

**MANAGEMENT STUDY OF
A.I.D.'S OVERSEAS
NONDIRECT-HIRE WORKFORCE**

Prepared by

**Support Budget Division
Office of Budget
Bureau for Finance and Administration**

March, 1993

ACKNOWLEDGEMENTS

The Study Team would like to express its appreciation to the Agency personnel who took time out of their regular schedules to participate in the study. The Team especially appreciated the efforts of the overseas mission staffs, both direct hire and nondirect hire, who went out of their way to accommodate the Team and gave generously of their time. The participating missions were the Guatemala bilateral mission and the ROCAP regional office, the Egypt mission, the Kenya bilateral mission and the REDSO regional office, and the Tanzania mission. The Team hopes the results of this study will improve in some way the worklives of those who work so diligently in carrying out the Agency's programs.

Study Team Members:

John Haecker (Team Leader)

Robbin Boyer

Ernest Barbour (Consultant)

TABLE OF CONTENTS

	<u>Page</u>
EXECUTIVE SUMMARY	i
I. INTRODUCTION	1
BACKGROUND	2
II. AGENCY EMPLOYMENT PROCEDURES	7
A. LIMITATIONS ON PSCs' AUTHORITY	7
B. PSC's SUPERVISING OF OTHER EMPLOYEES	9
C. COMPENSATION AND CLASSIFICATION	10
FSN/TCN COMPENSATION	10
FSN DH AND PSC CLASSIFICATION	11
TCN TREATMENT	11
USPSC COMPENSATION	12
PASAs	14
D. PSC RECRUITMENT	15
E. PSC CAREERS	16
F. WORKFORCE REPORTING	17
III. MORALE PROBLEMS	18
IV. FUNDING AND SOURCES OF FUNDING	20
V. APPROPRIATE USE OF NONDIRECT-HIRE PERSONNEL	22
A. REPLACEMENT OF SPECIFIC U.S. DIRECT-HIRE FUNCTIONS ..	24
B. IMPACT OF CHANGES IN UTILIZATION ON PERSONNEL	
CATEGORIES	26
USDHs	26
FSNs	26
USPSCs	27
PASAs	28
INSTITUTIONAL CONTRACTS	28
C. REPLACING NONDIRECT HIRE WITH NONDIRECT HIRE	29
D. MANAGING THE REPLACEMENT OF U.S. DIRECT HIRES	29
SUMMARY OF RECOMMENDATIONS	32
APPENDICES	
A. Summary of Related Studies	
B. Scope of Work	
C. Limitations on Authorities for Nondirect-Hire Staff	
D. General Counsel Memorandum on PSCs	
E. Agency Letter to OMB Regarding Inherently Governmental Functions	
F. Agency Memorandum Regarding the Rockefeller Amendment	

EXPLANATION OF TERMS USED IN THE REPORT

DH	DIRECT HIRE EMPLOYEE -- BOTH U.S. AND FSN
FSN	FOREIGN SERVICE NATIONAL -- DIRECT HIRE AND PERSONAL SERVICES CONTRACTORS
FSNDH	FOREIGN SERVICE NATIONAL DIRECT-HIRE EMPLOYEE
FSNPSC	FOREIGN SERVICE NATIONAL PERSONAL SERVICES CONTRACTOR
FTE	FULL-TIME EQUIVALENT CEILING ON DIRECT-HIRE STAFFING LEVELS
GAO	GENERAL ACCOUNTING OFFICE
NDH	NONDIRECT HIRES AS DEFINED IN THE REPORT
OE	OPERATING EXPENSE FUNDS
OFFSHORE HIRE	AN EMPLOYEE HIRED FROM OUTSIDE THE COUNTRY OF EMPLOYMENT
OMB	EXECUTIVE OFFICE OF MANAGEMENT AND BUDGET
PASA	PARTICIPATING AGENCY SERVICE AGREEMENT EMPLOYEE
PSC	PERSONAL SERVICES CONTRACTOR -- ALL CATEGORIES
RESIDENT HIRE	AN EMPLOYEE WHO WAS A CURRENT RESIDENT IN THE COUNTRY OF EMPLOYMENT WHEN HIRED
TCNPSC	THIRD COUNTRY NATIONAL PERSONAL SERVICES CONTRACTOR
USDH	U.S DIRECT-HIRE EMPLOYEE
USPSC	U.S. PERSONAL SERVICES CONTRACTOR

EXECUTIVE SUMMARY

This study is part of the Directorate for Finance and Administration's efforts to review the Agency's use of nondirect-hire human resources. This study specifically focuses on the use of these resources overseas in A.I.D.'s field offices with the goal of gaining a better understanding of this important part of the workforce. The Office of Budget, Support Budget Division of the Directorate for Finance and Administration (FA/B/SB) assembled a study team to examine a range of selected issues. The principle findings and recommendations of the study are summarized below.

Agency Employment Procedures

Limitations on PSC authority. The A.I.D. Handbooks outline the limitations placed on the authorities of PSCs. These limitations prohibit PSCs from performing certain actions, including making certain decisions involving governmental functions and negotiating on behalf of the U.S. Government. These limitations are open to broad interpretation and, for the most part, have not prevented PSCs from carrying out the essential work of the Agency. The Agency needs to review these limitations to determine which limitations need to be clarified and which might be altered to legitimately expand the authorities of PSCs.

In regards to PSC supervision of other employees, the Handbooks stipulate restrictions in the limitations on who PSCs are not permitted to supervise (e.g., USPSC employees may not supervise USDHs), but do not detail who a PSC can supervise and in what instances (e.g., can a FSNPSC supervise a FSNDH?). AID/W should clarify these supervision guidelines where across-the-board guidance is needed and leave the remaining issues to the mission.

Compensation and Classification. In most missions, A.I.D. classifies its FSNPSCs, whereas the Embassy personnel office classifies the A.I.D. FSNDHs. This sometimes results in A.I.D. FSNPSCs being classified in higher grades than other FSNs occupying comparable positions, which leads to morale problems and salary discrepancies. FSNPSCs are, for all practical purposes, extended the same benefits and are subject to the same restrictions as FSNDH employees. There is no practical difference between a FSNPSC and a FSNDH employee. The Agency should continue to move in the direction of a single system for FSNs by hiring FSNs as PSCs rather than DHs.

The A.I.D. Handbook provides one set of regulations governing the employment of FSNPSCs and TCNPSCs, specifying the two groups should be treated alike for employment purposes. In practice, TCNPSCs are almost always treated similarly to USPSCs rather than FSNPSCs. The Handbooks need to be revised to either broaden the USPSC guidance to cover TCNs or to include new guidance specifically covering TCN employment.

There are a great deal of inconsistencies and inequities among USPSC salaries and benefits. This is true both between and within the same A.I.D. missions. The Agency needs to examine the need for more standards for the USPSC system for hiring and compensation. Any additional standards should maintain the missions' flexibility. One possibility would be the implementation of a job classification system for USPSCs. USPSC (as well as TCN) benefit packages need to be reviewed. The Agency needs to reconsider whether all USDH benefits should be given to offshore-hire PSCs (as is now the case) who are not making a career commitment to the foreign service. The prohibition on USPSCs receiving awards should also be reviewed. Should changes be made to the PSC benefits, additional guidance may be needed outlining which benefits may be awarded to PSCs under various circumstances.

Recruitment and Competition. Missions need to make greater efforts in identifying candidates for PSC positions to insure greater competition, including utilizing candidate lists which may be available from backstop offices in A.I.D./W. In the long term, the Agency should study the feasibility of establishing one central database for all USPSC and TCNPSC personnel and positions. Such a system would serve to get more complete information in a reasonable time to missions looking for qualified candidates for PSC positions. This should result in increased competition for PSC positions and, consequently, some cost savings on PSC salaries.

PSC Careers. FSNPSC, USPSC, and TCNPSC employees often stay with the Agency for years. Regardless of whether this was the intent when the PSC concept was first introduced, many PSCs can be considered career employees in this respect. The Agency needs to insure adequate training opportunities are made available to long-term PSCs. In the long term, a "clearinghouse" for USPSC and TCNPSC personnel and positions as described above would also assist the Agency in matching qualified PSCs to positions.

Agency Workforce Reporting. The Agency has historically lacked accurate data on its overseas NDH workforce. Demand for such data is needed and is in demand both inside and outside the Agency. The Agency needs to standardize overseas mission staffing patterns on NDH staffs and maintain the worldwide data centrally in an automated NDH staffing pattern. This staffing pattern could provide information on all NDH personnel (as defined), including information on employment type, classification, FTE workyears, and funding source.

Morale Problems

The study looked for the existence of morale problems in the overseas workforce which might be caused by systematic problems in NDH employment policies and procedures. Although some minor problems were identified, no major overall morale problems were observed in this regard.

Funding and Sources of Funding

Missions need clarity on the funding sources for NDH staff and the circumstances in which personnel should be operating expense or program funded. The recently released contracting guidelines for AID/W on nonpersonal services contracts should be reissued for the field and adapted to address the unique circumstances of PSCs.

Appropriate Use of Nondirect-Hire Personnel

The Agency's trend in staffing over the last several years has been a reduction in the USDH workforce with NDH personnel stepping in to carry out more of the Agency's business. This trend could probably be carried even further if the Agency desires. Advantages to the Agency would be probable savings in operating expenses from costly USDH salaries and support, a savings in USDH FTE overseas, and more of a reliance on local nationals who may understand local development conditions and needs better than USDH. The disadvantages may include a loss of accountability of U.S. Government programs and funds by U.S. citizens and a loss of program effectiveness because of reductions in the USDH cadre of career development professionals knowledgeable of international development, U.S. development interests, and influencing LDC governments.

Agency management must determine a policy for staffing missions in the future which will address the appropriate utilization and mix of USDH and NDH staff to successfully administer A.I.D.'s development programs. Specifically, a short and long term strategy should be developed. Should Agency management decide it must move more towards replacing USDH with NDH, the following steps can be taken:

- USDH staff must understand they will increasingly be performing more administrative, oversight, and general policy work.
- Should FSNs continue to take on more responsibilities, the FSN position grading system will need to be reviewed to reflect increased responsibility for FSN positions.
- More training overall will be needed for PSCs for them to perform at their highest level in carrying out Agency functions.
- The Agency will need to continue to explore the possibility of using institutional contracts to carry out various functions/activities, since institutional contracts are generally less management intensive.
- As recommended above, the Agency should review its limitations on PSC authority to determine which limitations might be eliminated to allow PSCs to assume greater responsibilities in carrying out the Agency's essential work.

I. INTRODUCTION

This study is part of the Directorate for Finance and Administration's efforts to review the Agency's use of nondirect-hire human resources. This study specifically focuses on the use of these resources overseas in A.I.D.'s field offices with the goal of gaining a better understanding of this important part of the workforce. A range of selected issues are examined: the various categories of workforce personnel (U.S. personal services contractors, foreign service national personal services contractors, institutional contracts, etc.) and their funding; the services rendered by these personnel; A.I.D.'s methods of acquiring these services; and, the costs/benefits of using nondirect-hire staff versus U.S. direct-hire (USDH) staff. This report should assist Agency management in making decisions on managing and effectively utilizing the Agency's overseas workforce.

Methodology

A three-person team was formed by the Office of Budget, Support Budget Division of the Directorate for Finance and Administration (FA/B/SB) consisting of a management analyst, a budget analyst, and a personnel specialist. Information for the study was collected from both A.I.D./W and the field. A review of related studies was first completed to further focus the coverage of the study (see Appendix A for a summary of these studies). Other information was then collected such as budget documents, Agency personnel records, handbook guidance, pay compensation plans, and other related documents. Interviews were completed with various Washington managers, personnelists, contract officers, and others with field experience.

For the overseas portion of the study, four countries were selected for visits based on several criteria, including overall composition of the workforce, mission size, structure of the mission's program, and geographic location. These posts were the Guatemala bilateral mission and the ROCAP regional office, the Egypt mission, the Kenya bilateral mission and the REDSO regional office, and the Tanzania mission. At each mission, various staff were interviewed representing a range of labor categories (USDH, USPSCs, FSNs, etc.). Various data was also collected including cost information on salary and benefits, staffing patterns and contract documents.

The sampling of missions for the study was by no means a representative sample of A.I.D. missions. Nonetheless, data collected from these missions combined with extensive research in A.I.D./W provides information to draw conclusions in the report applicable Agency-wide.

The information was compiled and analyzed and is presented in this report. See Appendix B for the complete Scope of Work.

BACKGROUND

The term nondirect-hire staff has been used in the Agency in different ways to encompass a variety of elements of the workforce. For purposes of defining the scope of this study, the study team devised its own working definition. For purposes of this study, the nondirect-hire (NDH) workforce encompasses the following categories of personnel:

- Personal Services Contractors (U.S. citizen, Foreign Service National, and Third-Country National)
- Participating Agency Service Agreements (PASAs)
- Nonpersonal services contracts with individuals
- Various other employment arrangements with individuals, including Intergovernmental Personnel Act employees (IPAs), American Association for the Advancement of Science Fellows (AAAS), Technical Advisors in AIDS and Child Survival (TAACS), Population Fellows, and Child Survival Fellows.
- Service Contracts (of a nonpersonal services nature).
- Various other types of nonpersonal services contractors.

The study was, however, primarily concerned with employment arrangements with individuals, such as personal services contracts¹. The procedures for employing and utilizing these people were examined more thoroughly than the other employment mechanisms. The study purposefully avoided delving too deeply into contractual arrangements for project implementation activities. Those activities represent another large workforce element, but were considered beyond the scope of this study. This study team focused on those employed by the USAID mission to administer its programs, not implement them. The study also dealt, to some extent, with issues surrounding foreign service national direct-hire employees. Since many of the issues involving FSNs are the same regardless of their hiring mechanism, concerns regarding FSNPSCs and FSNDHs are often examined together. Therefore, references to FSNs and their use apply to both FSNDHs and FSNPSCs unless otherwise indicated.

The NDH workforce in A.I.D. is performing a very large array of functions for the USAID missions. This ranges from highly professional positions such as economists and technical advisors to lower skilled positions such as drivers, painters, and custodians. Table 1, for example, shows a partial listing of some of the positions which FSNPSCs are filling. Table 1 also shows a partial listing of positions filled by USPSCs and TCNs. Service contracts provide custodial services, real property maintenance, vehicle maintenance, and computer maintenance.

