

PD-ABB-118

AUDIT OF PERSONAL SERVICES CONTRACTING
AT OVERSEAS MISSIONS

AUDIT REPORT NO. 9-000-90-003

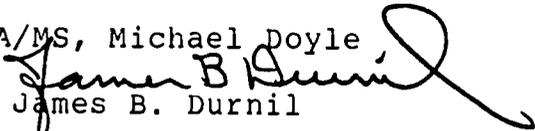
MAY 23, 1990

AGENCY FOR INTERNATIONAL DEVELOPMENT
WASHINGTON, D C 20523

DEPUTY INSPECTOR GENERAL

May 23, 1990

MEMORANDUM FOR AA/MS, Michael Doyle

FROM: D/IG, James B. Durnil 

SUBJECT: Audit Report on Personal Services Contracting at
Overseas Missions

The Inspector General's Office of Programs and Systems Audits has completed the subject review. A draft of the report was provided to your Bureau for review and comments. A copy of the response is attached to the report as Appendix 1. Five copies of the report are attached for your action.

The report contains 3 recommendations which are considered unresolved. Please provide to the Office of Programs and Systems Audits within 30 days the actions planned or taken to close the recommendations.

I appreciate the cooperation and courtesy extended to my staff during the audit.

Executive Summary

The Foreign Assistance Act authorizes A.I.D. to award personal services contracts. Such contracts create an employer-employee relationship between the Government and the person under contract. Federal acquisition regulations generally require that such contracts be let competitively, which includes soliciting offers from as many sources as practicable. We estimate that active personal services contracts in A.I.D. amount to \$243 million.

The audit's objectives were to determine whether A.I.D. (i) established and operated a control system to ensure that personal services contracting activity complied with the laws and regulations which encourage competition; (ii) followed required procedures when awarding personal services contracts under the other than full and open competition procedures; and (iii) followed A.I.D. policies when setting personal services contractors' salaries.

The audit found that A.I.D. had established and implemented a system to control the competition related aspects of the personal services contracting process, but the system needed improvement to better ensure compliance with regulations. In addition, some missions were not following requirements for competition when awarding personal services contracts under the other than full and open competition procedures. Finally, the missions were frequently not following A.I.D. policies when setting personal services contractors' salaries.

Three specific areas needed attention. First, the procurement system evaluation process needed improvement in order to better detect serious noncompliance and correct it. Second, about \$4.7 million of the \$13.7 million in personal services contracts at the 4 audited missions were awarded, under the other than full and open competition procedures, without sufficiently trying to attract competition. Third, the four audited missions frequently used improper practices when setting contractors' wages.

A.I.D.'s Competition Advocate, the Chief of the Procurement Policy, Planning and Evaluation Staff in the Bureau of Management Services, is responsible for fostering competition throughout A.I.D. As such he must have an adequate system to oversee the competition related aspects of the personal services contracting process. However, the system in use was not providing the needed oversight. This situation existed because the amount of detailed testing for noncompliance included in the procurement system evaluation process was insufficient to support aggressive enforcement. Such enforcement was important because the close organizational relationships of mission contracting and oversight officials had eroded internal control

at the mission level. The Procurement Executive also needs to define limits of noncompliance, publish a system of appropriate sanctions, and review the Procurement Policy, Planning and Evaluation Staff's priorities and staffing in order to provide increased oversight. If improved oversight is not provided, missions will continue not to comply with the rules fostering competition.

A.I.D.'s procurement regulations require the missions to make a serious effort to attract competition before awarding contracts under the other than full and open competition procedures. However, the audit showed that \$4.7 million of the \$13.7 million in such personal services contracts at the 4 missions were awarded without attempting to attract competition. This occurred because, in the absence of effective A.I.D./Washington oversight, mission managers tolerated expedient and procedurally incorrect procurements. Making awards without attracting competition may reduce the quality of the workforce, undermine confidence in the U.S. Government's fairness, and diminish the likelihood that A.I.D. funds are economically used.

A.I.D. established salary setting rules to foster economy, equity, and consistency in paying personal services contractors. Nevertheless, in 119 contracts the audit found 85 instances of noncompliance in establishing salaries at the four missions. This situation occurred because missions did not comply with regulations, and A.I.D. policies were not always clear. As a result, A.I.D.'s salary setting objectives were not being achieved.

The report recommends that A.I.D. improve its internal control system for personal services contracting by using better techniques to detect noncompliance, establishing a system of sanctions which can be applied against frequent noncompliers, and reviewing the staffing for competition oversight. The report also recommends that A.I.D. give a probationary warning to, or reduce or withdraw the authority of certain officials who approve personal services contracts. Finally, the report recommends that A.I.D. clarify its salary setting requirements for personal services contractors and intensify its review of compliance with salary setting regulations when conducting contracting activity reviews at the missions.

The Bureau for Management Services said it was in general agreement with the facts in the draft report and would respond specifically to the recommendations in their final report form. The Bureau said it would examine the staffing for Procurement Policy, Planning and Evaluation in carrying out responsibilities for the Procurement Executive and Competition Advocate. The Bureau also emphasized the Procurement Executive's and Competition Advocate's inability to review every personal services contracting action, given their charter and limited

resources. In that context, the Bureau said it would make every effort to remedy any deficiencies in the award and administration of personal services contracts. The Bureau's full comments are included as Appendix 1 to this report.

Office of the Inspector General

AUDIT OF PERSONAL SERVICES CONTRACTING
AT OVERSEAS MISSIONS

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AUDIT OF PERSONAL SERVICES CONTRACTING
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PART I - INTRODUCTION

A. Background

An understanding of certain terms used in this report would be useful at the onset. For example, what is a "personal services contract?" Although Government agencies usually obtain their employees by the direct hire procedures required by the civil service laws, certain agencies are authorized by specific statute to award personal services contracts. Section 636 (a) (3) of the Foreign Assistance Act authorizes A.I.D. to award such contracts. A "personal services contract" is characterized by the employer-employee relationship it creates between the Government and the person under contract. Such a relationship assumes the Government exercises relatively continuous supervision and control over the person under contract.

What is "full and open competition?" "Full and open competition," as used in the Federal Acquisition Regulation (FAR), means all responsible sources are permitted to compete for a contract under specifically prescribed procedures, such as sealed bids and competitive proposals.

What is "other than full and open competition?" The FAR prescribes procedures for contracting under "other than full and open competition," in the event of unusual and compelling urgency, national security sensitivity, having only one responsible source, and other circumstances. "Other than full and open competition" procedures take into account practical constraints on the procurement process, but do not minimize the importance of competition. The FAR still requires that contracting officers ensure that offers are solicited from as many potential sources as practicable.

The Bureau for Management Services (MS) is responsible for A.I.D.'s system for personal services contracting, including the administration of the rules applying to A.I.D.'s contracting. Thus, the Bureau develops and publishes the Agency for International Development Acquisition Regulation, called the AIDAR. In addition, the Deputy Assistant to the Administrator for Management Services, as A.I.D.'s Procurement Executive, is responsible for making recommendations to the A.I.D. Administrator on the entire procurement system.

