



Acquisition & Assistance Policy Directive (AAPD)

From the Director, Office of Acquisition and Assistance

Issued: August 31, 2004

AAPD 04-11

Revised Contractor Salary Approval Threshold Policy/Procedures

Subject Category: Acquisition Management; Personal Service Contracts)
Type: Policy/Procedure

AAPDs provide information of significance to all agency personnel and partners involved in the Acquisition and Assistance process. Information includes (but is not limited to): advance notification of changes in acquisition or assistance regulations; reminders; procedures; and general information. Also, AAPDs may be used to implement new requirements on short-notice, pending formal amendment of acquisition or assistance regulations.

AAPDs are **EFFECTIVE AS OF THE ISSUED DATE** unless otherwise noted in the guidance below; the directives remain in effect until this office issues a notice of cancellation.

This AAPD: Is New Replaces/ Amends AAPD 03-02

Precedes change to: AIDAR Part(s) 731, 752, and Appendices D and J
 USAID Automated Directives System (ADS) Chapter 302
 Code of Federal Regulations _____
 Other _____
 No change to regulations

Applicable to: Existing awards; Modification required:
 Effective immediately
 No later than _____
 As noted in guidance below
 RFPs/RFAs issued on or after the effective date of this AAPD;
all other Pending Awards, i.e., 8(a), sole source...
 Other or N/A

New Provision/Clause Provided Herein: Yes; Scheduled update to Prodoc: October 2004
 No

(Signature on File)

Jeffery Bell
Acting Director

PURPOSE: The purpose of this AAPD is to revise policy and procedures relevant to the threshold at which M/OAA Director approval is required for contract salaries. This revision applies to both personal and non-personal contracts, and includes revision to the following:

- ADS 302 policy guidance
- AIDAR language and relevant provisions/clauses (interim revision)

BACKGROUND: ADS 302, "USAID Direct Contracting", contains Agency policy and procedures regarding the threshold at which contract salaries require M/OAA Director approval. Currently, ADS 302.5.3 establishes a rate equivalent to Office of Personnel Management's (OPM's) ES-6 level as the threshold. The USAID Acquisition Regulation (AIDAR)¹ cost principles and certain clauses also refer to the "ES-6 policy".

In 2003, Public Law 108-136 replaced the U.S. Government SES grade structure from which the ES-6 rate flowed with a single, open-range "payband" that has only its minimum and maximum rates fixed by statute². The use of the ES-6 level as the threshold for M/OAA approval is therefore no longer possible, and a new standard must therefore be determined for establishing the threshold for M/OAA Director approval.

After analysis of alternatives, we have determined that use of a rate equivalent to the newly established rate for agencies without a certified SES performance appraisal system (AWCPAS) (\$145,600/yr. for 2004) is the most appropriate replacement for the ES-6 rate. Use of the AWCPAS rate provides a reasonable and objective threshold, in consideration of changes associated with our traditional threshold.

While there is a higher-level standard available in the new SES system to use as a benchmark in the rate established for agency *with* a certified SES performance appraisal system, we see that rate (\$158,100/yr. for 2004) as excessive and unnecessary for several reasons:

- Approval requests for contractor rates exceeding the previous ES-6 rate (\$134,000/yr. in 2003) have been minimal.
- There is no true direct correlation between the Federal SES pay system and contract rates. While consideration of commercial market rates is given in establishing SES rates, other factors such as benefits, are also considered. Establishment of contract rates must therefore be based primarily on market rates. Personal service contracts, which are based on Federal General Schedule (GS) rates are the exception.
- The types of services for which USAID contracts are typically not at the executive level. They are typically at the senior professional or "implementer" level, where compensation rates rarely approach levels paid to

¹ <http://www.usaid.gov/policy/ads/300/aidar.pdf>

² <http://www.opm.gov/oca/compmemo/2004/2004-03.asp>

executives, federal or otherwise. When executive level expertise is employed under USAID contracts, it is typically minimal and captured in a firm's indirect cost rate, to which this USAID policy does not apply.