As one might expect, there are significant differences in the types of functions the various categories of NDH are performing. USPSCs, for example, often are employed for their expertise in a particular technical area the mission is focusing on. For PASAs, this is even more true, as they may be lending very specialized expertise to a project.

¹ The HRDM Workforce Planning group devised a similar definition, calling it the "defined workforce," which consisted of those persons with an employer-employee relationship with the Agency (direct hires and PSCs).

Table 1
**LIST OF SELECTED POSITIONS FILLED BY
 FOREIGN SERVICE NATIONALS
 U.S. PERSONAL SERVICES CONTRACTORS AND
 THIRD COUNTRY NATIONAL PERSONAL SERVICES CONTRACTORS**

FSN POSITIONS

Carpenter	Legal Consultant
Chauffeur	Librarian
Chief Accountant	Mail Clerk
Communications and Records Supervisor	Painter
Computer Systems Analyst	Participant Training Specialist
Contract Specialist	Personnel Specialist
Contracting Assistant	Procurement Specialist
Development Assistance Specialist	Program Specialist
Economist	Project Development Specialist
Engineers of various types	Project Management Specialist
Financial Analyst	Secretary
General Services Officer	Supply Clerk
Janitor	Voucher Examiner

USPSC POSITIONS

Administrative Aide	Personnel Officer
Budget Analyst	Population & Health Specialist
C&R Specialist	Project Monitoring Specialist
Certifying Officer	Project Manager
Contract Negotiator	Public Liaison Specialist
Data Systems Analyst	PVO Coordinator
Drought Relief Coordinator	Secretary
Engineers of various types	Senior Technical Advisor
Evaluation Officer	Small Scale Enterprise Advisor
Executive Assistant	Social Scientist
Family Planning Liaison	Technical Advisor
Food for Peace Advisor	Technical Advisors of various types
General Services Officer	Training Coordinator
Inventory Management Specialist	

TCNPSC POSITIONS

Assistant Executive Officer	Monetary and Fiscal Officer
Behavioral Science Advisor	Population Program Specialist
Deputy Controller	Private Sector Advisor
Engineer	Project Development Officer
Financial Systems Advisor	Project Advisor
General Services Officer	RHUDO Technical Advisor

FSNPSCs, as shown in the table, are performing the widest range of tasks for USAID missions. Their positions range from laborers to highly skilled professionals.

A.I.D.'s NDH workforce is a very important part of A.I.D.'s overseas field presence. The great majority of personnel in the mission are, in fact, non-USDH personnel. This situation evolved over time as A.I.D.'s direct-hire employment decreased substantially. The shortfall of staff coupled with the sustained workload resulted in more nondirect-hire staff being employed to fill the workload needs.

The NDH element in the overseas workforce is primarily managed by the individual USAID missions. A.I.D./W has very little involvement except for setting general procedures and guidelines. Probably due to this separation, the Agency has never developed an accurate central source of data on the total number of people in the NDH workforce worldwide. Numbers from the Annual Budget Submissions indicate that for FY 1992, total workyears for the non-USDH workforce totalled 6056.1 (includes

Table 2
A.I.D. OVERSEAS WORKFORCE
DISTRIBUTION BY BUREAU/REGION
FY 1992 DATA

WORLDWIDE SUMMARY	CATEGORY OF PERSONNEL (#s in workyears)					TOTAL NON-USDH*	TOTAL USDH	RATIO NON-USDH/USDH
	USPSC	FNDH	FSNPSC/ TCNPSC	OTHER US GOVT				
FHA	0.0	0.0	0.0	0.0		0.0	2.0	0
NIS	0.1	0.0	0.0	0.0		0.1	1.1	0.1
POLICY	0.0	2.0	0.0	0.0		2.0	9.0	0.2
EUROPE	10.6	0.0	65.0	0.0		75.6	23.5	3
NEAR EAST	37.7	134.7	372.5	12.0		556.9	153.1	4
ASIA	31.5	288.2	1024.4	1.0		1345.1	226.9	6
AFRICA	186.9	226.9	1820.0	14.2		2248.0	374.2	6
LAC	186.6	305.7	1318.7	17.4		1828.4	289.6	6
TOTAL	453.4	957.5	4600.6	44.6		6056.1	1079.4	6

Data Source: FY 1994 Annual Budget Submission (ABS). Includes operating expense and program-funded personnel.

* Total Non-USDH includes: USPSC, FNDH, FNPSC, TCNPSC, and Other US Govt (PASAs, RSSAs, and Details-In). Manpower/Service contracts and other institutional contracts (including IPAs and TAACS) are not included.

FSNDH, FSNPSC, TCNPSC, USPSC, and other U.S. Government - both operating expense and program funded; does not include service or institutional contractors). Non-U.S. citizens (primarily FSNs) make up 92% of that total. Table 2 above provides a breakout of totals by regions and workforce category.

The cost of employing a particular NDH employee depends on a number of factors. The salary may be determined according to different markets and where the individual is coming from for the job. For example, a USPSC hired from the U.S. will be paid a comparable salary to a USDH Foreign Service Officer and probably receive similar benefits. A USPSC hired in-country, however, may be paid a lower salary and receive very few benefits. A FSN, on the other hand, is paid by the local compensation plan based on local market conditions in that country. Table 3 below compares the average cost by personnel category across the missions visited in the study.

Table 3 Costs of Personnel by Labor Category Salary and Benefits Paid Average of Six A.I.D. Missions *	
	Salary and Benefits (in thousands of dollars)
USDH **	\$153.9
USPSC	
Offshore	\$177.8
Resident Hire	\$ 47.2
TCNPSC	
Offshore	\$145.2
Resident Hire	\$ 38.7
FSN	
Grade 11 Step 1 average	\$ 14.1
* Missions include USAID/Guatemala, ROCAP/Guatemala, USAID/Egypt, USAID/Kenya, REDSO/Kenya, USAID/Tanzania.	
** Reflects total costs of USDH - salary and benefits.	

There are a number of factors which may determine the ratio of USDH staff to NDH staff in a mission. These may include length of time the mission has been in existence, historical availability of trust funds, and the scope and objectives of a mission's programs. The more focused the programs the fewer USDHs needed to develop and monitor them. Table 4 provides a listing of all A.I.D. missions, their USDH and NDH staffs, and the ratio of the two.

Table 4
A.I.D. OVERSEAS WORKFORCE
DISTRIBUTION BY COUNTRY WITH RATIO OF NON-USDH TO USDH
FY 1992 Data in Workyears

WORLDWIDE SUMMARY	TOTAL USDH	TOTAL NON-USDH	RATIO NON-USDH/USDH	WORLDWIDE SUMMARY	TOTAL USDH	TOTAL NON-USDH	RATIO NON-USDH/USDH
MAURITANIA	0	3	0	LEBOTHO	7.5	27.8	4
SIERRA LEONE	0	0	0	BOTSWANA	7.8	42	5
LIBERIA	0	0	0	ZAMBIA	8	74	9
SOMALIA	0	0	0	TANZANIA	8	87.2	11
LEBANON	0	6	0	BURUNDI	8.2	54.2	7
YEREVAN	0.1	0	0	CHAD	8.5	106.6	13
ALMA ALTA	0.2	0	0	TUNISIA	8.9	46	5
LATAVIA	0.3	3	10	ETHIOPIA	9	76	8
KIEV	0.3	0	0	MADAGASCAR	10	69.3	7
LITHUANIA	0.3	3	10	SWAZILAND	10.8	41.9	4
ESTONIA	0.4	3	8	ZAIRE	11	48	4
MOSCOW	0.7	0.1	0	ROCAP	11	81	7
GUYANA	1	3	3	GUINEA-CONAKRY	11	65.5	6
POL/TOKYO	1	0	0	GHANA	11.5	75.3	7
PARAGUAY	1	8	8	THAILAND	11.8	72.4	6
YUGOSLAVIA(Belgrade)	1	2.6	3	ZIMBABWE	12	58	5
POL/GENEVA	1	0	0	MOZAMBIQUE	12.7	87.2	7
WEST BANK	1	3.3	3	MALAWI	12.8	66.7	5
AFR/COOR PARIS	1	1	1	JORDAN	13.1	48.9	4
COLOMBIA	1	6.6	7	PANAMA	13.7	56.4	4
MONGOLIA	1	0	0	SOUTH AFRICA	14	30.2	2
ERITREA	1	5	5	NEPAL	14	84.6	6
MEXICO	1	11	11	ECUADOR	14.2	102.2	7
URUGUAY	1	12.2	12	UGANDA	15	127	8
BRAZIL	1.1	3	3	CAMEROON	15	87	6
BENIN	1.5	12	8	DOMINICAN REPUBLIC	15.4	92.1	6
ALBANIA	1.7	8.5	5	HAITI	15.5	113.4	7
CHILE	2	8	4	AFGHANISTAN	15.8	18	1
ANGOLA	2	9	5	PERU	18	168.1	11
CAMBODIA	2	3.3	2	MALI	16	112	7
FHA/ROME	2	0	0	INDIA	16.3	145.8	9
NIGERIA	3	15	5	SRI LANKA	17	98	6
POL/ROME	3	0	0	COSTA RICA	17	111.4	7
GUINEA-BISSAU	3	0	0	JAMAICA	18	74.5	4
ROMANIA	3.2	9.9	3	KENYA	18	183.7	10
BULGARIA	3.3	4.6	1	NIGER	18.4	114.5	6
CAPE VERDE	3.6	12.5	3	RDO/CARIB	18.5	68.6	4
HUNGARY	3.9	12.5	3	BOLIVIA	20.8	197.4	9
TOGO	4	18	5	SENEGAL	21.8	133.8	6
POL/PARIS	4	1	0	NICARAGUA	21.9	88.1	4
CZECHOSLOVAKIA	4.3	11.3	3	MOROCCO	22.2	64.3	3
OMAN	4.8	15.4	3	GUATEMALA	23	154	7
NAMIBIA	5	20.6	4	REDSO/EAST	26.5	67.7	3
BURKINA FASO	5	36.8	7	BANGLADESH	31.8	124	4
GAMBIA	5	35	7	INDONESIA	32.6	165.2	5
POLAND	5.1	17.2	3	REDSO/WEST	34	85.1	3
SUDAN	5.6	111.8	20	HONDURAS	34	183	5
BELIZE	6.5	27.6	4	PAKISTAN	35	397.2	11
SOUTH PACIFIC	6.8	29.6	4	EL SALVADOR	36	259	7
RWANDA	7	48.8	7	PHILLIPPINES	43	208	5
YEMEN	7	36	5	EGYPT	96.1	340	4
				TOTAL	1079.4	6056.1	6

Data Source: FY 1994 Annual Budget Submission (ABS). Includes operating expense and program-funded personnel.

Total Non-USDH includes: USPSC, FNDH, FNPSC, TCNPSC, and Other US Govt (PASAs, RSSAs, and Details-In). Manpower/Service contracts and other institutional contracts (including IPAs and TAACS) are not included.

NDHs must be managed along with the USDH workforce in A.I.D. given their pivotal role in the Agency's overseas operations. Current Agency-wide procedures and policies, however, on hiring and use of the NDH workforce are often incomplete and inconsistent. The sections below review current procedures and policies and suggest some possible directions for the Agency to go in to improve the management of the NDH workforce. The first section reviews the procedures for compensation, recruiting, and other personnel matters. The next section reviews morale problems identified in the NDH workforce. This is followed by a section reviewing the funding sources for NDHs. Finally, appropriate use of nondirect-hire staff and current patterns of and possibilities for replacing USDH staff with NDH staff are explored. The study's recommendations are also summarized at the back of the report.

II. AGENCY EMPLOYMENT PROCEDURES

NDH personnel abroad are employed under a variety of contract mechanisms. Personal service contracts (PSCs) are a common form of employment, but use of a nonpersonal services contract with an individual is possible under some circumstances. Even a purchase order may be used to obtain the services of an individual on a short term basis. PASAs and similar arrangements are used to obtain the services of employees of other U.S. Government agencies. Institutional contracts may be used to obtain the services of personnel needed to implement A.I.D. projects. Service contracts may be used to cover security, maintenance and other functions required on a continuing or recurring basis.

A.I.D. NDH policies and procedures are primarily found in the A.I.D. Handbooks. Detailed employment guidelines for personal services contractors are found in Appendices D and J of A.I.D. Handbook 14. The FSNPSC system is fairly standardized and is based on the established rules for FSNDHs developed by State, A.I.D., and other foreign affairs agencies. The USPSC system is less standardized. Since U.S. citizen, Foreign Service National, and Third Country National personal service contractors form a significant part of A.I.D.'s overseas workforce, the Handbook guidelines on PSCs in large part define the appropriate roles of all personnel in the total Agency overseas workforce.

A. LIMITATIONS ON PSCs' AUTHORITY

Appendix D and J of Handbook 14 list a number of regulatory restrictions A.I.D. places on PSCs' authorities. Most of the restrictions relate to the "inherently governmental" nature of some functions, which typically are not to be performed by contractors. Appendix C of this paper lists these regulatory restrictions for PSCs by category of personnel. These guidelines may be summarized as follows:

1. PSCs may be used only when adequate supervision is available.
2. PSCs may be used to perform commercial activities.
3. PSCs may also be used to perform governmental functions with the following exceptions:
 - a. They may not negotiate on behalf of the U.S. with foreign governments and public international organizations. They may, however, negotiate with private individuals.
 - b. They may not enter into any agreement on behalf of the U.S.
 - c. They may not make decisions involving governmental functions such as planning, budget, programming and personnel selection. They may, however, make recommendations up to final decision.
 - d. They may not supervise U.S. direct-hire employees.
 - e. In the case of FSNPSCs and TCNPSCs, they may not perform services involving security classified material.

FSNPSCs and TCNPSCs are permitted to assume the responsibilities of project managers/coordinators for specific projects. Responsibilities can include conducting site inspections, reviewing project scheduling and other technical elements with counterpart officials, and conducting administrative reviews of vouchers. Similar responsibilities may be permitted in other areas including administrative, program office, controller, etc. subject to appropriate supervision by division chiefs or other U.S. direct-hire personnel.