A.I.D. procures personal services through a decentralized system. Thus, the majority of contracts are awarded at A.I.D.'s 71 overseas missions, including 35 in Africa, 18 in Asia and the Near East, and 18 in Latin America and the Caribbean region. The number and dollar value of all active personal services contracts was not available in A.I.D./Washington, and we did not request the data from the missions. However, we estimate that active personal services contracts amount to \$243 million.

B. Audit Objectives and Scope

The Inspector General's Office of Programs and Systems Audits made an audit of A.I.D.'s contracting process for personal services. The audit focussed on aspects of the process the auditors judged to have the highest inherent risk. Inherent risk is simply the potential for fraud, waste, abuse, or mismanagement due to the nature of the process component itself. Thus, the audit's objectives were to determine whether A.I.D.:

- Established and operated a control system to ensure that personal services contracting activity complied with the laws and regulations which encourage competition;
- Followed required procedures when awarding personal services contracts under the other than full and open competition procedures; and
- Followed A.I.D. policies when setting personal services contractors' salaries.

The auditors examined pertinent documentation and discussed audit related issues with responsible officials at the Bureau for Management Services in Washington, D.C. and at A.I.D. missions. The audit work in Washington focussed on A.I.D.'s oversight system for the competition and salary setting aspects of personal services contracting. The audit work at USAID/Costa Rica, REDSO/Abidjan, USAID/Zaire, and USAID/Cairo focussed on the implementation of competition and salary setting aspects of personal services contracting. The audit did not assess the overall economy and efficiency of the A.I.D. personal services contracting process. At each mission the auditors reviewed all active U.S. citizen and Third Country National (TCN) contracts and the related file documentation for compliance with competition and salary setting related requirements. This entailed reviewing 119 active contracts worth \$13.7 million at the four missions, which was about 6 percent of the active personal services contracts the auditors' estimated were at all A.I.D. Missions. The review of

compliance and internal controls was limited to the finding areas presented in the report. The audit, which began in June 1989 and was completed in January 1990, was made in accordance with generally accepted government auditing standards.

AUDIT OF PERSONAL SERVICES CONTRACTING
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PART II - RESULTS OF AUDIT

A.I.D. had established and implemented a system to control personal services contracting activity, but the system needed improvement to better ensure compliance with the regulations which encourage competition. In addition, some missions were not following required procedures when awarding personal services contracts under the other than full and open competition procedures. Finally, the missions were frequently not following A.I.D. policies when setting personal services contractors' salaries.

Three specific areas needed attention. First, the procurement system evaluation process needed improvement in order to better detect serious noncompliance and correct it. Second, about \$4.7 million of the \$13.7 million in personal services contracts at the 4 audited missions were awarded, under the other than full and open competition procedures, without sufficiently trying to attract competition. Third, the four audited missions frequently used improper practices when setting contractors' wages.

The report recommends that A.I.D. improve its internal control system for personal services contracting by using better techniques to detect noncompliance, establishing a system of sanctions which can be applied against frequent noncompliers, and reviewing the staffing for competition oversight. The report also recommends that A.I.D. give a probationary warning to, or reduce or withdraw the authority of, certain officials who approve personal services contracts. Finally, the report recommends that A.I.D. clarify its salary setting criteria and intensify its review of compliance with salary setting regulations when conducting contracting activity reviews at the Missions.

A. Findings and Recommendations

1. Oversight of Personal Services Contracting Should Be Improved

A.I.D.'s Competition Advocate, the Bureau of Management Services official responsible for fostering competition throughout A.I.D., must have an adequate system to oversee the competition related aspects of the personal services contracting process. However, the system in use was not providing the needed oversight. This situation existed because the amount of detailed testing for noncompliance included in the procurement system evaluation process was insufficient to support aggressive enforcement. Such enforcement was important because the close organizational relationships of mission contracting and oversight officials had eroded internal control at the mission level. The Procurement Executive also needed to define limits of noncompliance, publish a system of appropriate sanctions, and review the Policy, Planning and Evaluation Staff's (MS/PPE) priorities and staffing in order to provide increased oversight. If improved oversight is not provided, missions will continue not to comply with the rules fostering competition.

Recommendation No. 1

We recommend that the Assistant to the Administrator for Management Services, with respect to personal services contracting, direct the Procurement Policy, Planning and Evaluation Staff to:

- a. include in procurement reviews increased detailed testing to determine overall mission compliance;
- b. define limits of noncompliance and develop a system of sanctions to apply as needed;
- c. review the staffing of the Procurement Policy, Planning and Evaluation Staff and make changes as necessary to achieve increased testing and enforcement; and
- d. facilitate oversight and reinforce accountability by amending the AIDAR to require that the contracting officer include in the contracting file his or her signed certification that each of the key competition related procedures set forth in the AIDAR have been completed.

Discussion

The A.I.D. Competition Advocate's office in Washington oversees the missions on the competition related aspects of personal services contracting. In fact, the FAR [6.502] requires that every Agency's Competition Advocate challenge barriers which reduce competition and review all contracting operations in order to identify (i) opportunities and actions needed to maximize competition, and (ii) any condition or action that has the effect of unnecessarily restricting competition. The Competition Advocate works with the Deputy Assistant to the Administrator for Management Services to help in preparing an annual report for Congress which describes A.I.D.'s current status, goals and plans for increasing competition, and in recommending a system of personal and organizational accountability for competition. The AIDAR names the Chief of the Procurement Policy, Planning and Evaluation Staff (MS/PPE) as A.I.D.'s Competition Advocate.

The Procurement Executive's duties cover all of A.I.D.'s procurement activities - not just personal services. To discharge those duties, the Procurement Executive has MS/PPE evaluate A.I.D.'s contracting system against certain criteria and annually certify that the system meets the criteria. The system criteria includes 29 separate criterion. Criterion 13 (Competition), for example, states: "A.I.D. follows the government wide requirements concerning competition established in the Federal Acquisition Regulation." Associated with each system criterion are performance criteria. For example, system criterion 13 has five performance criteria. One performance criteria, to illustrate, is: "Files are documented for non-competitive actions to show required approvals, extent of consideration of other sources, justifications, etc." Overall, the scheme used in the procurement system evaluation includes 29 system criteria and 122 performance criteria.

To obtain information for the annual certification and to address his duty to recommend improvements, the procurement system evaluation teams made reviews of individual missions against the system and performance criteria. Six to eight such reviews were made each year, with each review lasting one or two weeks and being staffed by one or two person(s).

Because of the broad scope of the reviews relative to the staff time made available to complete them, the evaluation teams were not able to analyze sufficient contracting files to determine a mission's overall incidence of noncompliance with the competition requirements related to personal services

contracting. Individual problem cases would be identified and addressed but the teams could not determine if the cases were the exception or the rule. As a result, the MS/PPE was not in a position to identify or act on high overall rates of noncompliance with the competition requirements related to personal services contracting.

