

TITLE: CIB 98-21 Contractor Progress Reports - new AIDAR coverage

MEMORANDUM FOR ALL CONTRACTING OFFICERS AND NEGOTIATORS

TO: DISTRIBUTION LIST FAC
/s/
FROM: M/OP, Marcus L. Stevenson, PROCUREMENT EXECUTIVE
SUBJECT: Contractor Progress Reports - new AIDAR coverage

CONTRACT INFORMATION BULLETIN 98 - 21

This CIB supersedes and cancels CIB 96-24 dated October 11, 1996.

The purpose of this CIB is to implement new performance monitoring and contractor progress reporting requirements. These requirements are separate from the performance evaluation requirements in CIB 97-28, "Guidance on Evaluating Contractor Performance and Using Past Performance Information in Source Selection", which is still current. Finally, the progress reports addressed in this CIB are separate and distinct from Technical Reports (or studies, papers, analyses, etc.), the acquisition of which may be the purpose or one of the purposes of the contract.

I. Background

Over the past four years, several versions of the "Reports" clause, AIDAR 752.2026, have been issued via CIB (the latest of which was in CIB 96-24, cancelled above); none of these versions were ever officially added to the AIDAR because each time an AIDAR Notice was prepared, the current CIB version of the "Reports" clause was already substantively obsolete. However, the October 1989 version of the clause was never officially removed from the AIDAR, either, resulting in overall confusion about which version should be used.

Years ago, standardized quarterly reports were initiated to eliminate the excessive reporting being required on a contract-by-contract basis. The reports themselves were becoming the "deliverables" under these contracts, but often, actual review was infrequent; they were inadequate as performance monitoring tools, and it was difficult to conclude from them that the Agency's development work was being successfully implemented. Succinct quarterly reports, limited in size and scope, were intended to efficiently keep track of what contractors were doing without wasting their resources, and consequently, ours, and allow anyone reading them to quickly learn the status of contractor progress and performance.

The 1994 and 1996 versions of the "Reports" clause were intended to establish and then improve on the coordination of contractor reporting requirements with performance evaluations required as a result of the Federal Acquisition Streamlining Act of 1994 (FASA) and the Federal Acquisition Reform Act of 1996 (FARA, now known as the Clinger-Cohen Act). However, USAID reengineering and the requirements of the Government Performance and Results Act (GPRA) recently led us to recognize the need to improve our ability to determine how well we -

and our contractors - are achieving results in our programs and then to report on them. The standardized approach of the previous versions of the "Reports" clause, while still providing a "snapshot" view of the contractor's performance status, need to go further to meet the need to report results.

Contractor progress reporting requirements need to be tailored to the specific needs of the activity for which the contract was awarded. FAR Subpart 42.11, entitled "Production Surveillance progress reporting policy and procedures, and a FAR clause [at 52.242-2, "Production Progress Reports (Apr 1991)"] could allow this tailoring to be done; however, the way these FAR sections are written is misleading in the USAID context of technical assistance services. Therefore, we have developed AIDAR coverage that is more compatible with the nature of the work we do as a development Agency. These new AIDAR sections will be included in an upcoming Proposed Rule to be published for comment in the Federal Register, but until a Final Rule is published to formally revise the AIDAR, we intend to begin using the clause immediately, as discussed below.

II. Proposed AIDAR Amendment

The contract should require only the minimum reporting needed to track the contractor's progress towards meeting the goals and objectives in the Statement of Work; in most cases, they will directly address performance indicators, since USAID's policy, along with the rest of the Federal Government, is to use performance-based contracts whenever appropriate, and performance indicators are an integral part of performance-based contracts. However, producing progress reports in and of themselves is not an appropriate indicator or result for the contract.

Although the FAR coverage at Subpart 42.11 and the clause at 52.242-2, could be used for this purpose, the use of the term "production" and the implication throughout the subpart that the purpose of the contract is to acquire goods or supplies could needlessly cause confusion with USAID technical staff, contractors, and even among the contracting staff. Therefore, corresponding AIDAR coverage, i.e., a new section 742.1170 that incorporates language conveying the intent of FAR 42.11 and a new clause at 752.242-70 (which practically repeats FAR 52.242-2 but includes clarification that "contract" also means "task order" or "delivery order"), has been prepared and is in Attachment 1. Comments on this reporting language may be submitted to M/OP/P at any time.

Although the AIDAR won't be officially amended until a Final Rule is published, contracting personnel shall begin using this language immediately. The clauses in the attachment are to be used in any new solicitations issued after the date of this CIB, and contracting officers shall make every effort to include these clauses in new contracts and to modify them into existing contracts.

Section III below also provides supplementary guidance, based on other relevant FAR sections, ADS 200 Series requirements for monitoring and evaluating performance, and Government-wide "Best Practices", on using the proposed AIDAR language.

