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Country Contracting Handbook

Chapter 1: Procurement of Professional and Technical Services

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1.0 Introduction

1.1 Applicability

Chapter 1 of this Mandatory Reference to ADS Chapter 305, Host Country Contracts, contains both rules and guidance for all country contracting for technical or professional services when implementing bilateral assistance (other than Commodity Import Programs), contracting by intermediate credit institutions, or contracting restricted to local sources (both loan and grant funded).

a. Contracts Competed Internationally

This Chapter applies to contracts for technical and professional services when solicitations for such contracts are not made solely within the cooperating country, even though local firms may be eligible. The contract may be denominated in U.S. dollars, local currency, or other currency.

b. Contracts Competed Locally

When solicitations for contracts for technical or professional services are made solely within the cooperating country, only the contract approval requirements set forth in Section 2.1, the competitive principle in 2.4.1, the nationality requirements in 2.6, and the appropriate mandatory contract clauses discussed in 2.12 apply. However, this Chapter contains information and other procedures which are useful in entering into such local contracts.

c. Procurement by Intermediate Credit Institutions

The Country Contracting Handbook applies to contracts entered into by development banks or other intermediate credit institutions for their own account. Although the guidance may contain useful information, the rules do not apply to contracts entered into by or on behalf of the subborrowers of such banks or institutions unless made applicable by the Strategic Objective Grant Agreement(SOAG) or SOAG Implementation Letter.*

*See also ADS Chapter 311, for contracting policies concerning Local Procurement; Chapter 316, for Intermediate Credit Institutions; and Chapter 317, for Fixed Amount Reimbursement.

d. Contracts with Individuals

Annex A to this Chapter 1 modifies and supplements the rules and guidance elsewhere in Chapter 1 for use in contracting for the services of an individual alone. The Annex applies regardless of whether foreign or local individuals are considered for the contract.

e. Contracts with Educational Institutions, International Research Centers, or Cooperative Development Organizations

Annex B to this Chapter 1 modifies and supplements the rules and guidance elsewhere in Chapter 1 for use when it has been determined that only an educational institution, international research center, or cooperative development organization can perform the required services and a collaborative assistance relationship is desired. Annex B may not be used for contracts with nonprofit organizations which are not educational institutions, international research centers, or cooperative development organizations.

If an institution covered by Annex B wishes to perform a contract which could also be performed by a profit-making or nonprofit firm other than an educational institution, international research center, or cooperative development organization, or if the collaborative assistance relationship is inappropriate, Chapter 1 shall apply in all respects in lieu of Annex B.

f. Other Chapters in this Mandatory Reference are:

- Chapter 2, Procurement of Construction Services
- Chapter 3, Procurement of Equipment and Materials
- Chapter 4, Cost Principles for Country Contracts

1.2 USAID's Role in Country Contracting

The USAID Mission is responsible for providing assistance to the Contracting Agency, to the extent necessary, in the application of the rules abstracted from ADS Chapter 305 and the guidance in this Mandatory Reference. The Mission may also have a useful role in explaining USAID's procedures to the contractor. Prior approval of country contracts by USAID, as discussed in 2.2 below, serves both as a vehicle for providing institutional assistance in developing general contracting expertise in the contracting agency and for specifically safeguarding USAID's interests in insuring effective contracting for direct delivery of assistance to the Borrower/Grantee.

1.3 Rules

The rules to be followed in country contracting are set forth in section 2.0 of this chapter. They are derived either from U.S. Government statutes or are based on USAID's experience in carrying out its responsibility for stewardship of U.S. Government funds. In certain cases, as discussed in section 2, these rules may be waived by an authorized USAID official based on a written justification.

1.4 Guidance

The remainder of this chapter contains guidance which may be modified based on the circumstances of the particular procurement. This guidance is based on sound procurement practice. Use of procedures other than those recommended in the Guidance Section of this Chapter (Section 3) does not require waivers of any kind. The procedures to be followed in contractor selection and contract preparation should be agreed upon with the Contracting Agency and set forth in a SOAG Implementation Letter. Review of the application of the procedures by the Contracting Agency to individual contracting actions is part of the USAID contract approval process.

1.5 Definitions (See Glossary)

USAID GEOGRAPHIC CODE
BORROWER/GRANTEE
CONTRACTING AGENCY
ELIGIBLE COUNTRIES
FIRM
JOINT VENTURE
LEGAL RESIDENT
LOCAL, COOPERATING COUNTRY, OR HOST COUNTRY
PROCUREMENT EXECUTIVE
STRATEGIC OBJECTIVE AGREEMENT
STRATEGIC OBJECTIVE GRANT AGREEMENT(SOAG)
STRATEGIC OBJECTIVE TEAM
UNITED STATES

Special terms are usually defined when first used. Any reference to a firm or contractor also applies to an individual unless indicated otherwise.

2.0 Rules

2.1 USAID Approvals

2.1.1 Contracts Anticipated to Exceed \$250,000

When the total contract amount is anticipated to exceed \$250,000 in value, including any local currency, written USAID approval is required for:

- a. Notices to prospective offerors, e.g. Commerce Business Daily notices;
- b. Lists of prequalified offerors, if any, prior to issuance of the solicitation document;
- c. The contractor selection method (may be part of approval of solicitation document);
- d. Complete solicitation document, prior to issuance;
- e. The selected contractor;
- f. Any host country decision to terminate negotiations with the highest ranked offeror and to initiate negotiations with the next ranked offeror or to reject all offers;
- g. The contract, prior to execution; and
- h. Signed contract documents, before financing;

2.1.2 Additional approvals

- a. The use of either cost-reimbursement contracts that are not anticipated to exceed \$250,000 or level of effort, cost-reimbursement contracts, regardless of dollar value, requires specific written USAID approval.

b. USAID may require that contracts not funded by USAID but having a substantial impact on the activity be approved by USAID. The Results Package and Implementation Letters must specify the entities to be involved in contract preparation and administration, and the review and approval procedures.

c. USAID approvals may also be required, at the Mission's discretion for other actions taken by the Contracting Agency during the contracting process, e.g. contract administrative actions such as subcontracts, amendments, and change orders. Such additional approval requirements will be set forth in a SOAG Implementation Letter.

