

SUBCHAPTER H—CLAUSES AND FORMS

PART 752—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

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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.

SOURCE: 49 FR 13259, Apr. 3, 1984, unless otherwise noted.

Subpart 752.2—Texts of Provisions and Clauses

752.200 Scope of subpart.

None of the clauses specified in this subpart are for use in USAID personal services contracts. For personal services contract clauses, see AIDAR Appendix D—Direct USAID Contracts

with U.S. Citizens or U.S. Residents for Personal Services Abroad and AIDAR Appendix J—Direct USAID Contracts with Cooperating Country Nationals and with Third Country Nationals for Personal Services Abroad.

[49 FR 13259, Apr. 3, 1984, as amended at 51 FR 11450, Apr. 3, 1986; 51 FR 12706, Apr. 15, 1986; 57 FR 5236, Feb. 13, 1992; 62 FR 40469, July 29, 1997]

752.202-1 Definitions.

(a) As prescribed in 702.270 and in FAR Subpart 2.2, USAID contracts use the Definitions clause in FAR 52.202-1 and its Alternate I, as appropriate, and the following additional definitions.

(b) *Alternate 70*. For use in all USAID contracts. Use in addition to the clause in FAR 52.202-1.

USAID DEFINITIONS CLAUSE—GENERAL SUPPLEMENT FOR USE IN ALL USAID CONTRACTS (JAN 1990)

(a) *USAID* shall mean the U.S. Agency for International Development.

(b) *Administrator* shall mean the Administrator or the Deputy Administrator of USAID.

(c) When this contract is with an educational institution *Campus Coordinator* shall mean the representative of the Contractor at the Contractor's home institution, who shall be responsible for coordinating the activities carried out under the contract.

(d) When this contract is with an educational institution *Campus Personnel* shall mean representatives of the Contractor performing services under the contract at the Contractor's home institution and shall include the Campus Coordinator.

(e) *Consultant* shall mean any especially well qualified person who is engaged, on a temporary or intermittent basis to advise the Contractor and who is not an officer or employee of the Contractor who performs other duties for the Contractor.

(f) *Contractor employee* shall mean an employee of the Contractor assigned to work under this contract.

(g) *Cooperating Country or Countries* shall mean the foreign country or countries in or for which services are to be rendered hereunder.

(h) *Cooperating Government* shall mean the government of the Cooperating Country.

(i) *Federal Acquisition Regulations (FAR)*, when referred to herein shall include U.S. Agency for International Development Acquisition Regulations (AIDAR).

(j) *Government* shall mean the United States Government.

(k) *Mission* shall mean the United States AID Mission to, or principal USAID office in, the Cooperating Country.

(l) *Mission Director* shall mean the principal officer in the Mission in the Cooperating Country, or his/her designated representative.

(c) *Alternate 71*. For use in USAID contracts with an educational institution for participant training. Use in addition to the clauses in FAR 52.202-1 and in 752.202-1(b) of this chapter.

USAID DEFINITIONS CLAUSE—SUPPLEMENT FOR CONTRACTS WITH AN EDUCATIONAL INSTITUTION FOR PARTICIPANT TRAINING (APR 1984)

(a) *Catalog* shall mean any medium by which the Institution publicly announces terms and conditions for enrollment in the Institution, including tuition and fees to be charged. This includes "bulletins," "announcements," or any other similar word the Institution may use.

(b) *Director* shall mean the individual who fills the USAID position of Director, Center for Human Capacity Development (G/HCD), or his/her authorized representative acting within the limits of his/her authority.

(c) *Fees* shall mean those applicable charges directly related to enrollment in the Institution. This shall not include any permit charge (e.g., parking, vehicle registration), or charges for services of a personal nature (e.g., food, housing, laundry) unless specifically called for in this contract.

(d) *Institution* shall mean the educational institution providing services hereunder. The terms "Institution" and "Contractor" are synonymous.

(e) *Tuition* shall mean the amount of money charged by an institution for instruction, not including fees as described in this section.

(d) *Alternate 72*. For use in all USAID contracts which involve any performance overseas. Use in addition to the clauses in FAR 52.202-1 and in 752.202-1(b) of this chapter.

USAID DEFINITIONS CLAUSE—SUPPLEMENT FOR USAID CONTRACTS INVOLVING PERFORMANCE OVERSEAS (DEC 1986)

(a) *Contractor's Chief of Party* shall mean the representative of the Contractor in the Cooperating Country who shall be responsible for supervision of the performance of all duties undertaken by the Contractor in the Cooperating Country.

(b) *Cooperating Country National (CCN) employee* means an individual who meets the citizenship requirements of 48 CFR 702.170-5 and is hired while residing outside the

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United States for work in a cooperating country.

(c) *Dependents* shall mean:

(1) Spouse;

(2) Children (including step and adopted children) who are unmarried and under 21 years of age or, regardless of age, are incapable of self support.

