

TITLE: CIB 98-04 Flat Rate Per Diem for Institutional Contractors

February 10,1998

In recent months, questions have been raised about whether or not institutional contractors are entitled to receive per diem based on a flat rate rather than the lodgings plus meals and incidental expenses method ("lodging plus"), since the Agency was granted a waiver from GSA to convert from "lodging plus" to the fixed rate several months ago for direct hire employees. The purpose of this message is to clarify that the regulations do not require that contractors use the same per diem methodology direct hires use. The Federal Acquisition Regulation (FAR) and the USAID Acquisition Regulation (AIDAR) place limitations on contractors in that they may not pay MORE than the maximum per diem amount in the Standardized Regulations ("SR"), but how they determine the amount is not mandated in either regulation.

The specific references are **AIDAR clause 752.7002 Travel and Transportation (JAN 1990)** and **FAR 31.205-46 Travel costs**. Paragraph (a) of the AIDAR clause states: "The Contractor will be reimbursed for reasonable, allocable and allowable travel and transportation expenses incurred under and for the performance of this contract. Determination of reasonableness, allocability and allowability will be made by the Contracting Officer based on the applicable cost principles, the Contractor's established policies and procedures, USAID's established policies and procedures for USAID direct-hire employees, and the particular needs of the project being implemented by this contract. The following paragraphs provide specific guidance and limitations on particular items of cost. Same clause, paragraph (b) states:

"...Travel allowances for travelers shall not be in excess of the rates authorized in the Standardized Regulations (Government Civilians, Foreign Areas) -- hereinafter referred to as the Standardized Regulations -- as from time to time amended, for not more than the travel time required by scheduled commercial air carrier using the most expeditious route."

This statement in (b) imposes the kind of limitation paragraph (a) was referring to. It does not, however, impose a methodology for reaching that limitation.

The list of bases for the Contracting Officer to determine reasonableness in paragraph (a) starts with the cost principles, followed by the contractor's own policies and procedures. The applicable cost principle is **FAR 31.205-46 Travel costs**, paragraph (a)(1) of which states:

"Costs for lodging, meals, and incidental expenses may be based on per diem, actual expenses, or a combination thereof, provided the method used results in a reasonable charge."

Paragraph (a)(2) goes on to say that

"...costs incurred for lodging, meals, and incidental expenses... shall be considered to be reasonable and allowable only to the extent that they do not exceed on a

daily basis the maximum per diem rates in effect at the time of travel as set forth in the... Standardized Regulations".

Again, the method for reaching the maximum rate isn't mandated; only the maximum rate itself is limited, and the Standardized Regulations list the maximum per diem rate as the total of the lodging plus M&IE. Further, subparagraph (a)(4) states:

"Subparagraphs (a)(2) and (a)(3) of this subsection do not incorporate the regulations cited in subdivisions (a)(2)(i), (ii), and (iii) (SR) of this subsection in their entirety. Only the maximum per diem rates, the definitions of lodging, meals, and incidental expenses, and the regulatory coverage dealing with special or unusual situations are incorporated herein."

Therefore, a contractor whose established policy or procedure uses a fixed rate per diem method with a total rate that is no higher than the SR rate can use this method, unless there is some other aspect of their methodology that is unreasonable.

Finally, even though the list of bases for determining reasonableness includes "USAID's established policies and procedures for USAID direct-hire employees", this phrase alone does not require contractors to use our policies and procedures.

USAID has a waiver from GSA to use fixed rate per diem for direct hire employees, but this waiver does not extend to institutional contractors. In the course of obtaining this waiver, GSA cautioned USAID that there may be tax implications in using fixed rate per diem, and Contractors should be so advised, too, if they chose to use a fixed rate per diem method.

Please direct questions about this CIB to Diane Howard, M/OP/P, at 202-712-0206.