The limitations listed above, for the most part, have not prevented PSCs from carrying out the essential work of the Agency. For example, the prohibition on making decisions involving governmental functions leaves a broad range of actions available to the PSC to impact on the decision making process. The PSC often has the specific technical knowledge to know the best course of action. Based on that knowledge, the PSC can recommend the specific decision which should be made by the USDH. Much of the staff work on compiling budgets, planning documents, personnel matters, etc. is often done by PSCs. Furthermore, even though a PSC cannot negotiate with foreign governments, they may be in the best position to deal with the host government. FSNs, for example, often have close contacts with their governments, often having been employed by them previous to their employment at A.I.D. Such contacts may facilitate the negotiation process and may lead to agreements which need only be formally approved by a USDH. The Agency limitations are general enough to allow for broad interpretations to permit these actions. Clearly, this flexibility has been key to the missions carrying out their essential work with limited USDH presence. However, the general nature of the limitations also leave the limitations vague, which raises doubts on the part of the missions as to whether or not certain actions actually violate the regulations or are permitted.

The A.I.D. procedural limitations need to be further reviewed to determine if alterations are needed. Federal government policy holds that certain functions are "inherently governmental" and may not be performed by nongovernmental employees, which includes contractors. The point of contention is whether PSCs are governmental employees for the purposes of applying these limitations. The A.I.D. General Counsel

holds that A.I.D.'s PSCs are governmental employees and can therefore perform inherently governmental functions, except those which A.I.D. restricts in its own internal policy (see Appendix D). To date, this interpretation has held and OMB has recently acknowledged that their restrictions on contractors performing inherently governmental functions do not apply to A.I.D. PSCs (see Appendix E for the correspondence to OMB)².

If PSCs are indeed exempt from the Federal Government restrictions, which appears to be the case, then the Agency is free to alter its own restrictions as it sees fit within the bounds of accountability concerns. This leaves the door wide open for expanding the authorities granted PSCs by eliminating some or all of the restrictions. This is an extremely important point, since loosening the restrictions could result in almost limitless possibilities in utilizing PSCs. This could mean, for example, a USPSC could run a mission. Many restrictions on FSNs relate to them being non-U.S. citizens. However, expanding their authorities would also allow FSNs to take on even greater responsibilities. This issue needs to be further reviewed and clarified.

- ☞ **Recommendation:** FA/PPE, the Office of the General Counsel, the Agency's Procurement Policy Advisory Panel, and the Agency's Management Review and Control Committee should review and clarify limitations on PSCs' authority to determine which limitations might be eliminated to legitimately expand the authorities of PSCs to carry out the essential work of the Agency without sacrificing Agency accountability. Remaining limitations should be made more clear and specific. Contracting guidelines could then be issued to the field, along the lines of the recently released A.I.D./W contracting guidelines on nonpersonal services contracts, clarifying these limitations on PSCs.

B. PSC's SUPERVISING OF OTHER EMPLOYEES

The question of the supervisory authority which may be exercised by USPSCs, FSNPSCs, and TCNPSCs was raised several times during the course of this study. Many missions are unclear on Agency policy on which categories of personnel can supervise which other categories. The regulations specify that PSCs of any type may not supervise USDH employees but are otherwise silent. Assuming that anything not prohibited in these regulations is permitted, USPSCs should be able to supervise other USPSCs, FSN/TCN PSCs, as well as FSNDH personnel. Similarly, FSN/TCN PSCs should be able to supervise FSNDH employees, FSN/TCN PSCs, and even USPSCs. These lines of supervision seem generally sound as long as they are applied based on the position the employee holds. Clarification of these issues would be helpful to mission management.

² OMB gave their response verbally through a telephone conference. As of the release date of this report, the Agency has not yet received the written response from OMB.

- ☐ **Recommendation:** FA/PPE should clarify PSC supervision guidelines where across-the-board guidance is needed and leave the remaining issues to the mission. The clarified supervision guidelines should be included in the above mentioned contracting guidelines to be issued to the field.

C. COMPENSATION AND CLASSIFICATION

FSN/TCN COMPENSATION

FSN and TCN personal services contractors are to be graded and paid in accordance with local position classification and compensation plans. They are not to be considered U.S. Government employees for purposes of any U.S. Government retirement or pension plan and are not eligible for meritorious step increase awards (this restriction is currently under review by FA/PPE). FSNs, both DH and PSCs, are covered by retirement plans determined by local conditions under the local compensation plans. (There are some DH exceptions still under the older U.S. Government Civil Service Retirement plan.) Consequently, other than FSNPSCs being ineligible for meritorious step increases, FSNPSCs and TCNPSCs are extended the same benefits and are subject to the same restrictions as FSN direct-hire employees³. There is no practical difference between a FSNPSC and a FSNDH employee. Is there a need for two separate employment mechanisms for FSNDHs and FSNPSCs? One mission perspective is that the two mechanisms gives the mission additional flexibility in hiring. However, this must be balanced with the concern that two employment categories for FSNs may cause morale and other management problems relating to the existence of two separate classes of FSNs.

Local compensation plans are determined by State Department salary surveys of local markets. The surveys take the average pay of the top 10% of private sector employers. The surveys are very comprehensive and take into account all compensation and benefits, including such items as company cars and village leave. Several A.I.D. positions are included in the survey. Even though some in the Agency have complained that the survey does not provide high enough pay levels for some of A.I.D.'s professional FSNs, the team's conclusion is that A.I.D. is a competitive employer and is able to attract the caliber of FSN employees the Agency needs. However, problems may occur in several areas. One is that the salary surveys may not be updated frequently enough to keep pace with local economic conditions, resulting in salaries declining in value. The salary survey results also may not be implemented in a timely manner due to budget constraints in one or several of the Agencies affected by the survey⁴. Furthermore,

³ A.I.D. regulations require that a FSN cashier position be filled by a direct-hire employee and not a FSNPSC. Such a distinction, however, no longer seems relevant.

⁴ For a salary survey to be implemented, each of the participating foreign affairs agencies must be able to pay for any resulting salary increases.

there are some problems with FSNs reaching a grade ceiling (particularly highly-skilled professionals) and leaving the Agency to find other employment, but this is almost inevitable with any government personnel classification system. A similar type of phenomenon occurs with U.S. Government employees reaching a ceiling.

FSN DH AND PSC CLASSIFICATION

In all the A.I.D. organizations visited, the Embassy Personnel Office is responsible for the classification of A.I.D.'s FSN direct-hire positions. In only one case, however, was the Embassy also responsible for classifying A.I.D.'s FSNPSC positions. In most cases, A.I.D. classified its own FSNPSC positions. This sometimes results in A.I.D. FSNPSCs being classified in higher grades than other FSNs occupying comparable positions, which leads to morale problems and salary discrepancies. This could result in the U.S. mission competing internally to employ personnel. This does not appear to be a general problem as yet, but could become one if not remedied. It would seem to be advisable for A.I.D. to review the situation and develop a method to eliminate or minimize such discrepancies. The optimal solution may well be for A.I.D. to turn completely to the FSNPSC hiring mechanism.

- ☞ **Recommendation:** The Agency should continue to move in the direction of a single system for FSNs by hiring all FSNs as PSCs rather than DHs. Missions need to be aware of FSN classification discrepancies and take steps to minimize them.

TCN TREATMENT

Appendix J of Handbook 14 provides regulations governing the employment of FSNPSCs and TCNPSCs. The regulations specify that the two groups should be treated alike for employment purposes. TCNs, therefore, are to be paid following the local compensation plan for FSNs. The Mission Director may, however, determine that compensation in accordance with the local plan would be inappropriate in a particular instance. In that case, the mission may follow other policies they have on FSN compensation or follow the USPSC guidelines. In the latter case, determining the appropriate market salary would then be a problem. If the local market is not used, then is the U.S. or the TCN's home country used? In practice, TCNPSCs are almost always treated similarly to USPSCs rather than FSNPSCs. To a great extent, this is a reflection of the fact that TCNs are usually offshore hires. In the missions visited, TCN salaries varied from the lower to higher end of the U.S. scale and most of the benefits provided USPSCs are also provided TCNs. Such treatment of TCNs might be justified in terms of their value to the mission, but the practice appears to be incompatible with current A.I.D. regulations. The A.I.D. Contract Office should clarify the guidance for TCN compensation.

- ☞ **Recommendation:** TCNPSCs, in reality, are not treated the same as FSNPSCs for employment purposes and probably should not be. FA/PPE should revise the Handbooks to either broaden the USPSC guidance to cover TCNs or to include new guidance specifically covering TCN compensation and employment.

USPSC COMPENSATION

Handbook 14 specifies that USPSC initial salaries are to be based on the "market value" (presumably in the U.S.) of the position being recruited for. The instructions are unclear on how the market value is to be determined. The market value range is then to become the basis for negotiations along with the applicant's salary history. The instructions also stipulate the salary should be consistent with the Project Officer's estimate of the cost of a comparable GS/FS position, although this need only be done when "appropriate." The instructions are unclear on how to reconcile conflicts which may arise between the market value and the value of the GS/FS position determination.

The study found a great deal of inconsistency in USPSCs' compensation. Instances in which USPSC positions of comparable difficulty and responsibility had varying salaries were found in all four of the countries visited. These inconsistencies and inequities may have been caused by the lack of knowledge on the part of the Project and Contract Officers of comparable GS/FS grades and the market values of similar work in the U.S. Another contributing factor was the varying negotiating skills on the part of the candidates when discussing salary for the position and pressures on the part of the mission to hire a candidate at whatever costs to fill an urgently needed position.

Problems with classification and compensation of PSCs may be a reflection of the dual nature of their employment relationship with the Agency. As contractors, the terms of PSC employment may vary with each contractual arrangement. As government employees, however, with an employer-employee relationship with the Agency, there is a need for a standardized personnel system. Determining a middle ground between these two relationships will always be problematic.

Some USPSCs are paid at an FS-1 level or higher when their actual job responsibilities in the position may be at a lower level. This may be due to the mission prematurely identifying a PSC they want to hire and then paying an inflated salary based on the candidates salary history. A case such as this suggests the need for increased competition for USPSC positions.

The benefits provided to USPSC employees also varied from mission to mission and even within the same mission. With few exceptions, USPSCs hired offshore receive the same benefits as USDHs. USPSCs hired in the host country (resident hires) are not normally eligible to receive the same benefits as USDHs and USPSCs hired in the U.S.

(offshore)⁵. Some benefits, such as APO, Embassy health unit, Commissary privileges, and the diplomatic pouch are not under USAID control and cannot be guaranteed to all USPSCs on an equal basis. The granting of these benefits is determined by the policies of the U.S. presence in that country. Furthermore, these benefits, similar to the others, are usually only given to offshore-hire PSCs (except for the diplomatic pouch). There are exceptions, however, of resident-hire PSCs getting contracts similar to that of an offshore hire.

The desirability and need to provide the same benefits USDHs receive to USPSCs and often TCNPSCs hired offshore is questionable. The USDH benefit package was developed in order to attract and retain qualified USDH personnel for a career foreign service. Yet PSCs receive these benefits as well as other advantages (such as greater mobility) USDHs do not have. The argument for giving PSCs these benefits is that the Agency is able to attract the high caliber of personnel needed to effectively manage its programs.

Whether A.I.D. needs to give the entire USDH benefits package to attract qualified offshore-hire PSCs is doubtful. Current Handbook guidance stipulates most benefits are to be included in the contract as a matter of procedure without negotiation. However, a better approach might be to reduce the standard benefit package to include only those benefits which are considered essential, leaving other benefits such as home leave and R & R to be granted only in certain cases. These cases could be specified in Agency guidance based on the PSC meeting certain criteria. Such a system could save the Agency money in the contracts. A downside to doing this is that it could cause additional morale problems due to more perceived inequities among U.S. citizen compensation packages.

Granting certain benefits to offshore-hire PSCs but not to resident-hire PSCs, as is done, also creates two unequal categories of USPSCs and is a fruitful source of morale problems. This is unfortunate and there may be no easy way to resolve this problem. There may, however, be cases when granting resident hires certain benefits is justified and necessary, such as access to the Embassy Health Unit or APO privileges where available.

USPSCs are also not permitted to participate in any awards programs. The nature of USPSC employment is considered to be of a contractual arrangement. The Agency contracts with the PSC for a specific task and a clearly defined level of effort. As long as the PSC meets the minimal level of effort, that person is fulfilling the terms of the contract; awards are viewed as unnecessary. However, giving awards to other employees, including USDHs, FSNDHs, FSNPSCs, and not to USPSCs singles out this group from the others. This is a particular problem with U.S. citizen employees, as USDHs and USPSCs work side by side, yet USDHs regularly receive awards and

⁵ See A.I.D. Handbook 14 Appendix D. There are exceptions if the resident hire can demonstrate their previous employer paid similar benefits.

USPSCs do not. Furthermore, since many USPSCs work for the Agency for several years, an award given for outstanding performance may enhance the quality of the work relationship between the Agency and the USPSC. Awards for USPSCs (and TCNPSCs) is another area which may need further review by the Agency.

Inconsistencies and inequities among USPSC salaries and benefits clearly indicate the need for review and revision of current regulations and guidelines concerning these areas. The guidelines need to "regularize" the system, with more standards needed to insure fair and equal treatment. Any additional standards, however, should take into account the mission's need for flexibility in hiring USPSCs.

- ☞ **Recommendation:** FA/PPE needs to examine the need for more standards for the USPSC system for hiring and compensation. Any additional standards should maintain the missions flexibility. One possibility might be increased emphasis on classifying USPSC jobs to determine fair market rates for positions.
- ☞ **Recommendation:** FA/PPE needs to review USPSC and TCNPSC benefit packages. FA/PPE should consider reducing the standard benefits package given to these PSCs and making the remaining benefits contingent on the PSC qualifying for them based on certain criteria. Limitations on which benefits should be given to which PSCs should be clearly spelled out.
- ☞ **Recommendation:** FA/PPE should issue general guidance for field personnel on PSC benefits and negotiating techniques. This guidance should be written for a broad audience including not only contracting officers but others who may be involved in the process as well.
- ☞ **Recommendation:** FA/PPE should review the Agency policy of excluding USPSCs from receiving any awards. Awards to USPSCs could take any of several forms, such as cash awards or certificates for outstanding achievements.

PASAs

A.I.D. Handbook 12 contains regulations governing the use of PASA employees. The Agency currently uses approximately 30 to 40 individuals through PASA arrangements. A few examples of positions PASAs are performing include a Natural Resources Advisor from the Department of Energy, an Electrical Engineer from the Department of Interior, and a Manpower Development Advisor from the Department of Labor.

The regulations specify that these agreements must be for the purpose of providing technical assistance and must have "unique suitability" to provide such technical assistance. This means that the proposed PASA must have a clear and substantial superiority to other sources, both public and private. In addition, not all PASA employees appear to be performing work contemplated in the regulations. In some

cases, they are developing mission strategy statements, developing projects, and implementing, monitoring and managing projects and, in general, performing work which appears identical to that of a USDH employee. Such assignments did not seem to be in line with those authorized by A.I.D.'s regulations.