(3) Parents (including step and legally adoptive parents), of the employee or of the spouse, when such parents are at least 51 percent dependent on the employee for support; and

(4) Sisters and brothers (including step or adoptive sisters or brothers) of the employee, or of the spouse, when such sisters and brothers are at least 51 percent dependent on the employee for support, unmarried and under 21 years of age, or regardless of age, are incapable of self support.

(d) *Local currency* shall mean the currency of the Cooperating Country.

(e) *Regular employee* shall mean a Contractor employee appointed to serve one year or more in the Cooperating Country.

(f) *Short-term employee* shall mean a Contractor employee appointed to serve less than one year in the Cooperating Country.

(g) *Third Country National (TCN) employee* means an individual who meets the citizenship requirements of 48 CFR 702.170-15 and is hired while residing outside the United States for work in a Cooperating Country.

[49 FR 13259, Apr. 3, 1984, as amended at 52 FR 4145, Feb. 10, 1987; 52 FR 38098, Oct. 14, 1987; 55 FR 6802, Feb. 27, 1990; 64 FR 42042, Aug. 3, 1999]

752.204-2 Security requirements.

Pursuant to the Uniform State/USAID/USIA Regulations (Volume 12, Foreign Affairs Manual, Chapter 540), USAID applies the safeguards applicable to "Confidential" information to administratively controlled information designated as "Sensitive But Unclassified". Therefore, when the clause in FAR 52.204-2 is used in USAID contracts, pursuant to 704.404, paragraph (a) of the clause is revised as follows:

(a) This clause applies to the extent that this contract involves access to classified ('Confidential', 'Secret', or 'Top Secret'), or administratively controlled ('Sensitive But Unclassified') information.

[49 FR 13259, Apr. 3, 1984, as amended at 49 FR 33668, Aug. 24, 1984; 62 FR 40469, July 29, 1997; 64 FR 5008, Feb. 2, 1999]

752.209-71 Organizational conflicts of interest discovered after award.

As prescribed in 709.507-2, include the following clause in any solicitation

containing 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.

ORGANIZATIONAL CONFLICTS OF INTEREST DISCOVERED AFTER AWARD (JUN 1993)

(a) The Contractor agrees that, if after award it discovers either an actual or potential organizational conflict of interest with respect to this contract, it shall make an immediate and full disclosure in writing to the Contracting Officer which shall include a description of the action(s) which the Contractor has taken or proposes to take to avoid, eliminate or neutralize the conflict.

(b) The Contracting Officer shall provide the contractor with written instructions concerning the conflict. USAID reserves the right to terminate the contract if such action is determined to be in the best interest of the Government.

(End of clause)

[58 FR 42255, Aug. 9, 1993, as amended at 64 FR 5008, Feb. 2, 1999]

752.211-70 Language and measurement.

The following clause shall be used in all USAID-direct contracts.

LANGUAGE AND MEASUREMENT (JUN 1992)

(a) The English language shall be used in all written communications between the parties under this contract with respect to services to be rendered and with respect to all documents prepared by the contractor except as otherwise provided in the contract or as authorized by the contracting officer.

(b) Wherever measurements are required or authorized, they shall be made, computed, and recorded in metric system units of measurement, unless otherwise authorized by USAID in writing when it has found that such usage is impractical or is likely to cause U.S. firms to experience significant inefficiencies or the loss of markets. Where the metric system is not the predominant standard for a particular application, measurements may be expressed in both the metric and the traditional equivalent units, provided the metric units are listed first.

(End of clause)

[57 FR 23321, June 3, 1992. Redesignated at 61 FR 39095, July 26, 1996]

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752.216-70 Award fee.

As prescribed in 716.406, insert the following clause in solicitations and contracts in which an award-fee contract is contemplated.

AWARD FEE (MAY 1997)

(a) The Government shall pay the Contractor for performing this contract such base fee and such additional fee as may be awarded, as provided in the Schedule.

(b) Payment of the base fee and award fee shall be made as specified in the Schedule; provided, that after payment of 85 percent of the base fee and potential award fee, the Contracting Officer may withhold further payment of the base fee and award fee until a reserve is set aside in an amount that the Contracting Officer considers necessary to protect the Government's interest. This reserve shall not exceed 15 percent of the total base fee and potential award fee or \$100,000, whichever is less. The Contracting Officer shall release 75 percent of all fee withholds under this contract after receipt of the certified final indirect cost rate proposal covering the year of physical completion of this contract, provided the Contractor has satisfied all other contract terms and conditions, including the submission of the final patent and royalty reports, and is not delinquent in submitting final vouchers on prior years' settlements. The Contracting Officer may release up to 90 percent of the fee withholds under this contract based on the Contractor's past performance related to the submission and settlement of final indirect cost rate proposals.

(c) Award fee determinations made by the Government under this contract are not subject to the Disputes clause.

(End of clause)

[64 FR 5008, Feb. 2, 1999]

752.219-8 Utilization of small business concerns and small disadvantaged business concerns.

