

## SUBCHAPTER B—ACQUISITION PLANNING

### PART 705—PUBLICIZING CONTRACT ACTIONS

Sec.  
705.002 Policy.

#### Subpart 705.2—Synopsis of Proposed Contract Actions

705.202 Exceptions.  
705.207 Preparation and transmittal of certain synopses.  
705.502 Authority.

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; 40 U.S.C. 474.

#### 705.002 Policy.

(a) USAID's Office of Small and Disadvantaged Business Utilization maintains an USAID Consultant Registry Information System (ACRIS), which serves as a reference source and an indication of a prospective contractor's interest in performing USAID contracts. Prospective contractors are invited to file the appropriate form (Standard Forms 254/255, Architect-Engineer and Related Services Questionnaire; or USAID Form 1420-50, USAID Consultant Registry Information System (ACRIS) Organization and Individual Profile) with USAID's Office of Small and Disadvantaged Business Utilization (Department of State, U.S. Agency for International Development, Washington, DC 20523-1414—Attention: Office of Small and Disadvantaged Business Utilization). These forms should be updated annually.

(b) USAID policy is to include all Commerce Business Daily Notices and solicitations on the Internet.

[50 FR 40976, Oct. 8, 1985, and 50 FR 51396, Dec. 17, 1985, as amended at 52 FR 21058, June 4, 1987; 56 FR 2699, Jan. 24, 1991; 62 FR 40467, July 29, 1997]

#### Subpart 705.2—Synopsis of Proposed Contract Actions

##### 705.202 Exceptions.

(a) [Reserved]  
(b) The head of the U.S. Agency for International Development has deter-

mined after consultation with the Administrator for Federal Procurement Policy and the Administrator of the Small Business Administration, that advance notice is not appropriate or reasonable for contract actions described in 706.302-70(b)(1) through (b)(3).

(c) Advance notice is not required for contract actions undertaken in accordance with 706.302-71.

[51 FR 42845, Nov. 26, 1986, as amended at 54 FR 28069, July 5, 1989; 55 FR 8469, Mar. 8, 1990; 55 FR 39154, Sept. 25, 1990; 56 FR 27208, June 13, 1991; 57 FR 5235, Feb. 13, 1992]

##### 705.207 Preparation and transmittal of certain synopses.

The responsible contracting officer shall notify USAID's Office of Small and Disadvantaged Business Utilization (OSDBU) at least seven business days before publicizing a solicitation in the Commerce Business Daily for an acquisition:

(a) Which is to be funded from amounts referred to in section 706.302-71(a); and

(b) Which is expected to exceed \$100,000.

For exceptions, see 726.7005.

[56 FR 27208, June 13, 1991, as amended at 62 FR 40467, July 29, 1997]

##### 705.502 Authority.

(a) The M/OAA Director, acting as head of the Agency under the authority of 701.601(a)(1), hereby authorizes USAID contracting officers to place paid advertisements and notices in newspapers and periodicals. Contracting officers shall document the contract file to reflect consideration of the requirements of (48 CFR) FAR 5.101(b)(4).

[64 FR 5006, Feb. 2, 1999, as amended at 64 FR 42042, Aug. 3, 1999; 72 FR 19670, Apr. 19, 2007]

### PART 706—COMPETITION REQUIREMENTS

Sec.  
706.003 Definitions.

Subparts 706.1-706.2 [Reserved]

## 706.003

## 48 CFR Ch. 7 (10-1-10 Edition)

### Subpart 706.3—Other Than Full and Open Competition

706.302-5 Authorized or required by statute.  
706.302-70 Impairment of foreign aid programs.

706.302-71 Small disadvantaged businesses.  
706.303-1 Requirements.

### Subpart 706.5—Competition Advocates

706.501 Requirement.

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; 40 U.S.C. 474.

### 706.003 Definitions.

*Procuring activity* means “contracting activity”, as defined in 702.170-3.

[50 FR 40528, Oct. 4, 1985]

### Subparts 706.1–706.2 [Reserved]

### Subpart 706.3—Other Than Full and Open Competition

#### 706.302-5 Authorized or required by statute.

Certain annual appropriations acts authorize USAID to contract with certain disadvantaged enterprises using other than full and open competition. The provisions implementing this authority are set forth in 706.302-71 and part 726.

[58 FR 8702, Feb. 17, 1993, as amended at 62 FR 40467, July 29, 1997]

#### 706.302-70 Impairment of foreign aid programs.

(a) *Authority.* (1) Citation: 40 U.S.C. 474.