- ☞ **Recommendation:** Appropriate utilization of PASA employees should be clarified as part of the contracting guidelines to be issued by FA/PPE to the field.

D. PSC RECRUITMENT

A similar pattern of recruitment was observed in all the missions visited. FSNPSC positions are often filled by promotion from within if possible. Otherwise, the position is advertised locally. Local salary scales appear to be sufficiently high at the missions to attract very qualified applicants. Applications for advertised FSNPSC positions are received and screened by either the mission or the Embassy personnel office. Applications from individuals who appear to meet the basic qualification requirements are referred to the requiring office for review and evaluation. The best qualified applicants are invited to an interview, usually with an ad hoc panel of mission officials. The candidates are then ranked and the top one selected.

Whenever possible, resident hires are preferred to offshore hires for filling USPSC positions to save costs. In some countries, large colonies of expatriate Americans or American spouses and dependents provide pools from which qualified candidates are available. In other countries, however, it may be difficult or impossible to find qualified American candidates locally. In these cases, the USPSC position is usually advertised internationally to attract candidates. The requiring office is responsible for reviewing and evaluating applications. Interviews may be conducted before the final selection is made. The Contract Officer is responsible for conducting salary and benefits negotiations with the recommended candidate.

A.I.D and Embassy officials interviewed by the Study Team considered the recruitment process to be reasonably satisfactory. Some complaints were voiced, however, with regard to the inordinate lengths of time required to identify suitable candidates, obtain necessary approvals and clearances, and get the candidate in the job. Sometimes this process took as much as 18 to 24 months.

There may be a problem with USPSC and TCNPSC positions not being adequately competed. Pressure to fill positions as quickly as possible leads to the mission choosing among the first available candidates. Secondly, PSC positions are often filled through recommendations of the informal network of Agency development professionals, without information on or an attempt to identify other possible candidates. A result of inadequate competition may be the paying of inflated salary levels and benefit packages to PSCs.

Another issue that has arisen recently is the Rockefeller amendment to the Foreign Service Act. This amendment, in effect, will require A.I.D. to give U.S. citizens living abroad equal opportunity with foreigners in filling FSNDH positions. This could cause problems by reducing promotion opportunities for FSNs, worsening morale among FSNs, and costing the Agency more money through paying higher salaries associated with U.S. citizens. However, as a practical matter, since most of A.I.D.'s FSN jobs are PSC, the impact of the Rockefeller Amendment on the Agency should be minimal (see Appendix F for a more in-depth discussion of the issues involved).

- ☞ **Recommendation:** Missions need to make greater efforts in identifying candidates for PSC positions to insure greater competition, including utilizing candidate lists which may be available from backstop offices in A.I.D./W. FA/PPE should include specific instructions on this as part of the previously mentioned contracting guidelines to be released.

- ☞ **Recommendation:** In the long term, the Agency should study the feasibility of establishing one central database for all USPSC and TCNPSC personnel and positions. Such a system would serve to get more complete information in a reasonable time to missions looking for qualified candidates for PSC positions. This should result in increased competition for PSC positions and, consequently, some cost savings on PSC salaries.

E. PSC CAREERS

In terms of length of service, FSNPSC employees can be considered no differently than their FSNDH counterparts. FSNPSCs are career employees in almost every respect, giving the Agency many years of service.

It is not uncommon for some U.S. citizens and Third Country Nationals to work for years as A.I.D. PSCs, at either one mission or moving from mission to mission. In effect, these people are "career PSCs." It is doubtful that such a situation was envisaged when the PSC concept was originally introduced. On the other hand, the Agency has an interest in maintaining a cadre of specialized technical experts which can be employed relatively quickly. Such people gain experience with A.I.D. policies, procedures and documentation and are more productive than a newcomer would be. Many of these experienced PSCs maintain informal networks which provide them information about A.I.D. programs, projects, and also PSC vacancies. USDHs also provide assistance to PSCs who have been working at their mission and may be looking for a new assignment⁶.

⁶ There have been some cases in the past of USDHs sending cables or other official correspondence to missions announcing the availability of a PSC for an onward assignment. This practice, however, is not consistent with procurement regulations.

Clearly, Agency resources are being devoted to maintaining an informal job network for long-term Agency PSCs. A better alternative might be to eventually formalize this process by establishing a central PSC database of personnel and positions in A.I.D./W as mentioned above. Such a database would be of benefit to the Agency as well as the PSC. At a minimum, the database could consist of a database of records on PSCs presently employed by the Agency or who have worked for the Agency in recent years. The records could contain information on the PSC, their skills, and their salary history. The information could be made available to missions upon their request when filling a particular position. Carried a step further, the database could also contain job announcements of missions. A match could be made to PSCs with those skills, or PSC candidates could review announcements for possible employment opportunities. Such a system may not cost any more than the Agency resources in staff time and correspondence currently devoted to the informal network. It would certainly operate more efficiently for recruiting and matching more and better qualified candidates for particular PSC jobs.

The Agency also must give more consideration to training its long-term PSC workforce. Most A.I.D. training is targeted towards USDH personnel, with availability made to some NDHs. As the Agency's overseas workload continues to shift from USDH personnel towards NDHs, the Agency's NDH workforce will increasingly need more skill development in overall procedures and operations of the Agency. The Agency needs to insure that training opportunities are made available to long-term PSCs, especially FSNs, who are at the core of mission operations. Such training might include courses on A.I.D. procedures, English writing skills, and language training. Training might be done on a regional basis for greater economy.

- ☞ **Recommendation:** The Agency needs to insure adequate training opportunities are made available to long-term PSCs. FA/HRDM/TSD should insure training opportunities are made available to PSCs where appropriate. Missions should insure adequate in-country and regional training programs are developed for PSC staff.
- ☞ **Recommendation:** As stated above, the Agency should, in the long term, study the feasibility of establishing a "clearinghouse" for USPSC and TCNPSC personnel and positions.

F. WORKFORCE REPORTING

As was reported in the GAO study, A.I.D. has not had a central reporting system for collecting information from the field on nondirect-hire employees⁷. Since, unlike USDH with centralized Agency management, nondirect-hires are managed in the field

⁷ A.I.D.'s Use of Personal Services Contracts Overseas, U.S. General Accounting Office (September, 1991).

offices there has not been an urgent need for such a reporting system for accounting or personnel purposes. Only in recent years has the Agency as a whole begun making efforts towards accounting for this part of the workforce. Several parts of the Agency have collected numbers on on-board personnel or workyears in many of the various employment categories. The numbers vary in accuracy due to problems with definitions, inaccurate reporting by missions, lack of timeliness in reporting, and other factors. Communication between the field and A.I.D./W is often poor and the field must be relied on to report the information as requested. The request is often considered another cumbersome reporting requirement from A.I.D./W with little practical use for the mission.

However, the demand for data on A.I.D.'s workforce, both direct and nondirect-hire, will likely continue and even increase with the continued interest in the management of the Agency by Congress, OMB, and, of course, Agency Executives. Rather than collect this data on an irregular basis, as is now done, the Agency would be better off designing one central data source on its NDH workforce which could generate data to respond to requests and otherwise be available as needed. Such a reporting system can be developed with a minimum of effort. Most missions, if not all, keep their own staffing patterns of their DH and NDH workforce. Currently, different missions use different automation systems for maintaining the database. Missions need only to be standardized on one system over time, and then this data could easily be compiled in A.I.D./W into one central database. Clear definitions would need to be developed for all the data categories. This should result in less of a workload on missions, since no additional work would be required in maintaining their staffing pattern and missions would no longer need to respond to periodic requests for this information, since it would all be kept centrally and be current. Clearly, if A.I.D. expects to get a better understanding and control of its overseas NDH employment it's NDH reporting procedures must be overhauled.

- ☞ **Recommendation:** The AA/FA assign FA/B/SB to develop an automated, standardized overseas mission staffing pattern on NDH staffs to be maintained centrally in A.I.D./W (currently FA/B/SB has the greatest demand within the Agency for this information). This staffing pattern could provide information on all NDH personnel (as defined), including information on employment type, classification, FTE workyears, and funding source. In the long run, FA/HRDM should be assigned the maintenance of the data centrally in an automated worldwide NDH staffing pattern.

III. MORALE PROBLEMS

The Study Team did not encounter any major morale problems caused by NDH employment policies and procedures. It did find some minor morale problems which are caused by the following factors:

- Some FSNPSCs believe their employment status is lower than that of FSNDHs. This appears to be more of a perception problem, however, rather than a reflection of reality. Some FSNPSCs also believe they are more vulnerable to reductions-in-force (RIFs), even though RIF regulations of missions tend to group FSNPSCs and FSNDHs in the same competitive area.
- Some FSNDHs are displeased because FSNPSCs may be doing the same work but are getting a higher grade and salary due to classification discrepancies mentioned earlier.
- Some FSN/TCN professionals may resent the vast differences between their salaries and benefits and those of Americans doing similar type of work. Some FSN/TCN professionals may also believe they are not being used to their maximum capabilities, are excluded from the mission decision-making process, and are not considered "members of the family" as Americans are. Mission Directors need to be aware of these issues and deal with them as they arise.
- FSN professionals may bump up against the grade and salary ceilings of the local classification and compensation plans and see no further career promotion ladder open to them. In such a situation they either leave USAID employment for better opportunities or they stay with USAID indefinitely but lose interest and incentive to improve their work.
- Some USPSCs are displeased because they are not receiving benefits in some missions they feel they are entitled to (e.g., APO and Embassy Health Room). Some USPSCs are displeased because of inconsistencies and inequities in salaries and benefits received by USPSCs, primarily between offshore and resident-hire USPSCs.
- Some resident-hire USPSCs are unhappy with their compensation because they were unfamiliar with A.I.D.'s negotiating process and guidelines when their salary was negotiated. They may have agreed to salaries which were lower than they might have received had their negotiating skill and knowledge of regulations been greater.
- A few problems may occur because of unclear supervisory relationships, such as FSNDHs being supervised by FSNPSCs, or PSCs supervising other PSCs. As stated earlier, supervisory relationships are not always clearly set forth in the regulations.

All of the above problems were found to be relatively minor and infrequent and, for the most part, can be handled in the confines of the particular USAID mission. They are considered almost inevitable, given A.I.D.'s disparate workforce and working environment.

Perhaps the greatest morale problem found was among USDHs due to reduced numbers and changing responsibilities towards contract administration and away from implementing the actual programs. USPSCs, in many cases, may have more interesting work than the USDH. This problem is further explored below.

IV. FUNDING AND SOURCES OF FUNDING

The basic principle of appropriations law is that an appropriation is only available for the purposes for which the appropriation is made. A.I.D. is appropriated two major funding sources which can be utilized for NDH staff -- operating expenses (OE) and program funds. Table 5 below summarizes the overseas NDH workforce and their source of funding. The determination of which funding source is used is based on the predominant function carried out by the employee. This determination is made by applying a purpose test. All costs associated with supporting A.I.D. direct-hire personnel (to include salary and benefits) must be funded within the operating expense appropriation. The operating expense appropriation must also be charged with all costs related to NDH employees (to include salary and benefits) predominantly involved in activities directly related to the "cost of doing business." On the other hand, if the predominant function of the NDH employee is project or program related activities, then the NDH and all associated costs (to include salary and benefits) must be program funded.

Generally, these guidelines seem to be followed in the field. However, gray areas do exist where NDH employees may be performing several different types of activities. If the services are being obtained predominantly for specific program or project requirements then the costs should be program funded, even if they provide a residual benefit of an Agency support nature. Likewise, if the NDH employee is being obtained predominantly for activities involved in managing A.I.D. or as a "cost of doing business" the costs should be charged to the operating expense account, even if the NDH employee is providing residual benefits in support of a project or program.

In cases where the predominant function is split between the "cost of doing business" standard and the program or project related activity standard, pressures exist for the mission to program fund personnel whenever possible. Operating expense funds are a scarce resource and have alternative uses in other high-priority areas of mission operations. Program funds, on the other hand, are a relatively more abundant resource to the mission. Missions under tight OE constraints, therefore, are under pressure to save OE by program funding these personnel, even in cases where this may not be legitimate. For similar reasons, a program-funded USPSC under contract may save the mission OE costs as compared to a USDH performing the same function, since the USDH must be OE funded.

Table 5
A.I.D. OVERSEAS WORKFORCE BY FUNDING SOURCE
DISTRIBUTION BY BUREAU/REGION
FY 1992 DATA

CATEGORY OF PERSONNEL AND FUNDING SOURCE (#s in workyears)

WORLDWIDE SUMMARY	USPSC		FSN/TCN PSCs		OTHER US GOVT		TOTAL		TOTAL NON-DH*
	OE/TF	PROG	OE/TF	PROG	OE/TF	PROG	OE/TF	PROG	
FHA	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
NIS	0.1	0.0	0.0	0.0	0.0	0.0	0.1	0.0	0.1
POLICY	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
EUROPE	10.6	0.0	65.0	0.0	0.0	0.0	75.6	0.0	75.6
NEAR EAST	21.8	15.9	319.9	52.6	0.0	12.0	341.7	80.5	422.2
ASIA	26.8	4.7	1014.4	10.0	0.0	1.0	1041.2	15.7	1056.9
AFRICA	86.9	99.9	1645.9	174.1	2.0	12.2	1734.8	286.2	2021.0
LAC	63.9	122.6	1126.5	192.4	2.0	15.4	1192.4	330.4	1522.8
TOTAL	210.1	243.1	4171.7	429.1	4.0	40.6	4385.8	712.8	5098.6

Data Source: FY 1994 Annual Budget Submission (ABS). Includes operating expense and program-funded personnel.

* Total Non-DH includes: USPSC, FNPSC, TCNPSC, and Other US Govt (PASAs, RSSAs, and Details-In). Manpower/Service contracts and other institutional contracts (including IPAs and TAACS) are not included.

Note: The total for Non-DH staff differs from total Non-USDH in table 2 in that FNDH are not included in this table.

There is a need for more guidance in funding NDH personnel and their associated costs. Guidance needs to be specific and clearly state the circumstances in which personnel and related costs should be OE funded or program funded. Such guidance was developed for A.I.D./W and similar guidance would be useful for the field. The guidance would leave less to chance and provide needed documentation on funding sources for purposes of greater accountability.