2.2 Contracting Method

Unless an exception is specifically authorized by USAID, contracts for professional and technical services are awarded on the basis of negotiation rather than on a formal bid basis. The selection of a prospective contractor with whom to negotiate is based exclusively on professional qualifications for the activity. Price is not included with the technical proposals which are evaluated qualitatively based on the needs of the specific activity. A price proposal is requested from the offeror submitting the highest ranked technical proposal and negotiations are conducted concerning both technical and cost proposals. If a satisfactory contract cannot be concluded, the Contracting Agency terminates negotiations with that contractor and initiates negotiations with the next ranked offeror.

2.3 Debarment, Suspension, and Ineligibility

2.3.1 Rule

The Contracting Agency is required to refrain from soliciting offers or awarding contracts to organizations and individuals that are suspended, debarred, or ineligible, as indicated on (1) the "List of Parties Excluded from Federal Procurement and Nonprocurement Programs" and/or (2) the "Consolidated Lists of Designated Nationals".

2.3.2 Waivers

a. Exception with respect to parties listed on the "List of Parties Excluded from Federal Procurement and Nonprocurement Programs" may only be made upon waiver by the USAID Procurement Executive.

b. No waivers may be granted to the rule with respect to parties on the "Consolidated Lists of Designated Nationals."

2.4 Competition

2.4.1 Rule

USAID requires that the Contracting Agency follow competitive procedures in procuring services with USAID financing. Such competitive procedures include obtaining as many proposals as practical and competitive selection based on technical quality. Sections 3.3, 3.4, and 3.5 of this chapter are the usual steps in competitive negotiated procurement.

2.4.1.1 Competition Without Advertising and Written Requests for Technical Proposals

In the following two cases, advertising and written requests for proposals are not required:

- a. If the services are to be performed personally by an individual, consideration of a reasonable number of candidates is recommended. (See Annex A.)
- b. If the estimated contract value does not exceed \$100,000, negotiation may be undertaken without formal solicitation of proposals from more than one source. However, informal solicitation of several sources is required unless a waiver of competition has been approved pursuant to Section 2.4.2 below.

2.4.1.2 Follow-on Work

If the Borrower/Grantee wishes to employ, for work related to activity implementation, a contractor who has satisfactorily performed work in connection with the identification, development, or study of an activity, competitive selection need not be used provided that 1) the contractor was initially selected on a competitive basis; 2) all competing firms were advised in the Commerce Business Daily notice, if any, and in the Request for Technical Proposals that the Contracting Agency reserved the right to contract with the selected contractor for specified subsequent work; and 3) the firm is eligible in accordance with 2.7. Work performed under the initial contract might be a sector assessment, activity design, social studies, or a feasibility study covering technical, economic, financial, or environmental aspects of a defined activity. Subsequent work might be engineering design, construction supervision, the provision of advisors needed for the execution of an activity, or a combination of such services.

2.4.2 Waiver--Negotiation with a Single Source

a. Circumstances

Competition in the procurement of services may be waived* and negotiation with a single source authorized by USAID only under one of the following criteria. Waivers must be supported by a written record of the reasons for negotiation with only the single source.

* If only one firm responds to a solicitation that has been advertised (if required by Section 2.5) and made available to all interested parties, technical and cost negotiations may be conducted with that firm without a waiver.

The Borrower/Grantee can demonstrate the existence of an emergency situation in which the requirement for competition would result in unacceptable activity delay.

1. Special design or operational requirements require services available from only one source.
2. One firm can be demonstrated to have the unique capability by reason of special experience or facilities, or specialized personnel who are recognized as predominant experts in the particular field to perform the services required for the activity.

3. The Borrower/Grantee desires to utilize a contractor previously engaged in the activity for follow-on work and the contractor clearly has special capability by virtue of previous experience in the work but the contractor was either not initially selected on a competitive basis or the Contracting Agency did not advise all competing firms that a follow-on contract might result. A waiver on these grounds should be granted only after careful review of all pertinent facts. If the contract for the initial work specified that follow-on work might result, see Section 2.4.1.2.

4. Adherence to competitive procedures would result in the impairment of the objectives of the United States foreign assistance program or would not be in the best interests of the United States.

b. Amendments to Existing Contracts

Approval of an amendment to an existing contract which increases the scope of work or level of effort (i.e., a new procurement amendment is also required. Negotiation with the single source to amend the contract must be justified under one of the criteria in a.1 through a.5 above, and approved by USAID.

2.5 Advertising

2.5.1 Rule

Solicitation of potential contractors is effected through widely disseminated advertising. When the estimated value of a contract is anticipated to exceed \$100,000, a notice of the availability of prequalification questionnaires or, if prequalification is not used, Requests for Technical Proposals (RFTP) is published in the Commerce Business Daily of the U.S. Department of Commerce. The Contracting Agency may also utilize additional advertising in appropriate local, regional, and international journals, newspapers, etc., and otherwise in accordance with local practice. Additionally, when the fee for services in procurement services contracts is anticipated to exceed \$25,000, notice of the availability of prequalification questionnaires or the RFTP is published in the USAID Procurement Information Bulletin.

2.5.2 Exceptions

This rule does not apply to contracts with an individual (see Annex A and Section 2.4.1.1), follow-on work (Section 2.4.1.2), or to a waiver of competition (Section 2.4.2).

2.5.3 Waivers

The requirement for advertising in the Commerce Business Daily may be waived by the Mission Director to avoid serious delay in activity implementation, provided that efforts shall in any event be made to secure proposals from a reasonable number of potential contractors.