(2) Full and open competition need not be obtained when it would impair or otherwise have an adverse effect on programs conducted for the purposes of foreign aid, relief, and rehabilitation.

(b) *Application.* This authority may be used for:

(1) An award under section 636(a)(3) of the Foreign Assistance Act of 1961, as amended, involving a personal services contractor serving abroad;

(2) An award of \$250,000 or less by an overseas contracting activity;

(3)(i) An award for which the Assistant Administrator responsible for the project or program makes a formal

written determination, with supporting findings, that compliance with full and open competition procedures would impair foreign assistance objectives, and would be inconsistent with the fulfillment of the foreign assistance program; or

(ii) Awards for countries, regions, projects, or programs for which the Administrator of USAID makes a formal written determination, with supporting findings, that compliance with full and open competition procedures would impair foreign assistance objectives, and would be inconsistent with the fulfillment of the foreign assistance program.

(4) Awards under AIDAR 715.370-1 (Title XII selection procedure—general) or 715.370-2 (Title XII selection procedure—collaborative assistance).

(5) An award for the continued provision of highly specialized services when award to another resource would result in substantial additional costs to the government or would result in unacceptable delays.

(c) *Limitations.* (1) Offers shall be requested from as many potential offerors as is practicable under the circumstances. While the authority at 706.302-70(b)(5) is for use when the contracting officer determines that the incumbent contractor is the only practicable, potential offeror, the requirement to publicize the intended award, as required in FAR 5.201, still applies.

(2) The contract file must include appropriate explanation and support justifying the award without full and open competition, as provided in FAR 6.303, except that determinations made under 706.302-70(b)(3) will not be subject to the requirement for contracting officer certification or to approvals in accord with FAR 6.304.

(3) The authority in 706.302-70(b)(3)(i) shall be used only when no other authority provided in FAR 6.302 or AIDAR 706.302 is suitable. The specific foreign assistance objective which would be impaired must be identified and explained in the written determination and finding. Prior consultation with the Agency Competition Advocate (see 706.501) is required before executing the written determination and finding, and this consultation must

## Agency for International Development

## 706.501

be reflected in the determination and finding.

(4) Use of the authority in 706.302-70(b)(5) for proposed follow-on amendments in excess of one year or over \$250,000 is subject to the approval of the Agency Competition Advocate. For all other follow-on amendments using this authority, the contracting officer's certification required in FAR 6.303-2(a)(12) will serve as approval.

[50 FR 40976, Oct. 8, 1985, and 50 FR 51395, Dec. 17, 1985, as amended at 54 FR 28069, July 5, 1989; 54 FR 46389, Nov. 3, 1989; 57 FR 5235, Feb. 13, 1992; 61 FR 39091, July 26, 1996; 62 FR 40467, July 29, 1997; 64 FR 42042, Aug. 3, 1999]

### 706.302-71 Small disadvantaged businesses.

(a) *Authority.* (1) Citations: Sec. 579, Pub. L. 101-167 (Fiscal Year (FY) 1990), Sec. 567, Pub. L. 101-513 (FY 1991), Sec. 567, Pub. L. 102-145 (FY 1992), Sec. 562, Pub. L. 102-391 (FY 1993), Sec. 558, Pub. L. 103-87 (FY 1994), and Sec. 555, Pub. L. 103-306 (FY 1995).

(2) Except to the extent otherwise determined by the Administrator, not less than ten percent of the amounts made available through the appropriations cited in paragraph (a)(1) of this section for development assistance and for assistance for famine recovery and development in Africa shall be used only for activities of disadvantaged enterprises (as defined in 726.7002). In order to achieve its goal, USAID is authorized in the cited statutes to use other than full and open competition to award contracts to small business concerns owned and controlled by socially and economically disadvantaged individuals (small disadvantaged businesses as defined in 726.7002), historically black colleges and universities, colleges and universities having a student body of which more than 40 percent of the students are Hispanic Americans, and private voluntary organizations which are controlled by individuals who are socially and economically disadvantaged, as the terms are defined in 726.7002.

(b) *Application.* This authority may be used only if the Agency determines in accordance with 726.7004 that:

(1) The acquisition is to be funded from amounts referred to in paragraph (a) of this section;

(2) Award of the acquisition to an eligible organization is appropriate to meet the requirement in paragraph (a)(2) of this section; and

(3) After considering whether the acquisition can be made under the authority of section 8(a), award under section 8(a) is not practicable.