III. Using the new AIDAR 742.1170 and the clause at 752.242-70

AIDAR 742.1170-3 will allow the Contracting Officer to include the clause at AIDAR 752.242-70 when information on contract performance status is needed from the Contractor. The clause itself requires the Contractor to prepare and submit the progress reports specified in the contract Schedule. Therefore, the SO Team must specify what minimum reporting requirements will be needed to adequately monitor the contractor's performance; the Contracting Officer will then include these reporting requirements in the Schedule in the contract's Section G, since progress reporting is an aspect of contract administration.

Much of the following guidance is predicated on the use of performance-based contracts (PBCs), even though USAID still awards other types of contracts. This guidance is not restricted to PBCs, but should be adapted as appropriate for use with other types of contracts.

A. References and resources: To accurately and efficiently define reporting requirements, the SO Team and Contracting Officer need to be familiar with these AIDAR sections, FAR Subpart 42.11, and the requirements found in:

- FAR 37.5, Management Oversight of Service Contracts (which implements the Office of Federal Procurement Policy [OFPP] Policy Letter 93-1), and FAR 37.6 Performance-Based Contracting (which implements OFPP Policy Letter 91-2 Service Contracting). FAR 37.503(c) lists other OFPP Policy Letters (specifically 92-1 Inherently Governmental Functions, and 89-1 Conflicts of Interest Policies Applicable to Consultants) relevant to services contracts; all of these Policy Letters can be accessed through the M/OP/P Homepage on the intranet, under the Regulations/ References Links to A&A Resources Outside of USAID section at the bottom of the page; see below for accessing the OFPP Policy Letters on the internet).

- ADS Chapters 202 Managing for Results: Achieving, and 203 Managing for Results: Monitoring and Evaluating Performance. Objectives of both chapters relevant to contractor progress reporting are the promotion of regular collection and review of data and information related to performance and the ability of the Agency to meet accountability and reporting requirements.

In addition, OFPP has issued two Best Practices, one for Contract Administration and the other for Performance-Based Services Contracts (PBSC), which contain valuable guidance the SOT should consider when preparing Statements of Work and Monitoring/Evaluation plans, including guidance for deciding when the Contractor should be submitting progress reports and the information those reports should contain. The SO Team as a whole has the responsibility for developing both the Statement of Work and the corresponding reporting requirements, and the Contracting Officer is a critical member of and advisor to the SO Team in meeting both responsibilities. The Best Practices can also be accessed through the OP/P Homepage or through the Acquisition Reform Network (ARNET) internet homepage at <http://www.arnet.gov>, under Acquisition Best Practices; the OFPP Policy Letters are also available on the ARNET homepage, under Reference Corner.

B. Structuring reporting requirements: The contractor shall be required to report only the minimum information needed by the cognizant

technical officer (CTO) or SOT to stay apprised of the contractor's progress in performing the contract. In addition to specifying the substantive performance details the reports must address, the CTO must decide the logistic specifications for the reports (the approximate number of pages, the frequency/due dates of the submissions, the number of copies, distribution instructions, etc.) and state them in the Schedule. If the CTO knows that he/she will be in regular and frequent contact (either through face-to-face meetings, site visits, or telephone/ electronic mail communications), then detailed written reports may be an unnecessary drain on the contractor's resources (and waste contract funds that would otherwise be spent on development work) and not add any value to performance monitoring. However, if the CTO or other members of the SOT are likely to be reassigned or rotated during the period of the contract, or if the CTO's contact with the contractor is likely to be infrequent, then the contractor's progress reports take on more significance and should be designed to provide as much detail on progress as may be necessary to adequately track the contractor's performance, regardless of who the CTO is. An additional consideration in deciding the magnitude and frequency of reports is the need to maintain a record of progress/performance for the benefit of third parties who may have an interest in the contract's progress.

This written record becomes important when evaluating the contractor's performance in accordance with FAR 42.15 (see CIB 97-28 "Guidance on Evaluating Contractor Performance and Using Past Performance Information in Source Selection"). Also, these reports comply with and are consistent with USAID policy in ADS 202.5.6. "Using Performance Information to Achieve Results". However, they are not intended to replace the performance monitoring actions of the SOT (see the policy in ADS 203.5 and corresponding essential procedures in E203.5), but rather are one tool available to USAID in managing for results.

The Contracting Officer ultimately controls the reporting requirements that are included in the contract, and is responsible for ensuring that periodic progress reports: 1) directly address the performance indicators or other requirements in the Statement of Work; and 2) comply with the FAR by requiring reports that are the minimum needed by the SOT/CTO to properly monitor contractor performance.

C. Post-award administration: At some point during contract performance, the SO Team and CTO may determine that the reporting requirements in the contract schedule are not accomplishing their intended purpose and need to be modified. Since only the contracting officer has the authority to modify the terms of the contract, the SOT or CTO must work with the contracting officer to decide how the reporting requirements need to be revised; the contracting officer then must negotiate the modification with the contractor. In most cases, the modification should not affect the contract's cost or price, but if an adjustment is needed, it must be processed the same as any other funded contract modification.