The Foreign Assistance Act calls for USAID to give small businesses an opportunity to provide supplies and services for foreign assistance projects. To help USAID meet this obligation, the following paragraph is to be added to the clause prescribed in FAR 19.708(a):

USAID small business provision. To permit USAID, in accordance with the small business provisions of the Foreign Assistance Act, to give small business firms an opportunity to participate in supplying equipment supplies and services financed under this contract, the Contractor shall, to the max-

imum extent possible, provide the following information to the Office of Small and Disadvantaged Business Utilization (OSDBU), USAID, Washington, DC 20523-1414, at least 45 days prior to placing any order in excess of the simplified acquisition threshold except where a shorter time is requested of, and granted by OSDBU:

(1) Brief general description and quantity of commodities or services;

(2) Closing date for receiving quotations or bids; and

(3) Address where invitations or specifications may be obtained.

[49 FR 13259, Apr. 3, 1984, as amended at 52 FR 21059, June 4, 1987; 56 FR 2699, Jan. 24, 1991; 61 FR 39095, July 26, 1996; 62 FR 40469, July 29, 1997]

752.219-70 USAID Mentor-Protégé Program.

As prescribed in 719.273-11(a), insert the following provision:

USAID MENTOR-PROTÉGÉ PROGRAM (JULY 13, 2007)

(a) Large and small business are encouraged to participate in the USAID Mentor-Protégé Program (the "Program"). Mentor firms provide eligible small business Protégés with developmental assistance to enhance their business capabilities and ability to obtain Federal contracts.

(b) Mentor firms are large prime contractors or eligible small business capable of providing developmental assistance. Protégé firms are small business as defined in 13 CFR parts 121, 124, and 126.

(c) Developmental assistance is technical, managerial, financial, and other mutually beneficial assistance that aids Protégés. The costs for developmental assistance are not chargeable to the contract.

(d) Firms interested in participating in the Program are encouraged to contact the USAID Mentor-Protégé Program Manager (202-712-1500) for more information.

(End of provision)

[72 FR 32546, June 13, 2007]

752.219-71 Mentor requirements and evaluation.

As prescribed in AIDAR 719.273-11(b), insert the following clause:

MENTOR REQUIREMENTS AND EVALUATION (JULY 13, 2007)

(a) Mentor and Protégé firms shall submit an evaluation of the overall experience in the Program to OSDBU at the conclusion of the mutually agreed upon Program period,

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the conclusion of the contract, or the voluntary withdrawal by either party from the Program, whichever occurs first. At the conclusion of each year in the Mentor-Protégé Program, the Mentor and Protégé will formally brief the USAID Mentor-Protégé Program Manager regarding Program accomplishments under their Mentor-Protégé Agreement.

(b) Mentor or Protégé shall notify OSDBU in writing, at least 30 calendar days in advance of the effective date of the firm's withdrawal from the Program.

(End of clause)

[72 FR 32546, June 13, 2007]

752.225-9 Buy American Act—Trade Agreements Act—Balance of Payments Program.

The clause prescribed by FAR 25.408(a)(2) is not generally included in USAID contracts when more stringent source requirements are stated in the contract or when inclusion is not appropriate under FAR 25.403, or 725.403 of this chapter. (See Executive Order 11223, dated May 12, 1965, 30 FR 6635.) The clause setting forth USAID's source restrictions is shown in section 752.225-70.

[49 FR 13259, Apr. 3, 1984, as amended at 54 FR 16122, Apr. 21, 1989; 59 FR 33447, June 29, 1994; 62 FR 40470, July 29, 1997]

752.225-70 Source, origin and nationality requirements.

The following clause is required as prescribed in 725.704.

SOURCE, ORIGIN AND NATIONALITY REQUIREMENTS (FEB 1997)

(a) Except as may be specifically approved by the Contracting Officer, all commodities (e.g., equipment, materials, vehicles, supplies) and services (including commodity transportation services) which will be financed under this contract with U.S. dollars shall be procured in accordance with the requirements in 22 CFR part 228, "Rules on Source, Origin and Nationality for Commodities and Services Financed by USAID." The authorized source for procurement is Geographic Code 000 unless otherwise specified in the schedule of this contract. Guidance on eligibility of specific goods or services may be obtained from the Contracting Officer.

(b) Ineligible goods and services. The Contractor shall not procure any of the following goods or services under this contract:

- (1) Military equipment,
- (2) Surveillance equipment,

(3) Commodities and services for support of police and other law enforcement activities,
(4) Abortion equipment and services,
(5) Luxury goods and gambling equipment,
or

(6) Weather modification equipment.

(c) Restricted goods. The Contractor shall not procure any of the following goods or services without the prior written approval of the Contracting Officer:

- (1) Agricultural commodities,
- (2) Motor vehicles,
- (3) Pharmaceuticals and contraceptive items,
- (4) Pesticides,
- (5) Fertilizer,
- (6) Used equipment, or
- (7) U.S. government-owned excess property.

