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REVIEW OF  
PERSONAL SERVICES CONTRACTING  
PRACTICES EMPLOYED BY CERTAIN MISSIONS  
IN AID'S LATIN AMERICA AND  
CARIBBEAN BUREAU  
AUDIT REPORT No. 1-000-85-12  
AUGUST 20, 1985

AGENCY FOR INTERNATIONAL DEVELOPMENT

WASHINGTON, D.C. 20523

August 20, 1985

Office of the  
Assistant Inspector General  
for Audit

Mr. R.T. Rollis, Jr.  
Assistant Administrator  
Bureau for Management  
Agency for International Development  
Washington, D.C. 20523

Dear Mr. Rollis:

Attached for your information and use is a copy of our audit report entitled "Personal Services Contracting Practices Employed by Certain Missions in AID's Latin America and Caribbean Bureau." The audit was made by the Regional Inspector General for Audit/Tegucigalpa to determine whether the Agency had in place clearly established guidelines, procedures, and regulations governing contracts for personal services, and whether USAID Missions were contracting for personal services in accordance with those guidelines. We also reviewed the accuracy of contractors reporting their prior salaries and work experiences on applicable U.S. Government forms.

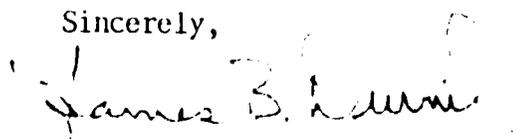
Clear, well-defined regulations, guidelines, and procedures governing personal services contracting practices were not readily available to contracting officers who needed them. Furthermore, USAID Missions were not consistently adhering to what guidance was available; nor were they always exercising sound business judgment or protecting U.S. Government interests in executing this type of services agreement. Moreover, we found no indication that any sanctions were being applied for non-compliance with Agency rules and regulations in this area.

We attempted to verify whether personal services contractors had accurately reported their past salary and work histories. Responses to our inquiries of former employers tended to confirm reported salaries and employment experiences, but over 50 percent of our inquiries went unanswered. Moreover, in those instances where reported salaries were reviewed in detail, we found that the salary histories reported were often inaccurate or misleading. This showed that confirmations by previous employers could not always be relied upon.

The recommendations are made in this report to improve the Agency's rules and regulations governing personal services contracts and to strengthen its ability to ensure compliance with sound contracting practices in the future. Recommendation No. 2 is for your personal action and its implementation is considered crucial if current personal services contracting deficiencies are to be quickly and adequately addressed.

Please advise me within 30 days of what actions have been taken or are planned in order to implement the four report recommendations.

Sincerely,

A handwritten signature in dark ink, appearing to read "James B. Durnil". The signature is written in a cursive style with some loops and flourishes.

James B. Durnil  
Assistant Inspector General  
for Audit

## EXECUTIVE SUMMARY

A personal services contractor (PSC) is an individual whose personal services are contracted for and paid directly by AID. By regulation, personal services contracts establish an "employer-employee" relationship between the individual and AID. It is not intended that PSCs work independently; they are to act at the direction and under the supervision of AID direct-hire employees. PSCs may be American, third-country or host-country nationals; however, this report deals only with American citizen or resident alien PSCs. Given current restrictions on the number of direct-hire (Foreign Service) employees AID may station abroad, the Agency has resorted increasingly to the use of the PSC employment format to augment its staff capability at overseas Missions. In late 1984, approximately 155 individuals were working in some 15 USAID Missions and offices in AID's Latin America and Caribbean region alone under personal services contracts.

The results of our audit indicated the need for clear, concise and well-defined regulations, guidelines and procedures governing personal services contracting practices. Such guidance was not readily available to contracting officers. Furthermore, USAID Missions were not consistently adhering to what guidance was available nor were they always exercising sound business judgment or protecting USG interests in executing this type of services agreement. Moreover, we found no indication that any sanctions were being applied for non-compliance with Agency rules and regulations in this area. We also detected certain problems relating to the F.I.C.A. and Federal Tax provisions of personal services contracts.

The Regional Inspector General for Audit, Tegucigalpa (RIG/A/T) reviewed certain USAID Missions' procedures for contracting for personal services from U.S. citizens and U.S. resident aliens. The objectives of our review were to determine whether the Agency had in place clearly established guidelines, procedures and regulations governing contracts for personal services, and whether USAID Missions were contracting for personal services in accordance with those guidelines. We also sought to determine if contractors were accurately reporting their prior salaries and work experiences on applicable U.S. Government forms. The review was done in Washington, D.C. and at five USAIDs in the Latin America and Caribbean region. The review covered active contracts as well as some that had been completed at the time of our visits to the USAIDs. We made our review of Mission contracting activities during the period October 1984 to March 1985 and continued our review of applicable laws and regulations until the date of issuance of this report.

From the more than 80 PSC files reviewed at the five USAID Missions that we visited, the basic information required for formal, arms-length negotiations was often absent from the record.

- 59 files (68 percent of those reviewed) contained no Standard Form 171 (Personal Qualifications Statement) or its equivalent, although completion of this document is basic to Federal hiring practices.
- In many cases the records contained neither a job description from the technical office ordering the personal services nor a Memorandum of Negotiation by the contracting officer responsible for entering into the contractual obligation on behalf of AID.
- In almost no case did we encounter evidence that would indicate that prior salary histories and work experiences had been verified by the Mission in connection with their screening of PSC candidates.

Our report contains several examples of loose contracting practices some of which could be considered serious abuses of this increasingly important employment format. They are symptomatic, in our view, of the deficiencies of an employment system in urgent need of review and corrective action. We also found one Mission that was not withholding F.I.C.A. or Federal Income Taxes from any of its over a dozen personal services contractors. The recommendations made in this report are designed to improve the Agency's rules and regulations governing personal services contracts and to strengthen the Agency's ability to ensure compliance with sound contracting practices in the future.

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PERSONAL SERVICES CONTRACTING PRACTICES  
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PART I - INTRODUCTION

A. Background

USAID Missions in Latin America and the Caribbean (LAC) enter into direct contracts with U.S. citizens and U.S. resident aliens (among others) to help supplement their professional and administrative staffs. These agreements between the USAIDs and the individuals are called Personal Services Contracts (PSCs). AID's Handbook 14, Appendix D, entitled Direct AID Contracts with U.S. Citizens or U.S. Residents for Personal Services Abroad, defines a PSC as "...one which establishes an employer-employee relationship". Appendix D is codified in Title 48, Chapter 7, Code of Federal Regulations, entitled "Federal Acquisition Regulations System" (formerly Appendix F of 41 CFR 7, entitled "Public Contracts and Property Management"). The personal services contractors perform duties similar to those of direct-hire AID employees. However, there are certain limitations on the scope of their duties. For example, they do not have the authority to obligate AID funds or to commit AID to contractual agreements.

The legal basis for AID's authority to enter into contracts with individuals for personal services abroad is Section 636(a)(3) of the Foreign Assistance Act of 1961 (Public Law 87-195) (FAA), as amended. Pursuant to this authority, individuals working under personal services contracts frequently perform functions critical to the fulfillment of AID objectives. As of mid-December 1984, over 155 individuals were working in USAID Missions throughout Latin America and the Caribbean under PSCs. This figure is equivalent to 48 percent of the approximately 320 U.S. direct-hire personnel working in the region during the same period. They are performing administrative functions, such as assistant administrative officers, and program functions, such as project managers and assistant project managers. Because of their numbers and increasing importance to AID's operations, the selection and contracting of PSCs requires care, consistency and close adherence to applicable regulations.

B. Audit Objectives and Scope

The Regional Inspector General for Audit, Tegucigalpa (RIG/A/T) reviewed the practices followed by certain AID Missions in the LAC region in contracting for personal services from U.S. citizens and U.S. resident aliens. We also selectively tested the accuracy of prior salaries and employment histories reported by the PSCs on their applications for employment or Biographical Data Sheets. The purposes of the review were

to determine whether: (i) AID's regulations, procedures and guidelines governing contracting for personal services were adequate; (ii) USAID contracting officers were adhering to established regulations, procedures and guidelines; and (iii) contractors were accurately reporting prior salaries and work experiences on their employment applications and Biographical Data Sheets.

Our review universe comprised the 14 AID Missions in the Latin America and Caribbean (LAC) region. We visited five of those Missions, reviewed over 80 PSC files (over 50 percent of the 155 PSCs in the LAC Region), and sent letters to 25 former employers of 22 PSCs requesting written verifications of their reported prior salaries and work experience. In certain cases we verified the accuracy of former employers' salary confirmations. We interviewed AID Officials and employees in the AID/Washington offices of Contract Management, Financial Management and the IAC Bureau, as well as Contracting Officers, Controllers and other officials and employees as necessary at the Missions visited. As noted above the 155 PSCs in the IAC Region represent a significant portion of AID's work-force in the region.

This was mainly a functional/compliance review. We did not review or attempt to evaluate contractors' performance or compliance with limitations on PSC functions [see e.g., 48 CFR 7, Appendix D, Paragraph 4(b)]. However, in meeting with various Mission Officials, certain performance aspects were discussed and considered as deemed necessary.