(c) *Limitations.* (1) Offers shall be requested from as many potential offerors as is practicable under the circumstances.

(2) Use of this authority is not subject to the requirements in FAR 6.303 and FAR 6.304, provided that the contract file includes a certification by the contracting officer stating that the procurement is being awarded pursuant to 706.302-71 and that the application requirements and limitations of 706.302-71 (b) and (c) have been complied with.

[56 FR 27208, June 13, 1991, as amended at 58 FR 8702, Feb. 17, 1993; 61 FR 51235, Oct. 1, 1996; 62 FR 40467, July 29, 1997]

### 706.303-1 Requirements.

(a)-(c) [Reserved]

(d) USAID project procurements are generally not subject to the Trade Agreements Acts of 1979 (see 725.403 of this chapter). To the extent procurements are made under the authority of FAR 6.302-3(a)(2)(i) or FAR 6.302-7 with Operating Expenses (OE) Funds, the Contracting Officer shall send a copy of the justification to the Office of the United States Trade Representative, 600 17th Street, NW., Washington, DC 20506, ATTN: Director, International Procurement Policy.

[50 FR 16086, Apr. 24, 1985]

## Subpart 706.5—Competition Advocates

### 706.501 Requirement.

The USAID Administrator delegated the authority to designate the agency competition advocate and a competition advocate for each agency procuring activity (see 706.003 of this part) to the M/OAA Director. The M/OAA Director, under the Administrator's delegation, has designated the M/OAA Deputy Director for Policy, Evaluation and Support as the Agency's competition advocate and the deputy head of each

contracting activity as the competition advocate for each activity. The competition advocate for M/OAA is the Deputy Director for Operations. If there is no deputy, the head of the contracting activity is designated the competition advocate for that activity. The competition advocate's duties may not be redelegated, but can be exercised by persons serving as acting deputy (or acting head) of the contracting activity. For definitions of contracting activity and head of contracting activity, see 702.170–3 and 702.170–10, respectively.

[59 FR 33446, June 29, 1994, as amended at 64 FR 5006, Feb. 2, 1999; 64 FR 42040, Aug. 3, 1999; 72 FR 19670, Apr. 19, 2007]

## PART 707—ACQUISITION PLANNING

### Subpart 707.1—Acquisition Plans [Reserved]

## PART 709—CONTRACTOR QUALIFICATIONS

Sec.

### Subpart 709.4—Debarment, Suspension and Ineligibility

709.403 Definitions.

### Subpart 709.5—Organizational Conflicts of Interest

709.503 Waiver.

709.507–2 Contract clause.

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 709.4—Debarment, Suspension and Ineligibility

#### 709.403 Definitions.

*Debarring official* in USAID is the M/OAA Director.

*Suspending official* in USAID is the M/OAA Director.

[62 FR 40467, July 29, 1997, as amended at 64 FR 42040, Aug. 3, 1999; 72 FR 19670, Apr. 19, 2007]

## Subpart 709.5—Organizational Conflicts of Interest

### 709.503 Waiver.

For purposes of approving waivers or further delegating the authority to approve waivers pursuant to FAR 9.503, the M/OAA Director is the Agency head (see AIDAR 701.601(a)(1)). The M/OAA Director hereby delegates the authority to approve waivers pursuant to FAR 9.503 to the heads of USAID contracting activities, as defined in AIDAR 702.170–10.

[64 FR 42042, Aug. 3, 1999, as amended at 72 FR 19670, Apr. 19, 2007]

### 709.507–2 Contract clause.

(a)–(b) [Reserved]

(c) In order to avoid problems from organizational conflicts of interest that may be discovered after award of a contract, the clause found at 752.209–71 shall be inserted in all contracts whenever the solicitation or resulting contract or both include a provision in accordance with (48 CFR) FAR 9.507–1, or a clause in accordance with (48 CFR) FAR 9.507–2, establishing a restraint on the contractor's eligibility for future contracts.

[58 FR 42255, Aug. 9, 1993, as amended at 64 FR 5006, Feb. 2, 1999]

## PART 711—DESCRIBING AGENCY NEEDS

Sec.

711.002–70 Metric system waivers.

711.002–71 Solicitation provisions and contract clauses.

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.

### 711.002–70 Metric system waivers.

(a) *Criteria.* The FAR 11.002(b) requirement to use the metric system of measurement for specifications and quantitative data that are incorporated in or required by USAID contracts may be waived when USAID determines in writing that such usage is impractical or is likely to cause U.S. firms to experience significant inefficiencies or the loss of markets.