PART 722—APPLICATION OF LABOR LAWS TO GOVERNMENT ACQUISITION

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.

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Parent topic: SUBCHAPTER D—SOCIOECONOMIC PROGRAMS

Subpart 722.1—Basic Labor Policies

722.103 Overtime.

722.103-1 Definitions.

Compensatory time off means leave equal to overtime worked, which, unless otherwise authorized in a contract or approved by a contracting officer, must be taken not later than the end of the calendar month following that in which the overtime is worked.

722.103-2 Policy.

(a) Most contracts covered by this regulation call for the performance of professional or technical services overseas on a cost-reimbursement basis. The compensation for employees performing such services is normally fixed on a monthly or annual basis, and the contracts usually state minimum work week hours. It is not expected that these employees will receive additional pay, overtime or

shift premiums, or compensatory time off.

(b) When the contracting officer determines it is in the best interests of the Government, specific provision may be made in contracts to permit such benefits for non-technical and non-professional employees serving overseas, subject to approvals to be required in the contract.

722.103-3 [Reserved]

722.103-4 Approvals.

The contracting officer may make the determinations referred to in (48 CFR) FAR 22.103-4.

722.170 Employment of third country nationals (TCN's) and cooperating country nationals (CCN's).

(a) *General.* It is USAID policy that cooperating country nationals (CCNs) and third country nationals (TCNs), who are hired abroad for work in a cooperating country under USAID-direct contracts, generally be extended the same benefits, and be subject to the same restrictions as TCNs and CCNs employed by the USAID Mission. Exceptions to this policy may be granted either by the Mission Director or the Assistant Administrator having program responsibility for the project. (TCN's and CCN's who are hired to work in the United States shall be extended benefits and subject to restrictions on the same basis as U.S. citizens who work in the United States.)

(b) *Compensation.* Compensation, including merit or promotion increases paid to TCN's and CCN's may not, without the approval of the Mission Director or the Assistant Administrator having program responsibility for the project, exceed the prevailing compensation paid to personnel performing comparable work in the cooperating country as determined by the USAID Mission. Unless otherwise authorized by the Mission Director or the Assistant Administrator having program responsibility for the project, the compensation of such TCN and CCN employees shall be paid in the currency of the cooperating country.

(c) *Allowances and differentials.* TCN's and CCN's, hired abroad for work in a cooperating country, are not eligible for allowances or differentials under USAID-direct contracts, unless authorized by the Mission Director or the Assistant Administrator having program responsibility for the project.

(d) *Country and security clearances.* The contractor shall insure that the necessary clearances, including security clearances, if required, have been obtained for TCN and CCN employees in accordance with any such requirements set forth in the contract or required by the USAID Mission, prior to the TCN or CCN starting work under the contract.

(e) *Physical fitness.* Contractors are required to insure that prospective TCN and CCN employees are examined prior to employment to determine whether the prospective employee meets the minimum physical requirements of the position and is free from any contagious disease.

(f) *Workweek, holidays, and leave.* The workweek, holidays, and leave for TCN and CCN employees shall be the same as for all other employees of the contractor, under the terms of the contract; however, TCN and CCN employees are not eligible for home leave or military leave unless authorized by the Mission Director or the Assistant Administrator having program responsibility for

the project.

(g) *Travel and transportation for TCN's and CCN's.* Travel and transportation shall be provided TCN and CCN employees on the same basis as for all other employees of the contractor, under the terms of the contract.

(h) *Household effects and motor vehicles.* USAID will not provide household effects to TCN and CCN employees; such employees may ship their household effects and motor vehicles to their place of employment on the same basis as for all other employees of the contractor, under the terms of the contract unless they are residents of the cooperating country.

Subpart 722.8—Equal Employment Opportunity

722.805-70 Procedures.

(a) The procedures in this section apply, as appropriate, for all contracts excluding construction, which shall be handled in accordance with (48 CFR) FAR 22.804-1. Contracting officers are responsible for ensuring that the requirements of (48 CFR) FAR 22.8 and related clauses are met before awarding any contracts or consenting to subcontracts subject to these requirements.