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PART II - RESULTS OF AUDIT

A. Findings

1. AID Objectives and Guidelines in Personal Services Contracting Need to be Clearly Defined

There are Federal and AID regulations as well as AID Handbook guidance and requirements based on those regulations which address the function of contracting for personal services. While the regulations are specific as to what is to be included in the contract agreements, they are not sufficiently specific or comprehensive in providing criteria and guidelines for negotiating the contracts or in providing sanctions for failure to comply with the regulations. Further, what guidelines do exist are not easy to find and sometimes difficult to comprehend.

AID procurement policies and procedures are set forth in the AID Acquisition Regulation (AIDAR), 48 CFR 7 (formerly the AID Procurement Regulation - AIDPR, 41 CFR 7). The AIDAR is incorporated in AID Handbook 14 and became effective on April 1, 1984. Our review of the AIDAR failed to disclose any simple, direct statement of the procedures to be utilized in contracting for personal services. Yet, despite the AIDAR shortcomings, certain applicable regulations apparently required, as a minimum, non-competitive negotiation in awarding personal services contracts abroad (AIDPR 7-3.107-50; 41 CFR 7-3.107-50). (See also AIDPR Notice 84-1.) In permitting non-competitive procurement, Section 7-3.107-50 required consideration of as many sources as practicable, including informal solicitation to the maximum feasible extent. Further, each contract file was required to include appropriate explanation and support justifying the noncompetitive award. (See also, AIDPR 7-3.107-51; 41 CFR 7-3.107-51, Authority to approve noncompetitive procurements.)

On April 1, 1984, the Federal Acquisition Regulation (FAR) became effective and was applicable to all Federal executive agencies. The FAR explicitly applies to the acquisition of services by contract (FAR 1.103; FAR 2.1). It is supplemented for AID purposes by the AIDAR. However, the provisions of the AIDPR cited above remained applicable until April 1, 1985. (See Federal Acquisition Circular 84-1.)

Prior to its amendment, effective April 1, 1985, FAR 37.105 required that contracts for services be awarded "through formal advertising whenever feasible and practicable" and when not feasible and practicable,

negotiation could be authorized. FAR 37.105 went on to state that even when negotiation was authorized, "competition still must be obtained to the maximum practicable extent...."

Effective April 1, 1985, FAR 37.105 was amended by the Competition in Contracting Act, Public Law 98-369, <sup>1/</sup> to conform that section to the new general rule that contracts must be awarded on the basis of "full and open competition," meaning that all responsible sources are permitted to compete (FAR 6.000; FAR 6.003). Present FAR 37.105 reads as follows:

37.105 Competition in service contracting

a) Unless otherwise provided by statute, contracts for services shall be awarded through sealed bidding whenever the conditions in 6.401(a) are met, (except see 6.401(b)).

b) The provisions of statute and Part 6 of this regulation requiring competition apply fully to service contracts. The method of contracting used to provide for competition may vary with the type of service being acquired and may not necessarily be limited to price competition.

The full and open competition contemplated by FAR 37.105 can be achieved through sealed bidding or through "negotiation" when sealed bidding is inappropriate (FAR 6.102; FAR 6.401(a); FAR 6.401(b); FAR 15.101; FAR 15.102). <sup>2/</sup> "Negotiation" as used in this context is "a procedure that includes the receipt of proposals from offerors, permits bargaining, and usually affords offerors an opportunity to revise their offers before award of a contract."

<sup>1/</sup> It bears noting that despite general FAR applicability, AID maintained that its exemption from Federal competitive procurement regulations (41 CFR 7-3.107-50) for personal services contracting abroad also applied to the FAR requirements. However, the statutory changes in the FAR which became effective April 1, 1985 (Competition in Contracting Act, Public Law 98-369) appear to resolve this confusion by failing to endorse any such general exemption for AID personal services contracting. Accordingly, the provisions of the FAR now appear to be fully applicable to AID procurement of personal services abroad as confirmed in STATE Telegram 097190 (4/85), captioned "Interim Guidance - Mission Implementation of the Competition in Contracting Act."

<sup>2/</sup> FAR 6.001 and FAR 6.301 set forth the exemptions and exceptions to required "full and open competition." None appears applicable to personal services contracting abroad under normal circumstances.

Since a competitive process is now required by the FAR, it is hard to understand why the AIDAR makes no direct mention of this requirement with respect to contracts for personal services. In fact, the provisions affecting personal services contracting are so vague and scattered as to be virtually useless to those who need them most -- AID employees delegated contracting responsibilities in the field. Those defects notwithstanding, at least one clear message can be gleaned from reading the FAR and the AIDAR -- personal services contracting procedures and practices must protect the interests of the U.S. Government and obtain the services needed at a fair price. As of April 1, 1985, at least, such procedures and practices require some form of competitive procurement. At a minimum, the process must entail arms-length negotiation.

According to AID's Contract Management Office (SIR/CM), AID Handbook 14, Appendix D 3/ (48 CFR 7, Appendix D) is the basic guide for contracting for personal services by U.S. citizens and U.S. resident aliens. 4/ It sets forth "... the authority, policy and provisions under which AID may contract with individual U.S. citizens or U.S. residents to provide personal services abroad." However, present Appendix D does not outline specific procedures to be followed nor does it currently require that AID contracting officers obtain data which would be essential to the conduct of reasonable, informed, arms-length negotiations.

Guidance to contracting officers in the execution of personal services contracts is contained in Paragraph 5 of Appendix D "Executing a Personal Services Contract." It states in Subparagraph (a) that in executing a contract, the contracting activity is to ensure that:

(a) The following approvals for the proposed contractor have been obtained: (1) Security clearance, to the extent required by AID Handbook 6--Security. (2) Mission and country clearance, as appropriate. (3) Medical clearance based on certification by a licensed physician. Medical clearance requirements apply to the contractor and to each dependent who is authorized to travel to the overseas post.

3/ Appendix D, entitled "Direct AID Contracts With U.S. Citizens or U.S. Residents for Personal Services Abroad".

4/ SIR/CM is circulating a draft Appendix J (48 CFR 7, Appendix J) which will set forth policies and procedures for direct AID contracts with cooperating country nationals and with third country nationals for personal services. The subject matter of proposed Appendix J is beyond the scope of this audit report, but in many respects, the proposed Appendix J represents an effort to address problems inherent in Appendix D as well. Applicable parts of proposed Appendix J could serve as a basis for needed revisions of Appendix D.

Subparagraph (b) places certain limits on compensation and Subparagraphs (c), (d), (e), (f), and (g) cover details of contract format, contract funding, and contractor obligations. However, nowhere in the guidance for contract execution is any mention made of the procedures to be followed in arriving at the terms of the contract itself or in determining whether or not the personal services are necessary in the first place. To illustrate this point, Appendix D does not require that any of the following documents be prepared or obtained by the contracting officer prior to execution of the contract:

- Position Description from the Technical Office requiring the personal services, fully detailing responsibilities and required qualifications;
- Standard Form 171 or 174 - Personal Qualifications Statement;
- Contract Negotiator's Checklist;
- AID Form 1420-17 - Contractor Employee Biographical Data Sheet;
- Memorandum of Negotiation.

Without tools such as those listed above, no serious negotiation of any kind can take place; the contracting responsibility is reduced to little more than a clerical function. Nothing in either the FAR or the AIDAR contemplates loose practices of this kind, yet the lack of specific and clearly defined guidance virtually ensures it. Moreover, neither a contractor who is less than truthful in providing information as to his/her qualifications nor a contracting officer who fails to follow reasonable procedures in ascertaining the candidate's qualifications is subject to any sanctions for any acts of commission or omission under current AID procedures. The resulting contracts, no matter how defective their negotiation or award, remain valid and binding on the U.S. Government.

## 2. Personal Services Contracts Were Not Based on Arms-Length Negotiations

In an apparent effort to fill some of the gaps outlined above, SER/CM issued Contract Information Bulletin (CIB) 82-7 5/ to all contracting officers on May 10, 1982. Its subject was "Checklist for Personal Services Contracts (PSCs)," and it included a clearly-stated requirement that, in preparing a PSC, the contracting officer is responsible for ensuring that a "memorandum of negotiation has been prepared and placed in the contract file." This requirement was reiterated in exactly the

5/ Contract Information Bulletins are issued periodically by the Office of Contract Management to advise other AID offices, USAIDs and contracting officers of current contracting policy, regulations, and requirements.

same language in CIB 84-30, an update of CIB 82-7 issued on December 12, 1984. <sup>6/</sup> This would imply that SIR/CM at least saw a continuing need to document the fact and substance of negotiation in executing a personal services contract

Despite this, we believe there are several significant facets of the "memorandum of negotiation" requirement which, when viewed in the light of our audit results, strongly suggest that the minimum prerequisite of meaningful, arms-length negotiation of personal services contracts is frequently not taking place:

- The CIB "requirement" for a memorandum of negotiation has no force or effect, because the contracts are valid without the memorandum being on file, and no sanctions attach if the requirements of the CIB are not met. Furthermore, Appendix D of AID Handbook 14 does not address the concept of negotiating a personal services contract and does not require that a memorandum of negotiation be placed in the contract file.
- In the majority of ISC files we reviewed there was insufficient information to permit the contracting officer to effectively "negotiate" a contract.
- The CIB does not require that the contract files contain the basic tools for negotiating a contract, such as a Standard Form 171 (U.S. Government job application - "Personal Qualifications Statement") and an adequate justification for utilizing a ISC to meet a particular AID objective.