GUIDANCE :

The USAID threshold beyond which approval of the Director, M/OAA is required shall be the equivalent of the OPM maximum rate for agencies without a certified SES performance appraisal system (AWCPAS)³. (This rate is \$145,600 per year in 2004.) In future years, changes to the salary approval threshold will be effective on the effective date of a new maximum rate for agencies without a certified SES performance appraisal system, as announced by the Office of Personnel Management and published in the Federal Register. Annual AAPDs will not be issued to further publicize revised rates. In accordance with this policy change, the following policy directive and regulatory changes are provided:

I. REVISION TO ADS 302 POLICY GUIDANCE

ADS 302.5.3 is revised to read as follows:

302.5.3 APPROVAL OF CONTRACTOR SALARIES EXCEEDING THE MAXIMUM RATE FOR AGENCIES WITHOUT A CERTIFIED SES PERFORMANCE APPRAISAL SYSTEM (AWCPAS)

- a) Non-Personal Service Contracts: Approval of the Director, Office of Acquisition and Assistance (M/OAA) is required before the contracting officer authorizes a contract salary that exceeds the maximum rate for Federal agencies without a certified SES performance appraisal system (AWCPAS), as published by the Office of Personnel Management. Market values for the types of services (direct labor) acquired under USAID non-personal service contracts are typically for senior-level professional services, but rarely require direct labor at the executive level. Costs associated with executive level salaries are typically allocated to the contract through the indirect cost pool, to which this policy does not apply.

Salaries under non-personal service contracts are to be compensated at rates determined fair and reasonable in the competitive market by the contracting officer in accordance with the applicable FAR part and cost principles.

Base for hourly rate calculation: Contract rates are to be established on an hourly basis. For estimating purposes, non-personal service contract rates are to be calculated based on 2080 hours/year, the number used by many private sector entities. If a contractor employs methods or calculations using other than 2080 hours/year, the Contracting Officer must annotate this in the negotiation memorandum and contract, particularly if the methodology results in an annualized salary exceeding the AWCPAS rate.

³ <http://www.opm.gov/ses/SESGUIDE04.doc> Pg 24

This policy applies to types of contracts in which the actual salary of the individual is considered in establishing the price or the fixed labor rate for services. Examples include:

- cost reimbursement contracts
- firm-fixed price contracts
- indefinite quantity contract (IQC) salaries
- task orders issued under IQCs for which salaries have not been negotiated in advance in the basic contract

These rates are presumed to have been factored into the establishment of fair and reasonable salaries in pre-existing contracts and are not to be re-negotiated, nor is additional cost/pricing data to be requested.

b) Personal Service Contracts: In accordance with AIDAR Appendices D and J, personal service contractors are considered employees for purposes of rate calculation and their hourly rates must be based upon 2087 hours per year. Salaries that provide for a rate in excess of the AWCPAS rate must be approved by the M/OAA Director. This approval authority may not be re-delegated.

c.) Approval Procedures: The procedures to be followed in obtaining the approval of the M/OAA Director for any contractor personnel compensation exceeding the threshold established herein are as follows:

1. The contracting officer shall prepare a Memorandum in which the proposed salary exceeding the maximum rate for AWCPAS is evaluated as fair and reasonable in accordance with the applicable FAR guidance. The memorandum must include discussion the following items, at a minimum:

- comparison with the pre-solicitation independent government cost estimate (IGCE)
- comparison of the proposed salary to the individual's salary history for similar work
- the specific basis upon which the proposed rate is considered fair and reasonable in accordance with the applicable FAR cost principles

If the contracting officer is unable to determine the salary(ies) is (are) fair and reasonable, no memorandum should be prepared.

The memorandum must be addressed from the contracting officer, through the cognizant technical officer for concurrence/non-concurrence, to the Director, M/OAA.

2. The contracting officer's memorandum must be forwarded to the cognizant technical officer for concurrence/non-concurrence. The technical officer must prepare a supplemental memorandum indicating concurrence/non-concurrence, discussing relevant technical issues, such as:

- technical competence of the individual compared to that required for the work
- scope of responsibility
- any inconsistencies with independent government estimates

3. Both the contracting officer's and technical officer's memoranda are to be routed through the cognizant Assistant Administrator or Mission Director for concurrence, and returned to the contracting officer. The contracting officer then forwards the memoranda to the Director, M/OAA for decision.

4. After the M/OAA Director renders a decision, the contracting officer must convey that decision in writing to the contractor to facilitate the contractor's compliance with the relevant cost principle in AIDAR 731.

The contracting officer must document actions required in this section in the contract file. (See Mandatory References, AIDAR 731.205-6, 731.371(b), and 731.772). The approval must be placed in the contract file.

d) An increase in the maximum rate for AWC PAS must not be, by itself, the basis for salary increases of contractor employees. Revisions to salaries should only be considered in light of changes to the scope of work or in accordance with other contract terms. Salary increases should not be granted without corresponding increases in the quality or quantity of services rendered.

II. REVISIONS TO USAID ACQUISITION REGULATION (AIDAR)

AIDAR SUBPART 731.2 -- CONTRACTS WITH COMMERCIAL ORGANIZATIONS

731.205-6 "Compensation for personal services" is revised as follows:

(a) General. When establishing the workweek for employees overseas the contractor will take local and USAID Mission practice into account and will insure that the workweek is compatible with that of those USAID Mission and Cooperating Country employees with whom the contractor will be working.