- ☞ **Recommendation:** The recently released contracting guidelines for A.I.D./W on nonpersonal services contracts should be reissued for the field and adapted to address the unique circumstances of PSCs and their funding.

V. APPROPRIATE USE OF NONDIRECT-HIRE PERSONNEL

The Agency's trend in staffing for a number of years has been away from a USDH staff and towards a NDH workforce to carry out its field work. A.I.D.'s missions are now staffed primarily with a NDH workforce. There have been a variety of reasons for this trend, two primary ones being annual reductions in the Agency's FTE for USDH staff and constraints on operating expense funds. The Agency's workload, in the meantime, has remained stable or even increased as foreign aid objectives continuously change and expand around the world. Many in A.I.D. now believe USDH staff levels and the Agency's workload have been stretched to the limit.

The implication of USDH being stretched to their limit is that further reductions in USDH staff cannot be absorbed without A.I.D. changing "the way it does business." This could mean moving towards a headquarters-centered organization as in the Bureau for Europe; or towards more regionalization and fewer and smaller country missions; or, in some countries, perhaps delegating more responsibility for programming and project development to the host country; or adopting some other functional arrangement which is less management-intensive than at present, thereby minimizing USDH staffing requirements.

However, the possibility of USDH staff functions being further taken over by NDH may also exist. During visits to A.I.D. organizations, the NDH Study Team focused attention on the possibility of replacing USDH staff with PSCs, PASAs, institutional contractors or other types of American or local NDH personnel. Assuming that A.I.D.'s current field organizations and methods of operation would continue for an indefinite period, the Study Team concluded that some USDH positions could possibly be filled by American or local NDH personnel without harming mission operations. In fact, this process can be observed in some missions. Positions such as General Services Officer, Deputy Executive Officer, Deputy Controller, Data Management Supervisor and Project Evaluation Officer which were formerly filled by USDH personnel are now or soon will be filled by FSN employees. USPSC employees also occupy some positions formerly occupied by USDH employees.

Clearly, there are limitations on how far the replacement of USDH staff can be carried as long as A.I.D.'s field organizations continue to operate as they do at present. A.I.D. regulations require that certain "inherently governmental" functions only be performed by USDH employees (see procedures section above). These regulations, should they remain unchanged, mean that all mission positions of division/office chief and above should be occupied by USDH employees. Even a small mission may need a staff of five or six USDH employees for minimal operations. Below this level, however, NDH personnel can be used to perform program development, project management, financial operations, administrative support and related functions up to the point of making decisions. USDH staff occupying these positions might be replaced by NDH personnel when qualified replacements are available. USDH "core" positions might be

characterized as those of a generalist managerial nature while "non-core" positions are more likely to be of a specialist or support nature.

Agency policies governing the utilization of NDH personnel are notably deficient; A.I.D. has had no general policies in the area of NDH utilization. The use of NDH personnel has been incremental and, in the absence of central guidance, each A.I.D. organization abroad has taken whatever steps it has found necessary to solve its staffing problems.

Costs and Benefits of Replacing USDH

Good arguments can be made for and against replacing USDH with NDH personnel. Replacement of USDH with NDH has been the trend in the Agency and many believe this will continue as a practical matter. Personnel constraints from USDH FTE ceilings and hiring freezes which limit the availability of USDH staff can be circumvented to some extent by the use of NDHs. The mission has fewer constraints on its ability to hire NDH staff. NDHs can do much of the same work as USDHs. FSNs also know the country, culture, and local conditions better and so may be able to do a better job on many projects. An additional benefit is that the NDH in some cases may actually cost less than the comparable USDH (this point is explored further below).

Some believe the Agency has gone too far in replacing USDH. The Agency has opened itself up to major vulnerabilities by reducing its USDH staff overseas. As accountability concerns in the Agency increase, there may be insufficient USDH staff in place to account for Agency funds and monitor Agency programs. Fewer USDH staff also results in more bureaucratic inefficiencies, since NDH staff are not as familiar with Agency-wide operations and procedures. USDHs are trained in and are very familiar with Agency procedures. In addition, communicating within an organization such as A.I.D. requires strong and in some cases intricate English language skills which many FSNs lack. Program effectiveness may also suffer as the Agency loses a cadre of career development professionals. Career USDH employees are in the best position to influence LDC Governments on U.S. development interests.

Where replacement of USDH employees by NDH personnel is possible, it is not always done on a one-for-one basis, even when the replacement is a NDH American. PSC, PASA, institutional contract or other NDH employees will usually lack the USDH's experience and knowledge of A.I.D. policies, procedures and documentation; program/project backgrounds; donor relations; and similar perspectives. (These duties will likely fall back to another USDH, increasing their workload further.) USPSCs and FSNPSCs who have the potential to directly replace USDH employees may have no interest in leaving their specialized technical jobs for management-oriented USDH responsibilities.

A. REPLACEMENT OF SPECIFIC U.S. DIRECT-HIRE FUNCTIONS

Under current regulations, only certain positions and functions would be appropriate for replacement of USDH by NDH. Certain higher-level mission-management functions may not be appropriate for replacement by NDH due to the nature of the position. Conversely, NDHs exclusively fill many low and intermediate level professional positions in the mission which a direct hire would never fill. The key positions to focus on when discussing replacement are USDH positions not of a "core" nature which might be appropriate for NDH staff.

Many believe project offices in the mission more than the administrative areas could utilize NDH to replace USDH. This is due to accountability concerns of needing USDH in the administrative areas for activities such as monitoring U.S. Government funds and contracting. Furthermore, project offices have the ability to program-fund staff, giving them more flexibility in hiring NDH staff. Others have the opposite view, that USDH project people are needed for accountability and NDH could be used more in the administrative support areas. This argument states program/project areas need personnel (USDH) who know A.I.D. procedures. Administrative areas, such as contracting, are more general knowledge fields for which one can find services elsewhere.

The positions of Controller, Contract Officer, and Executive Officer have and can be filled by USPSCs, but almost always on a temporary basis and by a USPSC who is a retired USDH foreign service officer who served in the same or a similar position. The PSC will usually fill the position during a lapse in the position being filled by a USDH.

The study team attempted to identify "transitional" positions which are or have been formally filled by USDH and are or have been replaced by a NDH on a permanent basis. Table 6 is a selected list of such positions. They include a FSN who, for all intents and purposes, is functioning as a program officer and a TCN functioning as a project development officer. For the most part, these functions are carried out the same as they would be if performed by a USDH. There are certain constraints to the NDH performing the job. Because of limitations on their authorities, for example, they cannot sign certain documents and would need to get the necessary approval from a USDH. This does not appear to be a major impediment, however, as long as a USDH is close at hand in the same office. (It does cause something of a morale problem since the NDH is essentially performing at the same level of responsibility as the USDH, but does not have the same authorities.) Cases of Program Officer and Project Development Officer positions being filled by NDH still are not common, but show that these higher-level positions can be filled by a NDH provided a USDH is available at post for general oversight.

More common are certain positions that were historically filled by USDH, but are increasingly being replaced by NDH due to FTE constraints. These positions include General Services Officer, Communications/Records Specialist, ADP Systems Administrator, and Evaluation Officer. Other positions are now filled by either DH or NDH depending on the availability of qualified candidates. Examples are Economist,

Food for Peace Officer, Deputy Executive Officer, Certifying Officer, and Deputy Controller.

<u>Position</u>	<u>Formerly Filled By</u>	<u>Presently Filled By</u>
Personnel Officer	USDH	USPSC
ADP Systems Administrator	USDH, then USPSC	FSNPSC
Contract Specialist	USDH	FSNPSC (performing most duties of USDH)
Evaluation Officer	USDH	USPSC
General Services Officer	USDH	USPSC
Communic./Records Specialist	USDH	USPSC
Systems Analyst	USDH	USPSC
Program Officer	USDH	FSNPSC (performing most duties of USDH)
Economic Specialist	USDH	FSNPSC
Project Development Specialist	USDH	TCNPSC (performing most duties of USDH)
Deputy Executive Officer	USDH	To be filled by FSNPSC (performing most duties of USDH)
Certifying Officer	USDH	USPSC
Economist	USDH	FSNDH
Deputy Controller	USDH	TCNPSC, now training FSNPSC to take over
Deputy Executive Officer	USDH	TCNPSC, now training FSNPSC to take over

Decisions on filling the above positions are usually made by the mission based on availability of FTE for USDH. Mission FTE may be constrained for several reasons. If the Agency cuts back FTE concomitantly with a decision to reduce a mission's program, the number of management units, or to generally decrease the workload, then no NDH replacement should occur. Otherwise, as FTE are cut back, the mission makes decisions on marginal USDH positions such as those listed. The mission replaces the USDH with a qualified USPSC, TCNPSC, or FSN, depending on the pool of qualified candidates available to the particular mission. An added benefit to the Agency is that the NDH may actually cost less than the USDH, especially in the case of an FSN. Several examples will illustrate these points. An ADP Systems Administrator position in one country was formerly filled by a USDH, then by a USPSC, and is now filled by an FSNPSC. The costs of the FSN is \$19,411 in salary and benefits as compared to an American at the FS-3 level costing \$121,142. The FSN is approximately one-sixth the cost. Another country left a USDH Project Development Officer position vacant due to FTE constraints. The position has been taken over, for the most part, by a TCNPSC. The TCNs salary and benefits amounts to \$71,522 as compared to an American at an FS-2 level drawing \$112,624. The TCN's cost is 64% of that of the USDH. Another country replaced a USDH Technical Advisor with a program-funded PSC. In this case, the

USDH at an FS-1 level cost \$162,470 as compared to the USPSC's contract of \$236,750; the USPSC was actually more expensive. However, since the USPSC was program funded, the mission would have preserved operating expense funds.

B. IMPACT OF CHANGES IN UTILIZATION ON PERSONNEL CATEGORIES

USDHs

Like most U.S. Government agencies A.I.D. finds itself contracting out more functions. As a result USDH employees are becoming more like contract administrators than development specialists. Accountability and compliance functions occupy more time than program development and project design functions. Many USDH employees resent the amount of time they must spend on accountability concerns, but there appears to be little basis to think this trend is likely to be reversed. Hence, the need for greater reliance on contract personnel to perform many of those specialized development assistance tasks such as project design and management which were formerly the responsibility of the USDH staff. The skills required by USDH employees are becoming more managerial in nature. Management and administration are areas which have little appeal for many USDH foreign service officers who see themselves as development specialists first and foremost. Nevertheless, the Agency and its employees must recognize that USDH staff must accept these responsibilities and continue to acquire these skills.

FSNs

A.I.D.'s In-Country Presence study found that FSNs could probably be used more to carry out certain Agency functions, including replacing some USDH⁸. FSN direct-hire and PSC employees have the potential to eventually assume many technical and administrative support functions which presently occupy significant amounts of USDH time. As noted above, FSN personnel already occupy positions formerly occupied by USDH employees. Additional training for FSN employees may be necessary before some replacements can take place. Furthermore, regulatory restrictions on the authority which can be exercised by FSN personnel will, in some cases, limit the effectiveness of the FSN. Even routine requests for office supplies and official communications to other A.I.D. organizations often must be approved by a USDH employee. This restriction is apparently an extension of the limitation on the FSN committing U.S. Government funds. Promotion of FSN employees to higher level positions may also require changes in the local position classification and compensation plan which was not designed to cover significantly higher levels of difficulty and responsibility than now exist. FSN responsibilities in some functions have increased enormously over the last ten years. One example, cited above, is a FSN occupying an ADP Systems Administrator position which was formerly filled by a USDH. Such a FSN is in high demand in the job market. In

⁸ A.I.D.'s In-Country Presence: An Assessment, A.I.D. (July, 1992).

order to retain such a highly-skilled FSN, the Agency must be able to pay higher salaries than what the current system allows.

Limitations on the FSN's ability to function effectively in some key positions due to cultural constraints and perspectives were cited by several of those interviewed. Even though the FSN employee's technical capability was unquestioned, the individual might not be a good supervisor or manager. Lack of ability to write acceptable English communications is a common deficiency, although this varies from country to country. Some of these weaknesses can be overcome by proper training. Other weaknesses, however, such as a lack of analytical ability or creativity would be more difficult to eliminate.

The general consensus of those interviewed was that A.I.D.'s FSN employees could perform more difficult and responsible work if given training and opportunity. Many also pointed out that the FSN staff provide continuity and mission memory, understand the local environment, have extensive local contacts and, of course, speak the local language, all of which are valuable assets. Last but not least, even two or three high level professional FSN employees can usually be hired for less than the cost of one American.

USPSCs

For the most part, USPSCs probably should not be used more to replace USDH. There are several reasons for this. The costs of a USPSC offshore hire is not less expensive than a USDH. Even though their technical expertise may be high, they will generally not be as familiar with Agency regulations and procedures as a direct hire would be. The pool of candidates for USPSC resident hires, which would be less expensive, may be limited in-country. To the extent resident hires are available, there may be some circumstances in which they can replace a USDH. This would likely result in cost savings since resident hires do not receive the USDH benefit package.

One advantage missions may perceive in hiring a USPSC is that the PSC, depending on the nature of their work, could be program funded, saving the mission valuable OE dollars they would have spent on a USDH. Additionally, the use of a PSC could save the mission a USDH FTE slot. For the mission, these would be major incentives for hiring a USPSC to replace a USDH.

As USDH positions are cut back in certain areas, it is likely that retired USDH employees may move in to fill these positions as USPSCs on a temporary basis, as is done now in some functional areas.

USPSCs' unfamiliarity with A.I.D. procedures may be a problem when they are initially hired. Training might be considered to get them up to speed more quickly so they can become more productive.

PASAs

Overhead costs for PASAs can vary in the range of 10% to 40% depending on the participating Agency. The Bollinger Task Force on Improving Agency Efficiency recommended the Agency look at other means of acquiring these services due to the lack of control and overhead involved with the PASAs.⁹ Utilizing PASAs, however, does have several advantages. Even though their overhead can be high, they are sometimes less costly to the Agency than other U.S. citizen employees. This can be due to two factors. The PASA employee, often a mid-level GS employee, may occupy a lower grade level than a comparable A.I.D. overseas U.S. citizen employee, resulting in the PASA earning a lower salary. In addition, they may not receive all the same benefits as the other U.S. citizen employees. PASAs also have all the resources of their participating Agency behind them. Nonetheless, PASAs make up only a negligible part of the workforce and probably could not be utilized more as a practical matter due to personnel constraints around the federal government; few Agencies are willing to release employees for such assignments.

