



Acquisition & Assistance Policy Directive (AAPD)

From the Office of the Director, Procurement

Issued: February 12, 2004

AAPD 04-05

Negotiation of New DBA rate for Direct and Host Country Contracts

Subject Category: Acquisition Management (AM);
Assistance (A)
Type: New 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
CIB/AAPD No: 03-08

Precedes change to: AIDAR Part(s) Appendix
 USAID Automated Directives System (ADS) Chapter
 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: 04/04
 No

(SIGNATURE ON FILE)

Timothy T. Beans

PURPOSE: The purpose of this directive is to update guidance relative to Defense Base Act (DBA) coverage and the DBA Waiver List.

BACKGROUND: DESCRIPTION OF DEFENSE BASE ACT (DBA) COVERAGE

DBA coverage is worker's compensation insurance providing that employees may collect in the event that an employee is injured while working on a contract financed by the U. S. Government and performed outside the U.S. DBA coverage also pays benefits to dependents of employees in the event that an employee is killed as a direct result of the employee's employment under an U.S. Government financed contract. DBA coverage is required by statute for employees of contractors and subcontractors regardless of the duration of their assignment. It is over and above any State coverage. Subcontracts under USAID financed contracts are also included in the required coverage.

Personal Services Contractors (PSCs) are exempt from Defense Base Act coverage. PSCs are treated like direct-hire employees for worker's compensation purposes and are covered by the Federal Employees Compensation Act.

The current Defense Base Act **rate** does not apply to grants and cooperative agreements. Recipients of grants and cooperative agreements are required to obtain Defense Base act coverage for employees of contractors who are awarded contracts under assistance instruments. Although the Defense Base Act **rate** does not apply to grants and cooperative agreements, recipients who desire to purchase DBA coverage may negotiate rates at the discretion of the insurance carrier.

WAIVER OF COVERAGE

DBA insurance coverage is required for employees of contractors (and their subcontractors) unless a waiver has been obtained from the U.S. Department of Labor (See FAR 28.305). Blanket waivers from Defense Base Act insurance requirements have been issued by the Department of Labor for foreign nationals in over 100 countries in which USAID has or had programs. Foreign national employees covered by this waiver (and/or their employers) are exempt from the requirement to secure Defense Base Act Insurance. Foreign national employees and their employers should be aware that even though they do not have to secure Defense Base Act coverage, foreign national employees must be provided worker's compensation benefits as prescribed in applicable foreign laws. However, the waivers do not apply to any employee who is:

1. A citizen of the United States;
2. A resident of the United States; or,
3. Hired in the United States.

The attached DBA Waiver List (Attachment 1) identifies all countries for which foreign national employees and/or their employers are exempt from the requirement to secure Defense Base Act coverage.

CONTRACT CLAUSES

As prescribed in FAR 28.309 (a) The contracting officer shall insert the clause at 52.228-3, Workers' Compensation Insurance (Defense Base Act), in solicitations and contracts when the Defense Base Act applies (see 28.305) and-

- (1) The contract will be a public-work contract performed outside the United States; or

(2) The contract will be approved or financed under the Foreign Assistance Act of 1961 (Pub. L. 87-195) and is not excluded by 28.305(b) (2).

**FAR 52.228-3 Workers' Compensation Insurance (Defense Base Act)
(Apr 1984)**

The Contractor shall (a) provide, before commencing performance under this contract, such workers' compensation insurance or security as the Defense Base Act (42 U.S.C. 1651, *et seq.*) requires and (b) continue to maintain it until performance is completed. The Contractor shall insert, in all subcontracts under this contract to which the Defense Base Act applies, a clause similar to this clause (including this sentence) imposing upon those subcontractors this requirement to comply with the Defense Base Act.

(End of clause)

In accordance with AIDAR 728.309, the USAID Contracting Officer shall add the supplemental coverage at AIDAR 752.228-3 to the clause specified in FAR 52.228-3.

752.228-3 Worker's Compensation Insurance (Defense Base Act).

As prescribed in 728.309, the following supplemental coverage is to be added to the clause specified in FAR 52.228-3 by the USAID contracting officer. (See FAR 52.228)

(a) The Contractor agrees to procure Defense Base Act (DBA) insurance pursuant to the terms of the contract between USAID and USAID's DBA insurance carrier unless the Contractor has a DBA self insurance program approved by the Department of Labor or has an approved retrospective rating agreement for DBA.

b) If USAID or the Contractor has secured a waiver of DBA coverage (see AIDAR 728.305-70(a)) for contractor's employees who are not citizens of, residents of, or hired in the United States, the contractor agrees to provide such employees with worker's compensation benefits as required by the laws of the country in which the employees are working, or by the laws of the employee's native country, whichever offers greater benefits.

(c) The Contractor further agrees to insert in all subcontracts hereunder to which the DBA is applicable, a clause similar to this clause, including this sentence, imposing on all subcontractors a like requirement to provide overseas workmen's compensation insurance coverage and obtain DBA coverage under the USAID requirements contract.