If the contractor is late in complying with the reporting requirements stated in the contract, paragraph (b) of FAR clause 52.242-2, and the AIDAR version, allows the contracting officer to withhold up to \$25,000 or 5 percent of the amount of the contract, whichever is less. The language does not make the withholding

mandatory nor must the maximum amount be withheld, therefore the contracting officer should exercise good business judgment in exercising this authority. However, the contracting officer is responsible for notifying the contractor immediately if delays in report submission are having a detrimental effect on USAID's ability to monitor contract performance, what corrective action from the contractor is expected, and that the Agency may take recourse to this withholding authority if the contractor continues to fail to meet the terms of the contract.

Any questions about this CIB should be directed to Diane Howard, M/OP/P, at 202-712-0206.

Attachments:

Proposed language to amend the AIDAR PART 742 CONTRACT ADMINISTRATION
Section 742.1170 [added]

A new section 742.1170 is added to read as follows:

742.1170 - Performance Monitoring and Progress Reporting

742.1170-1 General Performance monitoring is a function of contract administration used to determine contractor progress towards achieving the goals and objectives of the contract and to identify any factors that may delay or prevent the accomplishment of those goals and objectives. Performance monitoring requires USAID personnel, particularly the Cognizant Technical Officer, to maintain adequate knowledge of the contractor's activities and progress in order to ensure that USAID's objectives, as stated in the contract's Statement of Work, will be achieved.

742.1170-2 Applicability

(a) This section applies to USAID non-personal, professional/technical services contracts exceeding the simplified acquisition threshold, but may be applied to other USAID contracts (except personal services contracts awarded in accordance with Appendices D and J), if the contracting officer and requiring office determine that doing so is in the best interests of the Agency. This determination shall be documented in the contract file.

(b) The underlying principles of (48 CFR) FAR Subpart 42.11 apply to USAID contracts and are inherent to this section. However, not all of the specific requirements and terminology in FAR 42.11 are compatible with the types of technical assistance contracts usually awarded by USAID. Therefore, this section 742.1170 shall apply in lieu of the requirements of (48 CFR) FAR Subpart 42.11.

(c) The progress reports discussed in this section are separate from the performance evaluation reports prepared in accordance with (48 CFR) FAR 42.15 and internal Agency procedures, although they may be used by USAID personnel or their authorized representatives when evaluating the contractor's performance. Furthermore, the policies, procedures and limitations of this section do not apply to technical reports, studies, papers, etc., the acquisition of which may be part of or even the sole purpose of the contract.

742.1170-3 Policy

(a) The contractor is responsible for timely contract performance. Performance monitoring by USAID does not obviate this responsibility.

(b) The Strategic Objective Team (SOT), particularly the Cognizant Technical Officer and the Contracting Officer, will determine how to monitor the contractor's performance to protect the Government's interests, by considering:

- (1) The contract requirements for reporting progress;
- (2) The contract performance schedule;
- (3) The contractor's implementation plan or workplan;
- (4) The contractor's history of contract performance;
- (5) The contractor's experience with the services or supplies being provided under the contract;
- (6) The contractor's financial capability;
- (7) Any other factors the SOT considers appropriate and necessary to adequately monitor contractor performance (for example, the day-to-day working proximity of the SOT, CTO, or contracting officer to the contractor's place of performance).

(c) In monitoring contractor performance, the SOT (particularly the cognizant technical officer and contracting officer) shall utilize any of the contractor's existing systems or processes for monitoring progress, provided that doing so is not contrary to the terms of the contract. The SOT shall not require anything from the contractor that is outside the scope or terms of the contract or may result in claims of waivers, of changes, or of other contract modifications. Further, progress reports shall not require information already available from other sources.

742.1170-4 Progress reporting requirements and contract clause

(a) When information on contract performance status is needed, the contract may include a requirement for the contractor to submit periodic progress reports, tailored to address specific contract requirements but limited to only that information essential to USAID's needs in monitoring the contractor's progress.

(b) Because the cognizant technical officer (CTO) is the individual most familiar with the contractor's performance, the progress reports shall be directed to the CTO, who shall review the reports and advise the contracting officer of any required action, including any action needed to address potential or actual delays in performance. Such advice shall be in writing and provided in sufficient time for the contracting officer to take necessary action, and shall provide a definite commendation, if action is appropriate. The requirements of this paragraph do not relieve the contractor of notification requirements identified elsewhere in the contract.

(c) The contracting officer shall insert the clause at 752.242-70, Periodic Progress Reports, in solicitations and contracts when progress reporting is required, as specified in this section. When this clause is used, the contract shall specify appropriate reporting instructions in Section G of the contract.

752.242-70 [added]

A new section 752.242-70 is added to read as follows:

752.242-70 Periodic Progress Reports (July 1998) 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 (July 1998)

(a) The contractor shall prepare and submit progress reports as specified in the Schedule of this contract. These reports are separate from the interim and final performance evaluation reports prepared by USAID in accordance with (48 CFR) 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 contracting officer determines that the delay no longer has a detrimental effect on the Government's ability to monitor the contractor's progress.