We have therefore concluded that, for the most part, the terms and conditions of Personal Services Contracts and their respective salary awards have not been negotiated at all, but rather have been arrived at by informal means and are similar to one another only in their lack of adherence to the basic requirements of arms-length negotiation. AID

<sup>6/</sup> CIB 84-30 supersedes and cancels CIB 82-7, but primarily conforms the substance of CIB 82-7 to the changeover from the AID Procurement Regulation to the AID Acquisition Regulation citations. However, there is one significant, unexplained, change of substance. CIB 84-30 removed any mention of the competitive process that could be utilized in obtaining personal services. The earlier CIB 82-7 had noted that while formal competition was not required in contractor selection, requirements of AIDIR 7-3.101-50(d)(1) relating to justification for non-competitive negotiation had to be met. This notation and appropriate citations were not included in CIB 84-30, leaving only the broad statement requiring that the selection of a contractor be documented and justified. As noted above, FAR 37.105 would now appear to require "full and open competition," necessitating a new CIB to clarify the situation.

Handbook 17, "Organization Handbook," states ( in Chapter 18) that one of the functions of the Field Support and Review Branch of M/SER/CH/SD is to conduct "...both pre and post contract reviews of AID-direct contracts for conformance with regulations, policies, good business practices, and professional standards." However, we found no indication either at the Missions or in AID/Washington that such a periodic review process was in existence. At least one reason for this is that the Field Support and Review Branch is generally staffed by only 3 to 4 people, two permanently assigned and one to two Foreign Service Officers.

The cases cited in report section 5 demonstrate what has happened in some Missions when sound, arms-length contracting procedures were not followed. We believe the conditions described in these cases are a direct result of deficient guidelines and regulations, an absence of meaningful negotiations, and extremely limited oversight from AID's Contract Management Office.

### 3. AID Contract Information Bulletins (CIBs) Are Not Sufficiently Specific and Are Not Being Followed

While CIB 84-30 places responsibility on the contracting officers to ensure that memoranda of negotiation are prepared for the contract files, it does not require that they obtain the underlying information necessary to prepare such memoranda. Implicit in the concept of a memorandum of negotiation is that the contract in fact be negotiated. Yet neither CIB 84-30 nor its predecessor CIB 82-7 requires that the contracting officer obtain the basic documentation necessary to engage in serious, arms-length discussions with a potential contractor that would justify the commitment of USG funds.

For example, CIB 84-30 does not require the contracting officer to specifically obtain a Standard Form 171. Hiring personnel for U.S. Government service at even the most basic levels requires such a form, yet substantial commitments of USG funds are regularly made for personal services without securing the information contained in this basic personnel document. This document requires that, among other things, the prospective PSCs list prior work experiences and salaries earned. Upon signing the form, the PSC candidate affirms that to the best of his/her knowledge the facts stated therein are true, complete and correct. That affirmation is subject to the following admonition:

A false answer to any question in this statement may be grounds for not employing you, or for dismissing you after you begin work, and may be punishable by fine or imprisonment (U.S. Code, Title 18, Section 1001).

AID Form 1420-17, Contractor Employee Biographical Data Sheet (Bio-data Sheet), used by AID to secure limited information from AID institutional contractors with respect to those employed by the contractor under an AID contract, was present in some PSC files reviewed, but this form lacks the completeness of the SF 171, and more importantly, lacks the complete certification and admonition contained in the SF 171.

Of the more than 80 PSC files we reviewed at five USAID Missions:

59 files (68 percent) contained no Standard Form 171; 7/

46 files (53 percent) contained no Bio-data Sheets (Form AID 1420-17);

50 files (57 percent) contained no Memoranda of Negotiation. 8/

In most of the files we reviewed, we found no checklist prepared by the contracting officer to ensure that at least minimum documentation had been obtained and minimum criteria adhered to. Even more serious, in many cases job descriptions and job requirements prepared by the Technical Office for which the prospective contractor was being hired were lacking.

4. Contracting Officers Are Responsible for Negotiating Personal Services Contracts and Must Assume that Responsibility

Crucial to the concept of meaningful negotiation is the person responsible for representing the interests of the party on whose behalf he/she acts. AIDAR Subpart 701.603-70 places such responsibility clearly in the hands of the "contracting officer" in AID's procurement process:

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7/ In many cases the files contained personal bio-data sheets, resumes, and/or personal applications for employment, but they did not always contain complete prior salary histories and addresses of former employers. These informal documents generally tend to place employee candidates in the best possible light and do not require affirmation that the statements contained therein are true and correct. In addition, they lack the consistency that can be achieved only with standard forms.

8/ One Mission was preparing memoranda of negotiation after the fact at the time the auditor was performing this review.

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. In order to insure proper accountability, and to preclude possible security, conflict of interest, or jurisdiction problems, it is AID policy that AID contracting officers must be U.S. citizen employees of the U.S. Government. [Emphasis added ]

Where, as in this case, the interests of the U.S. Government require, as a minimum, arms-length negotiation, anything less must be viewed as irresponsible conduct for which the contracting officer should be called to account, as contemplated by AIDAR Subpart 701.603-70. To re-enforce this concept, AIDAR Appendix A (48 CFR 7, Appendix A) outlines in unmistakable terms the role of the contracting officer in the AID procurement process. Appendix A is set forth as Exhibit 1 to this report. It should be immediate, mandatory reading in its entirety for all contracting officers. (See also FAR 1.602; 6.101; 37.103.)

The message in AIDAR Appendix A and the FAR is clear. A contracting officer in the AID procurement process is to exercise a high level of responsibility and is charged with protecting the interests of the U.S. Government. This is not a clerical function. To the extent that contracting officers simply ratify the work of others or permit pre-determined "deals" to become reality, they are not in any way discharging their responsibilities in accordance with AID regulations.

When the standards outlined above and in Exhibit 1 are applied to the procurement of personal services, the result requires meaningful, informed, arms-length negotiation. Negotiation implies a process of informed give-and-take; not pre-arranged deals with friendly sources. In short, the contracting officer, when he/she signs a personal services contract on behalf of the U.S. Government, is certifying that he/she has obtained needed personal services from the best available source under the best available terms and conditions for the United States Government and has done so in accordance with applicable law and regulations.

As guidance with respect to the critical issue of salary awards for personal services contractors, AIDAR Appendix G (48 CFR 7, Appendix G) sets forth the basic criteria to be applied and places clear responsibility for its application in the hands of contracting officers. (See Exhibit 2 to this report.) After a discussion of procedures in those instances where a contractor's salary is to exceed the GS-1 level, Appendix G states in part:

Salaries below the FS-1 level should also be fully justified, even though formal approval procedures may not be involved. Personnel compensation negotiated and payable under AID contracts should be at the minimum levels necessary to attract needed technical services in a competitive market. Rates should be determined by the "market place" where the types of services are obtained. Using such criteria, very few salaries can be expected to approach or exceed the FS 1 level.

Actual discussions with contractors concerning salaries should be held only by persons authorized to negotiate and execute contracts. [Emphasis added.]

Thus, the contracting officer, is by regulation AID's salary negotiator, required to follow guidelines contained in the regulations, and required to justify his/her decision in each case.

### Salary Verifications

In an effort to verify past salaries and employment of selected contractors, we sent letters to 25 former employers reported by 22 personal services contractors. The responses we received generally confirmed the salaries that had been reported by the contractors, but we received responses from only 10 employers. Therefore, we can make no informed judgment regarding the overall accuracy of prior salaries reported by personal services contractors.

However, our in-depth analysis of certain PSC salary histories suggested the need for verification of salary and employment history prior to the execution of the contracts. For example, addresses shown on Bio-Data Sheets and SF 171s were not always clear and precise. If prospective contractors knew that their employment was contingent on their prior salaries being verified, they would very likely provide more explicit information which would facilitate verification.

In this connection it is interesting to note the extent of detail that AID's Office of Personnel Management expects in the negotiation of salaries of prospective direct-hire employees. Exhibit 5 to this report represents a reproduction (for the sake of clarity) of 1983 STATE Telegram 220306 (8/5/83) containing this detailed guidance. We believe that no less care should be taken in making personal services contract salary awards.

### Oversight Lacking

As noted earlier, AID Handbook 17, Ch.18H provides that the Field Support and Review Branch of the Services Operations Division, Office of Contract Management is to conduct "both pre and post contract reviews of AID-direct contracts for conformance with regulations, policies, good

business practice, and professional standards." That mandate should be the authority by which every contracting officer is held accountable for his/her commitment of U.S. Government funds. Our review found little, if any, evidence that contracting officer actions in this regard were being scrutinized, and no evidence that contracting officers were being held accountable for the failure to follow what guidelines did exist.