(b) Salaries and wages. It is USAID policy that if an employee's base salary plus overseas recruitment incentive, if any (see AIDAR 731.205-70) exceeds the maximum rate for Federal agencies without a certified SES performance appraisal system (AWCPAS), it will be allowable only if approved in writing by the contracting officer. The contracting officer shall only provide such approval after internal Agency procedures for review/approval of salaries in excess of the AWC PAS rate have been followed. USAID policies on compensation of third country national or cooperating country national employees are set forth in AIDAR 722.170.

(c) through (l) [Reserved].

(m) Fringe benefits. USAID's policies on certain fringe benefits related to overseas service, including but not limited to leave, holidays, differentials and allowances, etc. are set forth in the appropriate contract clauses in AIDAR Subpart 752.70.

AIDAR SUBPART 731.3 -- CONTRACTS WITH EDUCATIONAL INSTITUTIONS--

731.371 "Compensation for personal services", Paragraph (b) "Salaries and wages", Subparagraph (1) is revised to read as follows:

It is USAID policy that if an employee's base salary plus overseas recruitment incentive, if any (see AIDAR 731.205-70) exceeds the maximum hourly, daily or annual rate for Federal agencies without a certified SES performance appraisal system (AWCPAS), it will be allowable only if approved in writing by the contracting officer. The contracting officer shall only provide such approval after internal Agency procedures for review/approval of salaries in excess of the AWCPAS rate have been followed. USAID policies on compensation of third country national or cooperating country national employees are set forth in AIDAR 722.170.

AIDAR Clause 752.7007 "Personnel Compensation" is revised to read as follows:

The following clause shall be used in all USAID cost-reimbursement contracts.

PERSONNEL COMPENSATION (August 2004)

(a) Direct compensation of the Contractor's personnel will be in accordance with the Contractor's established policies, procedures, and practices, and the cost principles applicable to this contract.

(b) Compensation (i.e., the employee's base annual salary plus overseas recruitment incentive, if any) which exceeds the maximum rate for agencies without a certified SES performance appraisal system, as published in the Federal Register, will be reimbursed only with the approval of the Contracting Officer, as prescribed in 731.205-6(d) or 731.371(b), as applicable.

Appendix D: "Direct USAID Contracts With U.S. Citizens or U.S. Residents for Personal Services Abroad"

Section 4. Policy, Paragraph (e) Determining Salary for Personal Services Contractors, Subparagraph (3) is revised to read as follows:

Salaries in excess of the maximum rate for Federal agencies without a certified SES performance appraisal system must also be approved by the M/OAA Director based upon a memorandum through the appropriate Assistant Administrator or Mission Director and Contracting Officer, as provided for in internal guidelines on "Approval Procedures for Contractor Salaries". This approval cannot be re-delegated.

Section 7. Executing a Personal Services Contract, Paragraph (k), Item (7), is revised to read as follows:

The approval for any salary in excess of the maximum rate for Federal agencies without a certified SES performance appraisal system, in accordance with internal guidelines on "Approval Procedures for Contractor Salaries";

General Provision 4. WORKWEEK AND COMPENSATION (PAY COMPARABILITY ADJUSTMENTS) (Dec 1985), Paragraph (b) Compensation (Pay Comparability) Adjustments, is revised to read as follows:

*The contractor's compensation shall be adjusted to reflect the pay comparability adjustments, which are granted from time to time to U.S. direct-hire employees by Executive Order for the statutory pay systems. Any adjustments authorized are subject to the availability of funds and shall not exceed that percentage stated in the Executive Order granting the adjustment. **Further, the adjusted compensation may not exceed the maximum (annual) rate for agencies without a certified SES performance appraisal system (or the equivalent hourly rate).***

AIDAR Appendix J—"Direct USAID Contracts With a Cooperating Country National and With a Third Country National for Personal Services Abroad" is revised as follows:

Section 7. Executing a Personal Services Contract, Paragraph (i) (4) is revised to read as follows:

The approval for any salary in excess of the maximum rate for agencies without a certified SES performance appraisal system, in accordance with internal agency guidelines;

This AAPD serves as interim guidance pending the revision of ADS 302 and AIDAR to reflect the change in salary approval threshold and remains in effect until cancelled or superceded.

The effective date of this AAPD is the date of issuance. Active contracts are to be modified to include the applicable revised provisions, but rates shall not be re-negotiated as a result of this AAPD.

RFPs/current contracts are to be amended/modified to include the applicable revised provisions.

POINT OF CONTACT: Direct questions about this AAPD to Mr. Kenneth Monsess, M/OAA/PE, at (202) 712-4913 or kmonsess@usaid.gov.