If USAID determines that the Contractor has procured any of these specific restricted goods under this contract without the prior written authorization of the Contracting Officer, and has received payment for such purposes, the Contracting Officer may require the contractor to refund the entire amount of the purchase.

[62 FR 40470, July 29, 1997; 62 FR 45334, Aug. 27, 1997]

752.225-71 Local procurement.

For use in any USAID contract involving performance overseas.

LOCAL PROCUREMENT (FEB 1997)

(a) Local procurement involves the use of appropriated funds to finance the procurement of goods and services supplied by local businesses, dealers, or producers, with payment normally being in the currency of the cooperating country.

(b) All locally-financed procurements must be covered by source/origin and nationality waivers as set forth in subpart F of 22 CFR part 228 except as provided for in 22 CFR 228.40, Local procurement.

[62 FR 40470, July 29, 1997; 62 FR 45334, Aug. 27, 1997; 62 FR 47532, Sept. 9, 1997]

752.226-1 Determination of status as disadvantaged enterprise.

As prescribed in 726.7006(a), insert the following provision:

DISADVANTAGED ENTERPRISE REPRESENTATION (APR 1991)

The offeror/contractor shall submit a representation in the following form to the contracting officer:

(a) *Representation.* The offeror represents that:

- (1) It is, is not a small disadvantaged business.

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(2) It is, is not an historically black college or university, as designated by the Secretary of Education pursuant to 34 CFR 608.2.

(3) It is, is not a college or university having a student body in which more than 40 percent of the students are Hispanic American.

(4) It is, is not a private voluntary organization which is controlled by individuals who are socially and economically disadvantaged.

(b) *Definitions.* (1) *Asian Pacific Americans*, as used in this provision means United States citizens whose origins are in Japan, China, the Philippines, Vietnam, Korea, Samoa, Guam, the U.S. Trust Territory of the Pacific Islands (Republic of Palau), the Northern Mariana Islands, Laos, Kampuchea (Cambodia), Taiwan, Burma, Thailand, Malaysia, Indonesia, Singapore, Brunei, Republic of the Marshall Islands, or the Federated States of Micronesia.

(2) *Controlled by socially and economically disadvantaged individuals* means management and daily business are controlled by one or more such individuals.

(3) *Native Americans*, as used in this provision means American Indians, Eskimos, Aleuts, and native Hawaiians.

(4) *Owned by socially and economically disadvantaged individuals* means at least 51 percent owned by one or more individuals who are both socially and economically disadvantaged, or a publicly owned business having at least 51 percent of its stock owned by one or more socially and economically disadvantaged individuals.

(5) *Small business concern*, as used in this provision, means a U.S. concern, including its affiliates, that is independently owned and operated, not dominant in the field of operation in which it is bidding on Government contracts, and qualifies as a small business under the criteria and size standards in 13 CFR part 121.

(6) *Small disadvantaged business*, as used in this provision, means a small business concern that:

- (i) Is at least 51 percent owned by one or more individuals who are both socially and economically disadvantaged, or a publicly owned business having at least 51 percent of its stock owned by one or more socially and economically disadvantaged individuals; and
- (ii) Has its management and daily business controlled by one or more such individuals.

(7) *Subcontinent Asian Americans*, as used in this provision, means United States citizens whose origins are in India, Pakistan, Bangladesh, Sri Lanka, Bhutan, or Nepal.

(c) *Qualified groups.* The offeror shall presume that socially and economically disadvantaged individuals include Black Americans, Hispanic Americans, Native Americans, Asian-Pacific Americans, Subcontinent Asian Americans, and women.

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(End of provision)

[56 FR 27209, June 13, 1991, as amended at 62 FR 40470, July 29, 1997]

752.226-2 Subcontracting with disadvantaged enterprises.

As prescribed in 726.7007, insert the following clause:

SUBCONTRACTING WITH DISADVANTAGED ENTERPRISES (APR 1997)

NOTE: This clause does not apply to prime contractors that qualify as disadvantaged enterprises as described below.

(a) Not less than ten (10) percent of the dollar value of this contract shall be subcontracted to disadvantaged enterprises as described in paragraph (b) of this clause.

(b) Disadvantaged enterprises are U.S. organizations or individuals that are:

- (1) Business concerns (as defined in FAR 19.001) owned and controlled by socially and economically disadvantaged individuals;
- (2) Institutions designated by the Secretary of Education, pursuant to 34 CFR 608.2, as historically black colleges and universities;
- (3) Colleges and universities having a student body in which more than 40 percent of the students are Hispanic American; or
- (4) Private voluntary organizations which are controlled by individuals who are socially and economically disadvantaged.

(c) *Definitions.* (1) *Controlled by socially and economically disadvantaged individuals* means management and daily business are controlled by one or more such individuals.