## 5. Examples of Loose or Abusive Personal Services Contracting Practices

### USAID "A"

1. In March 1984, USAID "A" was in the process of contracting for the services of an individual who had no clear salary history. The individual's contract file contained no Bio-Data Sheet, SF 171 or 174, or security clearance and no evidence of prior salary verification. Nevertheless, the Mission Director was "...prepared to sign a contract..." at an annual salary of \$29,281.93 based on a "salary 'history'" that the Mission Director himself computed for the PSC. A contract was eventually executed for a salary of \$33,756. Exhibit 3 to this report is a copy of a memorandum written by the Mission Director to the USAID contracting officer "reconstructing" the "salary 'history'" of the PSC candidate which subsequently resulted in a \$33,756 contract.

2. USAID "A" has a General Services Contract (i.e., not a personal services contract) with an entity that provides the Mission with its drivers, guards, cleaning and other general services required. Nearly 100 employees under this contract are host country nationals who are paid in local currency according to the local pay scale for such services. In addition, there were at least five U.S. citizens also working for USAID "A" under the General Services Contract who were being paid in U.S. dollars and at U.S. pay scales. These individuals were working as program and project technicians whose work, as far as we could determine, had nothing to do with a General Services operation and who were essentially personal services contractors. Contract Information Bulletin 84-27 and AID General Notice of November 25, 1984 prohibit contracting with an organization for the purpose of establishing a temporary employee/employer relationship. This is the function of direct personal services contracts with the individuals involved.

3. A Personal Services Contractor employed at USAID "A" at a salary of about \$19,500 was being converted to a resident direct-hire employee at a salary of about \$26,000. However, the individual reported in his SF 171 that he was earning about \$24,300 under his personal services contract, resulting in the \$26,000 offer from AID's Office of Personnel Management. The SF 171 was forwarded to AID/Washington by the Deputy Mission Director. We were told by the contractor that the Mission

Director counseled him to add about \$4,500 (consisting of employer's F.I.C.A. contributions, travel, per diem and other contract costs) to his \$19,500 salary to arrive at the reported figure in his SF 171. This issue is under continuing review by the IG's Office.

4. There was no evidence in the 14 contract files reviewed at USAID "A" that security clearances had been obtained for PSC employees, even though required by the AIDPR (as well as the current AIDAR). Further investigation in IG/Security in Washington disclosed that in fact 12 PSCs did not have security clearances. The General Services Contractor as well as two of his U.S. citizen employees did not have security clearances. This matter was brought to the attention of the IG's Office of Security which requested USAID "A" to obtain the required clearances.

#### USAID "B"

In April 1984, USAID "B" contracted for the personal services of an individual to be an assistant in the USAID Executive Office. The individual was contracted for two years at an annual salary of \$31,000.

This individual was a PSC in a similar capacity for two years in another USAID Mission at an annual salary of about \$8,200<sup>9/</sup> per year in 1983 and early 1984. While the \$8,200 salary appears unusually low, the \$31,000 he received under his new contract appears unusually high. The individual's reported earnings prior to his \$8,200 contract with AID were \$12,000 to \$17,400 per year during the period January 1981 to February 1983, and prior to that time he was a Peace Corps volunteer. Thus, this individual's salary declined from \$17,400 in 1981 to \$8,200 per year in 1983-84, and then increased to a salary of \$31,000 under his current contract. His contract files contained no documentation that would explain the process by which the contracting officer at USAID "B" "negotiated" a nearly 300 percent increase in salary.

While the official records do not explain this individual's dramatic increase in salary, it bears noting that his USDH supervisor at the previous USAID Mission, where he earned \$8,200, is now his USDH supervisor at USAID "B". He began working at USAID "B" under the \$31,000 per year contract almost as soon as his supervisor had transferred to USAID "B".

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<sup>9/</sup> The contractor was paid in local currency the rate for which was not constant in terms of U.S. dollars. The \$8,200 is based upon the rate of exchange at the time the contract terminated in early 1984.

## USAID "C"

1. A Personal Services Contractor was contracted by the USAID/Director at an FS-1 salary level plus a 15 percent post differential to coordinate a \$13 million reconstruction project. Because there had been no apparent investigation by the USAID into the background and prior earnings of this individual, he was awarded a salary of nearly \$10,000 per year more than he was earning previously according to his income tax returns. Also, according to the AID Project Officer, this individual was not qualified for the job, was not performing any real function, and was never needed for the project. We were advised consequently that this individual was hired because he was a friend and former AID supervisor of the former Deputy Mission Director. This case was the subject of a earlier RIG/A/T special report (See STATE 379914, dated December 28, 1984).

The total cost of this Personal Services Contract was \$135,000, including the contractor's salary and support costs, which might have served a far better purpose had the money been used directly for the project rather than to fund a position which the Mission's own Project Officer deemed unnecessary.

2. An individual was contracted by USAID "C" on September 19, 1984 at an annual salary of \$51,831 (FS-2/9) plus a 15 percent post differential of \$7,775. The contract was for 13 months. On January 15, 1985, nearly four months after the effective date of his contract, this individual signed a Contractor Employee Biographical Data Sheet (AID 1420-17) which was placed in his official contract file. There was no SF 171 or 174 in the file. There was a Security Investigation Data form (SF 86) and a resume showing his past work experience. However, these documents did not indicate his prior earnings.

According to information in the contractor's Bio-Data Sheet, during the period 1978 to 1984, he earned \$500 per week. He also reportedly earned \$190 to \$195 per day on three two-to-three week consulting jobs during the period January 20, 1983 to March 30, 1984. Thus, as reported in his Bio-Data Sheet, the contractor, during the period 1978 to 1984 earned \$26,000 per year (\$500/wk. x 52 weeks) plus about \$5,800 in 1984 from two of the fifteen-day consultancies.

Under the definition of salary found in AID's Bio-Data Sheet, i.e. basic periodic payments for services rendered, the contractor would be credited with reported earnings of \$26,000 per year. Yet USAID contracted him on September 19, 1984 for \$51,831 per year plus post differential. This would be a \$25,831 increase (excluding post differential) over his prior reported salary, nearly 100 percent. Even crediting the extra \$5,800 earned in 1984, the increase in salary would be over 60 percent. It bears noting that inflated salaries frequently result in inflated benefit costs normally associated with AID employment overseas.

3. An individual was employed under a personal services contract for a salary of more than \$53,000 even though his prior income declarations for income tax purposes had been about \$35,000. Again there was no indication in the contractor's file that any attempt had been made to verify this individual's prior earnings. This case was also reported earlier (STATE 279914). The contractor is a close personal friend of the Mission Director who, in response to the earlier report, offered the contractor an opportunity to negotiate his salary downward. The contractor declined to do so and the USAID Director closed the matter.

4. In reviewing the personal services contract files in USAID "C," it was apparent that many contractors paid little attention to reasonable and sound contracting procedures. The USAID Executive Officer, recognizing that the contract files in many cases lacked adequate documentation, had recently been requesting the contractors to prepare the "Contractor Employee Biographical Data Sheet" (AID form 1420-17) for their files. These forms were frequently prepared in a haphazard manner with dates and signatures missing. Exhibit 4 to this report provides a clear example of a contractor's almost total disregard for adhering to minimum Agency requirements. Until AID follows sound contracting procedures, those with whom it does business are unlikely to take the Agency's procedures seriously.

5. On at least six occasions USAID "C" contracted for the short term personal services of an individual through Purchase Orders. On each occasion the contractor was paid at the rate of \$265.60 per day (except for one six-day period when he was paid \$0.60 less per day) or at an annual rate of \$69,056.10. The periods of services and the salaries paid were as follows:

Period of Service	Number of Work Days	Rate Per Day	Total Salary	Excess Over Rate for FS-1 11/
1-08-84 to 1-29-84	18	\$265.60	\$ 4,780.80	\$ 236.34
1-30-84 to 2-04-84	5	265.60	1,328.00	65.65
2-13-84 to 3-04-84	15	265.60	3,984.00	196.95
Amendment to increase work days 4 weeks starting 5-01-84	6	265.00	1,590.00	75.18
July 1984	24	265.60	6,374.40	315.12
	20	265.60	5,312.00	262.60
Total			\$23,369.20	\$1,151.84

10/ This report does not address the issue of utilizing purchase orders to obtain what are essentially personal services. However, regardless of the type of contract, we take the position that rates paid to individuals cannot exceed the FS-1 maximum without appropriate justification and approval.

11/ The daily rate for an FS-1 step 10 at the time was \$252.47. (\$65,647 divided by 260 days = \$252.47)

According to AID Handbook 14, Subpart 731.205.6, Compensation for Personal Services:

...Any compensation (i.e., the employee's or consultant's base annual salary plus overseas recruitment incentive, if any) which exceeds the maximum payable annual or daily rate for a Foreign Service Officer Class FS-1 as set forth in the payment schedule of the Uniform State/AID/USIA regulations, as from time to time amended, will be reimbursed only with the written approval of the Contracting Officer. Contracting Officer's approval of salaries in excess of the maximum payable rate for a Foreign Service Officer Class FS-1 will be based upon a memorandum from the technical office and approved by the Assistant Administrator or Mission Director having program responsibility for the project in support of which the contract is written.