This was unfortunate because the auditors found that A.I.D.'s decentralized process for personal services contracting contained a high level of noncompliance. In fact, the auditor's detailed tests of 119 active personal services contracts at 4 missions disclosed that efforts to attract competition did not meet requirements in 34 cases.

The environment for personal services contracting had high inherent risk because persons performing oversight duties at the missions were vulnerable to having their independence impaired. Missions were usually designated as contracting activities with the mission directors designated as the heads of the contracting activities. As such the director was usually authorized to sign personal services contracts up to \$250,000. The mission director's deputy was usually designated as the Competition Advocate at the mission, and like the A.I.D. Competition Advocate was responsible for acting to maximize competition. The senior administrative officer (Executive Officer) at the mission, usually an immediate subordinate of the deputy director (Competition Advocate) would prepare the paper work associated with personal services contract solicitation, award, and contract administration.

As a result of the close organizational relationship of the participants in the contracting process at the missions, the effectiveness of the controls at that level was suspect. Arthur Anderson & Co. in its "Guide for Studying and Evaluating Internal Controls in the Federal Government" aptly characterized this situation: "If the person performing control duties could benefit by not detecting errors, the reliability of the control technique should be questioned." In the auditors' judgment, based on interviews and assessments of organizational relationships, competition related procedures at the missions tended to be activities rather than controls. The incidence of competition related noncompliance found during the audit confirmed that judgement.

Given the evident ineffectiveness of competition related controls at the missions, the oversight role of the A.I.D. Competition Advocate's office was critical. But as previously discussed, the existing structure of the evaluation process did not permit the type of in-depth testing that could provide support for aggressive corrective action. The auditors

followed-up on two of the 22 evaluations performed at overseas missions to determine the impact on competition related compliance.

At USAID/Costa Rica, an evaluation by the MS/PPE staff during November 1986 stated that: "A recurrent theme throughout the evaluation was that conflicting advice on contracting matters was being given by various mission personnel involved in the process and the Regional Contracting Officer. Competition (particularly less than full and open competition) seemed to be the area of most confusion and concern. The team recommended that a Mission Order be prepared, and cleared by the appropriate Mission offices and the Regional Contracting Officer, setting forth documentation, procedures, authorities, etc. in this area."

Despite the team's recommendation, the Mission took no action. During the auditors' visit to Costa Rica in June 1989, the auditors asked for any mission orders regarding competition. Mission officials were unable to provide any such Mission orders. The auditors concluded that the 1986 recommendation had never been acted upon.

The auditors did find the usual contract information bulletins and other A.I.D./Washington guidance that addressed competition. Nevertheless, the audit at the Mission showed severe procurement discrepancies. See Finding 2 for the extent of the noncompliance found.

At USAID/Zaire, a March 1988 evaluation stated that the use of U.S. Personal Services Contractors in the mission was extensive. While the evaluation team did not identify any specific problems with their overall use, the team did advise the Mission to take special care to ensure that personal services contracts stay within the regulatory limitations on their use and authority, as described in AIDAR Appendix D.

The Zaire evaluation, like the Costa Rica evaluation, did not disclose whether competition was being impaired or even how many personal services contract files were reviewed. This audit showed that, in fact, \$1.1 million or 17 percent of the personal services contracts were awarded without adequate consideration of potential offerors. See Finding 2 for the specific discrepancies found.

Thus, the evaluations were not achieving the needed result with respect to improving competition related compliance in personal services contracting. The auditors attributed this to the limitations resulting from the broad scope of the evaluations and their limited staffing and duration.

Another obstacle to obtaining positive A.I.D.-wide results from the evaluation process was the long MS/PPE evaluation cycle. Given current staffing levels, MS/PPE will require seven years to complete evaluations at A.I.D.'s missions. This is the case even though the evaluations, with respect to competition in personal services contracting, do not now include sufficient in-depth testing. Correcting the compliance problems noted in this report must include addressing the evaluation staffing shortfall, because the shortfall results in an evaluation cycle too lengthy to significantly influence compliance.

To achieve adequate competition related compliance at the missions, A.I.D. must rethink its approach to oversight and control. The Competition Advocate, given necessary changes in methods and staffing, could provide the needed oversight and control.

In order to provide adequate oversight and control, MS/PPE needs to establish a regular program of detailed testing during the evaluations at missions to determine the overall incidence of noncompliance. In addition, the Procurement Executive needs to develop and publish a system of sanctions which can be applied at missions when predetermined minimum levels of compliance are not met. Sanctions could include probationary warnings, or reduction or withdrawal of personal services contracting authority, and other actions. Regular operation of such a program should significantly improve compliance at the missions. Without such a program, missions will continue not to comply with the rules fostering competition.

2. Sanctions Needed to Enforce Competition Requirements

A.I.D.'s procurement regulations require the missions to make a serious effort to attract competition before awarding contracts under the other than full and open competition procedures. However, the audit showed that \$4.7 million of the \$13.7 million in such personal services contracts at the 4 missions were awarded without attempting to attract competition. This occurred because, in the absence of effective A.I.D./Washington oversight, mission managers tolerated expedient and procedurally incorrect procurements. Making awards without attracting competition may reduce the quality of the workforce, undermine confidence in the U.S. Government's fairness, and diminish the likelihood that A.I.D. funds are economically used.

Recommendation No. 2

We recommend that the Assistant to the Administrator for Management Services direct the Procurement Policy, Planning and Evaluation Staff to:

- a. review personal services contracting at USAID/Costa Rica and REDSO/Cote d'Ivoire to determine the full extent of noncompliance and identify the responsible officials; and
- b. apply sanctions as appropriate.

Discussion

Authority exists both in the AIDAR and the FAR for acquiring personal services under other than full and open competition. Under the AIDAR subpart 706.302-70 (a), two conditions must be met before a personal services contract can be awarded under the other than full and open competition procedures: (1) offers must be requested from as many potential offerors as is practicable under the circumstances; and (2) the contract file must include appropriate explanation and support justifying the award without full and open competition. The contracting officer could meet the second condition by preparing individual justifications for all personal services contracts which were not awarded under full and open competition.

A.I.D./Washington determined that preparing such individual justifications was a heavy burden on contracting officers, and on January 20, 1987, prepared a class justification which would relieve contracting officers of the burden of preparing separate justifications (See the class justification document

in Exhibit 1). The class justification applies to all personal services contracts awarded overseas, and states in part:

"It has been determined that requiring full and open competition for procurement of personal services ... by overseas contracting activities would impair AID's ability to meet the objectives of the foreign assistance program."

The class justification states the specific steps, as summarized below, that must be taken to satisfy the requirements on attracting competition under the other than full and open competition procedures:

(1) If recruited from the United States, the position was either publicized in a U.S. trade/professional/technical publication, newspaper or similar publication, or procedure 3 below, was followed.

(2) If recruited locally, the position was publicized in the same way that the Mission announces direct hire U.S. citizen positions, or procedure 3 below, was followed.