2.6 Nationality and Source

2.6.1 The SOAG, SOAG Implementation Letters, and other related documents specify the authorized geographic code for nationality of services contractors and source for any related commodities.

2.6.2 Nationality Rule

2.6.2.1 Privately Owned Commercial Suppliers

An individual or a privately owned commercial firm is eligible for financing by USAID as a contractor or as a subcontractor providing services only if the criteria in subparagraphs a., b., or c., below are met and, in the case of the categories described in subparagraphs b. and c., the certification requirements in subparagraph d. are met.

a. The Supplier is an individual who is a citizen of and whose principal place of business is in a country or area included in the authorized geographic code or a non-U.S. citizen lawfully admitted for permanent residence in the United States whose principal place of business is in the United States.

b. The supplier is a privately owned commercial (i.e., for profit) corporation or partnership that is incorporated or legally organized under the laws of a country or area included in the authorized geographic code, has its principal place of business in a country or area included in the authorized geographic code, and meets the criteria set forth in either subparagraph (1) or (2), below:

1) The corporation or partnership is more than 50% beneficially owned by individuals who are citizens of a country or area included in the authorized geographic code and non-U.S. citizens lawfully admitted for permanent residence in the United States. In the case of corporations "more than 50% beneficially owned" means that more than 50% of each class of stock is owned by such individuals; in the case of partnerships, "more than 50% beneficially owned" means that more than 50% of each category of partnership interest (e.g., general, limited) is owned by such individuals. (With respect to stock or interest held by companies, funds or institutions, the ultimate beneficial ownership by individuals is controlling.)

(2) The corporation or partnership:

(a) has been incorporated or legally organized in the United States for more than 3 years prior to the issuance date of the invitation for bids or request for proposals; and

(b) has performed within the United States similar administrative and technical, professional, or construction services under a contract or contracts for services and derived revenue therefrom in each of the 3 years prior to the date described in the preceding paragraph; and

(c) employs United States citizens and non-U.S. citizens lawfully admitted for permanent residence in the United States in more than half its permanent full-time positions in the United States; and

(d) has the existing capability or can provide the necessary resources in the United States to perform the contract.

c. The supplier is a joint venture or unincorporated association consisting entirely of individuals, corporations, partnerships, or non-profit organizations which are eligible under subparagraph 2.6.2.1.a. or paragraph b., above, or subparagraph 2.6.2.2 below.

d. A duly authorized officer of a firm or nonprofit organization shall certify that the participating firm or nonprofit organization meets either the requirements of subparagraphs 2.6.2.1.b(1) or (2), or 2.6.2.2. In the case of corporations, the certifying officer shall be the corporate secretary. With respect to the requirements of subparagraph b(1), the certifying officer may presume citizenship on the basis of the stockholder's record address, provided the certifying officer certifies, regarding any stockholder (including any corporate fund or institutional stockholder) whole holdings are material to the corporation's eligibility, that the certifying officer knows of no fact which might rebut that presumption.

2.6.2.2 Nonprofit Organizations

Nonprofit organizations, such as educational institutions, foundations, and associations, are eligible for financing by USAID as contractors or subcontractors for services if they meet all of the criteria listed in subparagraphs a., b., and c. below, and the certification requirement in subparagraph 2.6.2.1.d., above is met.

Any such institution must:

- a. Be organized under the laws of a country or area included in the authorized geographic code; and
- b. Be controlled and managed by a governing body, a majority of whose members are citizens of countries or areas included in the authorized geographic code; and
- c. Have its principal facilities and offices in a country or area included in the authorized geographic code.

2.6.2.3 Government-Owned Organizations

Firms operated as commercial companies or other organizations (including non-profit organizations other than public educational institutions) which are wholly or partially owned by governments or agencies thereof are not eligible for financing by USAID as contractors or subcontractors, except if their eligibility has been established by a waiver in accordance with the provisions in subparagraphs 2.6.2.6.a(2) and 2.6.2.6.d, below.

2.6.2.4 Joint Ventures

A joint venture or unincorporated association is eligible only if each of its members is eligible in accordance with subparagraphs 2.6.2.1, 2.6.2.2, or 2.6.2.3, above.

2.6.2.5 Ineligible Suppliers of Commodities and Services

Citizens of any country or area, and firms and organizations located in or organized under the laws of any country or organizations located in or organized under the laws of any country or areas which is not included in Geographic Code 935 are ineligible for financing by USAID as suppliers of services or commodities, or as agents acting in connection with the supply f

services, except that non-U.S. citizens lawfully admitted for permanent residence in the United States are eligible regardless of such citizenship.

2.6.2.6 Waiver

a. Criteria

A waiver to authorize a different geographic code or include additional suppliers must be based on one of the following criteria:

(1) Privately Owned Commercial Suppliers and Nonprofit Organizations.

(a) Services required for assistance are of a type that are not available for purchase in the United States, and for waivers to Code 899 or Code 935, also not in the cooperating country, or any country in Code 941.*

(b) It is necessary to permit procurement in a country not otherwise eligible in order to meet unforeseen circumstances, such as emergency situations.*

(c) It is necessary to promote efficiency in the use of United States foreign assistance resources, including to avoid impairment of foreign assistance objectives.*

* Waivers to Geographic Code 899 or Code 935 which are justified under paragraph (b) or (c) of this section may only be authorized on a case-by-case basis.

(d) For waivers to authorize procurement from Geographic Code 941 or the cooperating country:

(1) There is an emergency requirement for which non-USAID funds are not available and the requirement can be met in time only from suppliers in a country or area not included in the authorized geographic code.

(2) No suppliers from countries or areas included in the authorized geographic code are able to provide the required services.

(3) Persuasive political considerations.

(4) Procurement of locally available services would best promote the objectives of the foreign assistance program.

