

**TITLE: CIB 96-07 - Cessation of the Disadvantaged Enterprise Program**

February 26, 1996

MEMORANDUM FOR CONTRACTING OFFICERS AND NEGOTIATORS

TO: Distribution List FAC

From: M/AA, Michael Sherwin, Procurement Executive

Subject: Cessation of the Disadvantaged Enterprise Program

**Contract Information Bulletin 96-7**

Authority for USAID's Disadvantaged Enterprise Program (DEP), also known as the Gray Amendment, was not included in the FY 1996 appropriations bill which was recently passed. In previous appropriations acts, the Gray Amendment provisions required that not less than ten percent of all funds for development assistance, population and Development Funds for Africa be made available to small disadvantaged enterprises and, in recent years, also provided authority for limited competition and mandated certain subcontracting requirements. With the provisions no longer a part of our appropriations, the authorities and requirements of the DEP are not applicable to funds made available under the FY 1996 appropriations act. This means the following AIDAR sections are not applicable to FY 1996 appropriations: 705.202(c), 705.207, 706.302-71, 726.000 through 726.302, 752.226-1, and 752.226-2. The DEP authorities were available for procurements which were undertaken using funds appropriated under continuing resolutions.

The discontinuance of the DEP has no effect on the existence and validity of the small business and 8(a) set-aside programs described in FAR part 19.

The DEP still applies to old money (i.e., prior to FY 1996 appropriations), and to this end, we may continue to use the limited competition procedures in AIDAR 706.302-71 and must continue to implement the DEP subcontracting requirements when obligating previous years' funds.

The difficulty arises where fiscal year funds are mixed. If new money (i.e., FY 1996 appropriations) is used for incremental funding of existing contracts which contain Gray Amendment requirements for subcontracting, whether the provisions should stay in or not will depend on the nature of the incremental funding actions and the amount of old funds. If FY 1996 funds are being used to replenish a contract which is running out of prior year funds, the subcontracting requirements should be removed. If FY 1996 funds are being added to existing funds and both old and new money will be in the contract for some time, then the subcontracting provisions should remain in the contract, but be made applicable only to the amount of the contract that is funded with old money.

If a new contract is funded with a mixture of new and old money, the simplified competition requirements shall not be used; however, the old money would be subject to the requirement for 10% subcontracting to small and disadvantaged businesses. For example, if a \$2,000,000 contract were funded with a 50/50 split of new and old money, the contractor would only be required to subcontract 10% of the old money, or \$100,000, to disadvantaged enterprises.

You will need to pay close attention to each action's fund cites in order to determine the applicable regulations.

Please contact M/OP/P if you have any questions on applicability that have not been addressed.