PART 728—BONDS AND INSURANCE

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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Subpart 728.1—Bonds

728.105-1 Advance payment bonds.

Subpart 728.3—Insurance

728.305-70 Overseas worker's compensation and war-hazard insurance—waivers and USAID insurance coverage.

728.307-2 Liability.

728.307-70 Medical Evacuation (MEDEVAC) Services (MAR 1993).

728.309 Contract clause for worker's compensation insurance.

728.313 Contract clauses for insurance of transportation or transportation-related services.

Parent topic: SUBCHAPTER E—GENERAL CONTRACTING REQUIREMENTS

Subpart 728.1—Bonds

728.105-1 Advance payment bonds.

(a) Generally, advance payment bonds will not be required in connection with USAID contracts containing an advance payment provision. In lieu thereof, contracting officers will follow procedures set forth in (48 CFR) FAR 32.409-3.

(b) Whenever a contracting officer considers that an advance payment bond is necessary, the contracting officer will:

(1) Establish a bond penalty that will adequately protect interests of the Government;

(2) Use the USAID Advance Payment Bond format;

(3) Place bond with a surety currently approved by the U.S. Treasury Department according to the latest Treasury Department Circular 570; and

(4) Stipulate that the cost of the bond shall not exceed a rate of $7.50 per $1,000 per annum based on the penalty of the bond, without the prior written approval of the Bureau for Management, Office of Acquisition and Assistance, Policy Division (M/OAA/P).

(c) Where the surety's obligation under an advance payment bond covers all advances made to the contractor during the term of the contract, no release should be issued to the surety until all

advances made and to be made under the contract have been fully liquidated in accordance with the provisions of the contract, such as no-pay vouchers, reports of expenditures, or by refund. Where the surety's obligation under the bond is limited to advances made during a specified period of time, no release should be issued to the surety until all advances made and to be made during the specified period have been liquidated as aforesaid.

Subpart 728.3—Insurance

728.305-70 Overseas worker's compensation and war-hazard insurance—waivers and USAID insurance coverage.

(a) Upon the recommendation of the USAID Administrator, the Secretary of Labor may waive the applicability of the Defense Base Act (DBA) with respect to any contract, subcontract, or subordinate contract, work location, or classification of employees. Either the contractor or USAID can request a waiver from coverage. Such a waiver can apply to any employees who are not U.S. citizens, not residents of, or not hired in the United States. Waivers requested by the contractor are submitted to the contracting officer for approval and further submission to the Department of Labor, which grants the waiver. Application for a waiver is submitted on Labor Department Form BEC 565. USAID has a number of blanket waivers already in effect for certain countries that are applicable to its direct contracts with contractors performing in such countries. Where such waivers are granted from coverage under the DBA, the waiver is conditioned on providing other worker's compensation coverage to employees to which the waiver applies. Usually this takes the form of securing worker's compensation coverage of the country where work will be performed or of the country of the employee's nationality, whichever offers greater benefits. The Department of Labor has granted partial blanket waivers of DBA coverage applicable to USAID-financed contracts performed in certain countries, subject to two conditions:

(1) Employees hired in the United States by the contractor, and citizens or residents of the United States are to be provided DBA insurance coverage;

(2) Waived employees (i.e., employees who are neither U.S. citizens nor U.S. resident aliens, and who were hired outside the United States) will be provided worker's compensation benefits as required by the laws of the country in which they are working or the laws of their native country, whichever offers greater benefits. Information as to whether a DBA Waiver has been obtained by USAID for a particular country may be obtained from the cognizant USAID contracting officer.

(b) To assist contractors in securing insurance at minimal rates for the workmen's compensation insurance required under the DBA, and to facilitate meeting insurance requirements for such coverage, USAID, after open and competitive negotiation, has entered into a contract with an insurance carrier to provide such coverage at a specified rate. The terms of this contract require the insurance carrier to provide coverage, and the contractor to make payments to and handle its claims with that insurance carrier. Contracting officers are responsible for explaining and advising contractors of the details of securing such insurance.

728.307-2 Liability.

(a)-(b) [Reserved]

(c) *Automobile liability.* In order to ensure that private automobiles used by contractor employees stationed overseas under an USAID contract are properly insured, USAID has established minimum required coverages as a supplement to the (48 CFR) FAR clause at 52.228-7. This supplemental coverage is specified in (48 CFR) AIDAR 752.228-7, and is to be used in all USAID-direct contracts involving performance overseas.

728.307-70 Medical Evacuation (MEDEVAC) Services (MAR 1993).

The contracting officer must insert the clause at 752.228-70 in all contracts which require performance by contractor employees overseas.

728.309 Contract clause for worker's compensation insurance.

(a) Because of the volume of projects performed overseas resulting in contracts which require worker's compensation insurance, USAID has contracted with an insurance carrier to provide the required insurance for all USAID contractors. It is therefore necessary to supplement the (48 CFR) FAR clause at 52.228-3 with the additional coverage specified in (48 CFR) AIDAR 752.228-3. The coverage specified in (48 CFR) AIDAR 752.228-3 shall be used in addition to the coverage specified in (48 CFR) FAR 52.228-3 in all USAID-direct contracts involving performance overseas.

728.313 Contract clauses for insurance of transportation or transportation-related services.

(a) USAID is required by law to include language in all its direct contracts and subcontracts ensuring that all U.S. marine insurance companies have a fair opportunity to bid for marine insurance when such insurance is necessary or appropriate under the contract. USAID has therefore established a supplementary preface to the clause at (48 CFR) FAR 52.228-9. This supplementary preface is set forth in (48 CFR) AIDAR 752.228-9, and is required for use in any USAID-direct contract where marine insurance is necessary or appropriate.