(5) Such other circumstances as are determined to be critical to the achievement of project objectives.

(2) Foreign Government-Owned Organizations.

- (a) The competition for obtaining a contract will be limited to cooperating country firms/organizations meeting the criteria set forth in Secs. 2.6.2.1 or 2.6.2.2.
- (b) The competition for obtaining a contract will be open to firms from countries or areas included in the authorized geographic code and eligible under the provisions of Secs. 2.6.2.1 or 2.6.2.2, and it has been demonstrated that no U.S. firm is interested in competing for the contract.
- (c) Services are not available from any other source.
- (d) Foreign policy interests of the United States outweigh any competitive disadvantage at which United States firms might be placed or any conflict of interest that might arise by permitting a foreign government-owned organization to compete for the contract.

2.6.3 Nationality of Employees under Contracts and Subcontracts for Services

The nationality policy of subparagraph 2.6.2.1, above, does not apply to the employees of contractors or subcontractors. Such employees must, however, be citizens of countries included in Geographic Code 935 or, if they are not, have been lawfully admitted for permanent residence in the United States.

2.6.4 Source Rule

Source and origin requirements for commodities are discussed in Section 4.3.24. The requirements apply to any country contract which includes an element of commodity procurement.

2.7 Other Factors Affecting the Eligibility of Firms to Compete for the Contract

In addition to the eligibility criteria in Sections 2.3 and 2.6, above, firms may be ineligible for USAID-financed contracts for any of the following reasons:

2.7.1 A firm, including its affiliates and subsidiaries, should not be employed to perform services when, in the judgment of the USAID official authorized to approve the contract, the firm has been, or might be, placed in a position where its judgment may be biased, or where it has achieved an unfair competitive advantage. However, a firm will not be disqualified solely because it was previously employed to make a feasibility study, participate in sector assessments or activity design, or perform other technical or engineering services for a single activity provided it is otherwise qualified for detailed design, supervision, or rendering of other subsequent technical services for the activity.

2.7.2 Unless specifically approved by the USAID official authorized to approve the contract (for example, turnkey jobs or other exceptional circumstances), no firm, including its affiliates and subsidiaries, may perform engineering services and provide commodities or perform construction services on the same activity.

2.7.3 Any firm incorporated or legally organized in the United States is eligible for an USAID-financed contract only if it certifies prior to contract award that it is in compliance with its equal employment opportunity obligations under Executive Order 11246, as amended, and regulations and orders issued thereunder. This requirement may be waived only by the USAID Administrator.

2.8 Language and Specifications

2.8.1 Contracts and other documents submitted to USAID shall be in English unless USAID otherwise agrees in writing. Notices and solicitations to be published and/or disseminated in the United States shall be prepared in English in any event.

2.8.2 The metric system of measurement shall be used for specifications that are incorporated in or required by USAID-financed contracts unless USAID determines in writing that such use is impractical or is likely to cause significant inefficiencies or the loss of markets to U.S. firms.

2.9 Prohibition Against/Restrictions on Certain Types of Contracts

2.9.1 Prohibition

In no event will USAID finance a cost-plus-percentage-of-cost contract; i.e., a contract in which the profit or fee (however described) increases without limitation as the cost of the contract increases. Nor will USAID finance a contract for engineering services when the price is expressed as a percentage of the final cost of construction of a facility.

2.9.2 Restrictions

The use of either cost-reimbursement contracts that are not anticipated to exceed \$250,000 or level of effort, cost-reimbursement contracts, regardless of dollar value, requires specific USAID approval in writing.

2.10 Documentation for Payment

Each USAID-financed contract must require that claims by contractors for payment or reimbursement for goods and services be supported by appropriate and complete documentation, including the "Contractor's Certificate and Agreement with the Agency for International Development" (form USAID 1440-3), which is usually specified in the SOAG Implementation Letter or other related documents. (See Section 2.12.3.)

2.11 Submission of Contracts to USAID

The Mission will inform the Contracting Agency how many copies of the final executed contract and amendments are to be submitted to USAID. The Regional Bureau shall advise the Mission of USAID/W distribution requirements.

2.12 Mandatory Contract Clauses

The mandatory contract clauses set forth in this section must be included in every USAID-financed professional and technical services contract under the conditions discussed below.

There are other clauses, discussed in Section 4.3, which are sound contracting practice but not required on a mandatory basis.

2.12.1 Legal Effect of USAID Approvals and Decisions

USAID requires the reservation of certain approval rights with respect to the contract but must not incur legal liability by reason of the exercise of those rights. The clause in Section 5.11 which must be included verbatim in each contract, does not itself reserve approvals; it does recognize USAID's role as the financing entity and protects USAID against exposure to liability.

2.12.2 Nationality

The contract must state the eligible nationality of any subcontractors for services. The eligible countries must match those stated in the SOAG unless a waiver has been obtained (see Section 2.6.2.3). The nationality requirements arise from a number of U.S. Government statutes and regulations. While the language contained in the clause in Section 5.22 is not required to be used verbatim, any changes should be carefully worked out because this is a very complex subject.

2.12.3 Contractor's Certificate and Agreement with the Agency for International Development/Invoice and Contract Abstract (Form USAID 1440-3)

The contract must require the contractor to submit a "Contractor's Certificate and Agreement with the Agency for International Development/Invoice and Contract Abstract" (form USAID 1440-3), Attachment 1L, executed in accordance with instructions thereon, with each request for payment. This requirement may be waived only by USAID/W (the USAID Procurement Executive, with concurrence of GC).

2.12.4 Air Travel and Transportation

a. Grant-Financed Contracts

A U.S. Government statute requires the use of U.S. flag air carriers for all USAID grant-financed international air travel and transportation unless such service is not available. When U.S. flag air carriers are not available, any Code 935 flag air carrier may be used. The language defining "available" and "unavailable" carriers in Section 5.23 must be used verbatim in grant-financed country contracts.

b. Loan-Financed Contracts

(1) There is no statutory requirement for use of U.S. flag air carriers under loan-financed contracts.