At the time of our review in February 1985 the Mission did not provide any justification for paying the contractor at a rate in excess of an FS-1. Hence, the USAID should recover the \$1,151.84 that was paid to the contractor over and above the amount he would have received at the FS-1 level. This matter is being handled via a special report to USAID "C".

USAID "D"

Of 19 Personal Services Contract files reviewed in USAID "D", six files indicated that the contractors were given substantially higher salaries than they were receiving previously. The files did not provide justifications for these increases which ranged from nearly 15 percent to nearly 44 percent.

	Previous Salary	Starting Salary Current Contract	Increase	
			Amount	Percent
PSC A	\$42,011	\$48,400	\$ 6,389	15.2
PSC B	42,028	51,512	9,484	22.6
PSC C	28,282	35,585	4,303	15.2
PSC D	46,800	53,628	6,828	14.6
PSC E	18,480	22,652	4,172	22.6
PSC F	24,262	34,930 <sup>12/</sup>	10,665	44.0

USAID "E"

At USAID/E, while documentation was frequently incomplete and it was hard to determine the extent of arms-length negotiation, no examples of seriously negative results were found in our review.

<sup>12/</sup> Amendment of existing contract.

We believe the cited examples are symptomatic of an agencywide problem that needs to be urgently addressed by AID's Bureau for Management with the support and assistance of other concerned Bureaus and Offices.

#### B. Conclusions and Recommendations

The discussion in the preceding sections, when considered in total, indicates an AID activity almost totally lacking in overall well-defined procedures, guidelines, management control and sanctions.

Further, the guidelines that do exist are frequently ignored by Mission personnel. Despite the bulk of AID contracting guidelines and regulations and the Federal Acquisition Regulation, there is no concise statement of those practices and procedures that deal specifically with Personal Services Contracting abroad. AIDAR Appendix D (48 CFR 7, Appendix D) is referred to in various AIDAR sections as the source for guidance involving personal services contracting with U.S. citizens and residents, yet Appendix D is virtually silent regarding the most basic aspects of contract negotiation and execution. In fact, all that the text of Appendix D specifically requires is: i) a security clearance, (ii) Mission and country clearance, and (iii) a medical clearance.

As illustrated in this report and exhibits, what regulations and guidance exist are found in a variety of sources pertaining to a wide range of contracting situations. Nowhere did we find a clear and complete regulatory outline of the requirements for execution of a personal services contract overseas, including a listing of indispensable documents for the contracting process. Of perhaps equal importance, nowhere in the available regulations, nor in the CIBs, did we find any specific sanctions for non-compliance with regulations by contracting officers.

If there is to be any degree of consistency in contracting for personal services among the various USAIBs, and if such contracting is to be done according to sound business principles and in a manner designed to protect U.S. government interests, then contracting officers need to have clear and concise guidelines having the force of explicit Agency policy and regulation.

Once those guidelines are established in unmistakable terms, the Agency must devise a system for ensuring the integrity of the process, and contracting officers as well as Mission Directors <sup>13/</sup> must be held fully accountable for their actions. As AID's use of personal services

<sup>13/</sup> Mission Directors are generally the principal contracting officers, but they frequently redelegate their authority within the Mission. This re delegation does not relieve Mission Directors of primary accountability.

contracts expands to meet Agency objectives, the contracting process to obtain those services must be formalized and, at the minimum, arms-length negotiations assured. Only in so doing can the Agency hope to obtain the needed services under the best possible terms and conditions. Anything short of this will leave the Agency's projects and programs with less than they deserve.

AID's Office of Contract Management (SER/CM) did not fully agree with our conclusion on page 17 that well-defined procedures and guidelines were almost totally lacking with regard to personal services contracting. They emphasized throughout their comments non-compliance by contracting officers with existing regulations. SER/CM stated in its July 19, 1985 response to the draft report:

While SER/CM agrees that we need "better and more" well-defined procedures, guidelines, etc., the point we continue to make is that current procedures were not even followed. Further a careful reading of Appendix D (including the material which is referenced), will indicate that more is required than a security clearance, Mission and Country clearances, and a medical clearance.

Recommendation No. 1

We recommend that AA/M, in consultation with the Office of the AID General Counsel, require SER/CM to:

- a) review all existing guidelines and regulations applicable to personal services contracting and redraft AID Handbook 14, Appendix D to completely codify in one place all such guidelines and regulations;
- b) appropriately revise the contract negotiating checklist and issue a Contract Information Bulletin requiring contracting officers' completion;
- c) obtain a written scope of work and a statement of minimum qualifications from the office requesting personal services prior to the negotiation of any personal services contract;
- d) prior to negotiating and executing a personal services contract, require that contracting officers obtain a fully completed and signed Standard Form 171 from each prospective contractor, so that they can make independent and informed assessments of each prospective contractor's qualifications and capabilities and can reasonably engage in arm-length negotiations, and so that contractors can be held accountable for their statements;

e) design a standard memorandum to be acknowledged by the contractor via his/her signature and to be attached to all memoranda of negotiations pertaining to personal services contracts with U.S. citizens or U.S. resident aliens, which clearly advises the contractor that:

(i) the salaries received from AID pursuant to the contract are subject to F.I.C.A. contributions and Federal Income Tax withholding,

(ii) he/she must file a for W-4 with the cognizant AID Controller prior to commencing work under the contract,

(iii) he/she is not eligible to claim the "foreign earned income exclusion" either on the W-4 or in his/her tax returns to the IRS;

f) require verification of salary and employment history for all personal services contractors, with such verification being prior to execution of the contract except in extreme emergencies; further, the validity of any contract negotiated on the basis of unverified information should be made explicitly contingent upon such verification;

g) establish a written procedure to implement the required Handbook 17 function of conducting both pre and post contract reviews of AID-direct contracts for conformance with regulations, policies, good business practices, and professional standards.

#### Recommendation No. 2

We recommend that AA/M, in consultation with each Regional Bureau and the Office of General Counsel, establish specific procedures for the implementation of all regulations and guidelines applicable to personal services contracting abroad and establish a procedure for holding Mission Directors and contracting officers accountable for contracting actions.

#### Management Comments

AID's Office of Contract Management (SER/OM) generally agreed with Recommendations 1 and 2 and indicated that work was in progress to revise Appendix D to achieve the recommended results. However, SER/OM, in their July 19, 1985 response to the draft report disagreed with Recommendation

No. 1 (d) to the extent that it required the design of a standard memorandum. In addition, SER/CM suggested that compliance with the substance of Recommendations 1 (f) and 2 are in progress pursuant to Executive Order 12352 concerning Federal Procurement Reforms.

#### OIG Response

The SER/CM response seemed only to disagree with the notion of a standard memorandum, while agreeing with the need to transmit the suggested information. We believe that a standard memorandum signed by each contractor is the best means to clearly and concisely transmit the necessary information.

With respect to reforms under Executive Order 12352, while aspects of these reforms may ultimately satisfy Recommendation 1 (f) and 2, we retain these recommendations in their present form pending evaluation of the full implementation of the Executive Order.

#### C. Other Significant Issues and Recommendations Regarding Personal Services Contracting

##### Social Security (F.I.C.A.) and Federal Income Tax

The General Provisions attached to contracts with U.S. citizens or U.S. residents for personal services abroad state in clause 7 that, "F.I.C.A. contributions and U.S. Federal Income Tax withholding shall be deducted in accordance with regulations and rulings of the Social Security Administration and the U.S. Internal Revenue Service respectively." All but one of the USAIDs we visited was withholding and reporting F.I.C.A. contributions and U.S. Federal Income Tax. The one USAID that was not proceeded to do so after we pointed out the requirement. However, many of the contractors working at that USAID as well as some working in the other USAIDs have claimed exemptions from withholding on their form W-4 by virtue of being overseas (foreign earned income exclusion). In those cases the USAIDs were not withholding Federal Income Tax, and at least one Mission was reporting these salaries to the IRS on form 1099 rather than on Form W-2.

According to representatives from the IRS and as stated in IRS Publication 54, "Tax for U.S. citizens and Resident Aliens Abroad," U.S. personal services contractors are subject to Federal Income Tax on their overseas earnings if they are in effect working as U.S. Government employees.

Generally, U.S. citizens and resident aliens who are not U.S. Government employees working abroad can exclude up to \$80,000 of income earned abroad from Federal Income Taxes under certain circumstances, according to IRS Publication 54. However, Publication 54 also states:

For the purposes of both the foreign earned income exclusion and the foreign housing exclusion or deduction, foreign earned income generally does not include any amounts paid by the United States or any of its agencies to its employees. These amounts include payments to employees of Armed Forces post exchanges, officers' and enlisted men's clubs, Embassy commissaries, and similar instrumentalities of the U.S. Government.

AID's definition of a personal services contract is "...one which establishes an employer-employee relationship" (48 CFR 7, Appendix D). Therefore, not only are the USAID Missions required to deduct the Federal Income Tax withholding on salaries paid to personal services contractors, but the personal services contractors are required to declare such income on their Federal Income Tax returns and pay the appropriate tax. In order to establish consistency within AID and to avoid any misunderstandings on the part of the personal services contractors, it should be made clear to them that the salaries paid by AID are subject to both F.I.C.A. contributions and Federal Income Tax withholding.