(3) As an alternative to procedures 1 and 2 above, at least 3 individuals were considered by consulting source lists (i.e. applications or resumes on hand) or conducting other informal solicitation.

In addition to the authority in the AIDAR, subpart 6.3 of the FAR allows the use of the other than full and open competition procedures. The procedures may be used in the event of unusual and compelling urgency, having only one responsible source, and certain other circumstances. The FAR, like the AIDAR, requires that contracting officers ensure that offers are solicited from as many sources as practicable.

The audit showed that over one third of the funds in personal services contracts at the four missions were awarded incorrectly, because the missions did not follow the requirements of the other than full and open competition procedures. The following table summarizes the audit findings at each of the four missions. (To show the specific nature of the noncompliance found, this report's exhibit I discusses two problem contracts at each mission.)

PERSONAL SERVICES CONTRACTS
AWARDED WITHOUT ATTEMPTING TO ATTRACT COMPETITION

<u>AID Mission/ Country</u>	<u>Contracts Audited</u>	<u>Contracts Awarded Without Attempting Competition</u>	<u>Contracts Audited (\$Millions)</u>	<u>Contracts Awarded Without Attempting Competition (\$Millions)</u>
Costa Rica	22	10	\$ 3.8	\$2.3
REDSO/ Cote De Ivory	25	10	2.1	1.1
Zaire	48	8	6.5	1.1
Egypt	24	6	1.3	.2
	<u>119</u>	<u>34</u>	<u>\$13.7</u>	<u>\$4.7</u>
% of All Contracts		29%		
% of Total Value				34%

At the missions there were various causes for the lack of proper competitive practices. At one mission, for example, the auditors were told that pressure was put on contracting officials to hire specific persons at specific salaries by upper levels of mission management. At other missions the auditors noted instances of lack of knowledge or misinterpretation of required procedures. In one instance, mission management conceded that the rules were manipulated in order to attract contractor's to work in that country.

The compliance situation at the 4 missions varied from minimally acceptable to poor and in no instance could be characterized as good. As discussed in the first finding of this report, the risk environment was high and controls were not effective from a system point of view. This permitted some mission managers to engage in or tolerate expedient and procedurally incorrect procurements. The auditors concluded that compliance variances among the missions were due primarily to the differing attitudes of the individual contracting officers, executive officers, competition advocates, and mission directors. Given this situation it is important that A.I.D.'s system of organizational and personal accountability for competition be exercised when

unacceptable performance is found. Accordingly, the Office of Inspector General recommends that the Procurement Executive and MS/PPE focus attention on the serious noncompliers and apply appropriate sanctions. Without such action, A.I.D.'s system of accountability for competition is meaningless.

The result of the competition related noncompliance found by the auditors was that A.I.D. and U.S. Government procurement requirements were avoided which were established to ensure integrity in Government procurement. Making awards without attempting to attract and use competition may reduce the quality of the work force, undermine confidence in the U.S. Government's fairness, and diminish the likelihood that A.I.D. funds are economically used.

3. More Review Needed of Salary Setting Compliance

A.I.D. established salary setting rules to foster economy, equity, and consistency in paying personal services contractors. Nevertheless, in 119 contracts the audit found 85 instances of noncompliance in establishing salaries at the four missions. This situation occurred because missions did not comply with regulations, and A.I.D. policies were not always clear. As a result, A.I.D.'s salary setting objectives were not being achieved.

Recommendation No. 3

We recommend that the Assistant to the Administrator for Management Services direct the Procurement Policy, Planning and Evaluation Staff to:

- a. intensify the review of mission compliance with salary setting procedures;
- b. apply sanctions when serious patterns of noncompliance are identified; and
- c. amend the AIDAR section on establishing salaries to clarify and emphasize procedures related to the use of current earnings or salary set for the position; methods for setting position salaries; non-use of step increases and cost of living adjustments and others.

Discussion

A.I.D./Bureau for Management Services had established certain procedures for setting salaries for personal services contractors. Beginning April 22, 1986, it required that salaries for personal services contractors be based either on (i) the salary established for the position being recruited, or (ii) the applicant's current earnings. When an applicant has no current earnings history (e.g., a person reentering the workforce after a long absence) or when the earnings history does not reflect market value (e.g., a Peace Corps volunteer), the salary set for the position should be used. Use of the salary set for the position assumes the applicant has the full qualifications for the job and could command a similar salary in the open job market.

Additional Bureau guidance permitted fine tuning of current earnings. A three percent increase above current earnings

was authorized when earnings were based on a period of twelve months or more (two percent when less than 12 months and one percent when less than four months). Additional percentages, up to a maximum of seven percent, could be given for various factors such as worked in a developing country for more than two years. A salary rate above 10 percent over current earnings was to be approved in writing by the appropriate Regional Assistant Administrator or Mission Director.

Another requirement in setting salaries for personal services contractors was that a salary estimate for the job position be included in the Project Implementation Order/Technical Services (PIO/T)^{1/}. The salary estimate establishes the salary for the position in the event such a benchmark is needed in establishing a contract. Finally, applicants should certify their current earnings on an SF-171, "Personal Qualifications Statement" and the form should be retained in the mission's permanent contract file. Our review showed that the missions frequently did not follow established procedures when setting contractors' wages in that (i) salary estimates were not established for the positions being recruited^{2/}; (ii) salaries were not given within the allowable percentages or logically based on the current earnings or the salary set forth in the job position; and (iii) current earnings were not established by the SF-171s. The following report sections discuss the audit's findings at each of the four missions we reviewed.

A.I.D./Costa Rica. The audit found that salaries were not established for the job positions for 16 of 22 contracts; therefore, the contractors may have been paid more than the appropriate salaries should have been for the positions. Of these 16 contracts, 4 contracts included salaries in excess of the amount allowed by the AIDAR regulations.

For 6 of the 22 contracts, salaries were established for the job positions. However, two contracts included salaries in excess of the amount allowed by the AIDAR regulations. For

1/ The PIO/T is the A.I.D. form which initiates the contracting process, and prescribes the services required, the estimated costs and time period, and other details necessary to facilitate the negotiation and execution of a contract.

2/ In some cases, salaries were subsequently established for the job positions, but only after the prospective candidates were selected.

one of these two, the salary given was not logically based on the salary established for the position or the current earnings.

In addition, the appropriateness of salaries given to six contractors could not be determined because the contractors' files contained no salary history (i.e. no SF-171). To illustrate the specific nature of the salary setting problems found, two contracts are discussed in detail in Exhibit II.

A.I.D./Abidjan. The audit found that salaries were not established for the job positions for 7 of 25 contracts; therefore, the contractors may have been paid more than the appropriate salaries should have been for the positions.

Of the 18 contracts in which salaries were established for the job positions, 4 contracts included salaries in excess of the amount allowed by the AIDAR regulations. For two of these four, the salaries given were higher than the salaries established for the positions, and for the other two, the salaries given were not logically based on the salary established for the positions or the current earnings.

