

731.771

items) which are included in the budget of this award.

[49 FR 13250, Apr. 3, 1984, as amended at 50 FR 50302, Dec. 10, 1985; 51 FR 20651, June 6, 1986; 56 FR 67225, Dec. 30, 1991]

731.771 Bid and proposal costs.

Pending the establishment of Government-wide principles in Attachment B of OMB Circular A-122, USAID will treat bid and proposal costs as follows:

(a) Bid and proposal costs are the costs of preparing bids, proposals, and applications for potential activities such as Government and non-Government grants, contracts and other agreements, including the development of scientific, cost, and other data needed to support such bids, proposals, and applications. Except as provided in (b) below, bid and proposal costs of the current accounting period of both successful and unsuccessful bids and proposals normally should be treated as indirect costs for allocation to all current activities, and no bid and proposal costs of past accounting periods will be allocable to the current period. However, if the organization's established practice is to treat bid and proposal costs by some other method, the results obtained may be accepted only if found to be reasonable and equitable.

(b) Bid and proposal costs incurred by the organization to obtain unrestricted funds are to be treated as fund raising and allocated an appropriate share of indirect costs under the conditions described in paragraph B.3 of Attachment A to OMB Circular A-122.

731.772 Compensation for personal services.

The policies set for in AIDAR 731.205-6 are also applicable to contracts with a nonprofit organization.

[57 FR 5236, Feb. 13, 1992]

731.773 Independent research and development costs.

Pending establishment of Government-wide principles in Attachment B of OMB Circular A-122, USAID will apply the cost principles at FAR 31.205-18 for independent research and development costs.

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731.774 Overseas recruitment incentive.

USAID's policies regarding overseas recruitment incentives are set forth in AIDAR 731.205-70. These policies are also applicable to contracts with a nonprofit organization.

[57 FR 5236, Feb. 13, 1992]

PART 732—CONTRACT FINANCING

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AUTHORITY: Sec. 621, Pub. L. 87-195, 75 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 732.1—General

732.111 Contract clauses.

(a) [Reserved]

(b) USAID may obtain short term and (less frequently) long-term indefinite quantity professional services through Agency-specific indefinite quantity contracts that are a combination of contract types. Rather than using the fixed-price payment clauses for indefinite quantity contracts, when these IQCs provide for fixed daily rates (which may include wages, overhead, general and administrative expenses, fringe benefits, and profit) for services and reimbursement of other direct costs (such as travel and transportation) at cost, then the payment clause at 752.232-7 shall be used in the contract.

[61 FR 39094, July 26, 1996]

Subpart 732.4—Advance Payments

SOURCE: 56 FR 67225, Dec. 30, 1991, unless otherwise noted.

732.401 Statutory authority.

(a) Sections 635 (b) of the Foreign Assistance Act and Executive Order 11223, May 12, 1965, 30 FR 6635, permit the making of advance payments with respect to functions authorized by the Foreign Assistance Act. Advance payments may also be made under section 305 of the Federal Property and Administrative Services Act of 1949, which provides authority, not otherwise available to USAID, to take a paramount lien.

(b) The Act of August 28, 1968, Public Law 85-804 does not apply to USAID.

[56 FR 67225, Dec. 30, 1991, as amended at 62 FR 40469, July 29, 1997]

732.402 General.

(a)-(d) [Reserved]

(e)(1) U.S. Dollar advances to for-profit organizations, including advances for disbursement to grantees, shall be processed and approved in accordance with ADS 583.5.6b.

(2) All local currency advances to for-profit organizations require the approval of the Head of the Contracting Activity, after consultation with the Mission Controller.

[56 FR 67225, Dec. 30, 1991, as amended at 61 FR 39093, July 26, 1996; 64 FR 5008, Feb. 2, 1999; 64 FR 42042, Aug. 3, 1999]

732.403 Applicability.

References to nonprofit contracts with nonprofit educational or research institutions for experimental, research and development work include nonprofit contracts with nonprofit institutions for: (a) technical assistance services provided to or for another country or countries, and (b) projects which concern studies, demonstrations and similar activities related to economic growth or the solution of social problems of developing countries.

732.406-70 Agency-issued letters of credit.

This subsection provides guidance on use of USAID issued letters of credit (LOC) for advance payments.

732.406-71 Circumstances for use of an LOC.

An LOC shall be used under the following circumstances:

(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 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; 64 FR 42042, Aug. 3, 1999]

732.406-73 LOC contract clause.

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

(b) Contracting offices shall ensure that an appropriate (48 CFR) FAR payment clause is also included in the contract, in the event that the LOC is revoked pursuant to 732.406-74.

[56 FR 67225, Dec. 30, 1991, as amended at 64 FR 5008, Feb. 2, 1999]

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

Sec.

733.101 Definitions.

733.103-70 Protests to the agency.

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733.103-72 Responsibilities.

733.103-73 Protests excluded from consideration.

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.

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) 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.

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

[61 FR 39094, July 26, 1996, as amended at 64 FR 42042, Aug. 3, 1999]

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 M/OP Director.

(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 M/OP Director 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, as amended at 64 FR 42040, Aug. 3, 1999]

733.103-72 Responsibilities.

(a) *M/OP Director*. The decision regarding an agency protest shall be made by the M/OP Director within 30 days from the date a proper protest is filed unless the M/OP Director determines that a longer period is necessary to resolve the protest, and so notifies the protester in writing. The M/OP Director 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.