(2) *Owned by socially and economically disadvantaged individuals* means at least 51 percent owned by one or more individuals who are both socially and economically disadvantaged, or a publicly owned business having at least 51 percent of its stock owned by one or more socially and economically disadvantaged individuals.

(3) *Socially and economically disadvantaged individuals* has the same meaning as in FAR 19.001, except that the term also includes women.

(4) Contractors should require representations from their subcontractors regarding their status as a disadvantaged enterprise. Contractors acting in good faith may rely on such representations by their subcontractors.

(d) Contractors should require representations from their subcontractors regarding their status as a disadvantaged enterprise. Contractors acting in good faith may rely on such representations by their subcontractors.

(e) Contractors should require representations from their subcontractors regarding their status as a disadvantaged enterprise. Contractors acting in good faith may rely on such representations by their subcontractors.

(f) Contractors should require representations from their subcontractors regarding their status as a disadvantaged enterprise. Contractors acting in good faith may rely on such representations by their subcontractors.

(End of clause)

[56 FR 27210, June 13, 1991, as amended at 62 FR 40470, July 29, 1997]

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752.226-3 Limitation on subcontracting.

As prescribed in 726.7008, insert the following clause:

LIMITATIONS ON SUBCONTRACTING (JUN 1993)

By submission of an offer and execution of a contract, the Offeror/Contractor agrees that in performance of the contract, at least 51 percent of the cost of contract performance incurred for personnel shall be expended for employees of the contractor or employees of other disadvantaged enterprises eligible under the terms of 706.302-71. For the purposes of this clause, independent contractors hired by the contractor shall be considered employees of the contractor.

(End of clause)

[58 FR 42255, Aug. 9, 1993, as amended at 62 FR 40470, July 29, 1997]

752.227-14 Rights in Data—general.

As prescribed in 727.409(b), insert the following clause:

RIGHTS IN DATA—GENERAL (OCT 2007)

The following paragraph (d) replaces paragraph (d) of (48 CFR) FAR 52.227-14 Rights in Data—General.

(d) *Release, publication and use of data.* (1) For all data first produced or specifically used by the Contractor in the performance of this contract in the United States, its territories, or Puerto Rico, the Contractor shall have the right to use, release to others, reproduce, distribute, or publish such data, except to the extent such data may be subject to the Federal export control or national security laws or regulations, or unless otherwise provided in this paragraph of this clause or expressly set forth in this contract [see paragraph (d)(3) for limitations on contracts performed outside of the US].

(2) The Contractor agrees that to the extent it receives or is given access to data necessary for the performance of this contract which contain restrictive markings, the Contractor shall treat the data in accordance with such markings unless otherwise specifically authorized in writing by the Contracting Officer.

(3) For all data first produced or specifically used by the Contractor in the overseas performance of this contract, the Contractor shall not release, reproduce, distribute, or publish such data without the written permission of the Contracting Officer. The government also may require the contractor to assign copyright to the government or another party as circumstances warrant or as specifically stated elsewhere in the contract.

[72 FR 53164, Sept. 18, 2007]

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.

(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.

[53 FR 50631, Dec. 16, 1988, as amended at 54 FR 16122, Apr. 21, 1989; 56 FR 67226, Dec. 30, 1991]

752.228-7 Insurance—liability to third persons.

As prescribed in 728.307-2(c), the following paragraph is to be added to the clause specified in FAR 52.228-7 as either paragraph (h) (if FAR 52.228-7 *Alternate I* is not used) or (i) (if FAR 52.228-7 *Alternate I* is used):

() *Insurance on private automobiles.* If the Contractor or any of its employees or their dependents transport or cause to be transported (whether or not at contract expense) privately owned automobiles to the Cooperating Country, or they or any of them purchase an automobile within the Cooperating Country, the Contractor agrees to make certain that all such automobiles during such ownership within the Cooperating Country will be covered by a paid-up insurance policy issued by a reliable company providing the following minimum coverages or such other minimum coverages as may be set by the Mission Director, payable in United States dollars or its equivalent in the currency of the Cooperating Country: injury to persons, \$10,000/\$20,000; property damage, \$5,000. The

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premium costs for such insurance shall not be a reimbursable cost under this contract. Copies of such insurance policies shall be preserved and made available as part of the Contractor's records which are required to be preserved and made available by the "Audit and Records—Negotiation" clause of this contract.

[53 FR 50632, Dec. 16, 1988, as amended at 54 FR 16122, Apr. 21, 1989; 62 FR 40470, July 29, 1997]

752.228-9 Cargo insurance.

As prescribed in 728.313(a), the following preface is to be used preceding the text of the clause at FAR 52.228-9:

PREFACE: To the extent that marine insurance is necessary or appropriate under this contract, the contractor shall ensure that U.S. marine insurance companies are offered a fair opportunity to bid for such insurance. This requirement shall be included in all subcontracts under this contract.

[53 FR 50632, Dec. 16, 1988]

752.228-70 Medical Evacuation (MEDEVAC) Services.