Also, the appropriateness of salaries given to six contractors could not be determined because the contractors' files contained no salary history (i.e. no SF-171). (Two contracts are discussed in detail in Exhibit II.)

A.I.D./Zaire. The audit showed that salaries were not established for the job positions for 12 of 48 contracts; therefore, the contractors may have been paid more than the appropriate salaries should have been for the positions. Of these 12 contracts, 1 contract included a salary in excess of the amount allowed by the AIDAR regulations.

Of the 36 contracts in which salaries were established for the job positions, 7 contracts included salaries in excess of the amount allowed by the AIDAR regulations. In addition, 1 of the 36 contractors was given a salary substantially higher than the salary established for the position.

In addition, the appropriateness of salaries given to eight contractors could not be determined because the contractors' files contained no salary history (i.e. no SF-171). (Two contracts are discussed in detail in Exhibit II.)

A.I.D./Cairo. This audit showed that salaries were not established for the job positions for 7 of 24 contracts; therefore, the contractors may have been paid more than what the appropriate salaries should have been for the positions.

Of the 17 contracts in which salaries were established for the job positions, 2 contracts included salaries in excess of the amount allowed by the AIDAR regulations. For one of these two, the salary given was not logically based on the salary established for the position or current earnings.

In addition, the appropriateness of salaries given to six contractors could not be determined because the contractors' files contained no salary history (i.e. no SF-171). (One contract is discussed in detail in Exhibit II.)

Several factors contributed to the salary setting problems found at the missions. First, the written procedures for setting salaries were in some instances vague. For example, the AIDAR does not adequately explain when it is appropriate to use the applicant's current earnings or the salary established for the position. Also, mission officials were required to estimate what a comparable GS/FS position should cost, but the AIDAR did not provide adequate references or methodologies to do this. Second, the procedures were complex and consequently not always understood by the implementing officials. For example, an official was surprised to learn, upon receiving a contracting bulletin, that personal services contractors were not supposed to receive annual step increases even though that policy was in fact long standing. Third, attitudes about the importance of complying with the AIDAR sometimes were colored by a mission's need to quickly recruit qualified people by offering generous pay. Further, many missions believed their recruitment situation was unique in that qualified people were difficult to entice because of their country's difficult living environment. All of these factors contributed to the high rate of salary discrepancies identified by the audit.

To alleviate the high rate of salary discrepancies, A.I.D. needs to revise its salary setting procedures. The procedures must be improved as to clarity, completeness, and ease of uniform application.

A.I.D. also needs to intensify compliance review with respect to setting salaries. Attention to this should be increased during procurement system evaluations of contracting activity at individual Missions. All missions should be put on notice that serious patterns of noncompliance will result in the application of sanctions. The effect of the high level of

noncompliance found during the audit was that A.I.D. was not achieving its salary setting objectives.

In conclusion, shortcomings in written guidelines and compliance had resulted in a high rate of salary setting discrepancies. To correct this situation, A.I.D. needs to revise its written guidance, step up the level of compliance review, and apply sanctions when serious patterns of noncompliance are identified.

Management Comments - The Bureau for Management Services said it was in general agreement with the facts in the draft report and would respond specifically to the recommendations in their final report form. The Bureau said it would examine the staffing of MS/PPE in carrying out responsibilities for the Procurement Executive and Competition Advocate. The Bureau also emphasized the Procurement Executive's and Competition Advocate's inability to review every personal services contracting action, given their charter and limited resources. In that context, the Bureau said it would make every effort to remedy any deficiencies in the award and administration of personal services contracts. The Bureau's full comments are included as Appendix 1 to this report.

Office of Inspector General Comments - The Bureau's comments were generally responsive to the thrust of the draft report. However, the Office of Inspector General will consider the report's recommendations unresolved until it receives and assesses the Bureau's specific plans and actions regarding each of the report's recommendations.

B. Compliance and Internal Control

The review of compliance and internal controls was limited to the finding areas presented in the report.

Compliance

We noted the following compliance exceptions:

- As discussed in Finding Number 2, A.I.D. missions did not comply with AIDAR and FAR requirements for acquiring personal services under other than full and open competition. Specifically, the missions did not comply with the requirement that offers be requested from as many potential offerors as is practicable under the circumstances before awarding personal services contracts.
- As discussed in Finding Number 3, A.I.D. missions did not comply with AIDAR requirements in setting salaries for personal services contractors. Specifically, salary estimates were not established for the positions being recruited, salaries were not given within the allowable percentages or logically based on current earnings or the salary set forth in the job position; and current earnings were not established by the SF-171s.

Internal Control

As discussed in Finding Number 1, MS/PPE needed to improve its oversight of missions with respect to the competition related aspects of personal services contracting. Specifically, MS/PPE needed to (i) determine a mission's overall compliance with the personal services contracting requirements when conducting their mission evaluation reviews, and (ii) apply appropriate sanctions when the level of compliance was unacceptable.

AUDIT OF PERSONAL SERVICES CONTRACTING
AT OVERSEAS MISSIONS

PART III - EXHIBITS AND APPENDICES

EXAMPLES OF COMPETITION RELATED
PERSONAL SERVICES CONTRACTING NONCOMPLIANCE
AT FOUR A.I.D. MISSIONS

A.I.D./Costa Rica

Contract #3005 was awarded on January 19, 1983, and through follow-on contracts was extended seven consecutive years. At the conclusion of the contract on February 21, 1990, the contract cost had increased from \$18,000 to \$331,810. The contract files showed that on January 7, 1983, the mission Director determined that it was in the best interest of the mission and the Government to award the contract without further negotiation and competitive bidding. The mission Director stated in a 1983 memo that other possible contractors had been surveyed for the provision of the services required. However, nothing in the mission's files supported that contention. Accordingly, the contract appeared to have been awarded to an individual based solely on the preference of the Mission Director; the contractor was able to stay on for seven years in a job that was never competitively solicited.

Contract #4179 was awarded on May 4, 1984, was to terminate on May 3, 1986, and was to cost \$41,714. Contract modifications extended the contract to August 3, 1989 and increased the contract cost to \$187,540. No evidence existed in the contractors' files to indicate that other potential offerors were considered. The contractor's files did include a memorandum dated August 3, 1987 in which the hiring office requested from and was granted permission by the Deputy Mission Director to waive competition for the contract, stating further delay in taking action would unuly burden operations. The waiver was inappropriate, however, because: (i) No information on competition or attempts to attract potential offerors had been developed by the contracting office even though at least three months had been available to attract potential offerors; and (ii) the Federal Acquisition Regulation [6.301(c)] stated that contracting without providing for full and open competition shall not be justified on the basis of a lack of advance planning.