INSTITUTIONAL CONTRACTS

There has been speculation about using institutional contracts to replace entire functions within a mission, especially in administrative areas such as the Executive Office, the Controller function, and Contracting. For example, the financial management function in a mission might be contracted out. However, this could be problematic. Accountability concerns would still necessitate having a USDH heading up the function. All other work might then be contracted out to a locally-based institutional contractor. This would not necessarily be any cheaper than maintaining a primarily FSN staff, as is done now, to carry out this function. It might also be less efficient due to contractor turnover and the need for training the contractors rather than utilizing a career-oriented FSN workforce. The Agency might consider this area for further study at some point in the future.

The Study Team also inquired into the possibility of using institutional contractors to perform project design and implementation functions currently done by USDH employees (known as the DAP/DAD concept)¹⁰. Some of those interviewed thought the concept had merit and should be tried experimentally. Others were skeptical about chances of success. Most considered the DAD/DAP approach to be labor-intensive and did not believe it would result in any reduction of USDH personnel. This was due to the need for additional staff time for contracting and legal work because of the complexity of the contract, even though some project development staff time might be saved.

⁹ Improving Agency Efficiency, A.I.D. (circa 1990).

¹⁰ DAP/DAD refers to "Design and Performance" and "Design and Deliver" contracts as outlined by the Agency guidance on their use.

Some missions have used "Logistical Support Units" to provide logistical support to program-funded contractors in the field. These units may consist of a PSC or, in a larger operation, an institutional contract which are themselves program funded. Such units may alleviate some USDH staff time devoted to supporting projects and ensure that support for projects is paid for with the appropriate program funds.

Problems occasionally arise from USDH getting too actively involved micromanaging a project implementation contractor and this may cause problems of a USDH supervising a nonpersonal services contract. Nonpersonal services contractors are hired for specific activities and are to provide their own supervision for their employees.

- ☞ **Recommendation:** The AA/FA should direct HRDM Workforce Planning to organize an Agency task force of foreign service officers, personnel specialists, and others to develop some standards for positions in terms of which positions are appropriate to fill or should be filled by USDH, USPSCs, FSNs, etc.

C. REPLACING NONDIRECT HIRE WITH NONDIRECT HIRE

Another option in cost savings for the Agency is the replacement of more costly NDH personnel with less costly NDH personnel. For example, replacing a USPSC with a qualified FSNPSC would save considerable costs. The study team found several such examples of this occurring in missions. These decisions were based on cost savings, skills and experience required for the position, and availability of qualified candidates. One mission hired TCNs to fill some positions formerly held by USDH. The TCNs then were to train FSNs to fill the position at the expiration of the TCN's contract. Such cases of a workforce plan for a mission are unusual, but of great value.

In some countries, maintenance and other services provided for the mission are performed by PSCs rather than by service contractors. This would seem to create a management burden on the mission to supervise and provide for the PSCs. However, this may be more than offset by the greater control the mission has over the workers. This solves a problem in some countries with poorly developed economies and service sectors which may not have efficient service contractors available.

- ☞ **Recommendation:** The Agency should explore replacing some NDH staff with other less costly NDH staff. (For example, replacing a USPSC with a less costly FSN.) FA/PPE should include specific instructions on this to missions in the contracting guidelines to be developed and released to the field.

D. MANAGING THE REPLACEMENT OF U.S. DIRECT HIRES

Agency management must decide if the Agency's present course of replacing USDH with NDH is wise. If the Agency wants to go further in this direction, this must

be clearly stated in Agency policy and the process must be better managed. Otherwise, Agency management needs to convey to OMB and Congress that the Agency must maintain adequate USDH staffing levels.

Effective use of A.I.D.'s NDH workforce will require the Agency to determine the employment categories that are to be used to fill various types of positions. Which positions are to be reserved for USDH employees? What are the appropriate functions to be performed by personal services contractors, by PASAs, by institutional contractors and by other employment categories? The limitations on the authorities of all PSCs must be reviewed with consideration given to relaxing some of the restrictions to allow greater use of PSCs. The quality of FSNs varies a great deal from country to country and region to region. This must be taken into account when determining staffing and the extent to which FSNs can do the work of USDHs. In the absence of more specific guidance, each A.I.D. field organization has used its available human resources as its peculiar circumstances have required. Some degree of organizational flexibility is undoubtedly desirable, but it should be developed as a conscious variation from normal practice rather than being an ad hoc arrangement.

Determination of the ideal composition and utilization of A.I.D.'s total workforce during the next few years is a task that needs to be started now. What types of personnel will A.I.D. require to achieve its objectives? How will they be utilized? The need to manage its total human resources effectively will become increasingly acute as A.I.D. copes with changing requirements and changing resources. The piecemeal, incremental approach to human resources management that has characterized A.I.D. in the past will not be adequate in the future.

- ☐ **Recommendation:** Agency management must determine a policy for staffing missions in the future which will address the appropriate utilization and mix of USDH and NDH staff to successfully administer A.I.D.'s development programs. Specifically, the Management Review and Control Committee should be tasked with developing a short and long term strategy. OMB and Congress must be advised and kept informed of such a plan for purposes of determining appropriate USDH FTE levels. Should Agency management decide it must move more towards replacing USDH with NDH, the following steps can be taken:
- USDH staff must understand they will increasingly be performing more administrative, oversight, and general policy work.
 - Should FSNs continue to take on more responsibilities, the FSN position grading system will need to be reviewed to reflect increased responsibility for FSN positions.
 - More training overall will be needed for PSCs for them to perform at their highest level in carrying out Agency functions.
 - The Agency will need to continue to explore the possibility of using institutional contracts to carry out various functions/activities, since institutional contracts are generally less management intensive.
 - As recommended earlier, the Agency should review its limitations on PSC authority to determine which limitations might be eliminated to allow

PSCs to assume greater responsibilities in carrying out the Agency's essential work.

SUMMARY OF RECOMMENDATIONS

FA/PPE, the Office of the General Counsel, the Agency's Procurement Policy Advisory Panel, and the Agency's Management Review and Control Committee should review and clarify limitations on PSCs' authority to determine which limitations might be eliminated to legitimately expand the authorities of PSCs to carry out the essential work of the Agency without sacrificing Agency accountability. Remaining limitations should be made more clear and specific. Contracting guidelines could then be issued to the field, along the lines of the recently released A.I.D./W contracting guidelines on nonpersonal services contracts, clarifying these limitations on PSCs.

FA/PPE should clarify PSC supervision guidelines where across-the-board guidance is needed and leave the remaining issues to the mission. The clarified supervision guidelines should be included in the above mentioned contracting guidelines to be issued to the field.

The Agency should continue to move in the direction of a single system for FSNs by hiring all FSNs as PSCs rather than DHs. Missions need to be aware of FSN classification discrepancies and take steps to minimize them.

TCNPSCs, in reality, are not treated the same as FSNPSCs for employment purposes and probably should not be. FA/PPE should revise the Handbooks to either broaden the USPSC guidance to cover TCNs or to include new guidance specifically covering TCN compensation and employment.

FA/PPE needs to examine the need for more standards for the USPSC system for hiring and compensation. Any additional standards should maintain the missions flexibility. One possibility might be increased emphasis on classifying USPSC jobs to determine fair market rates for positions.

FA/PPE needs to review USPSC and TCNPSC benefit packages. FA/PPE should consider reducing the standard benefits package given to these PSCs and making the remaining benefits contingent on the PSC qualifying for them based on certain criteria. Limitations on which benefits should be given to which PSCs should be clearly spelled out.

FA/PPE should issue general guidance for field personnel on PSC benefits and negotiating techniques. This guidance should be written for a broad audience including not only contracting officers but others who may be involved in the process as well.

FA/PPE should review the Agency policy of excluding USPSCs from receiving any awards. Awards to USPSCs could take any of several forms, such as cash awards or certificates for outstanding achievements.

Appropriate utilization of PASA employees should be clarified as part of the contracting guidelines to be issued by FA/PPE to the field.

Missions need to make greater efforts in identifying candidates for PSC positions to insure greater competition, including utilizing candidate lists which may be available from backstop offices in A.I.D./W. FA/PPE should include specific instructions on this as part of the previously mentioned contracting guidelines to be released.

In the long term, the Agency should study the feasibility of establishing one central database for all USPSC and TCNPSC personnel and positions. Such a system would serve to get more complete information in a reasonable time to missions looking for qualified candidates for PSC positions. This should result in increased competition for PSC positions and, consequently, some cost savings on PSC salaries.

The Agency needs to insure adequate training opportunities are made available to long-term PSCs. FA/HRDM/TSD should insure training opportunities are made available to PSCs where appropriate. Missions should insure adequate in-country and regional training programs are developed for PSC staff.

As stated above, the Agency should, in the long term, study the feasibility of establishing a "clearinghouse" for USPSC and TCNPSC personnel and positions.

The AA/FA assign FA/B/SB to develop an automated, standardized overseas mission staffing pattern on NDH staffs to be maintained centrally in A.I.D./W (currently FA/B/SB has the greatest demand within the Agency for this information). This staffing pattern could provide information on all NDH personnel (as defined), including information on employment type, classification, FTE workyears, and funding source. In the long run, FA/HRDM should be assigned the maintenance of the data centrally in an automated worldwide NDH staffing pattern.

The recently released contracting guidelines for A.I.D./W on nonpersonal services contracts should be reissued for the field and adapted to address the unique circumstances of PSCs and their funding.

The AA/FA should direct HRDM Workforce Planning to organize an Agency task force of foreign service officers, personnel specialists, and others to develop some standards for positions in terms of which positions are appropriate to fill or should be filled by USDH, USPSCs, FSNs, etc.

The Agency should explore replacing some NDH staff with other less costly NDH staff. (For example, replacing a USPSC with a less costly FSN.) FA/PPE should include specific instructions on this to missions in the contracting guidelines to be developed and released to the field.

Agency management must determine a policy for staffing missions in the future which will address the appropriate utilization and mix of USDH and NDH staff to successfully administer A.I.D.'s development programs. Specifically, the Management Review and Control Committee should be tasked with developing a short and long term strategy. OMB and Congress must be advised and kept informed of such a plan for purposes of determining appropriate USDH FTE levels. Should Agency management decide it must move more towards replacing USDH with NDH, the following steps can be taken:

- USDH staff must understand they will increasingly be performing more administrative, oversight, and general policy work.
- Should FSNs continue to take on more responsibilities, the FSN position grading system will need to be reviewed to reflect increased responsibility for FSN positions.
- More training overall will be needed for PSCs for them to perform at their highest level in carrying out Agency functions.
- The Agency will need to continue to explore the possibility of using institutional contracts to carry out various functions/activities, since institutional contracts are generally less management intensive.
- As recommended earlier, the Agency should review its limitations on PSC authority to determine which limitations might be eliminated to allow PSCs to assume greater responsibilities in carrying out the Agency's essential work.

APPENDICES

Appendix A
RELATED STUDIES

Report of the Task Force on Personnel, A.I.D. internal study chaired by Frank Kimball, June 15, 1989.

This report primarily focused on the Agency's direct-hire staff. However, it did briefly examine the implications of an observed trend towards increased use of nondirect-hire staff in replacing direct hires. This trend was accepted as a necessary response to A.I.D.'s limitation on staff ceiling and operating expenses. The report identifies several problems with the trend. One is that many recruited as nondirect hire do not have previous A.I.D. experience and so cannot perform the same quality of work as a direct-hire. Another is a morale issue that fully qualified USPSCs often receive the same salary and benefits as direct hire; resentment then develops on the part of the direct hire. Third, as technical and program functions are contracted out, direct hires are forced to become contract managers of human and financial resources. This has created problems because it has come about in an evolutionary way and has not been a conscious decision to move in this direction. The report recommends A.I.D. management decide if the trend and its implications for the direct hire A.I.D. employee of the future is the desired course.

Improving Agency Efficiency, Internal A.I.D. report memorandum to the A.I.D. Administrator by Walter Bollinger and committee, circa 1990.

This report contains several recommendations on nondirect-hire staff. It recommends a study be done to ascertain the benefits of filling future FSN vacancies through the use of PSCs rather than direct hires, which the report views as a more restrictive hiring mechanism.

Another recommendation suggests the Agency explore alternative contracting mechanisms for generic contracts, each of which could support several projects within a sector.

The report observes it has become standard practice to grant USPSCs the same benefit package under their contracts as that available to USDH employees. The report recommends the Agency use a market-based philosophy for hiring USPSCs which would make the benefit package, including items such as home leave, negotiable.

The report also recommends a review of RSSAs and PASAs be conducted to determine if these services could be better provided through private-sector contracts. The report expresses several concerns with RSSAs and PASAs, including lack of A.I.D. control over their activities, costs, and that U.S. Government agencies should be used only when they have unique capabilities.

Audit of Personal Services Contracting at Overseas Missions,
A.I.D. Inspector General, May 23, 1990.

Among its findings, the IG found 85 out of 119 US/TCN contracts were in noncompliance in establishing salaries because missions did not comply with regulations or A.I.D. policies were not always clear. The report observed that A.I.D. established salary setting rules to foster economy, equity, and consistency in paying personal services contractors. The report concludes that A.I.D.'s salary setting objectives were not being achieved. One of its recommendations was to amend the AIDAR section on salaries to clarify procedures related to methods for setting salaries.

A.I.D.'s Use of Personal Services Contracts Overseas, Report by
the U.S. General Accounting Office, September, 1991.

The study found USPSCs worked without close or continuous supervision by direct-hire employees and influenced A.I.D. operations and programs by providing advice and recommendations, but found no instances where they performed restricted functions. The report also observed the Agency's PSC reporting requirements were not well defined. The report recommended the Agency provide guidance on the requirements for supervising personal services contracts and that the Agency should disclose in its budget presentations its use of USPSCs.

Analytical Study of the Use of Nondirect-hire Workforce in AID/W,
Support Budget Division, Office of Budget, A.I.D., December 13,
1991.

This study reviewed the use of nondirect-hire staff (primarily institutional contractors) in AID/W. The study noted that guidelines on the use of nondirect-hires exist, but were not adequate to address the nuances of various agreements and contracting mechanisms. The study recommended a set of comprehensive guidelines be issued and presented one set of guidelines on the use of nonpersonal services contractors. The study also found data on nondirect-hire personnel was scattered and incomplete.

The study observed that program-funded nondirect-hire staff sometimes performed functions which were more properly operating expense funded. In addition, institutional contracts had a wide range of overhead rates that, in some cases, resulted in costs higher than what they would have been if the work was performed by direct-hires.