As prescribed in 728.307-70, for use in all contracts requiring performance overseas:

MEDICAL EVACUATION (MEDEVAC) SERVICES (JUL 2007)

(a) Contractor must provide MEDEVAC service coverage to all U.S. citizen, U.S. resident alien, and Third Country National employees and their authorized dependents (hereinafter "individual") while overseas under a USAID-financed direct contract. USAID will reimburse reasonable, allowable, and allocable costs for MEDEVAC service coverage incurred under the contract. The Contracting Officer will determine the reasonableness, allowability, and allocability of the costs based on the applicable cost principles and in accordance with cost accounting standards.

(b) *Exceptions.* (i) The Contractor is not required to provide MEDEVAC insurance to eligible employees and their dependents with a health program that includes sufficient MEDEVAC coverage as approved by the Contracting Officer.

(ii) The Mission Director may make a written determination to waive the requirement for such coverage. The determination must be based on findings that the quality of local medical services or other circumstances obviate the need for such coverage for eligible employees and their dependents located at post.

(c) Contractor must insert a clause similar to this clause in all subcontracts that re-

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quire performance by contractor employees overseas.

[59 FR 33447, June 29, 1994, as amended at 72 FR 19669, Apr. 19, 2007]

752.229-70 Federal, state and local taxes.

For contracts involving performance overseas the clauses prescribed in FAR 29.401-3 or 29.401-4 may be modified to specify that the taxes referred to are United States taxes.

752.231-71 Salary supplements for HG employees.

As prescribed in 731.205-71, for use in all contracts with a possible need or services of a HG employee. The clause should also be inserted in all subsequent sub-contracts.

SALARY SUPPLEMENTS FOR HG EMPLOYEES (OCT 1998)

(a) Salary supplements are payments made that augment an employee's base salary or premiums, overtime, extra payments, incentive payment and allowances for which the HG employee would qualify under HG rules or practice for the performance of his/hers regular duties or work performed during his/hers regular office hours. Per diem, invitational travel, honoraria and payment for work carried out outside of normal working hours are not considered to be salary supplements.

(b) Salary supplements to HG Employees are not allowable without the written approval of the Contracting Officer.

[64 FR 16649, Apr. 6, 1999]

752.232-70 Letter of credit advance payment.

As required by 732.406-73 insert the following clause in contracts being paid by Letter of Credit.

LETTER OF CREDIT ADVANCE PAYMENT (OCT 1989)

(a) Payment under this contract shall be by means of a Letter of Credit (LOC) in accordance with the terms and conditions of the LOC and any instructions issued by the USAID Office of Financial Management, Cash Management and Payment Division (FM/CMP).

(b) As long as the LOC is in effect, the terms and conditions of the LOC and any instructions issued by FM/CMP constitute the payment conditions of this contract, superseding and taking precedence over any other clause of this contract concerning payment.

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(c) If the LOC is revoked, payment may be made on a cost-reimbursement basis, in accordance with the other clauses of this contract concerning payment.

(d) Revocation of the LOC is at the discretion of FM/CMP after consultation with the contracting officer. Notification to the contractor of revocation must be in writing and must specify the reasons for such action. The contractor may appeal any such revocation to the contracting officer, in accordance with the Disputes clause of this contract. Pending final decision, payments under the contract will be in accordance with paragraph (c) of this clause.

[49 FR 13259, Apr. 3, 1984, as amended at 49 FR 33668, Aug. 24, 1984; 54 FR 46391, Nov. 3, 1989; 56 FR 67226, Dec. 30, 1991; 59 FR 33447, June 29, 1994]

752.242-70 Periodic progress reports.

As prescribed in 742.1170-3(c), insert the following clause in contracts for which periodic progress reports are required from the contractor. The term "contract" shall be interpreted as "task order" or "delivery order" when this clause is used in an indefinite-delivery contract.

PERIODIC PROGRESS REPORTS (OCT 2007)

(a) The contractor shall prepare and submit progress reports as specified in the contract schedule. These reports are separate from the interim and final performance evaluation reports prepared by USAID in accordance with FAR 42.15 and internal Agency procedures, but they may be used by USAID personnel or their authorized representatives when evaluating the contractor's performance.

(b) During any delay in furnishing a progress report required under this contract, the contracting officer may withhold from payment an amount not to exceed US\$25,000 (or local currency equivalent) or 5 percent of the amount of this contract, whichever is less, until such time as the contractor submits the report or the contracting officer determines that the delay no longer has a detrimental effect on the Government's ability to monitor the contractor's progress.

[72 FR 53164, Sept. 18, 2007]

752.245-70 Government property—USAID reporting requirements.

In response to a GAO audit recommendation, USAID contracts, except for those for commercial items, must contain the following preface and reporting requirement as additions to the appropriate Government Property clause prescribed by FAR 45.106.

Preface: to be inserted preceding the text of the FAR clause.