(b) *Representations and certifications.* The first step in ensuring compliance with these requirements is to obtain all necessary representations and certifications (Reps and Certs) as required by (48 CFR) FAR 22.810 and FAR 4.1202. When applicable, the contracting officer must review the Reps and Certs to determine whether they have been completed and signed as required, and are acceptable.

(c) *OFCCP's National Preaward Registry.* If the Reps and Certs are complete, signed, and deemed acceptable, and the contracting officer has no reason to doubt their accuracy, the contracting officer must then consult the OFCCP's National Preaward Registry at the internet website in 48 CFR 22.805(a)(4) (i) to see if the offeror is listed.

(1) If the conditions stated in (48 CFR) FAR 22.805(a) (4) are met (including the contract file documentation requirement in paragraph (a)(4)(iii)), then the contracting officer does not need to take any further action in verifying the offeror's compliance with the requirements of this subpart and (48 CFR) FAR 22.8.

(2) If the offeror does not appear in the National Preaward Registry, and the estimated amount of the contract or subcontract is expected to be under $10 million then the contracting officer may rely on the Reps and Certs as sufficient verification of the offeror's compliance.

(3) If the offeror does not appear in the National Preaward Registry and the estimated amount of the contract or subcontract is $10 million or more, then the contracting officer must request a preaward clearance from the appropriate OFCCP regional office, in accordance with 48 CFR 22.805(a). If the initial contact with OFCCP is by telephone, the contracting officer and OFCCP are to mutually determine what information is to be included in the written verification request. The contracting officer may need to provide the following information in addition to the items listed in (48 CFR) FAR 22.805(a)(5), if so requested by the OFCCP regional office:

(i) Name, title, address, and telephone number of a contract person for the prospective contractor;

(ii) A description of the type of organization (university, nonprofit, etc.) and its ownership (private,

foreign, state, etc.).

(iii) Names and addresses of the organizations in a joint venture (if any).

(iv) Type of procurement (new contract—RFP or IFB, amendment, etc.) and the period of the contract.

(v) Copy of approved Reps and Certs.

(d) In the event that OFCCP reports that the offeror is not in compliance, negotiations with the offeror shall be terminated.

(e) *Documentation for the contract file.* Every contract file must contain completed and signed Reps and Certs. The file must clearly show that these documents have been reviewed and accepted by the contracting officer. If the Reps and Certs were revised to make them acceptable (see paragraph (b) of this section), the file must also document what changes were required and why, and verify that the changes were made. The contracting officer shall also document the OFCCP National Preaward Registry review (see paragraph (c)

(1) of this section), and, if the Registry does not include the offeror:

(1) For contracts or modifications over $10,000 but less than $10 million, the file must contain a statement from the contracting officer that the contractor is considered in compliance with EEO requirements, and giving the basis for this statement (see paragraph (c)(2) of this section). This statement may be in a separate memorandum to the file or in the memorandum of negotiation.

(2) For contracts or modifications of $10 million or more, the file must document all communications with OFCCP regarding the offeror's compliance. Such documentation includes copies of any written correspondence and a record of telephone conversations, specifying the name, address, and telephone number of the person contacted, a summary of the information presented, and any advice given by OFCCP.

(f) *Documentation in the event of non-compliance.* In the event OFCCP determines that a prospective contractor is not in compliance, a copy of OFCCP's written determination, and a summary of resultant action taken (termination of negotiations, notification of offeror and contracting officer's representative, negotiation with next offeror in competitive range, resolicitation, etc.) will be placed in the contract file for any contract which may result, together with other records related to unsuccessful offers, and retained for at least six months following award.

722.810 Solicitation provisions and contract clauses.

(a) The contracting officer must insert the clause at 752.222-70, USAID Disability Policy in section I of all solicitations and resulting contracts.

(b) The contracting officer must insert the clause at 752.222-71, Nondiscrimination in section I of all solicitations and resulting contracts