Many felt that the more substantive and enjoyable work in A.I.D. of program design and implementation is being done by nondirect-hires.

The study also found that some program-funded secretaries were, in reality, being supervised by direct-hire employees. Many contracts also indicated that, due to high overhead costs,

the costs clearly were higher than if the work were done by a direct-hire employee. The study recommended that the Agency review the utilization of nondirect-hires by first more clearly defining what the most appropriate role for direct-hire staff is in the Agency.

The study also found that A.I.D. has no control point for insuring contract integrity.

A.I.D.'s In-Country Presence: An Assessment, A.I.D. internal report by CDIE Assessment Team chaired by John Koehring, July, 1992.

This study assessed A.I.D.'s present in-country presence and examined possible alternative configurations. The study found that A.I.D.'s present system of in-country presence has two chief advantages: influence and program accountability. Of particular relevance to this study, the report found that the donor communities in the countries visited thought more highly of the FSN talent and used them in more responsible roles than did the USAID missions. The report concluded that there was considerable room for rethinking the role of FSNs and PSCs. The following conclusions were also reached regarding FSNs:

- Many professional FSNs are underutilized, and could assume more and higher levels of responsibilities.
- FSNs could replace the need for USDH responsibility in some functions.
- The number of FSN employees in a mission is often a function of the number of USDH employees.
- There is a definite limit on how much responsibility can be assumed by FSNs centering around restrictions on their authority.

SCOPE OF WORK

STUDY OF
THE AGENCY FOR INTERNATIONAL DEVELOPMENT'S
OVERSEAS NONDIRECT-HIRE WORKFORCE

Work To Be Performed By FA/B/SB

I. Purpose:

This study will be a continuation of the Directorate for Finance and Administration's efforts to review the Agency's use of nondirect-hire human resources. This effort will specifically focus on the use of these resources overseas in A.I.D.'s field offices. A range of issues will be examined: the various categories of workforce personnel (personal services contractors, institutional contracts, manpower contracts, etc.) and their funding sources; the quantity, quality, and efficiency of the services rendered by these personnel; their relationship with direct-hire personnel; A.I.D.'s methods of acquiring these services; and, the costs/benefits of using nondirect-hire staff versus U.S. direct-hire (USDH) staff.

II. Clients:

Primary clients are the Associate Administrator for Finance and Administration, other A.I.D. Associate and Assistant Administrators, and A.I.D. managers. Secondary clients may also be Congress and OMB.

III. Methodology:

Phase 1:

Estimated Time: 4 weeks

Information will be collected from both AID/W sources and the field. In the initial stages of the study, as much information as possible will be collected in Washington. First, a review of related studies (sources include previous A.I.D. studies, the GAO and the A.I.D. Inspector General) will be completed to further focus the coverage of the study. Other information will then be collected in Washington from budget documents, Agency personnel systems, and through interviews with managers, personnelists, contract officers, and foreign service officers with experience in the field as mission directors, project officers, contract officers, and executive officers. Relevant documents on delegation of authorities, contracting procedures, pay compensation, and other related documents will be collected and analyzed.

Phase 1 Review:

Estimated Time: 3 days

Once this information is assimilated and a base of knowledge is established, a review will be performed to determine the scope of the overseas portion of the study. This review will focus on what information we know, what information is lacking, and what the appropriate field sources are for the information.

Phase 2:

Estimated Time: 3-5 weeks

Three to four missions will be selected (selection will be done during phase 1 to give missions adequate advance notice of their consideration for the study) for visits to gain an understanding of current use and procedures of nondirect hires. At each post, time may be spent with the executive officer, project development officers, contract officers, and other USDH employees as well as some nondirect-hire personnel to gain more insights. Any relevant documentation, records, and data from information systems which can assist in the analyses will also be collected and analyzed. The missions will be selected based on some or all of the following criteria:

- One mission which, based on Agency perceptions, is performing comparatively better than other missions in their nondirect-hire employment practices and utilization of nondirect-hire resources.
- One mission which, based on Agency perceptions, has significant operating deficiencies in their employment and utilization of nondirect-hire resources.
- One to two missions considered "typical" in their program structure and in the size and type of their nondirect-hire workforce (moderate size missions).
- One relatively large mission which will provide a good overview of the various areas and issues the missions experience with a nondirect-hire workforce.
- The selected missions should be chosen from at least two different geographic regions of the world.

Phase 3:

Estimated Time: 4-6 weeks

All information will be reviewed and analyzed in Washington to be assimilated into a draft report. The draft will be appropriately reviewed and prepared for final distribution.

IV. Level of Effort:

The study will require a management analyst to devote three to four months of full-time work as coordinator of the study. Additionally, a team will be needed for a portion of the four

months which will facilitate data gathering in Washington and in the field. This team, to give balance and expertise to the study, should consists of an additional management/budget analyst, a foreign service contracts officer, and a personnel specialist (a General Schedule employee or preferably a consultant).

V. Deliverables:

A draft report with recommendations will be submitted to the appropriate A.I.D. officials for review three to four months after the study is undertaken. A final report incorporating comments will be submitted three weeks later. An oral presentation of the results may be delivered as requested.

FA/B/SB:JHaecker:6/8/92:NDH_SCP.DOC

11

Appendix C

Limits of authorities and responsibilities for Nondirect-Hire Staff.

USPSC

Source:	Restriction:
AIDAR App. D -	Cannot negotiate on behalf of the U.S. with foreign governments and public international organizations. Negotiation with private individuals and entities is permitted.
AIDAR App. D -	Cannot enter into an agreement on behalf of the U.S.
AIDAR App. D -	Cannot make decisions involving governmental functions such as planning, budgeting, programming, and personnel selection. Can, however, make recommendations.
AIDAR App. D -	Cannot supervise U.S. Direct-Hire employees.

FSNPSC/TCNPSC

Source:

Restriction:

- AIDAR App. J - Cannot negotiate on behalf of the U.S. with foreign governments and public international organizations. Negotiation with private individuals and entities is permitted.
- AIDAR App. J - Cannot enter into an agreement on behalf of the U.S.
- AIDAR App. J - Cannot make decisions involving governmental functions such as planning, budgeting, programming, and personnel selection. Can, however, make recommendations.
- AIDAR App. J - Cannot supervise U.S. Direct-Hire employees.
- AIDAR App. J - Cannot provide services which involve security classified material.

FSN Direct Hire

- | Source: | Restriction: |
|-----------|--|
| 3 FAM 922 | - Not authorized access to classified material. |
| 3 FAM 922 | - May not perform work involving policy formulation, representation, or supervision of U.S. citizens. (Waivers will be considered to permit supervision of American family members. |
| 3 FAM 922 | - May not be placed in the position of making final decisions on policy matters, officially representing the U.S. Government (including signing letters of implementation), or supervising, on a regular basis, U.S. citizen employees. |
| 3 FAM 922 | - May not be designated as contracting officers. |
| 3 FAM 922 | - The following responsibilities are permitted and, in fact, encouraged within the limits set above. <ul style="list-style-type: none">-- May, under the supervision of a division chief or other responsible U.S. citizen employee, be designated project managers/coordinators for specific projects. Responsibilities can include conducting site inspections, reviewing project scheduling and other technical project elements with counterpart officials, and conducting administrative review of vouchers.-- Similar responsibilities may be permitted in other divisions including administrative, program office, controller, etc., subject to appropriate supervision by division chiefs or other U.S. direct-hire personnel. |

40

Appendix D
AGENCY FOR INTERNATIONAL DEVELOPMENT
WASHINGTON, D.C. 20523

9636 No. 21
Chen

October 8, 1985

OFFICE OF
THE GENERAL COUNSEL

TO: M/AAA/SER, John Owens
FROM: GC/CCM, Jan Miller *JE*
SUBJECT: Personal Services Contracts: Section 636(a)(3)
of the FAA

This is in response to the issues raised at the Procurement Policy Advisory Panel (PPAP) review of the draft AIDAR Appendix D, which deals with personal services contracts with U.S. citizens and resident aliens.

A. Types of services that can be performed by personal services contractors ("PSCs").^{1/}

Traditionally, AID has not permitted PSCs to perform any services of the nature which are for performance by full-time Federal employees. See Manual Order 417.5; 41 CFR, Chapter 7, Appendix F at 4(b) (1981). It has been proposed to revise the Appendix to permit PSCs to perform any service, except for certain specific "direct-hire" or Governmental functions. The revision would explicitly permit PSCs to negotiate on behalf of AID with nongovernmental organizations and by implication to permit them to perform Governmental functions other than those specifically prohibited.

Basically, Federal employees perform two types of services - Governmental functions and commercial activities. OMB Circular A-76 defines a Governmental function as a function which is so intimately related to the public interest as to mandate performance by Government employees. A-76 at 6.e. Governmental functions require the exercise of discretion in applying Government authority or the use of value judgments in making decision for the Government. Activities in support of Governmental functions are considered to be commercial activities. Since commercial activities can be performed either by Government employees or by the private sector under contract, they may be performed by PSCs. What is at issue is the performance of Governmental functions by PSCs.

^{1/} For purposes of this memorandum, the term "PSC" includes only U.S. citizens and resident aliens. It does not include PSCs who are cooperating country or third country nationals.

1. As a general rule persons employed under personal services contracts may perform Governmental functions.

A personal services contract is a contract of employment, i.e. it establishes an employer-employee relationship between the individual and the United States Government. PSCs are referred to in GAO decisions and OPM regulations as "contract employees." They are distinguished from "contractors" or "contractor employees" who have an independent contractor, not an employer-employee, relationship with the Government.

The employment relationship has been broadly defined by the Comptroller General. In a series of decisions involving overtime pay and leave, the GAO held that personal services contractors have the status of officers and employees of the United States Government. 23 Comp. Gen. 17 (1943); 23 Comp. Gen. 260 (1943); 23 Comp. Gen. 393 (1943); 23 Comp. Gen. 425 (1943). In 23 Comp. Gen. 398 at 400, the Comptroller General set forth the general principle:

In other words, it may be stated that unless an officer or employee in or under the United States Government be expressly excepted from the terms of the act he must be regarded as included within its provisions notwithstanding that he may be employed on a contract basis.

The principle was stated again in 23 Comp. Gen. 425, at 429:

Persons authorized to be and who are employed under an instrument designated as a "contract" and who perform their work under the supervision and control of Government employees, are not exempted from Federal laws relating to Federal officers and employees, except such as are inconsistent with the plain provisions of the law granting such authority.

Similarly, the Office of Personnel Management considers PSCs to be employees under 5 U.S.C. 2105, which is the most commonly used definition of "Government employee." In defining employee under 5 U.S.C. 2105, the OPM regulations exclude contract employees "paid on contract or fee basis" but include "employees who are citizens of the United States who are appointed by contracts between the employees and the Federal employing authority which require their personal services and are paid on the basis of units of time." Therefore, PSCs are considered Government employees for purposes of retirement (5 CFR 831.201(a)(5); health benefits program (5 CFR 890.102(c)(6); life insurance (5 CFR 870.202(a)(6); and post employment conflict of interest (5 CFR 737.3(a)(3). In 1967, when OPM amended the retirement regulations to include PSCs, it

stated that the purpose of the amendment was to extend coverage to persons who are Federal employees in every sense. Federal Personnel Manual Supplement, Chapter 831 at S-3.

There might be constitutional or administrative law reasons for prohibiting the delegation of executive powers to private parties. But even if such principles prohibited the exercise of certain functions by private parties, i.e. nongovernment employees, there is nothing in those principles would exclude PSCs from the term "Government employee." OMB Circular A-76 does not exclude PSCs from the term Government employee. It simply uses the terms "Government employee" and "Government personnel". Since the presumption is that PSCs are Government employees unless specifically excluded, we conclude that PSC's are Government employees for purposes of OMB Circular A-76.

2. Section 636(a)(3) does not limit the kind of services that may be performed by PSCs.

In addition to determining whether the statute granting a certain authority includes PSCs, it is also necessary to determine whether the specific statutory authority which authorizes employment by personal services contracts excludes PSCs from exercising certain functions.

AID's authority to enter into personal services contracts is Section 636(a)(3) of the Foreign Assistance Act of 1961, as amended ("FAA"), 22 U.S.C. 2396(a)(3). It provides that funds available to AID may be used for "contracting with individuals for personal services abroad: Provided, that such individuals shall not be regarded as employees of the United States Government for the purposes of any law administered by the Civil Service Commission [now the Office of Personnel Management]."

Other than the limitation that the personal services must be performed overseas, the only limitation is that contained in the proviso.

The GAO has held that an authority to enter into personal services contracts serves only as an exemption from Civil Service Laws and regulations and does not change the status of the PSCs from employees to contractors. 23 Comp. Gen. supra at 428. The authority involved did not contain a proviso such as that found in section 636(a)(3). The GAO holding on the relationship between the exemption from Civil Service laws and status as Government employees is nonetheless applicable in this case.

41

Moreover, the scope of the proviso-laws administered by OPM - does not address the kinds of services that Government employees generally or PSCs specifically can perform. The statutes administered by OPM go to the incidents of employment - pay, classification, veterans preference, promotion, reduction in force, discipline and separation, and certain benefits. The effect of the proviso is to give to the agency the authority to administer a system of employment by contract without regard to civil service laws and regulations. Thus, the agency does not have to classify PSC positions or pay at GS schedules; it does not have to give PSCs rights regarding grievances, promotion actions, discipline and separation.

The legislative history also makes it clear that the proviso dealt with the rights and benefits that PSCs were precluded from receiving and not as a limitation on the kinds of services they could perform. Section 636(a)(3) was taken verbatim from Section 537(a)(3) of the Mutual Security Act of 1956, as amended by the Mutual Security Act of 1960 ("MSA of 1960") P.L. 86-472, 74 Stat. 134. The Senate Report accompanying the MSA of 1960 stated that PSCs "will not enjoy the status of civil service employees with the accompanying benefits and rights provided under the statutes governing such employees." S. Rep. No. 1286, 86th Cong., 2d Sess. 28 (1960).

3. The legislative history does not prohibit AID from contracting with PSCs to perform Governmental functions.

It appears that AID's practice of restricting the services to be performed by PSCs is based on AID's use of the authority at the time it requested amendment of Section 537. The House Report accompanying the MSA of 1960 stated:

The purpose [of the amendment] is to clarify the bases upon which ICA contracts with individuals, both Americans and aliens, to furnish technical assistance to foreign governments subject to administrative and policy supervision and guidance by the ICA mission.

