

(a) The contracting officer has determined that an advance payment is necessary and appropriate in accordance with this subpart and the guidance provided in FAR 32.4;

(b) USAID has, or expects to have, a continuing relationship of at least one year with the organization, and the annual amount required for advance financing will be at least \$50,000; and

(c) The Office of Financial Management, Cash Management and Payment Division (FM/CMP) agrees that the LOC payment method is appropriate.

[56 FR 67225, Dec. 30, 1991, as amended at 61 FR 39093, July 26, 1996]

732.406-72 Establishing an LOC.

(a) While the contract will provide for the use of an LOC when it is justified under subsection 732.406-71, the LOC is a separate agreement between the contractor and FM/CMP, acting on behalf of the USAID Controller. The terms and conditions of the LOC are established by FM/CMP/GIB.

(b) In order to establish or amend an LOC, the contracting officer shall provide FM/CMP with the following information:

- (1) The name of the Contractor;
- (2) The official 16 digit USAID contract number;
- (3) The obligated amount of the contract;
- (4) The budget plan code for the obligated funds;
- (5) The effective date and estimated completion date.
- (6) The contractor Federal Tax Identification Number.

This information should be provided in writing to FM/CMP together with a request to establish or amend an LOC as early in the negotiation cycle as possible.

(c) FM/CMP will prepare the LOC in accordance with USAID's LOC procedures; issue or amend and maintain the LOC in accordance with its terms and USAID procedures and regulations; and provide the contracting officer(s) a copy of each LOC and any other material governing its use at the time the LOC is issued or when it is amended or modified.

[56 FR 67225, Dec. 30, 1991, as amended at 61 FR 39093, July 26, 1996]

732.406-73 LOC contract clause.

If payment is to be provided by LOC, the contract shall contain the clause in subsection 752.232-70.

732.406-74 Revocation of the LOC.

If during the term of the contract FM/CMP believes that the LOC should be revoked, FM/CMP may, after consultation with the cognizant contracting officer(s) and GC, revoke the LOC by written notification to the contractor. A copy of any such revocation notice will immediately be provided to the cognizant contracting officer(s).

PART 733—PROTESTS, DISPUTES, AND APPEALS

Subpart 733.1—Protests

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733.270-1 Designation of Armed Services Board of Contract Appeals (ASBCA) to hear and determine appeals under USAID contracts.

733.270-2 Special procedures regarding contract disputes appeals promulgated pursuant to paragraph 2 of the Administrator's designation.

AUTHORITY: Sec. 621, Pub. L. 87-195, 73 Stat. 445 (22 U.S.C. 2381), as amended: E.O. 12163, Sept. 29, 1979, 44 FR 56673, 3 CFR, 1979 Comp. p. 435.

Subpart 733.1—Protests

SOURCE: 61 FR 39094, July 26, 1996, unless otherwise noted.

733.101 Definitions.

(a) "Procurement Executive" is defined in AIDAR 702.170-13.

(b) All "days" referred to in this subpart are deemed to be "calendar days", in accordance with FAR 33.101. In the case of USAID overseas offices with non-Saturday/Sunday weekend schedules, the official post weekend applies in lieu of Saturday and Sunday.

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(c) All other terms defined in FAR 33.101 are used herein with the same meaning.

733.103-70 Protests to the agency.

USAID follows the agency protest procedures in FAR 33.103, as supplemented by this section.

733.103-71 Filing of protest.

(a) Protests must be in writing and addressed to the Contracting Officer for consideration by the Procurement Executive.

(b) A protest shall include, in addition to the information required in FAR 33.103(d)(2), the name of the issuing Mission or office.

(c) Material submitted by a protester will not be withheld from any interested party outside the government or from any government agency if the Procurement Executive decides to release such material, except to the extent that the withholding of such information is permitted or required by law or regulation.

[61 FR 39094, July 26, 1996; 61 FR 51235, Oct. 1, 1996]

733.103-72 Responsibilities.

(a) *Procurement Executive.* The decision regarding an agency protest shall be made by the Procurement Executive within 30 days from the date a proper protest is filed unless the Procurement Executive determines that a longer period is necessary to resolve the protest, and so notifies the protester in writing. The Procurement Executive shall make his or her decision after personally reviewing and considering all aspects of the case as presented in the protest itself and in any documentation provided by the contracting officer, and after obtaining input and clearance from the Assistant General Counsel for Litigation and Enforcement (GC/LE). The decision shall be in writing and constitutes the final decision of the Agency.

(b) *Contracting Officer.* The Contracting Officer is responsible for requesting an extension of the time for acceptance

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of offers as described in FAR 33.103(f)(2).

[61 FR 39094, July 26, 1996; 61 FR 51235, Oct. 1, 1996]

733.103-73 Protests excluded from consideration.

(a) *Contract administration.* Disputes between a contractor and USAID are resolved pursuant to the disputes clause of the contract and the Contract Disputes Act of 1978.

(b) *Small business size standards and standard industrial classification.* Challenges of established size standards or the size status of particular firms, and challenges of the selected standard industrial classification are for review solely by the Small Business Administration.