(2) When the authorized source under a loan is Code 000, USAID's policy on financing air transportation is the same as under grant-financed contracts (paragraph a. above).

(3) When the authorized source under a loan is Code 941, USAID policy requires use of cooperating country flag air carriers, U.S. flag air carriers, or other Code 941 flag air carriers for international air travel and transportation to the extent they are available in accordance with the criteria in the clause in Section

5.23. If the contractor certifies that authorized carriers are unavailable, any Code 899 flag air carrier may be used.

2.12.5 Worker's Compensation Insurance

Worker's compensation insurance must be provided under all services contracts financed by USAID, often in the form of Defense Base Act insurance. This clause is discussed in detail in Section 4.3.41.

2.12.6 Participant Training

When a contract provides for participant training, i.e., the training of non-U.S. nationals outside their home countries, the contract must include a clause (see Sections 4.3.44 and 5.44) which incorporates into the contract by reference USAID's ADS Ch. 253, Training for Development Impact and requires the contractor to follow the provisions of that directive and attendant Participant Training Notices.

2.12.7 Host Country Taxes

USAID funds may not be used to pay identifiable taxes of the host government or its political subdivisions. This basic exemption is generally set forth in the bilateral agreement between the U.S. and host governments. The contract must contain a clause (see Sections 4.3.20 and 5.20) applying the exemption to the particular contract.

2.12.8 Settlement of Disputes

The contract must contain a clause (See 5.27) which specifies impartial and effective procedures to resolve disputes that arise from the performance of the contract for which an amicable settlement can not be reached. The clause and the permissible modifications to it are discussed in 4.3.27.

2.12.9 Disposition of Personal Property in the Cooperating Country

The contractor's employees, the contractor--if the contract is with an individual, and family members thereof will not be permitted to retain profits from the disposition of personal property that was acquired in or was imported into the Cooperating Country and was exempted from import restrictions, customs duties, or taxes by virtue of the individual's status under an USAID-financed contract. The contract must contain a clause (see Sections 4.3.28 and 5.28) which restricts the disposition of such personal property in accordance with the rules contained in 22 CFR Part 136 to the extent that these rules are applicable to the employees of U.S. Government contractors in the Cooperating Country.

2.12.10 Equal Employment Opportunity

A contract with a U.S. firm must include a clause requiring the contractor to be in compliance with its equal employment opportunity obligations under Executive Order 11246, as amended, and regulations and orders issued thereunder. This requirement may be waived only by the USAID Administrator. (See Sections 4.3.39 and 5.39.)

2.12.11 Audit and Records

Contracts for professional and technical services must contain an audit and record-keeping clause (see Section 4.3.18 and 5.18)

2.12.12 Corrupt Practices

All solicitations and contracts must contain a corrupt practices clause. (See Sections 4.3.47 and 5.47.)

2.13 Auditing and Contract Closeout Provisions

Provisions must be made for the proper audit of cost-reimbursable contracts and subcontracts in excess of \$250,000, including as necessary: setting aside SOAG funds to cover the cost of the audit, selection of the auditing entity in accordance with the guidance in Section 3.8, and providing for the finalization of provisional overhead rates annually. Cost-reimbursable items in contracts and subcontracts that do not exceed \$250,000 and contract requirements such as source of goods and use of U.S.-flag air carriers shall be audited when there is basis for questioning contractor representations. (See Section 3.8.) The contract shall also be closed out in an orderly fashion upon the contractor's satisfactory completion of the work. (See Section 3.9.)

3.0 Guidance

3.0.1 The application of the guidance in this Section 3 should be based on the circumstances of the procurement.

3.0.2 The normal considerations in country contracting are:

- Choice of type of contract

- USAID approvals

- Prequalification

 - Use of prequalification

 - Advertising

 - Distribution of prequalification questionnaires

 - Submission of prequalification questionnaires

 - Analysis of prequalification information and

 - establishment of a "shortlist"

 - Advice to firms seeking prequalification

- Contractor Selection

 - Preparation of the Request for Technical Proposals (RFTP)

 - Advertising (if prequalification was not used)

 - Distribution of RFTP

 - Receipt and analysis of Technical Proposals

 - Selection of contractor

 - Advice to firms

- Contract Preparation

 - Invitation to negotiate

 - Preparation of cost estimate by Contracting Agency

- Determination of the Method of Payment
- Negotiations
- Draft contract
- USAID approval of draft contract
- Signature of contract and required USAID approval
- Contract Administration
 - Inspection and acceptance
 - Payment
 - Audit
 - Closeout

3.1 Choice of Type of Contract

3.1.1 General

The Contracting Agency decides which type of contract is most appropriate for the specific procurement as the first step in the contracting process after the general outline of the work to be performed by the contractor has been developed during the activity development process. This decision may be subject to USAID approval. As a general rule, USAID recommends that the principles which are addressed in Attachment 1U, Performance-Based Contracting Methods, be incorporated in country contracting for professional and technical services, to the maximum extent practicable.

The three types of contracts most often used for procuring technical or professional services are discussed below. Other types of contracts, or a combination of these, may also be used, subject to the rule in Section 2.9.

3.1.2 Cost Reimbursement (With or Without Fee)

Cost reimbursement contracts are advisable when uncertainties in the amount of work, or the conditions under which the work must be performed, make accurate determination of the costs involved impossible. This type of contract entitles the contractor to reimbursement of all its reasonable, allowable, and allocable costs incurred in performing the work, plus a fixed fee. Nonprofit organizations are usually not entitled to a fixed fee.

