

**TITLE: CIB 94-12 Management Oversight of Service Contracting**

June 22, 1994

MEMORANDUM FOR ALL CONTRACTING OFFICERS AND NEGOTIATORS

TO: Distribution List FAC

FROM: DAA/M, Michael Sherwin, Procurement Executive

SUBJECT: Management Oversight of Service Contracting

**CONTRACT INFORMATION BULLETIN 94-12**

The Office of Management and Budget (OMB) has rescinded Circular A-120, "Guidelines for Use of Advisory and Assistance Services". Concurrently the Office of Federal Procurement Policy (OFPP) has issued Policy Letter 93-1 on "Management Oversight of Service Contracting". Policy Letter 93-1, together with (1) Policy Letter 92-1, "Inherently governmental Functions"; (2) Policy Letter 91-2, "Service Contracting"; (3) Policy Letter 89-1, Conflict of Interest Applicable to Consultants"; (4) OMB Circular A-76; and (5) OFPP's "Guidance on Contract Administration" replace the rescinded Circular A-120.

Pending the issuance of comprehensive, final guidance in the Federal Acquisition Regulation (FAR), USAID is implementing interim coverage for the management of service contracting in the attached General Notice. Please note that this interim contract policy revises the coverage on Advisory and Assistance services to further limit the types of services that re subject to its management and control procedures, pursuant to the attached Agency-wide deviation to the FAR.

Attachments: a/s

**ACTION MEMORANDUM FOR THE PROCUREMENT EXECUTIVE**

SUBJECT: Implementation of Interim Service Contracting Policy

FROM: M/OP, Kathryn Cunningham

**Issue:** To implement an interim service contracting policy which includes authorization of an Agency-wide class deviation from FAR Part 37, Service Contracting, under Deviation Control No. USAID-DEV-94-1c.

**Discussion:** As a result of a Government-wide review of service contracting and after years of difficulty with the coverage on consulting/advisory and assistance services, the Office of Management and Budget (OMB) has replaced prescribed management procedures with a list of principles that mandate "best practices" for the procurement and administration of service contracting. These principles address: (1) inherently governmental functions, (2) cost effectiveness, (3) control of the contracting process and contractor performance, (4) conflict of interest, and (5) competition.

OMB rescinded Circular A-120, "Guidelines for the Use of Advisory and Assistance Services", on November 19, 1993. Subsequently, the Office of Federal Procurement Policy (OFPP) issued Policy Letter 93-1, effective June 23, 1994, on "Management Oversight of Service Contracting" which together with (1) Policy Letter 92-1, "Inherently governmental Functions"; (2) Policy Letter 91-2, "Service Contracting"; (3) Policy Letter 89-1, Conflict of Interest Applicable to Consultants; (4) OMB Circular A-76; and (5) OFPP's "Guidance on Contract Administration" replace the rescinded Circular A-120. Policy Letter 93-1 directs the FAR Council to promulgate FAR coverage of the policy contained in this letter by December 20, 1994.

Pending the FAR implementation, we propose to implement interim coverage of the Policy Letter with a General Notice that addresses the five principles prescribed by OMB for conducting service contracting plus two other principles that are in keeping with the Policy Letter's urging to agencies to seek other best practices techniques for contract management and that address areas of particular concern in the Agency's service contracting: (1) USAID employee supervision of contractor personnel and (2) program vs OE funding of service contracts.

In order to implement this coverage effectively while meeting the needs of the Agency, it is necessary to deviate from current FAR coverage of service contracting where it conflicts with Policy Letter 93-1 or is redundant to USAID project approval processes, in the following respects:

1. To exclude services procured under small purchases and personal services contracts from the current FAR requirements for advisory and assistance services; and
2. To exclude services that are funded under USAID's project approval processes from the justification and approval processes for advisory and assistance services.

For services under Item 2 above, the requirement to adhere to the principles of Policy Letter 93-1 and the FAR requirement to prepare an assessment of the utility of the deliverables and of the performance of the contractor will remain applicable.

The deviation procedures in FAR Part 1 and AIDAR Part 701 do not specifically envision an Agency-wide deviation from the FAR; rather they provide for the head of a contracting activity to authorize a deviation for his/her contracting activity. But in this particular circumstance, we deem a class deviation applicable to all USAID contracting activities to be appropriate, and that you, as USAID's Procurement Executive, are the appropriate official to authorize such an Agency-wide deviation.

Though FAR and AIDAR coverage of deviations has provided for joint consideration of class deviations from the FAR by USAID and the Chairperson of the Civilian Agency Acquisition Council, USAID's designation as a reinvention laboratory provides the basis for waiving this requirement, pursuant to the attached June 24, 1993 letter from the GSA Office of Acquisition Policy. M/OP/P will inform the Council of the deviation upon its approval.

Recommendations: 1) That you authorize an Agency-wide deviation to the current, outdated FAR 37.204 list of exclusions for advisory and assistance services to:

- i) Exclude services procured under USAID small purchases and personal services contracts; and
- ii) Exclude services procured under USAID project-funded contracting actions with respect to the justification and approval processes for advisory and assistance services under FAR 37.206 and 37.207, as implemented under AIDAR 737. 206.

Item i) of this deviation will expire upon FAR implementation of superseding coverage, and Item ii) will expire two years from the date of approval, or upon FAR implementation of superseding coverage if it is no longer necessary.

2) That you sign the attached Contract Information Bulletin informing contracting officers of the OFPP Policy Letter and the FAR deviation.

3) That you clear the attached General Notice for Agency-wide issuance.

Approve:

Disapprove:

Date:

Attachments: (Not Attached to electronic copy.)

OFPP Policy Letter 93-1

GSA Office of Acquisition Policy letter dated June 24, 1993

CIB: Management Oversight of Service Contracting

General Notice: Management Oversight of Service Contracting