(End of clause)

ProDoc Change: The current ProDoc clause entitled, "Insurance and Services" is being changed and separate clauses are being developed for Defense Base Act Worker's Compensation Insurance and for MEDEX insurance. Until such changes are effective, the following information should be included in all contracts requiring DBA insurance:

Pursuant to AIDAR 752.228-3 Worker's Compensation Insurance (Defense Base Act); USAID's DBA insurance agent is:

Rutherford International, Inc.
5500 Cherokee Avenue, Suite 300
Alexandria, VA 22312

Points of Contact:
Sara Payne or Diane Proctor
(703) 354-1616

Hours of Operation are: 8 a.m. to 5 p.m. (EST)
Telefax: 703) 354-0370
E-Mail: www.rutherford.com

POLICY: USAID awarded a contract to Fidelity and Casualty of New York to provide Defense Base Act (DBA) coverage to USAID direct and host country contractors which includes a provision for periodic adjustment of the basic rate. The contract was awarded using full and open competition. The incumbent contractor won the competition. The period of performance for the new contract is a two year base period with three one-year option periods. The fixed rate for the two year base period of the contract, October 1, 2003 - September 30, 2005, is \$2.15 per \$100 of employee remuneration. A policy directive will be issued to provide information regarding exercise of option rates applicable after September 30, 2005.

Applications for coverage should be made directly to:

Rutherford International, Inc.
5500 Cherokee Avenue, Suite 300
Alexandria, VA 22312

Points of Contact:
Sara Payne or Diane Proctor
(703) 354-1616

Hours of Operation are: 8 a.m. to 5 p.m.
(Eastern Standard Time)

Telefax: (703) 354-0370 Website: www.rutherford.com

Applications may be requested by telephone or facsimile and coverage will be effective the day the covered individual leaves the United States. Applicants should request coverage in accordance with USAID Contract No. REE-Q-00-03-00090 with Fidelity and Casualty of New York.

Rutherford International, Inc., the administrative agent for Fidelity and Casualty of New York, will require a faxed copy of the Application for Defense Base Act Coverage. Applications and complete information and instructions are available directly from Rutherford International, Inc. or from the Rutherford web-site. Copies of Department of Labor (DOL) forms necessary to make an initial report of injury or illness are available at DOL website: www.DOL.gov.

Coverage is effective on the date listed on the application form as the

"coverage effective date" (the date the individual leaves the United States). "Date of application" is the date Rutherford invoices the applicant. For new business, the applicant has 10 days from the date of application (Rutherford's invoice date) to submit the premium. For renewal business, the applicant has 30 days from the date of application (Rutherford's invoice date) to submit the premium. Rutherford may adjust the application date, at its option, to meet particular circumstances.

COST OF COVERAGE

For the period October 1, 2003 - September 30, 2005, the rate is \$2.15 per \$100 of employee remuneration for all USAID financed contracts, subcontracts and subordinate contracts for both direct and host country contracts. For the purpose of this contract, employee remuneration is defined as salary plus overseas recruitment incentive and post differential, but excludes per diem, housing allowance, travel expenses, temporary quarters allowance, education allowance and other miscellaneous post allowances.

POINT OF CONTACT: Gwendolyn Little, Office of Procurement Evaluation Division, M/OP/E, Phone: 202-712-5473, E-mail:glittle@usaid.gov.

DEFENSE BASE ACT (DBA) WAIVER LIST

Albania	Haiti	St Lucia
Antigua	Honduras	St. Vincent
Armenia	Hungary	Senegal
Azerbaijan	India	Serbia
Bahamas	Indonesia	Seychelles
Bangladesh	Israel	Sierra Leone
Barbados	Italy	Slovak Republic
Belarus	Jamaica	Slovenia
Belize	Jordan	Somalia
Benin	Kazakhstan	South Africa
Bolivia	Kenya	Sri Lanka
Bosnia & Herzegovina	Korea	Sudan
Botswana	Kyrgyzstan	Swaziland
Brazil	Latvia	Syria
Bulgaria	Lebanon	Tajikistan
Burkina Faso	Lesotho	Tanzania
Burundi	Liberia	Thailand
Cambodia	Lithuania	Togo
Cameroon	Macedonia	Tonga
Cape Verde	Madagascar	Tunisia
Chad	Malawi	Turkey
Chile	Mali	Turkmenistan
Colombia	Mauritania	Uganda
Costa Rica	Mauritius	Ukraine
Cote d'Ivoire	Mexico	Uruguay
Croatia	Moldova	Uzbekistan
Czech Republic	Mongolia	Vietnam
Democratic Republic of the Congo	Montenegro	Western Samoa
Djibouti	Morocco	Yemen
Dominica	Mozambique	Yugoslavia
Dominican Republic	Namibia	Zambia
Ecuador	Nepal	Zimbabwe
Egypt	New Caledonia	
El Salvador	Nicaragua	
Equatorial Guinea	Niger	
Estonia	Nigeria	
Ethiopia	Oman	
Fiji	Pakistan	
Gambia	Panama	
Georgia	Papua New Guinea	
Ghana	Paraguay	
Grenada	Peru	
Guatemala	Philippines	
Guinea	Poland	
Guinea-Bissau	Portugal	
Guyana	Romania	
	Russian Federation	
	Rwanda	
	St. Christopher & Nevis	

Attachment 1