When a cost reimbursement contract is not expected to exceed \$250,000, the contract administration and audit effort and expense required for this type of contract may be excessive in relation to the value of the contract, and one of the other types of contracts is strongly recommended. Under the rule in Section 2.9.2, before USAID will finance a contract cost reimbursement contract which is not anticipated to exceed \$250,000, a written justification for using this type of contract must be approved by USAID.

When a cost reimbursement contract is used, it is preferable to use a completion form of contract in which the statement of work obligates the contractor to provide a defined output or product, rather than a level of effort contract in which the statement of work obligates the contractor to provide specified amounts of labor. Use of a level of effort contract requires approval by USAID based on a written justification, regardless of contract value.

Cost reimbursement contracts should incorporate the applicable cost principles, in accordance with Chapter 4, of this Mandatory Reference and include an agreed budget which the contractor may not exceed without advance approval by the Contracting Agency. The budget sets forth

the limitations on direct costs (e.g., salary, allowances, travel, commodities, etc.), indirect costs (e.g., overhead), and the fixed fee.

Payments to the contractor under cost reimbursement contracts are made periodically (usually monthly or quarterly) against billings, which are supported by itemized listings of the items being billed. The Contracting Agency must understand the principles under which direct and indirect costs are billed and have a system for ensuring that the billings are justified. Thus, use of a cost-reimbursement contract requires a competent Contracting Agency staff in order to avoid frequent disputes over billings and maintain effective control of the contract.

3.1.3 Time-Rate Contracts

a. Description

Time-rate contracts are useful when services are tied to schedules whose duration and timing are uncertain, but the type of skill(s) is known. They usually combine aspects of both fixed price and cost-reimbursement contracts. Only salary, overhead, and profit are combined into a fixed rate per time unit (day, week, or month). Other direct costs, such as travel and allowances are paid on a cost-reimbursement basis. The contractor is paid the fixed rate for the days actually worked, plus the related cost-reimbursement items, up to the maximum contract amount. The time-rate amount should be negotiated based on the following considerations:

(1) If the contractor has an established pay scale, the salary levels for each type of contractor employee who might perform work under the contract should be stated in the contract. The ranges for each level should be as narrow as possible and based on the pay scale. The contractor cannot substitute a person making a lower salary than the rank of people it is required to provide by the terms of the contract.

(2) If the contractor does not have an established pay scale, or if salary ranges are broad, the host country should be encouraged to negotiate a "multiplier" formula. The multiplier is a negotiated factor which includes salary, overhead and profit. It is multiplied against the actual salary paid to the employee. An example would be calculated as follows:

Direct Salary = 100 percent	=	1.00	
Overhead at 100 percent	=	1.00	
Subtotal		2.00	
Profit at 10 percent	.20		Multiplier 2.20

Fixed daily rate = multiplier x actual salary. If the employee's actual salary is \$52,000 per year or \$200 per day, the fixed daily rate would be 2.2 x \$200, or \$440.

b. Advantages

The major advantage in using time-rate contracts is the flexibility when the duration of the required services is more or less than the time estimated (but still within the stated maximum contract amount) and the relative ease of processing payments compared to the detail involved in cost-reimbursement contracts.

c. Disadvantages

Particular care should be exercised in the use of this type of contract since its terms of payment do not encourage effective management control and, in fact, encourage the contractor to spend more time performing the services thereby increasing its monetary return. Thus it is essential that this type of contract be used only where provision is made for adequate control, including appropriate surveillance by host country and USAID personnel during performance, to give reasonable assurance that inefficient or wasteful methods are not being used. The more time the contractor expends in performance of the contract, the greater its profit (which is included in the fixed rate). Also, unless the contract is carefully drafted the contractor can substitute lower paid personnel than those proposed during negotiations.

Since the time-rate amount is fixed, the contractor could increase its profits by retaining the excess salary for itself. In addition, the determination that contract costs are reasonable is more difficult for time-rate contracts than for any other form. An analysis is not difficult in short-term, time-rate contracts under known conditions. However, when the contract is for a longer term, and the problems facing the contractor are less foreseeable, a cost-reimbursement contract is usually less costly, and therefore, preferable.

3.1.4 Fixed Price or Lump Sum

Fixed price or lump sum contracts should be used whenever the scope and duration of services to be performed may be defined in advance with sufficient precision to enable both contracting parties to determine with reasonable accuracy the personnel and other requirements for the performance of the contract. The contractor is paid the amount stated in the contract regardless of its actual costs. The contract amount includes all of the contractor's anticipated direct and indirect costs and profit. The primary advantages to this type of contract are that it is easy to administer and the cost of the contract is known.

The primary disadvantage is the difficulty for both the contractor and Contracting Agency to calculate the cost of performing the work. The contractor obviously does not want to lose money on the contract, nor does the Contracting Agency wish to finance a "windfall" for the contractor. Consequently, a fixed price contract is most suitable when the work is precisely defined and the contract period is sufficiently short to minimize the contingencies covered in the price.

3.2 USAID Approvals

3.2.1 Whenever the total contract amount is anticipated to exceed \$250,000 in value, including any local currency, the rule in Section 2.1 requires USAID approval of specified intermediate steps in the contracting process, the final contract award, and postaward administrative actions as determined by the Mission. With respect to the latter, USAID and the Contracting Agency may agree on the thresholds and other criteria for determining the approval requirements for subcontracts, amendments, change orders, and other actions, depending upon their complexity, value, and other factors.

3.2.2 Whenever the total contract amount is not anticipated to exceed \$250,000 in value, the establishment of approval requirements is within the discretion of the Mission, and the Mission

and the Contracting Agency may agree on which of them should be applied and establish thresholds for applying them. Different Contracting Agencies have widely varying experience with contracting matters, and with USAID country contracting rules and procedures in particular. The Mission must therefore determine whether the Contracting Agency is likely to select a contractor acceptable to USAID and to negotiate a satisfactory contract without the Mission having prior approval of certain steps in the process. It must consider the complexity of the procurement and the likelihood of the Contracting Agency being able to avoid mistakes in the procurement and to avert offeror protests. On the other hand, these factors must be balanced against the desirability of having the host country be responsible for its own contracting and the time savings possible if USAID reviews are kept to a minimum. The steps at which USAID approval will be required are set forth in a SOAG Implementation Letter.