(c) *Procurement under Section 8(a) of the Small Business Act.* Contracts are let under Section 8(a) of the Small Business Act to the Small Business Administration solely at the discretion of the Contracting Officer, and are not subject to review.

(d) *Protests filed in the General Accounting Office (GAO).* Protests filed with the GAO will not be reviewed.

(e) *Procurements funded by USAID to which USAID is not a party.* No protest of a procurement funded by USAID shall be reviewed unless USAID is a party to the acquisition agreement.

(f) *Subcontractor protests.* Subcontractor protests will not be considered.

(g) *Judicial proceedings.* Protests will not be considered when the matter involved is the subject of litigation before a court of competent jurisdiction or when the matter involved has been decided on the merits by a court of competent jurisdiction.

(h) *Determinations of responsibility by the contracting officer.* A determination by the contracting officer that a bidder or offeror is or is not capable of performing a contract will not be reviewed by the Procurement Executive.

(i) *Small Business Certificate of Competency Program.* Any referral made to the Small Business Administration pursuant to section 8(b)(7) of the Small Business Act, or any issuance of, or refusal to issue, a certificate of competency under that section will not be

reviewed by the Procurement Executive.

Subpart 733.27—USAID Procedures for Disputes and Appeals

733.270-1 Designation of Armed Services Board of Contract Appeals (ASBCA) to hear and determine appeals under USAID contracts.

(a) The ASBCA is hereby designated the authorized representative of the Administrator of the U.S. Agency for International Development (USAID) in hearing, considering, and determining as fully and finally as might the Administrator, appeals by contractors from decisions on disputed questions taken pursuant to the provisions of contracts requiring the determination of such appeals by the Administrator or his/her duly authorized representative or Board.

(b) In acting under this designation, the ASBCA will follow such rules and procedures as are or may be prescribed for the conduct of Defense Department contract appeal cases, except for the rules entitled "Forwarding of Appeals" (Rule 3) and "Duties of the Contracting Officer" (Rule 4), which subjects will be governed by procedures to be promulgated by the General Counsel of USAID with approval of the Chairman of the ASBCA.

(c) The General Counsel of USAID will assure representation of the interests of the Government in proceedings before the ASBCA.

(d) All officers and employees of USAID will cooperate with the ASBCA and Government counsel in the processing of appeals so as to assure their speedy and just determination.

[53 FR 4980, Feb. 19, 1988. Redesignated at 61 FR 39095, July 26, 1996; 61 FR 51235, Oct. 1, 1996]

733.270-2 Special procedures regarding contract disputes appeals promulgated pursuant to paragraph 2 of the Administrator's designation.

(a) The following rules will apply, in lieu of Rules 3 and 4(a) of the ASBCA, to contract dispute appeals to the Administrator of the USAID or his/her authorized representative which are docketed with that Board.

(b) Rule 3 (USAID)—Forwarding of Appeals. When a notice of appeal in any form has been received by the contracting officer, he/she shall endorse thereon the date of mailing (or date of receipt, if otherwise conveyed) and within 10 days shall forward said notice of appeal to the Board with a copy to the USAID General Counsel in Washington, DC. Following receipt by the Board of the original notice of an appeal (whether through the contracting officer or otherwise), the contractor, the contracting officer, and the USAID General Counsel will be promptly advised of its receipt, and the contractor will be furnished a copy of these rules.

(c) Rule 4 (USAID). Preparation, Contents, Organization, Forwarding, and Status of Appeal File (Supersedes Rule 4, "Duties of Contracting Officer" of the ASBCA rules in effect on April 1, 1980).

(d) Duties of Contracting Officer. Within 30 days of receipt of an appeal or advice that an appeal has been filed, the contracting officer shall assemble and transmit to the USAID General Counsel in Washington, DC, two copies of all documents pertinent to the appeal, including:

(1) The decision and findings of fact from which appeal is taken;

(2) The contract, including specifications and pertinent amendments, plans and drawings;

(3) All correspondence between the parties pertinent to the appeal, including the letter or letters of claim in response to which the decision was issued;

(4) All transcripts of any testimony taken during the course of proceedings, and affidavits or statements of any witnesses on the matter in dispute made prior to the filing of the notice of appeal with the Board; and

(5) Any additional information considered pertinent.

(e) The General Counsel will compile the appeal file from such documents, which file must contain the items enumerated in paragraphs (d) (1) through (5) of this section and will promptly, and in any event within 65 days after the appeal is docketed by the Board, transmit the appeal file to the Board. The General Counsel will notify the appellant when he/she has compiled the

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appeal file, will provide him/her with a list of its contents, and will afford him/her an opportunity to examine the complete file at the office of the Board and, if the General Counsel deems it appropriate, at any overseas location, for the purpose of satisfying himself/herself as to the contents, and furnishing or suggesting any additional docu-

mentation deemed pertinent to the appeal. After receipt of the foregoing file, as it may be augmented at the time of receipt, the Board will promptly advise the parties.

[53 FR 4980, Feb. 19, 1988. Redesignated at 61 FR 39095, July 26, 1996; 61 FR 51235, Oct. 1, 1996; 62 FR 40469, July 29, 1997]