TITLE: CIB 95-12 Deviations

May 1, 1995

MEMORANDUM FOR ALL CONTRACTING OFFICERS AND NEGOTIATORS

FROM: DAA/M, Michael D. Sherwin, Procurement Executive

SUBJECT: Deviations

CONTRACT INFORMATION BULLETIN 95-12

This CIB is being issued as a reminder about deviations. It also
provides new guidance on changes concerning FAR waivers or deviations
which supports reinvention laboratories in their development and
testing of innovative procurement methods.

Both the FAR and the AIDAR are quite specific about what constitutes a
deviation and the approval procedures. FAR 1.401 basically defines a
deviation as any action which is inconsistent with the FAR, including
policies, procedures, solicitation provisions, contract clauses,
methods or practices of conducting acquisition actions of any kind at
any stage of the acquisition process. There are two types of
deviations, individual and class. The procedures for individual
deviations affecting only one contracting action are found at AIDAR
701.470(a). Class deviations are those which affect more than one
contract action or contractor. The procedures for class deviations are
found at AIDAR 701.470(b). It is policy that deviations be kept to a
minimum and only be approved if it is essential to accomplish necessary
procurement and when it clearly in the best interest of the Government.

Individual deviations from both FAR and AIDAR requirements are approved
by the head of the contracting activity (HCA). The request for
deviation shall contain a complete description of the deviation, the
effective date, the circumstances in which the deviation will be used,
the specific reference to the regulation being deviated from, an
indication as to whether any identical or similar deviations have been
approved in the past, a complete justification for the deviation
including any added or decreased cost to the Government, the name of
the contractor, and the contract or task order number. Prior to
submitting the deviation request to the HCA for approval, written
comments must be obtained from the Procurement Policy Division
(M/OP/P).

Class deviations from the AIDAR are processed in the same manner as those for individual deviations. Class deviations from the FAR previously required joint consideration by USAID and the chairperson of the Civilian Agency Acquisition Council (C/CAAC) unless the HCA determined otherwise. With USAID's designation as a reinvention laboratory under the purview of the National Performance Review the process is simpler. Subject to certain limited exceptions, USAID does not, during this time, need to coordinate class deviations with the C/CAAC. So therefore, only HCA approval is required for class deviations. The obvious limitations are the following. First, many FAR provisions implement statutory requirements. Unless otherwise authorized by law, USAID must adhere to the underlying statute. A FAR deviation will not operate to waive the underlying law. Second, certain FAR requirements implement the regulations or directives of other agencies such as those of the Department of Labor, the Office of Management and Budget, and the Small Business Administration. Unless otherwise provided by the underlying directive, a waiver by, or the approval of, the issuing organization will be required to deviate from the requirement.

The intent of the Document Generation System (DGS) was to both simplify and standardize USAID solicitations and awards. While the provisions and clauses on the DGS can be modified, under normal circumstances there should be no changes to the standard text of these documents. Any additive text or clauses that are unique to a requirement should be included in Section H of the contract format and in the Special Provisions section of the grants and cooperative agreements. Also, any change to the standard text constitutes a deviation and the applicable deviation procedures shall be followed. If you find specific problems with the system language, please bring it to the attention of M/OP/SPU, Catherine Green.

Clearance: M/OP, G. Kinney (Draft) Dated 4/25/95.

M/OP/P: FMaki:sms:X875-1534:4/25/95   (deviate)