Contract #0039 was awarded on September 17, 1986, was to terminate on September 16, 1988, and was to cost \$407,064. The contract was extended to February 4, 1990, and the contract cost increased to \$666,064. The files showed that a written justification for the other than full and open competition

REDSO/Abidjan

negotiation was prepared citing AIDAR 706.302-70. This clause states that full and open competition need not be obtained when it would impair or otherwise adversely effect programs conducted for the purposes of foreign aid, relief, and rehabilitation. This authority may be used if the Assistant Administrator responsible for the project formally determines and documents that compliance with full and open competition procedures would impair achieving foreign assistance objectives. The files, however, did not contain any documentation on a determination. As support for the Mission's action, officials cited a cable in which the Assistant Administrator for Africa and the Ambassador-Designate approved the establishment of the job position. The cable did not, however, approve the hiring of the specific contractor. Mission officials should not have relied on this cable as an approval for a sole-source procurement, because approval of a job position does not constitute approval for a sole-source procurement. The contract was entered into without attempting to attract competition. The contract was also extended without attempting to attract competition.

Contract #9008 was awarded on February 23, 1989, should terminate on February 22, 1991, and is expected to cost \$203,250. A justification for an other than full and open competition procurement, dated December 13, 1988, stated that the applicant had unique qualifications due to her eighteen years of A.I.D. experience. No evidence existed that other potential offerors were considered.

A.I.D./Zaire

Contract #6034 was awarded for a three year period beginning October 1, 1986, and with an estimated cost of \$332,828. Through amendments the estimated cost was increased by \$75,340 to \$408,168. A review of the contract file showed that the award was non-competitive, i.e., no other candidates were considered, because of the strong qualifications of the contractor and because "It would cause an unacceptable delay to advertise his position." FAR 6.302-2 requires that, even under circumstances of unusual and compelling urgency, offers be solicited from as many potential sources as practicable. Negotiations were begun with the contractor a full month prior to the issuance of the PIO/T. FAR 6.301 (c) states that a lack

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of advance planning does not justify the use of less than full and open competition. The contract file did not specify the nature of the urgency surrounding this contract, but under the circumstances few reasons should have precluded attempting to attract competition.

Contract #6046 was awarded for a six month period beginning February 9, 1987, with an initial estimated cost of \$16,772. Documentation in the contract file indicated that this short term contract for a part-time position was awarded without considering any other candidates or soliciting any other offers. This was contrary to AIDAR and FAR requirements that offers be sought from as many potential sources as practicable (AIDAR 706.302-70(c)(1) and FAR 6.301(d)). The contract was subsequently amended several times making it a full-time position, extending it for two years, and changing the contractor's status from resident hire to U.S. hire with the corresponding benefits and allowances^{1/}. None of these amendments were made through a competitive process. Due to these amendments, the initial estimated cost of the contract was increased by \$132,426 to a total of \$149,198.

A.I.D./Cairo

Contract #8054 was a follow-on contract awarded on April 27, 1988, with a total estimated cost of \$43,018. The Contract was extended to September 30, 1989, increasing the total estimated contract cost to \$62,018. The file indicated that the contractor was originally engaged by the Mission in August of 1986. The contract files did not indicate that other potential offerors were considered, either at the time of the original contract or the follow-on contract.

Contract #0004 was awarded on May 15, 1988, was expected to terminate on May 14, 1989, and totalled \$6,393. Two contract modifications increased the contract amount to \$12,308. No evidence existed that other potential offerors were considered either at the time of the original contract or the follow-on contract.

^{1/} U.S. hires receive certain housing, travel and other benefits not available to resident hires.

EXAMPLES OF NONCOMPLIANCE
WITH SALARY SETTING PROCEDURES
AT FOUR A.I.D. MISSIONS

A.I.D./Costa Rica

Contract #8078. The contractor's previous salary rates were \$16.00 per hour as a deputy executive officer for A.I.D./Senegal from January 1985 to September 1985 and \$10.00 per hour as an administrative officer for the Interamerican Institute for Human Rights in Costa Rica from June 1987 to May 1988. The contractor applied for, and received a program assistant position with A.I.D./Costa Rica in 1988. There was no established salary for the position; therefore, an appropriate salary for the position was not determined before the contractor was selected. The salary given was \$17.28 per hour. This represented an eight percent increase over the previous salary rate given to the contractor by A.I.D./Senegal. No more than four percent should have been given according to the regulations as follows:

<u>Type of Increase</u>	<u>Percent Given</u>	<u>Percent Allowed</u>
Optional	3%	2% ^{1/}
Prior Developing Country Experience	2%	1%
Cost of Living Adjustment	2%	0%
Education	<u>1%</u>	<u>1%</u>
Total	<u>8%</u>	<u>4%</u>

In summary, because a salary was not established for the position, the contractor may have been paid more than an appropriate salary should have been for the position. In addition, the salary given was in excess of the amount allowed by the AIDAR regulations.

Contract #6028. The contractor previously worked for USAID/Costa Rica from January 1983 to May 1986 as an assistant health development officer, with a beginning salary of \$11,000 and an ending salary of \$19,930. In 1986, the contractor applied for, and received a personal service contract for an

^{1/} Applicant did not have 12 months at current earnings, therefore only 2% should have been allowed.

assistant health development officer position for the Office of General Development. The job position salary was set at \$22,000 for May 17, 1986 to May 16, 1987 and \$25,000 for May 17, 1987 to May 16, 1988. Because the contractor's previous salary was \$19,930, the Executive Officer stated in a memo dated April 9, 1986 that the contractor will be given a salary of \$21,000 for the first year and \$22,000 for the second year. This represented a 5% increase for each of the two years. However, the contractor was given a salary of \$22,000 for the period May 17, 1986 to May 16, 1987 and \$25,000 for May 17, 1987 to May 16, 1988. This represented a 10.4 percent and 13.6 percent salary increase for the two years, respectively. Nothing in the contracting files justified why the contractor was given these large salary increases. Furthermore, contract modifications in 1988 and 1989 substantially increased the salary of the contractor (see table below).

In summary, the salary progression of the contractor for the same position was as follows:

Assistant Health Development Officer Contracts

<u>Year</u>	<u>Salary</u>	<u>Percent (%) Increase</u>
1983	\$11,000	-
1984	\$18,712	70.1%
1985	\$19,930	6.5%
1986	\$22,000	10.4%
1987	\$25,000	13.6%
1988	\$35,000	40.0%
1989	\$37,818	8.1%

A.I.D./Abidjan

Contract #9055. The contractor previously earned \$23,920 at REDSO/WCA/Abidjan as a temporary secretary and project assistant. The contractor applied for, and received a health population and nutrition program assistant position in 1989. The salary established for the position was \$23,646. The salary given to the contractor was \$28,742. This represented a 20.2 percent and 21.6 percent salary increase from the contractors previous salary and the salary established for the

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position, respectively. Nothing in the contractor's files justified why the contractor was given this large salary increase.

Contract #8024. The contractor previously earned \$274 a day as a contract consultant at A.I.D./Mali. The contractor applied for, and received a project officer position in 1988. The salary given to the contractor was \$274 per day. However, no salary was established for the position. Therefore, the contractor may have been paid more than the amount appropriate for the position.