3.3 Prequalification

3.3.1 Use of Prequalification

After the Contracting Agency has determined the exact nature of the services required, the type of contractor to provide them, and the type of contract (e.g., fixed-price, cost-reimbursement, etc.) to be used, it decides whether to prequalify and shortlist interested firms. In making this decision, the Contracting Agency considers such factors as the cost to interested firms to prepare adequate technical proposals; the complexity or uniqueness of the services; the number of responses anticipated; the need, if any, for review of documents, data, and conditions in the host country; or whether it is otherwise advantageous to determine the qualifications of potential contractors before proposals are requested. USAID generally recommends prequalification, and if the contract is anticipated to exceed \$250,000, it reserves the right to approve whether or not prequalification is used (as part of its approval of the contractor selection method).

If prequalification is not deemed necessary, the Request for Technical Proposals must include the qualification factors which will be evaluated as part of the contractor selection procedure.

To assure that the procurement is conducted in a manner that does not give an unfair competitive advantage to any party, information concerning specific procurement requirements should not be released to any potential offerors, directly or indirectly, prior to the issuance of prequalification questionnaires or the Request for Technical Proposals if prequalification is not used.

3.3.2 Advertising

In accordance with the rule in Section 2.5., a Notice of the availability of prequalification questionnaires is published in the Commerce Business Daily of the United States Department of Commerce. The contents of the Notice are set forth in Section 4.1.1. and preparation and transmittal procedures are specified in Attachment 1M. In addition, when services are sought from other eligible country and/or local firms, such firms are notified by the Contracting Agency in a manner consistent with local law and practice. If USAID approval is not required prior to its publication, a copy of the notification should be furnished to USAID when it is published.

3.3.3 Distribution of Prequalification Questionnaires

The Contracting Agency shall furnish to all interested firms responding to the prequalification notice, and all other firms which it wishes to solicit, an outline for presenting their general and

specialized qualifications; i.e., applicable experience, reputation, job capacity, etc. The Standard Form 255, "Architect-Engineer and Related Services Questionnaire for Specific Project" (Attachment 1B), requests this information. Similar forms which will elicit comparable information may be used.

If a joint venture seeks prequalification, qualification information must be supplied with respect to all firms in the joint venture. Each member firm of the joint venture must meet the source and other eligibility rules in Sections 2.6 and 2.7. However, the joint venture is treated as a unit in determining technical and other qualifications. If subcontracting is contemplated by any firm or joint venture, qualification information may be requested with respect to major subcontractors.

3.3.4 Submission of Prequalification Information

Prequalification information should be submitted to the Contracting Agency by the date specified in the Notice. The deadline date should be a reasonable time after publication of the Notice, but never less than 30 days after publication. Mailing time for prequalification forms and the completed questionnaires is a major factor in establishing the deadline date.

The Contracting Agency may consider prequalification information received after the due date as long as such consideration does not delay the contract process. In order to avoid disputes, it is recommended that the Notice contain a statement whether or not the Contracting Agency, at its option, will consider late prequalification information.

3.3.5 Analysis of Prequalification Information and Establishment of a "Shortlist"

3.3.5.1 The Contracting Agency evaluates the information submitted by interested firms and establishes a "shortlist". If the number of competing firms or the complexity of the work so warrants, the procedure in Section 3.4.4 may be adapted for this evaluation. The "shortlist" should include at least three firms. Depending upon the qualifications of the firms submitting information and the complexity of the Request for Technical Proposals, a few or all of the firms deemed qualified may be put on the "shortlist."

3.3.5.2 The Contracting Agency should prepare a memorandum explaining the basis for the selection of the firms on the "shortlist," and provide a copy of the memorandum to the Mission. If required, USAID approval of the "shortlist" must be given before the Request for Technical Proposals is issued.

3.3.5.3 Firms that are not included on the "shortlist" are not considered further. However, the firms that are not included on the "shortlist" are not necessarily judged to be unqualified for want of inclusion.

3.3.6 Advice to Firms Seeking Prequalification

The Contracting Agency should advise promptly those firms not selected for the shortlist. Attachment 1C is an example of such notification.

3.4 Contractor Selection

3.4.1 Preparation of the Request for Technical Proposals (RFTP)

The contents of the RFTP are set forth in Section 4.2.1. When required by Section 2.1, formal USAID approval of the RFTP must be given before it is issued. The due date established in the RFTP must allow offerors sufficient time to receive the RFTP, prepare responsive proposals (including time to visit the host country, if appropriate), and submit their proposals to the specified place by the specified time. The due date may be extended by the Contracting Agency by means of an addendum to the RFTP which is sent to all firms who received copies of the RFTP.

Likewise, if clarification of the material contained in the RFTP is necessary, a written addendum (also extending the due date, if appropriate) must be sent to all firms who received copies of the RFTP.

3.4.1.1 Selection Criteria

A primary selection criterion to be included in the RFTP is the previous experience of the offeror and the employees that it is proposing to assign to the requirement being contracted. Previous experience with USAID or country contracts in itself is not an appropriate selection factor, and technical experience obtained from such contracts should not be given more weight than experience gained from comparable performance under contractual arrangements with other contracting entities. Further, overseas, regional, and/or in-country experience should not be weighted in excess of 10 percent of the total technical evaluation criteria weighing without the approval of the USAID Assistant Administrator or Mission Director under whose authority the final award will be made.