The form now used to pay personal services contractors is the Standard Form 1034, "Public Voucher for Purchases and Services Other than Personal," shown as Exhibit 6 to this report. This form has no provision for showing F.I.C.A. and Federal Income Tax withholdings, and as such is not a proper format for paying personal services contractors.

Recommendation No. 3

We recommend that AA/M require M/PM to use a Statement of Earnings and Leave Form (AID 760-9) or similar form when paying personal services contractors. The form should, as a minimum, provide for recording F.I.C.A. and Federal Income Tax withholding from payments made pursuant to personal services contracts.

We were also advised in our discussions with Internal Revenue Service representatives that:

- Copies of all w-4 Forms on which personal services contractors have claimed exemption from withholding are to be sent to IRS.
- Personal services contractor's earnings should be reported on a Form w-2.

Recommendation No. 4

We recommend that AA/M require M/FM to advise all USAID Controllers that copies of Form W-4 on which personal services contractors have claimed exemption from withholding are to be sent to the Internal Revenue Service and that earnings of personal services contractors are to be reported on Form W-2 and not on Form 1099. The Controller Guidebook should be amended as necessary to reflect the substance of this recommendation.

APPENDIX A  
RESPECTIVE ROLLS OF CONTRACTING AND OTHER PERSONNEL  
IN THE AID PROCUREMENT PROCESS  
AID HANDBOOK 14 - PROCUREMENT REGULATIONS

1. Basic Policy

Only a contracting officer, designated to enter into contracts and make the determinations and findings related thereto (or an authorized representative of the contracting officer acting within the limits of his/her authority), may bind the United States Government to a contract, or direct or authorize a contractor to proceed with work.

2. Planning, Competition, Negotiation, and Award

(a) Preaward technical discussions with potential contractors should be conducted in such a manner as to preclude the assumption by any potential contractor that a commitment has been made. AID employees are responsible for insuring that no unfair competitive advantage is afforded one contractor over any other contractor in competing for Agency contracts. In this connection, discussions with prospective contractors prior to the final selection of the contractor and commencement of negotiations by the contracting officer must be conducted with the greatest discretion. Under no circumstances should the specific amount of funds which the Agency has available to support a contract be made known to a prospective contractor. No AID employee is authorized to dilute the Agency's negotiation position prior to or during an "arm's-length" negotiation conducted between AID and the contractors with whom it does business. The requirement for preservation of the Agency's negotiation position must be scrupulously observed whether the procurement is to be negotiated with a single, non-competitive source or whether it is to be negotiated on the basis of multiple competitive proposals. It is advisable to involve the contracting officer in the project planning cycle as early as possible, and to insure that he/she or his/her representative is either present at any meeting with prospective project planning cycle as early as possible, and to insure that he/she or his/her representative is either present at any meeting with prospective contractors, or is consulted prior to such a meeting.

(b) Contracting personnel act upon requirements which are formulated by the planning, technical, and research offices of the Agency. Contracting officers obtain the information they need on technical requirements by questions and discussions with the planning, technical, and research offices of the Agency. If a contract is to be tenable, the end result which is desired must be described with completeness and exactitude. The scope of the work must be explicitly stated; otherwise the contracting

officer cannot assure terms in a contract by which the desired action can be enforced. If the requiring office cannot provide a point of departure in these terms and deliver to the contracting officer a clear-cut description of the purpose and outline the limits of the scope, results may be disappointing and the possibility of deferring the project until these elements can be given more concrete dimensions should be considered. Finally, the requiring office should insure that the scope of work and funding information are delivered to the contracting officer with sufficient lead time to allow for proper preparation and planning of the procurement.

(c) One of the paramount duties of the contracting officer is to secure competition to the maximum practical extent for any planned procurement. The procedures for formally advertised, or for publicized negotiated, or for limited source procurements differ, the contracting officer must determine the proper method of procurement and contract type, and must determine the extent of competition required. The technical office has a continuing responsibility to assist the contracting officer in this effort to obtain competition and negotiate a contract. Basically, this commences with adequate drafting of the statements of work and specifications. The technical office can frequently assist by identifying additional technically competent sources for the solicitation of proposals.

### 3. Contract Administration

Meetings to discuss contract matters with contractors should be preceded by sufficient advance notification to all parties, including the contracting officer, to permit advance arrangements for the attendance at such meetings. Technical personnel shall not hold discussions of contract problems with contractors or technical problems with contractual implications without arranging for attendance by contracting personnel. Once a meeting with a contractor has been agreed upon and the issues have been made known to all involved parties, an internal AID meeting should take place between technical and contracting personnel, with the Country Desk representative and such other personnel in attendance as may be necessary, to establish an AID position or line of inquiry to be followed in the meeting with the contractor. If differences of opinion arise among AID personnel in the meeting with the contractor, such differences should never be discussed in the meeting with the contractor. AID personnel shall adjourn to resolve privately any such differences of opinion, and resume discussions with the contractor only when the AID position is consolidated. The AID individual designated to chair meeting with a contractor should be selected prior to the meeting with the contractor. Depending upon the issues to be discussed, whether primarily technical or primarily contractual, the chairman should be designated from either the technical office or the contracting office.

APPENDIX G  
APPROVAL AND REPORTING PROCEDURES FOR CONTRACTOR SALARIES  
AID HANDBOOK 14 - PROCUREMENT REGULATIONS

1. Purpose

This appendix does the following:

- (a) Provides guidelines for the use of prudent judgment when considering salaries, especially salaries exceeding the FS-1 maximum salary limitation (5 U.S.C. 5308 and Pub. L. 95-66);
- (b) Establishes procedures for justification of salary approvals;
- (c) Prescribes procedures for control numbers and submission of copies of salary approvals to SER/QM/SD/SS;
- (d) Establishes a semiannual report of salary approvals for the Deputy Administrator.

2. Procedures

(a) Salary approvals. In accordance with 731.205-6, 731.311-6, and 731.703, contracting officer approvals of salaries exceeding the FS-1 rate are to be based upon a memorandum from the technical office approved by the Assistant Administrator or Mission Director having program responsibility for the contract. The reasonableness of proposed salaries exceeding the FS-1 level must be evaluated by the appropriate technical office in terms of the technical competence required, scope of supervisory responsibilities involved, and the relationship of the proposed salary level to the individual's customary salary level for similar work. Even though approval of salary levels above the FS-1 rate are justified primarily by the Assistant Administrator or Mission Director having program responsibility, it is the contracting officer's responsibility to scrutinize increases as a matter of business acumen whenever AID negotiations deal with any salaries payable under contracts. Increases in the FS-1 statutory salary limitation are not, and shall not be by themselves, a basis for upward salary revisions of contractor employees. Proposals for such revisions should be considered normally when contracts are renewed, and must be carefully reviewed and negotiated to ensure that increases are not automatically granted without corresponding increases in the quality or quantity of services rendered. Salaries below the FS-1 maximum level should also be fully justified,

even though formal approval procedures may not be involved. Personnel compensation negotiated and payable under AID contracts should be at the minimum levels necessary to attract needed technical services in a competitive market. Rates should be determined by the "market place" where the types of services are obtained. Using such criteria, very few salaries can be expected to approach or exceed the FS-1 level.

Actual discussions with contractors concerning salaries should be held only by persons authorized to negotiate and execute contracts. (See AID/R Appendix A.)

(b) Justification of Approvals. There will be cases where the services required are so unique and highly specialized that few persons are available to perform them. In such instances, if justifications for exceptional salaries are needed, particularly where the salary would exceed the FS-1 level, the project officer will be consulted. If no alternative can be found, the project officer will prepare a salary justification to support the negotiator's action. It is the negotiator's responsibility to see to it that such cases are fully justified and that a complete record of the rationale is included in his memorandum for the contract file.

### 3. Approval Control Numbering and Submission to SIR/CM

Copies of all approvals of salaries that exceed that FS-1 level are required to be sent to SIR/CM/SD/SS. To assist SIR/CM in determining that they are receiving all copies from each approving office, approving officials will have a consecutive control number starting each fiscal year assigned to each approval by their office, the record of which will be maintained separately from other approval documents.

### 4. Semiannual Report to the Deputy Administrator

Commencing with March 31, 1978, a semiannual report listing all salary approvals that exceed the FS-1 maximum level will be sent to the Deputy Administrator of AID by the Office of Contract Management.

MEMORANDUM FROM USAID "A"  
DIRECTOR TO CONTRACTING OFFICER  
CREATING THE "SALARY HISTORY" OF A  
PERSONAL SERVICES CONTRACTOR

MEMORANDUM

DATE: March 27, 1984  
FROM: Director  
SUBJECT: Contract with Dr. X  
TO: Contracts Officer

I recognize that Dr. X's salary history is a difficult one to use in arriving at a just and reasonable offer for her next contract. However, I have done the following calculations that would provide a basis for "reconstructing" a four year "history" sufficient to justify an appropriate level of compensation for this outstanding professional. Her services, these last three months, have clearly demonstrated the outstanding quality of her work. Moreover the scope of work for her coming contract, based on the high quality of her work under the previous contract calls for a more sophisticated analytical performance and, therefore, a different compensation package: one that recognizes that she is not an "entry level" professional, which had been the basis of her first contract salary.