A.I.D./Zaire

Contract #6043. The contractor previously worked for A.I.D. at various locations in the field of mechanics and supply management and retired from A.I.D. in 1982. The contractor applied for, and received a project and supply management advisor position in 1987. The contractor requested a salary of \$65,000. The salary established for the position was \$54,004. The salary given to the contractor was \$61,007. This represented a 13 percent salary increase above the salary established for the position.

Contract #8353. The contractor's previous salary was \$18,000 as a project manager for the Catholic Relief Service. The contractor applied for, and received an assistant project officer position in the Health Population and Nutrition Office in 1988. A salary of \$17,500 was established for the position. The salary given was at an annual rate of \$23,672. This represented a 32 percent and 35 percent salary increase from the contractor's previous salary and the salary established for the position, respectively. Nothing in the contractor's files justified why the contractor was given this large salary increase.

A.I.D./Cairo

Contract #6113. The contractor previously worked with A.I.D./Cairo earning an annual salary of \$67,938. The contractor applied for, and received an engineering advisor position in 1986 and was given \$67,938. There was no established salary for the position; therefore, an appropriate salary for the position was not determined before the contractor was selected. The contractor may have been paid more than what an appropriate salary should have been for the position.

Listing of Contracts with Discrepancies
Related to Competition

<u>Original Contract Number</u>	<u>Contractor's Citizenship</u>	<u>Original Contract Value</u>	<u>Number Of Times Modified</u>	<u>Current Contract Amount</u>	<u>Initial Contract Date</u>	<u>Date of Modification (Extension or Change in Scope of Work)</u>
<u>USAID/Zaire</u>						
6034	U.S	\$332,828	2	\$ 408,168	10/01/86 - 09/30/89	Change in scope of work on 07/05/88
9079	TCN	8,919	0	8,919	01/01/89 - 12/31/89	-
9119	U.S.	23,553	0	23,553	01/16/89 - 01/15/90	-
8105	TCN	20,675	2	41,668	01/01/88 - 12/31/88	Extended on 12/23/88 to 12/30/89
8179	U.S.	9,925	2	27,065	09/15/88 - 09/30/88	-
6046	U.S.	16,772	5	149,198	02/09/87 - 08/09/87	Extended on 08/10/87 to 08/08/89
5016	U.S.	108,884	6	356,555	01/09/86 - 01/08/88	Extended on 01/09/87 and 06/01/88 to 07/26/89
8106	U.S.	24,254	1	52,636	12/21/88 - 12/20/88	Extended on 01/12/89 to 12/20/89
				<u>\$1,067,726</u>		

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Listing of Contracts with Discrepancies
Related to Competition (con't)

<u>Original Contract Number</u>	<u>Contractor's Citizenship</u>	<u>Original Contract Value</u>	<u>Number Of Times Modified</u>	<u>Current Contract Amount</u>	<u>Initial Contract Date</u>	<u>Date of Modification (Extension or Change in Scope of Work)</u>
<u>USAID/Costa Rica</u>						
3005	TCN	18,000	9	331,811	01/24/83 - 01/24/84	Extended on 02/21/88 to 02/21/90
8045	U.S.	4,184	3	9,777	03/21/88 - 09/29/88	Extended on 03/24/89 to 06/15/89
8011	U.S.	37,264	2	42,298	01/04/88 - 10/31/89	- -
6061	TCN	76,676	5	294,564	08/22/86 - 08/21/87	Extended on 06/22/87 and 5/23/89 to 08/21/90
6008	TCN	21,671	7	294,071	11/27/85 - 04/15/86	Extended on 03/15/87 and 02/27/89 to 04/30/899
6007	TCN	17,921	8	246,971	11/27/85 - 04/15/86	Extended on 03/24/87 and 04/30/89 to 12/31/89
4179	U.S.	41,714	11	187,540	05/04/84 - 05/03/86	Extended on 08/03/87 to 12/31/89
7070	U.S.	47,906	3	94,765	09/30/87 - 09/29/88	Extended on 07/22/88 to 09/29/89
6034	U.S.	105,083	3	238,599	07/01/86 - 06/30/87.	Extended on 07/29/88 to 07/29/89
4451	U.S.	224,924	14	600,087	10/15/84 - 10/14/86	Extended on 11/30/88 to 10/31/89
				<u>\$2,340,483</u>		

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Listing of Contracts with Discrepancies
Related to Competition (con't)

<u>Original Contract Number</u>	<u>Contractor's Citizenship</u>	<u>Original Contract Value</u>	<u>Number Of Times Modified</u>	<u>Current Contract Amount</u>	<u>Initial Contract Date</u>	<u>Date of Modification (Extension or Change in Scope of Work)</u>
<u>USAID/Abidjan</u>						
0039	U.S.	407,064	4	666,064	09/17/86 - 09/16/88	Extended on 08/09/88 to 02/04/90
8006	U.S.	100,510	4	100,510	02/19/88 - 02/18/91	- -
8024	U.S.	30,300	2	58,300	07/30/88 - 10/02/88	Extended on 09/30/88 to 03/31/89
8002	U.S.	78,572	4	80,011	12/17/87 - 12/16/90	- -
9008	TCN	203,250	1	203,250	02/23/89 02/22/91	- -
8035	U.S.	19,000	0	19,000	09/30/88 - 07/31/89	- -
9012	U.S.	1,080	0	2,021	12/21/88 - 03/17/89	- -
9036	U.S.	4,300	0	4,300	05/16/89 - 08/11/89	- -
9057	TCN	1,075	0	1,075	07/10/89 - 08/11/89	- -
9049	U.S.	1,728	0	1,728	06/26/89 - 09/15/89	- -
				<u>\$1,136,259</u>		

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Listing of Contracts with Discrepancies
Related to Competition (con't)

<u>Original Contract Number</u>	<u>Contractor's Citizenship</u>	<u>Original Contract Value</u>	<u>Number Of Times Modified</u>	<u>Current Contract Amount</u>	<u>Initial Contract Date</u>	<u>Date of Modification (Extension or Change in Scope of Work)</u>
<u>USAID/Cairo</u>						
0029	U.S.	3,223	0	3,223	07/30/89 - 09/30/89	- -
0025	U.S.	4,036	0	4,036	07/30/89 - 09/30/89	- -
0003	U.S.	2,991	1	9,383	05.15.88 - 05/14/89	- -
7016	U.S.	19,735	4	65,651	01/04/89 - 06/02/89	Extended on 06/09/87 to 09/30/89
0004	U.S.	6,392	2	12,308	05/15/88 - 05/14/89	Extended on 05/15/89 to 09/30/89
8054	U.S.	43,018	1	62,018	04/27/88 - 04/26/89	Extended on 09/27/88 to 09/30/89
				<u>\$ 156,619</u>		
				<u>\$4,701,087</u>		
Grand Total = 34 Contracts totalling						

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**CLASS JUSTIFICATION FOR USE OF OTHER THAN FULL
AND OPEN COMPETITION FOR PERSONAL SERVICES CONTRACTS
AND OVERSEAS CONTRACTS OF \$100,000 OR LESS.**

I. General

This document is a class justification for other than full and open competition as authorized by Section 6.303-1(c) of the Federal Acquisition Regulation (FAR).