The term *Government furnished property* wherever it may appear in the following clause, shall mean (1) non-expendable personal property owned by or leased to the U.S. Government and furnished to the contractor and (2) personal property furnished either prior to or during the performance of this contract by any U.S. Government accountable officer to the contractor for use in connection with performance of this contract and identified by such officer as accountable. The term *government property*, wherever it may appear in the following clause, shall mean government-furnished property and non-expendable personal property title to which vests in the U.S. Government under this contract. Non-expendable property, for purposes of this contract, is defined as property which is complete in itself, does not lose its identity or become a component part of another article when put into use; is durable, with an expected service life of two years or more; and which has a unit cost of more than \$500.

Reporting Requirement: to be inserted following the text of the FAR clause.

Reporting Requirements: The contractor will submit an annual report on all non-expendable property in a form and manner acceptable to USAID substantially as follows:

ANNUAL REPORT OF GOVERNMENT PROPERTY IN CONTRACTOR'S CUSTODY

[(Name of contractor) as of (end of contract year), 19xx]

| Motor vehicles | Furniture and furnishings— | | Other nonexpendable property |
|--|----------------------------|-----------------|------------------------------|
| | Office | Living quarters | |
| A. Value of property as of last report ..... | ..... | ..... | ..... |
| B. Transactions during this reporting period ..... | ..... | ..... | ..... |
| 1. Acquisitions (add): | | | |
| a. Purchased by contractor ¹ ..... | ..... | ..... | ..... |
| b. Transferred from USAID ² ..... | ..... | ..... | ..... |
| c. Transferred from others, without reimbursement ³ ..... | ..... | ..... | ..... |
| 2. Disposals (deduct): | | | |
| a. Returned to USAID ..... | ..... | ..... | ..... |
| b. Transferred to USAID—contractor purchased ..... | ..... | ..... | ..... |
| c. Transferred to other Government agencies ³ .. | ..... | ..... | ..... |
| d. Other disposals ³ ..... | ..... | ..... | ..... |
| C. Value of property as of reporting date ..... | ..... | ..... | ..... |
| D. Estimated average age of contractor held property ..... | ..... | ..... | ..... |
| | Years | Years | Years |

¹ Property which is complete in itself, does not lose its identity or become a component part of another article when put into use; is durable, with an expected service life of two years or more; and which has a unit cost of more than \$500.

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² Government furnished property listed in this Contract as non-expendable.
³ Explain if transactions were not processed through or otherwise authorized by USAID.

PROPERTY INVENTORY VERIFICATIONS

I attest that (1) physical inventories of Government property are taken not less frequently than annually; (2) the accountability records maintained for Government property in our possession are in agreement with such inventories; and (3) the total of the detailed accountability records maintained agrees with the property value shown opposite line C above, and the estimated average age of each category of property is as cited opposite line D above.

Authorized Signature

[49 FR 13259, Apr. 3, 1984, as amended at 62 FR 40470, July 29, 1997]

752.245-71 Title to and care of property.

As prescribed in 745.106(a), the following clause shall be included in all contracts when the contractor will acquire property under the contract for use overseas and the contract funds were obligated under a Strategic Objective agreement (or similar agreement) with the cooperating country.

TITLE TO AND CARE OF PROPERTY (APR 1984)

(a) Title to all non-expendable property purchased with contract funds under this contract and used in the Cooperating Country, shall at all times be in the name of the Cooperating Government, or such public or private agency as the Cooperating Government may designate, unless title to specified types or classes of non-expendable property is reserved to USAID under provisions set forth in the schedule of this contract; but all such property shall be under the custody and control of Contractor until the owner of title directs otherwise, or completion of work under this contract or its termination, at which time custody and control shall be turned over to the owner of title or disposed of in accordance with its instructions. All performance guaranties and warranties obtained from suppliers shall be taken in the name of the title owner. (Non-expendable property is property which is complete in itself, does not lose its identity or become a component part of another article when put into use; is durable, with an expected service life of two years or more; and which has a unit cost of \$500 or more.)

(b) Contractor shall prepare and establish a program, to be approved by the Mission, for the receipt, use, maintenance, protection, custody, and care of non-expendable property

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for which it has custodial responsibility, including the establishment of reasonable controls to enforce such program.

(c)(1) For non-expendable property to which title is reserved to the U.S. Government under provisions set forth in the schedule of this contract, Contractor shall submit an annual report on all non-expendable property under its custody as required in the clause of this contract entitled "Government Property".

(2) For non-expendable property titled to the Cooperating Government, the Contractor shall, within 90 days after completion of this contract, or at such other date as may be fixed by the Contracting Officer, submit an inventory schedule covering all items of non-expendable property under its custody, which have not been consumed in the performance of this contract. The Contractor shall also indicate what disposition has been made of such property.

[49 FR 13259, Apr. 3, 1984, as amended at 62 FR 40470, July 29, 1997; 64 FR 5009, Feb. 2, 1999]

752.247-70 Preference for privately owned U.S.-flag commercial vessels.