Salary "history"

1. last full time employment as university professor was 1979-80 at \$10,500 per year (9/12) or \$1,833.33 per month annualized (X 12) to \$21,999.96.
2. Had she stayed at the university she would have enjoyed each of the following years an annual step increase plus a cost of living (inflation factor) increase of no less than 10% per year as follows:

1979-80 base year	\$21,999.96
	2,199.99
1980-81 increase of 10% to new base	24,199.95
	2,419.99
1981-82 increase of 10% to new base	26,619.94
	2,661.99
1982-83 increase of 10% to new base	29,281.93

The reason that Dr. X does not have this salary history is because during the reconstructed period she put her husband's career as an international civil servant before her own and quit full time work to follow him.

I believe that it is neither fair nor just to "punish" a non-working spouse, male or female, by failing to make the kind of reasonable reconstruction of salary that I have done above so that upon reemployment they will not fall behind the true market value of their skills, especially when they have been so clearly demonstrated, as in Dr. X's case, to be at the current market level of performance with no loss due to the time away from the "full employment" game.

Therefore, I am prepared to sign a contract, if you are not, that will use the \$29,281.93 figure as the basis for a new daily rate of \$112.18.

(365 days - 104 weekend days = 261 working days  
\$29,281 reconstructed base salary divided by 261 = \$112.18)

We need to make a decision today since Mrs. X is leaving for the U.S. in the morning. I would like to have an executed contract before her departure.

DD FORM 17 (REV. 1-60)

**CONTRACTOR EMPLOYEE BIOGRAPHICAL DATA SHEET**

(Submit in duplicate to contracting officer)

BUDGET BUREAU NO. 34-80664  
Approval Expires May, 1970

1. NAME (Last, First, Middle)  Mr.  Mrs.  Miss

2. ADDRESS (Include Zip Code)

3. CONTRACTOR'S NAME

4. CONTRACT NO.

5. POSITION UNDER CONTRACT

6. PROPOSED SALARY

7. COUNTRY OF ASSIGNMENT

8. DURATION OF ASSIGNMENT

9. TELEPHONE NO. (Include Area Code)

10. MARITAL STATUS:  Married  Single  Other (Specify)

11. NAMES AND AGES OF DEPENDENTS TO ACCOMPANY (If applicable)

12. DATE OF BIRTH

13. PLACE OF BIRTH

14. CITIZENSHIP (If none U.S. Citizen, give two others)

15. EDUCATION (Include all secondary, business college or university training)

NAME AND LOCATION OF INSTITUTION	MAJOR SUBJECTS	CREDITS COMPLETED		TYPE OF DEGREE	DATE OF DEGREE
		SEMESTER HOURS	QUARTER HOURS		

16. EMPLOYMENT HISTORY

1. Give last three years. Continue on reverse to list all employment related to duties of proposed assignment. Exclude bonuses, profit sharing arrangements, commissions, consultant fees, overtime or overtime work payments, pay raise differential, or quarters, cost of living or dependent education allowances.

2. Salary definition - basic periodic payment for services rendered.

POSITION TITLE	EMPLOYER NAME AND ADDRESS	DATES OF EMPLOYMENT (Mo. Yr.)		SALARY DOLLARS PER
		FROM	TO	
Consultant AFAD, World Bank	1983	various	- total year	60,000
Consultant AD, World Bank	1984	various	- total year	60,000

17. SPECIFIC CONSULTANT SERVICES (Give last three years)

SERVICE PERFORMED	EMPLOYER NAME AND ADDRESS	DATES OF EMPLOYMENT (Mo. Yr.)		DAILY RATE
		FROM	TO	

18. LANGUAGE PROFICIENCY

LANGUAGE	SPEAKING			READING			WRITING			UNDERSTANDING		
	Per	Good	Ext	Per	Good	Ext	Per	Good	Ext	Per	Good	Ext

19. SPECIAL QUALIFICATIONS (Include awards, medals, titles, special honors, publications, research, special skills, and other pertinent information previously mentioned, and type of job, if necessary)

20. CERTIFICATION

To the best of my knowledge, the above facts as stated are true and correct.

SIGNATURE OF EMPLOYEE: Signature deleted

DATE: 2-20-81

Note: The contractor stated his name (block 1), address (block 3) and signed the form, but this information was removed to preserve the individual's privacy.

1983 STATE TELEGRAM 220306  
SALARY SETTING PROCEDURE

STATE 220306

DATE: AUGUST 8, 1983  
FROM: SECSTATE WASHDC  
TO: AID WORLDWIDE  
SUBJECT: SALARY SETTING PROCEDURES

1. ON OCCASION WE EXPERIENCE DIFFICULTIES IN NEGOTIATING SALARIES WITH NEW HIRE APPLICANTS PARTICULARLY IN INSTANCES WHERE AN OFFICIAL OF A MISSION HAS COUNSELLED AN APPLICANT ON WHAT THEY CONSIDER TO BE AN APPROPRIATE INITIAL SALARY OFFER. IN ORDER TO AVOID THIS OCCURRENCE IN THE FUTURE, WE WOULD LIKE TO OUTLINE THE PROCEDURES FOLLOWED IN SETTING SALARIES. THESE PROCEDURES HAVE BEEN CAREFULLY ESTABLISHED TO ENSURE THAT EQUITABLE TREATMENT IS GIVEN TO ALL NEW HIRE APPLICANTS, WHETHER FROM OUTSIDE THE AGENCY OR CONVERSIONS FROM CIVIL SERVICE, WHEN INITIAL RATES OF PAY ARE BEING APPROVED AND NEGOTIATED. TO DEVIATE MATERIALLY FROM THESE STANDARD PROCEDURES RESULTS IN INEQUITIES AND POSSIBLE COMPLAINTS BY EMPLOYEES AT A LATER DATE.

2. SALARIES OF NEW HIRE APPLICANTS OTHER THAN GS/GM EMPLOYEES ARE BASED ON CURRENT EARNINGS. AS A RULE UP TO A 3 PERCENT INCREASE ABOVE CURRENT EARNINGS MAY BE GIVEN. HOWEVER, A 3 PERCENT INCREASE IS AWARDED ONLY TO CANDIDATES WHOSE EARNINGS ARE BASED ON A PERIOD OF TWELVE MONTHS OR MORE: 2 PERCENT FOR ESTABLISHED EARNINGS OF LESS THAN TWELVE MONTHS BUT NOT LESS THAN FOUR MONTHS; OR 1 PERCENT FOR ESTABLISHED EARNINGS DURING THE PAST FOUR MONTHS. IF A CANDIDATE RECEIVES AN INCREASE OF EARNINGS AFTER SALARY HAS BEEN NEGOTIATED, THE OFFER MAY BE RENEGOTIATED USING THE ABOVE PROCEDURE. ADDITIONAL PERCENTAGES MAY BE GIVEN FOR THE FOLLOWING FACTORS WITH A TOTAL INCREASE NOT TO EXCEED 10 PERCENT. IF AN APPLICANT HAS LIVED OR WORKED IN A DEVELOPING COUNTRY FOR MORE THAN TWO YEARS AN ADDITIONAL 1 PERCENT IS AWARDED. EDUCATION RELATED TO THE AREA OF SPECIALIZATION AND ABOVE THE MINIMUM QUALIFICATION REQUIRED WARRANTS AN ADDITIONAL 1 PERCENT AND THOSE SPECIALTIES FOR WHICH THERE IS KEEN COMPETITION IN THE EMPLOYMENT MARKET OR A SERIOUS SHORTAGE CATEGORY NATIONWIDE ARE AWARDED AN ADDITIONAL 2 PERCENT. FOR YOUR INFORMATION, THE CRITICAL CATEGORIES ARE: ECONOMISTS, ENGINEERS, MEDICAL DOCTORS AND SECRETARIES. IN ADDITION, RELATED TECHNICAL EXPERIENCE OVER 5 YEARS INCREASES THE PERCENTAGE BY 1 AND OVER TEN YEARS BY 2. ALL REQUESTS FOR

AN INITIAL RATE OF PAY ABOVE 10 PERCENT OVER CURRENT EARNINGS MUST BE IN WRITING AND SUBJECT TO THE APPROVAL OF THE DIRECTOR, M/PM/OD. AS YOU KNOW, APPOINTMENTS INVOLVING A TWO GRADE SPREAD AS WELL AS APPOINTMENTS AT THE FSL-1 LEVEL MUST ALSO BE APPROVED BY THE DIRECTOR, M/PM/OD. CURRENT EARNINGS ARE OF COURSE ACTUAL EARNINGS FOR WORK REASONABLY RELATED TO THE POSITION FOR WHICH THE APPLICANT IS BEING CONSIDERED, SUPPLEMENTAL EARNINGS THAT ENHANCE THE VALUE OF THE APPLICANT TO THE AGENCY SUCH AS CONSULTING OR TEACHING, COMMISSIONS OR BONUSES WHEN ACTUAL FIGURES OF A RECENT YEAR ARE USED, HOURLY, WEEKLY OR MONTHLY RATES IF RECEIVED FOR AT LEAST ONE YEAR.