This class justification may be used in accordance with its terms by any AID contracting officer acting within the scope of his/her delegated authority.

This class justification is applicable to personal services contracts awarded pursuant to AID Acquisition Regulation (AIDAR) 706.302-70(b)(1), and to any contract of \$100,000 or less awarded by an overseas contracting activity pursuant to AIDAR 706.302-70(b)(2), as authorized by 40 U.S.C. 474, provided the appropriate requirements for competition in Section II of this class justification are followed.

It has been determined that requiring full and open competition for procurement of personal services or for procurement of \$100,000 or less by overseas contracting activities would impair AID's ability to meet the objectives of the foreign assistance program. Thus, Section 706.302-70 of the AIDAR provides that such procurements may be exempted from the full and open competition requirements.

This class justification may be used to satisfy the requirements of AIDAR 706.302-70(c)(2) regarding preparation of justifications pursuant to FAR 6.303. It applies only to procurements under AIDAR 706.302-70(b)(1) and (2).

II. Conditions for Use

A. PSCs with United States citizens or resident aliens.

(1) If recruited from the United States, the position was either publicized in a U.S. trade/professional/technical publication, newspaper or similar publication, or the procedure in paragraph II.A.(3), below, was followed.

(2) If recruited locally, the position was publicized in the same way that the Mission announces direct hire U.S. citizen positions, or the procedure in paragraph II.A.(3) below was followed.

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(3) As an alternative to the procedures in paragraph II.A.(1) and (2) above, at least 3 individuals were considered by consulting source lists (i.e. applications or resumes on hand) or conducting other informal solicitation.

B. PSCs with Cooperating Country Nationals and Third Country Nationals.

New contracts were publicized consistent with Mission/Embassy practice on announcement of direct hire FSN positions. Renewals or extensions with the same individual for continuing service do not need to be publicized.

C. Local Procurements for supplies and services from \$25,001 to \$100,000.

(1) Procurements up to \$25,000 are subject to the small purchase procedures of the FAR.

(2) Procurements between \$25,001 and \$100,000 were publicized locally sufficiently to ensure that a reasonable number of contractors were notified. This class justification may not be used if only one source was considered.

D. Certification, File Documentation.

A copy of this class justification must be included in the contract file, together with a written statement, signed by the contracting officer, that: the contract is being awarded pursuant to AIDAR 706.302-70(b)(1) or (2), as applicable; that the conditions in Section II of this class justification have been met; and that the cost of the contract is fair and reasonable.

III. Effective Date

This class justification is effective on the date of signature below.

JAN 20 1987

Date


John F. Owens
AID Procurement Executive

AGENCY FOR INTERNATIONAL DEVELOPMENT
WASHINGTON, D.C. 20523

APR 27 1990

MEMORANDUM

TO: IG/PSA, Mr. Richard C. Thabet
FROM: A-AA/MS, *John F. Owens*
SUBJECT: Draft Inspector General Report on Personal Services Contracting at Overseas Missions

We have reviewed the Draft Report forwarded by your memorandum dated April 10, 1990. We are in general agreement with the facts presented and will respond specifically to the Recommendations in their final form.

One area where we may not be able to reach agreement is the respective roles and responsibilities of the Procurement Executive, the Agency Competition Advocate and the Inspector General. Neither the Procurement Executive nor the Competition Advocate have the charter or resources to perform detailed worldwide audits of every Personal Services Contract awarded by the Agency. The Procurement Executive conducts an annual procurement system evaluation as required by Executive Order 12352 utilizing criteria recommended by OMB. Procurement Executive responsibilities are spelled out in the Executive Order, in the Office of Federal Procurement Policy Act Amendments of 1983 and in AIDAR 702.170-13. These responsibilities include evaluating the total contracting system's performance in accordance with approved criteria. We do this by conducting annual evaluations to test the system against the approved criteria recommended by OMB. The Competition Advocate function is best described in FAR Subpart 6.5. It includes responsibilities for challenging barriers to full and open competition, reviewing Agency operations and reporting areas for improvement. It does not envision a review of every action but rather a test of how well the Agency is doing and where it needs to improve.

In A.I.D., the principal means for carrying out the Procurement Executive's responsibilities and the Competition Advocates responsibilities is through the annual procurement system evaluation conducted by MS/PPE. This evaluation is conducted with limited staff and resources against a backdrop of other internal control procedures which are also designed to protect the integrity of the system. Namely, the internal control process itself, the general Mission management assessments

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conducted by the Bureaus, the systems in place for delegations, deviations etc., and the general oversight provided by the IG and the General Accounting Office. We will examine the staffing of MS/PPE in carrying out its responsibilities for the Procurement Executive and the Competition Advocate but it must be understood that PPE staff cannot substitute for the more thorough audits conducted by the IG upon which we heavily rely. In this context, we will make every effort to remedy any deficiencies in the award and administration of Personal Services Contracts, but we believe that abuses detected by the IG should be directed to the abusers. It has been our experience that if people choose to work outside the system it is not very productive to develop another policy that they can continue to ignore. With the responsibility we have delegated for these actions goes accountability. Where your findings reflect negligence we will cooperate fully in remedying the abuse.

LIST OF RECOMMENDATIONS

	<u>Page</u>
<u>Recommendation No. 1</u>	5
<p>We recommend that the Assistant to the Administrator for Management Services, with respect to personal services contracting, direct the Procurement Policy, Planning and Evaluation Staff to:</p>	
<ul style="list-style-type: none">a. include in procurement reviews increased detailed testing to determine overall mission compliance;b. define limits of noncompliance and develop a system of sanctions to apply as needed;c. review the staffing of the Procurement Policy, Planning and Evaluation Staff and make changes as necessary to achieve increased testing and enforcement; andd. facilitate oversight and reinforce accountability by amending the AIDAR to require that the contracting officer include in the contracting file his or her signed certification that each of the key competition related procedures set forth in the AIDAR have been completed.	
<u>Recommendation No. 2</u>	10
<p>We recommend that the Assistant to the Administrator for Management Services direct the Procurement Policy, Planning and Evaluation Staff to:</p>	
<ul style="list-style-type: none">a. review personal services contracting at USAID/Costa Rica and REDSO/Cote de Ivory to determine the full extent of noncompliance and identify the responsible officials; andb. apply sanctions as appropriate.	

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Recommendation No. 3

We recommend that the Assistant to the Administrator for Management Services direct the Procurement Policy, Planning and Evaluation Staff to:

- a. intensify the review of mission compliance with salary setting procedures;
- b. apply sanctions when serious patterns of noncompliance are identified; and
- c. amend the AIDAR section on establishing salaries to clarify and emphasize procedures related to the use of current earnings or salary set for the position; methods for setting position salaries; non-use of step increases and cost of living adjustments and other.

REPORT DISTRIBUTION

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