H.R. Rep. No. 1454, 86th Cong., 2d Sess. 50 (1960) (emphasis added). See also, S. Rep. No. 1286, supra at 28; Section by Section Analysis of Proposed Mutual Security Act of 1960 as submitted by the Executive Branch 7 (Comm. Print 1960).

However, there is nothing in the statute or the legislative history to indicate that the authority was premised on a promise by AID or an assumption by Congress that AID would never use the authority for anything else. The statute could easily have been drafted to be restricted to provision of

technical assistance to foreign governments; it was not. It was only restricted as to place, i.e. overseas, and as to treatment the PSCs for purposes of civil service laws. The legislative history simply indicated the state of affairs at enactment, the need for the legislation. There is no discussion of the question whether PSCs could be used for things other than furnishing assistance to foreign governments.

In view of the foregoing, it is our opinion that the agency has the authority to amend the AIDAR appendix to permit PSCs to perform certain governmental functions.

B. Length of PSC contracts.

The appendix states that personal services contracts may not exceed 5 years. Presumably the legal basis for that provision is section 635(h) of the FAA, 22 U.S.C. 2395(h). However, section 635(h) does not apply to OE funds; OE funds are authorized under Section 637, which is part of Chapter 2 of Part III of the FAA. By its terms Section 635(h) applies only to chapter 1 and title II of chapter 2 of part I and part II.

* 5 yrs.
E. 10/10/82
M. 10/10/82

More importantly, section 635(h) is only an authority to commit funds subject to the availability of appropriations, i.e. to incrementally fund contracts; it does not constitute an authority to forward fund a contract for 5 years. Therefore, PSCs regardless of their funding are still bound by the bona fide need rule which is reflected in FAR 37.106. The bona fide need rule requires that current year funds be used only for a bona fide need of that fiscal year. Any funding beyond the current fiscal year that cannot be justified on a bona fide need of the current fiscal year must be specifically authorized. See GAO, Principles of Federal Appropriations Law 4-9 to 4-24 (1st ed. 1982).

The statement regarding contract length in the Appendix implies that a contract could be forward funded for five years. The issue of forward funding however, must be decided on a case-by-case basis with reference to the bona fide need rule. In our view it would be too complex to provide guidance on forward funding and contract length in the AIDAR appendix. Accordingly, we recommend that the statement be deleted from the appendix.

C. Foreign Transfer and Home Service Transfer Allowances.

The foreign transfer and home service transfer allowances are two of the allowances set forth in the Standardized Regulations (Government Civilians, Foreign Areas) issued by the Department of State. Since under the GAO decisions cited above, PSCs are Government employees and since the statutory

bases for the regulations are laws administered by the State Department, and not OPM, PSCs are employees for purposes of the Standardized Regulations. Moreover, as noted in 23 Comp. Gen. 398,400 (1943) if a benefit is payable by operation of law, a provision in a contract for personal services to exclude payment of the benefit would be noneffective.

However, although PSCs are generally eligible, they do not meet the specific eligibility requirements for the two transfer allowances in question here.

The foreign transfer allowance which is governed by chapter 240 of the Standardized Regulations is premised on a transfer from an assignment in the U.S. to an overseas post. Transfer is defined as a change in an employee's post within the same government agency. Section 040q of the Standardized Regulations. It presumes no break in service. Therefore, retirement or separation from an AID position in the U.S. and subsequent employment under a personal services contract at an overseas post would not constitute a transfer.

The home service transfer allowance is governed by chapter 250 of the Standardized Regulations. There are two standards - one for Foreign Service ("FS") employees; another for non-FS employees. Section 251.lb. Since PSCs are not employed under the Foreign Service Act of 1980, as amended, 22 U.S.C. 3901 et seq., they are governed by the non-FS standard that requires that the assignment to the United States be between overseas posts and that the agency and employee certify that the employee will be assigned to a overseas post upon completion of the U.S. assignment. Since PSC's cannot be employed in the U.S., any employment in the U.S. either before or after a personal services contract would involve a break in service and therefore, would not constitute a transfer to the U.S. or a transfer to an overseas assignment as required by the regulation.

cc: PPAP Members

Clearance: GC/CCM, Kenneth E. Fries *KES*

Appendix E
UNITED STATES INTERNATIONAL DEVELOPMENT COOPERATION AGENCY
AGENCY FOR INTERNATIONAL DEVELOPMENT
WASHINGTON, D. C. 20523

CR } FYI.
KCF } .824

NOV - 4 1992

GENERAL COUNSEL

Mr. Richard A. Ong
Deputy Associate Administrator
Office of Federal Procurement Policy
725 17th Street, N.W., Ste. 9001
Washington, DC 20503

Re: OFPP Policy Letter 92-1:
Inherently Governmental
Functions

Dear Mr. Ong:

This is in response to the subject policy letter, which was issued in final form on September 30, 1992. 57 Fed.Reg. 45096 (September 30, 1992). The U.S. Agency for International Development (A.I.D.) wishes to raise two important issues. First, the final version contains a major change that was not part of the proposed text previously made available for public comment. The policies in the policy letter, including the prohibition on performance of inherently governmental functions by service contractors, have been extended to apply to some personal as well as nonpersonal services contractors. The scope of this change, in the view of the U.S. Agency for International Development (A.I.D.), is unclear. This letter notes A.I.D.'s understanding of the intent of the change and requests OMB, in the event our understanding is incorrect, to reconsider or clarify the relevant provisions. Second, it is our view that subsection 12(b) of Appendix A of the policy letter is too restrictive. I will address each point in turn below.

The proposed text of Policy Letter 92-1 was published in late 1991. 56 Fed.Reg. 65279 (December 16, 1991). Among its provisions was a prohibition on the performance of inherently governmental functions by service contractors. §6(b). The draft defined "service contract" as "a 'nonpersonal service contract'". 5(a). Personal services contractors were excluded from the prohibition. Accordingly, it was clear that under the policy letter as originally drafted, only nonpersonal services contractors, and not personal services contractors, were prohibited from performing inherently governmental functions.

The final version deletes the definition of "service contract". This change appears to expand the coverage of the policy letter, and its associated prohibition, to certain personal as well as

nonpersonal services contracts. The September 30 rulemaking notice explains this change as follows:

"Three commenters questioned why the policy letter applies only to nonpersonal services contracts. Upon consideration, we have accordingly deleted the definition of 'service contract' in section 5. No useful purpose is served by defining 'personal services' differently from the FAR and no harm arises from having the policy letter apply to the minimal number of true personal service contracts. Personal service contracts that are really personnel appointments are excluded from the coverage of the policy letter. Thus, FAR 37.102(b) need not be amended as a result of this policy letter."

Although we agree that it is not necessary to amend the FAR definitions, we believe that the deletion of the narrower definition of "service contract" results in uncertainty as to the scope of the policy letter. The explanation quoted above seems to distinguish between two types of personal services contracts, those that "are really personnel appointments" and those that are not. The policy letter does not apply to the former, as indicated in §3 of the guidance. This section states that "Services obtained by personnel appointments and advisory committees are not covered by this policy letter."

A.I.D. awards personal services contracts under several statutory authorities, including §636(a)(3) of the Foreign Assistance Act of 1961, as amended, and a number of laws authorizing provision of assistance "notwithstanding any other provision of law". Under these authorities, the contractors are considered U.S. Government employees for most purposes other than those explicitly excluded by the statutes (for example, §636(a)(3) personal services contractors may not be considered as Government employees for purposes of any law administered by the Office of Personnel Management). Such contractors are selected through a procurement process, and are not appointed as direct-hire employees. The A.I.D. Office of General Counsel has determined that personal services contractors may perform inherently governmental functions subject to certain limitations imposed as a matter of policy and sound administration. This determination has been recorded in the A.I.D. Acquisition Regulation. 48 CFR Chapter 7, App. D, §4(b)(3).

Flexible and extensive use of personal services contractors is essential to the achievement of the objectives of the U.S. foreign assistance program. When necessary, A.I.D. has--with appropriate monitoring, supervision, and other safeguards--utilized personal services contractors for performance of inherently governmental functions. For example, during temporary periods between assignments of direct-hire personnel in remote or otherwise difficult locations, we have brought in personal

-57

services contractors to serve as Controllers, Executive Officers, and even Contracting Officers.

Our understanding of the intent of the final version of the policy letter is that personal services contractors are not covered by the guidance, including the prohibition on contractor performance of inherently governmental functions, if they are treated or regarded as U.S. Government employees for most purposes. This is how we interpret the reference in the September 30, 1992 rulemaking notice to personal services contracts "that are really personnel appointments". Under this interpretation, A.I.D. personal services contracts awarded under the authority of §636(a)(3) of the 1961 Act, the various "notwithstanding" authorities, and other similar statutes, are not subject to the provisions of the policy letter, including the inherently governmental functions prohibition.

We request OFPP's concurrence with our interpretation. If OFPP does not concur, we request that the policy letter be revised to exclude personal services contractors or that A.I.D. be granted a deviation to continue our present practices as outlined above.

A second point we would like to raise concerns the list of inherently governmental functions in Appendix A of the policy letter. Section 12(b) of the Appendix states that "participating as a voting member on any source selection boards" is an inherently governmental function. Appendix B's list of non-inherently governmental functions, on the other hand, includes, as section 14, "Contractors participating as nonvoting members of, or technical advisors to, a source selection board or source evaluation board."

The above-quoted provisions do not seem consistent with each other. Appendix A limits contractors only if two elements are present: (a) the contractors must be on source selection boards, and (b) they must be voting members. Appendix B, however, seems to imply that contractors may not participate as voting members of either source selection or source evaluation panels.

A.I.D. assumes that by "source selection board" OFPP is referring to the type of procedure used in some agencies in which a board makes a binding selection of the contractor. In such cases, we fully agree with that this should be regarded as an inherently governmental function. However, A.I.D., like a number of other agencies (see FAR 15.612), utilizes "technical evaluation panels" that are limited to technical evaluation, and advisory only; the Contracting Officer is solely responsible for making the final selection decision. We are not sure if this is what OMB is referring to as a "source evaluation board". If so, we do not think that contractors should be prohibited, across the board, from participating as voting members.

On occasion, we consider utilizing contractor personnel (and, much more frequently, personal services contractors) to assist the technical evaluation panel, and see no reason to exclude them completely from voting on evaluation recommendations. In our bilateral foreign aid projects, it is also common to have recipient government or local private sector personnel serve on panels to ensure their input and active involvement in the project. In our view, such practices are consistent with the FAR, particularly FAR 15.413-2, which recognizes that proposals may be disclosed outside the U.S. Government with appropriate safeguards. Permitting contractor and other non-direct hire personnel to participate as voting members in evaluation panels also seems to be within the spirit of section 8 of Appendix B, which categorizes "technical evaluation of contract proposals" as not inherently governmental.

Finally, we note that the wording of the Appendix A "source selection board" provision was changed from the originally proposed version ("Participating as a voting member on any boards or in any meetings regarding evaluation of contractor proposals, to include final source selection"). This change narrowed the scope of the function deemed to be inherently governmental, in a way that implies that OFPP is concerned with fundamental decision-making rather than participation in the process as an advisor.

We would appreciate OFPP's concurrence with our view that the carefully considered and appropriate use of other than direct-hire personnel on technical evaluation panels, as described above, is not contracting out, or otherwise inappropriately providing for, performance of an inherently governmental function.

Please let me know if you would like any further information concerning this issue. I appreciate your attention to this matter.

Sincerely,

A handwritten signature in cursive script, appearing to read "Howard M. Fry".

Howard M. Fry

Dr.: GC/CCM, Soverall 10/16/92 (rev. Soverall 10/19/92)

Clearance: FA/PPE, KO'Hara E-mail 11/04/92
GC/CCM, KFries (draft 10/19/92)
GC/LE, Rob Sonenthal RS

5



U.S. AGENCY FOR
INTERNATIONAL
DEVELOPMENT

Appendix F

FEB 12 1993

NOTE FOR THE ACTING ADMINISTRATOR

FROM: AA/FA, Richard A. Ames *RAM*

Associate
Administrator
for Finance and
Administration

The attached memoranda describes the status of State Department's implementation of the Rockefeller Amendment. I recommend you use this package as a handout for a brief discussion at an OPS meeting.

This amendment which is now law gives U.S. citizens living abroad equal opportunity with foreigners for non-diplomatic positions at U.S. missions abroad. A.I.D. is now bound by this law.

There are a number of aspects of this legislation to which Mission management needs to be sensitive:

- it could work to reduce promotion opportunities for foreign service nationals;
- it will cost more and is administratively more complex; and
- it could cause morale problems inasmuch as U.S. citizens will be paid higher wages for the same work performed by a foreign service national.

A mediating factor is that the Agency's foreign service national direct-hire staff has been declining and is now relatively small. We have been converting direct-hire positions to PSC's as they are vacated. We plan to continue that practice. However, this needs to be managed with sensitivity to avoid having the Rockefeller provisions legislatively extended to PSC's.

Attachments: a/s

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1.21.93

54

Rockefeller Amendment

The Law: Section 408 of the F.S. Act is amended to include U.S. Citizens (AMCIT) residing abroad as eligible for local positions along with American Family Members (dependents of U.S. employees) and Foreign Nationals.

Intent: To give AMCITs residing abroad equal access to non-diplomatic positions at U.S. missions.

Impact: Does not pertain to Personal Services Contractors, but only to Direct Hire positions. AID has over 6,000 FSN positions of which only 953 are Direct Hire. As a matter of policy FSN jobs are being converted to PSC upon vacancy. AMCITs must have valid work permits in the host country.

Vacant FSN positions may be filled from within prior to opening them to outside hires.

Costs associated with AMCITs will generally be higher than for FSNs.

AMCITs will have a negative impact on FSN morale if promotion opportunities are blocked and the principal of equal pay for equal work is violated.

AMCIT program will result in increased administrative workload.

AMCIT program could result in some positives such as better qualified employees and ease of obtaining security clearances.

Actions: State Department's draft Standard Operating Procedure (SOP) clearly indicates that budgetary implications as well as qualifications are reasonable grounds for not selecting an AMCIT.

HRDM has notified State of our concerns and is offering suggestions for strengthening their SOP. HRDM will also develop AID specific SOPs.

HRDM will work jointly with State in developing the Foreign Affairs Manual (3 FAM) regulations governing employment abroad.

Summary: As a practical matter since most of our FSN jobs are PSC the impact of the Rockefeller Amendment on AID will be minimal.