3. CIVIL SERVICE EMPLOYEES SERVING IN THE GS PAY SCALE ARE APPOINTED TO THE FOREIGN SERVICE AT THE SAME SALARY AS THEY HOLD IN THE GENERAL SCHEDULE WITH APPOINTMENT AT THE STEP CLOSEST TO THE GS SALARY BUT NOT LESS. THE GRADE IS DETERMINED BASED ON A LINKAGE SYSTEM: S-1 EQUALS GS-15; S-2 EQUALS GS-14; S-3 EQUALS GS-13; S-4 EQUALS GS-12, ETC.

4. GM EMPLOYEES ARE ALSO APPOINTED USING THE SAME SYSTEM AS THAT FOR GS EMPLOYEES. HOWEVER, GM EMPLOYEES APPOINTED TO THE FOREIGN SERVICE PRIOR TO THE END OF THE RATING YEAR (CURRENTLY JULY 31) LOSE THEIR RIGHT TO ANY EARNED MERIT PAY AND BONUSES. THOSE GM EMPLOYEES APPOINTED TO THE FOREIGN SERVICE AFTER THE END OF THE RATING YEAR AND PRIOR TO THE BEGINNING OF THE FIRST PAY PERIOD IN OCTOBER WILL BE GIVEN AN INCREASE BASED ON THE AVERAGE INCREASE THAT WOULD HAVE BEEN GIVEN TO GM EMPLOYEES WITH THEIR RATING AND IN THEIR GRADE LEVEL. THOSE EMPLOYEES APPOINTED TO THE FOREIGN SERVICE AFTER THEIR MERIT PAY BONUSES HAVE BEEN DETERMINED BUT BEFORE THEY ARE ACTUALLY AWARDED, WILL BE GIVEN AN INCREASE RETROACTIVE TO THE FIRST PAY PERIOD IN OCTOBER.

5. OBVIOUSLY, THERE ARE MANY NUANCES TO ESTABLISHING SALARIES BUT THESE BASIC GUIDELINES MAY BE USEFUL TO YOUR MISSION IN UNDERSTANDING HOW SALARIES ARE ESTABLISHED. WHILE THE ABOVE PROCEDURES HAVE BEEN PROVIDED TO YOU FOR YOUR INFORMATION, I HOPE YOU UNDERSTAND THAT ONLY PM HAS THE AUTHORITY TO ESTABLISH AND NEGOTIATE INITIAL RATES OF PAY AND THAT YOU WILL CAUTION MEMBERS OF YOUR MISSION TO ABSTAIN FROM DISCUSSING SALARIES WITH NEW HIRE APPLICANTS OR ENCOURAGING THEM TO SEEK HIGHER RATES OF PAY THAN THOSE WARRANTED. EXCEPTIONS TO THE ABOVE PROCEDURES SHOULD BE HANDLED THROUGH APPROPRIATE CHANNELS AND SHOULD THE BUREAU WISH TO REQUEST A HIGHER SALARY OR AN EXCEPTION, THIS SHOULD BE DONE WITHOUT DISCUSSION WITH THE APPLICANT. SUCH DISCUSSIONS OFTEN CAUSE APPLICANTS TO BECOME DISENCHANTED WITH THE AGENCY AND THE PERSONNEL SYSTEM WHEN THESE EXCEPTIONS OR REQUESTS FOR HIGHER SALARY ARE DISAPPROVED AND CAN RESULT IN A DISGRUNTLED EMPLOYEE IF HIRED OR EVEN LOSS TO THE AGENCY OF A HIGHLY QUALIFIED INDIVIDUAL. SHELIZ

Standard Form 1034 Revised January 1980 Department of the Treasury FORM 4-2000 5034-119		PUBLIC VOUCHER FOR PURCHASES AND SERVICES OTHER THAN PERSONAL				VOUCHER NO.	
U.S. DEPARTMENT, BUREAU, OR ESTABLISHMENT AND LOCATION			DATE VOUCHER PREPARED		SCHEDULE NO.		
			CONTRACT NUMBER AND DATE		PAID BY		
			REQUISITION NUMBER AND DATE				
PAYEE'S NAME AND ADDRESS			DATE INVOICE RECEIVED		GOVERNMENT B. I. NUMBER		
			DISCOUNT TERMS				
			PAYEE'S ACCOUNT NUMBER				
			SHIPPED FROM TO WEIGHT				
NUMBER AND DATE OF ORDER	DATE OF DELIVERY OR SERVICE	ARTICLES OR SERVICES <i>(Enter description, item number of contract of Federal supply schedule, and other information deemed necessary.)</i>	QUANTITY	UNIT PRICE COST PER		AMOUNT	
(Use continuation sheets if necessary) <b>(Payee must NOT use the space below)</b>			<b>TOTAL</b>				
PAYMENT <input type="checkbox"/> PERSONAL <input type="checkbox"/> COMPLETE <input type="checkbox"/> PARTIAL <input type="checkbox"/> FINAL <input type="checkbox"/> PRE-PAID <input type="checkbox"/> ADVANCE		APPROVED FOR  TITLE		EXCHANGE RATE \$1.00		DIFFERENCES  Amount verified correct for (Signature or initials)	
Pursuant to authority vested in me, I certify that this voucher is correct and proper for payment.							
_____ (Date)		_____ (Authorized Certifying Officer)		_____ (Date)			
ACCOUNTING CLASSIFICATION							
PAID BY	CHECK NUMBER		ON ACCOUNT OF U.S. TREASURY		CHECK NUMBER		
	CASH		DATE		PAYEE		
When stated in foreign currency, insert name of currency. If the ability to certify and authority to approve are combined in one person, one signature only is necessary, unless the approving officer will sign in the space provided over his official title. When a voucher is accepted in the name of a company or corporation, the name of the person writing the company or corporate name, as well as the capacity in which he signs, must appear. For example: John Dow Company, per John Smith, Secretary in Charge, as the case may be.					PER  TITLE		

PRIVACY ACT STATEMENT

The information requested on this form is required under the provisions of 51 U.S.C. 87h and 87c, for the purpose of disbursing Federal money. The information requested is to identify the particular creditor and the amounts to be paid. Failure to furnish this information will hinder discharge of the payment obligation.

LIST OF RECOMMENDATIONS

Page

Recommendation No. 1

18

We recommend that AA/M, in consultation with the Office of the AID General Counsel, require SER/CM to:

- a) review all existing guidelines and regulations applicable to personal services contracting and redraft AID Handbook 14, Appendix D to completely codify in one place all such guidelines and regulations;
- b) appropriately revise the contract negotiating checklist and issue a Contract Information Bulletin requiring contracting officers' completion;
- c) obtain a written scope of work and a statement of minimum qualifications from the office requesting personal services prior to the negotiation of any personal services contract;
- d) prior to negotiating and executing a personal services contract, require that contracting officers obtain a fully completed and signed Standard Form 171 from each prospective contractor, so that they can make independent and informed assessments of each prospective contractor's qualifications and capabilities and can reasonably engage in arm-length negotiations, and so that contractors can be held accountable for their statements;
- e) design a standard memorandum to be acknowledged by the contractor via his/her signature and to be attached to all memoranda of negotiations pertaining to personal services contracts with U.S. citizens or U.S. resident aliens, which clearly advises the contractor that:
  - (i) the salaries received from AID pursuant to the contract are subject to F.I.C.A. contributions and Federal Income Tax withholding,
  - (ii) he/she must file a for W-4 with the cognizant AID Controller prior to commencing work under the contract,
  - (iii) he/she is not eligible to claim the "foreign earned income exclusion" either on the W-4 or in his/her tax returns to the IRS;

f) require verification of salary and employment history for all personal services contractors, with such verification being prior to execution of the contract except in extreme emergencies; further, the validity of any contract negotiated on the basis of unverified information should be made explicitly contingent upon such verification;

g) establish a written procedure to implement the required Handbook 17 function of conducting both pre and post contract reviews of AID-direct contracts for conformance with regulations, policies, good business practices, and professional standards.

Recommendation No. 2

19

We recommend that AA/M, in consultation with each Regional Bureau and the Office of General Counsel, establish specific procedures for the implementation of all regulations and guidelines applicable to personal services contracting abroad and establish a procedure for holding Mission Directors and contracting officers accountable for contracting actions.

Recommendation No. 3

21

We recommend that AA/M require M/FM to use a Statement of Earnings and Leave Form (AID 760-9) or similar form when paying personal services contractors. The form should, as a minimum, provide for recording F.I.C.A. and Federal Income Tax withholding from payments made pursuant to personal services contracts.

Recommendation No. 4

22

We recommend that AA/M require M/FM to advise all USAID Controllers that copies of Form W-4 on which personal services contractors have claimed exemption from withholding are to be sent to the Internal Revenue Service and that earnings of personal services contractors are to be reported on Form W-2 and not on Form 1099. The Controller Guidebook should be amended as necessary to reflect the substance of this recommendation.

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