

**TITLE: CIB 96-12 - Level of Effort (LOE) Contracts**

March 20, 1996

MEMORANDUM FOR ALL CONTRACTING OFFICERS AND NEGOTIATORS

TO: Distribution List FAC

FROM: Marcus L. Stevenson, Procurement Executive

SUBJECT: Level of Effort (LOE) Contracts

**CONTRACT INFORMATION BULLETIN 96-12**

A major issue which is becoming more problematic concerns what recourse the Agency has when a contractor runs out of level of effort before exceeding the funding ceiling. A common (not correct) practice is to ignore the level of effort and modify the contract to permit the contractor to continue to work until the remaining funds are expended.

Allowing the contractor to continue to work, ignores the fact that, by definition, a "level of effort" contract establishes the level of effort as the criterion for determining the completion of the contract. Although the contract may include a period of performance and a funding ceiling, a "level of effort" contract is, by its definition, completed once the contractor reaches the level of effort. Any increase in the level of effort is a new requirement which should be competed in accordance with established competition policies.

Most LOE contracts awarded by the Agency include either FAR 52.232-20, Limitation of Cost, or FAR 52.232-22, Limitation of Funds, clauses which require the contractor to advise the Contracting Officer in writing when the contractor nears the contractual ceiling on costs or funds. If a contract is properly written and administered, there should be a natural link between the LOE and the funds. However, a contractor may use less expensive labor than anticipated and exceed the LOE before the funds are expended; or, a contractor may use more expensive sub-contractor labor and deplete the funding before the level of effort is used. Since the contract only requires notification when the costs/funds reach 75% of the contract ceiling, the contractor may exceed the LOE without any notice to the Contracting Officer.

**Consequently, USAID is establishing a requirement that all LOE contracts should include the following clause:**

**LIMITATION ON LEVEL OF EFFORT (March 1996)**

The contractor will notify the Contracting Officer in writing when the contract or any task order awarded under the contract is expected to exceed 75% of the estimated level of effort (LOE) specified in either the Schedule or on the task order. Along with the written notice, the contractor will provide the contracting officer with a revised estimate of the total LOE. Project approvals, technical orders or other direction from the project office do not constitute authorization to increase, decrease or redistribute LOE. The Government is not obligated to reimburse the contractor for any actions which increase, decrease or redistribute LOE unless such actions have been authorized in writing by the contracting officer.

In the event direct labor hours in excess of the LOE are required to accomplish the work, such additional effort will be treated as new procurement except in limited situations in which the "Changes" clause may be applicable.

In the event fewer hours of LOE are used than authorized originally or by modification, the contracting officer has the option to extend the period of performance for any additional period of time not exceeding 90 days to allow the contractor to furnish the LOE specified in the contract schedule. Such extensions shall not exceed any established funding ceilings or other terms and conditions and is for the sole purpose of allowing the contractor to utilize the LOE.

(End of Clause)

All actions to increase the level of effort (money or hours) must be competed as new work or justified non-competitively.

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