As prescribed in 747.507, insert the following clause:

PREFERENCE FOR PRIVATELY OWNED U.S.-FLAG COMMERCIAL VESSELS (OCT 1996)

(a) Under the provisions of the Cargo Preference Act of 1954 (46 U.S.C. 1241(b)) at least 50 percent of the gross tonnage of equipment, materials, or commodities financed by USAID, or furnished without provision for reimbursement, or at least 75 percent of the gross tonnage of cargo moving under P.L. 480 financed by the U.S. Department of Agriculture, that may be transported in ocean vessels (computed separately for dry bulk carriers, dry cargo liners, and tankers) shall be transported in privately owned U.S.-flag commercial vessels.

(b) In accordance with USAID regulations and consistent with the regulations of the Maritime Administration, USAID applies Cargo Preference requirements on the basis of programs or activities that generally include more than one contract. Thus, the amount of cargo fixed on privately owned U.S.-flag vessels under this contract may be more or less than the required 50 or 75 percent, depending on current compliance with Cargo Preference requirements. If freight under the contract is fixed on a U.S. flag vessel, Alternate I of this clause shall apply.

(c)(1) The contractor shall submit one legible copy of a rated on-board ocean bill of lading for each shipment to both the Division of National Cargo, Office of Cargo Preference, Maritime Administration, U.S. Department of Transportation, Washington, DC

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20590, and the Transportation Division, Office of Acquisition and Assistance, USAID, Washington, DC 20523-7900.

(2) The contractor shall furnish these bill of lading copies within 20 working days of the date of loading for shipments originating in the United States, or within 30 working days for shipments originating outside the United States. Each bill of lading copy shall contain the following information:

- (i) Sponsoring U.S. Government agency.
- (ii) Name of vessel.
- (iii) Vessel flag registry.
- (iv) Date of loading.
- (v) Port of loading.
- (vi) Port of final discharge.
- (vii) Description of commodity.
- (viii) Gross weight in pounds and cubic feet if available.
- (ix) Total ocean freight revenue in U.S. dollars.

Alternate 1

(d) If freight is fixed on a U.S. flag vessel, except as provided in paragraph (e) of this clause, the contractor shall use privately owned U.S. flag commercial vessels, and no others, in the ocean transportation of any supplies to be furnished under this contract.

(e) If such vessels are not available, or not available at rates that are fair and reasonable for privately owned U.S. flag commercial vessels, the Contractor shall notify the contracting officer and request either authorization to ship in foreign-flag vessels or designation of available U.S.-flag vessels. If the Contractor is authorized in writing by the Contracting Officer to ship the supplies in foreign-flag vessels, the contract price shall be equitably adjusted to reflect the difference in costs of shipping the supplies in privately owned U.S.-flag commercial vessels and foreign-flag vessels.

[64 FR 5009, Feb. 2, 1999, as amended at 72 FR 19670, Apr. 19, 2007]

Subpart 752.70—Texts of USAID Contract Clauses

752.7000 Scope of subpart.

Subpart 752.70 contains the text of USAID-specific contract clauses for which there is no FAR equivalent. The clauses in this subpart do not apply to contracts for personal services. For personal service contract clauses see AIDAR Appendix D—Direct USAID Contracts with U.S. Citizens or U.S. Residents for Personal Services Abroad and AIDAR Appendix J—Direct USAID Contracts with Cooperating Country

Nationals and with Third Country Nationals for Personal Services Abroad.

[49 FR 13259, Apr. 3, 1984, as amended at 57 FR 5237, Feb. 13, 1992]

752.7001 Biographical data.

The following clause is to be included in all USAID cost reimbursement contracts.

BIOGRAPHICAL DATA (JUL 1997)

The Contractor agrees to furnish to the Contracting Officer on USAID Form 1420-17, "Contractor Employee Biographical Data Sheet", biographical information on the following individuals to be employed in the performance of the contract: (1) All individuals to be sent outside the United States, or (2) any employees designated as "key personnel". Biographical data in the form usually maintained by the Contractor on the other individuals employed under the contract shall be available for review by USAID at the Contractor's headquarters. A supply of USAID Form 1420-17 will be provided with this contract. The Contractor may reproduce additional copies as necessary.

[62 FR 40470, July 29, 1997; 62 FR 45334, Aug. 27, 1997; 62 FR 47532, Sept. 9, 1997]

752.7002 Travel and transportation.

For use in cost reimbursement contracts performed in whole or in part overseas.

TRAVEL AND TRANSPORTATION (JAN 1990)

(a) *General.* 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.

(b) *International travel.* For travel to and from post of assignment the Contractor shall be reimbursed for travel costs and travel allowances of travelers from place of residence in the United States (or other location provided that the cost of such travel does not exceed the cost of the travel from the employee's residence in the United States) to the post of duty in the Cooperating Country and return to place of residence in the United States (or other location provided that the cost of such travel does not exceed