In order to evaluate the offeror's previous experience from the perspective of its clients, the RFTP should include a request for business references from at least three present or former clients for whom the offeror has provided services similar to those being solicited. The offeror should be requested to furnish in its business references the names, addresses, telephone and/or telex numbers of the appropriate clients' contact persons, and descriptions, values, and periods of the services provided. The RFTP should also include a statement notifying the offerors of the intent to verify the business reference and employee biographical data submitted.

3.4.2 Advertising (If prequalification was not used)

In accordance with the rule in Section 2.5., if prequalification was not used, the Contracting Agency must advertise to availability of the RFTP. A Notice of the availability of the Request for Technical Proposals is published in the Commerce Business Daily of the United States Department of Commerce. The contents of the Notice are set forth in Section 4.2.2. When services are sought from other eligible country and/or local firms, such firms will be notified by the Contracting Agency in a manner consistent with local law and practice. A copy of the notification should be furnished to USAID/OSDBU/MRC.

3.4.3 Distribution of the RFTP

The Contracting Agency shall provide the Request for Technical Proposals to all firms asking for it and to all other firms the Contracting Agency wishes to solicit or, if prequalification was used,

to all shortlisted firms. Normally, there is no charge for the RFTP; but, if a charge is made, it shall not exceed the cost of reproduction and mailing.

3.4.4 Receipt and Analysis of Technical Proposals

Promptly after the date for receipt of Technical Proposals has expired, the Contracting Agency should begin evaluating the proposals against the criteria set forth in the RFTP. If provided for in the RFTP, Technical Proposals received after the due date but prior to completion of the technical evaluation procedure may be considered, in accordance with the RFTP's Late Proposals provision.

USAID recommends use of a selection panel for evaluation and subsequent ranking of the proposals. The selection panel should be composed of experienced, senior-level host country government personnel representing the program and contracting specialties involved in the activity. Outside specialists may be included as requirements dictate. Care must be taken to avoid the inclusion of persons whose participation in the evaluation could be construed as a conflict of interest that would impair an impartial evaluation of the proposals received.

USAID will furnish an observer to monitor the selection panel proceedings for procurements expected to exceed \$250,000. The observer will not actively participate in the proceedings, other than answering questions concerning USAID procedures and providing liaison with USAID in obtaining business references described below; USAID will not conduct a separate technical ranking of proposals.

The most effective procedure to evaluate proposals is to develop a chart which shows the criteria to be considered and to assign a weight to each criterion or group of criteria specified in the RFTP. Each proposal is rated against each criterion, a numerical value is assigned, and the weighted ratings are totaled. Attachment 1D is an example of an evaluation chart.

The selection panel should contact a sufficient number of the business references listed by each offeror considered technically acceptable in order to make an assessment of the experience claimed. The USAID observer (or activity manager if no observer is assigned) will provide liaison to check the performance record that an offeror may claim with USAID.

When considering U.S. offerors for which USAID and the Contracting Agency do not have sufficient first-hand information on previous performance or qualifications, the USAID observer or activity manager may obtain additional business data for the selection panel's consideration from PPC/CDIE/DI, in USAID/W. This office has access to approximately a dozen computerized business data bases, such as Dun and Bradstreet, Standard and Poor's, Moody's, etc.

Although the rating of firms against the criteria involves subjective judgments on the part of the rater, a degree of objectivity can be obtained by having the individual members of the selection panel independently rate the proposals. A comparison of the rating assigned by each member often brings to light ambiguities in the proposal which should be clarified by the offeror. The final ranking may be established by averaging the scores assigned by the panel members. The Contracting Agency prepares a selection memorandum which:

- a. States the evaluation criteria;
- b. Lists all of the firms which submitted proposals;
- c. Rates the proposals according to the evaluation criteria; and

- d. Lists all proposals deemed acceptable in the order ranked.

3.4.5 Selection of Contractor

If required, the Contracting Agency must secure USAID approval of the contractor selected for negotiation (or award without negotiation). USAID approval will be based on:

- a. The eligibility of the proposed contractor
 - (1) Nationality eligibility (see Section 2.6)
 - (2) Debarment, suspension, and ineligibility (see Section 2.3)*
 - (3) Conflict of interest, unfair competitive advantage, performance to own design, equal employment opportunity (see Section 2.7)
- b. The selection procedures carried out by the Contracting Agency (see Sections 2.2, 2.3, 2.4, and 2.5).
- c. The selection memorandum.
- d. A finding that the contractor's proposal demonstrates that it can carry out the work described in the RFTP. If that finding can be made, it is not necessary that USAID agree with the ranking of the proposals.

3.4.6 Advice to Firms

Immediately after USAID approval of selection of the contractor, the Contracting Agency should send appropriate notices to those firms submitting proposals which clearly will not be further considered and to those alternate firms with whom negotiations may be conducted if a satisfactory contract is not concluded with a higher ranked firm. Attachments 1E and 1F are examples.

* The "List of Parties Excluded from Federal Procurement and Nonprocurement Programs" is maintained by the U.S. General Services Administration. The "Consolidated Lists of Designated Nationals" is published under the U.S. Treasury Department Foreign Assets, Sanctions, Transactions, and Funds Control Regulations in 31 CFR Parts 500-599. All of the lists will be regularly distributed to USAID Missions, and will be available for review. Additionally, GSA maintains electronic lists of the parties that may be accessed (Internet URL <http://www.arnet.gov/epls/>) and telephone inquiry about entries may be made to (202) 501-4873. Questions concerning the listing of organizations and individuals on the Treasury Department's "Consolidated Lists of Designated Nationals" may be directed to (202) 566-5021. Questions concerning the listing of organizations and individuals on these lists may also be directed to GC/LE in USAID/W.

3.4.7 Protests by Offerors

Protests of the contractor selection and award processes which are submitted by offerors contending for award should be directed to the Contracting Agency in accordance with its policies and procedures. Consistent with its role as a financing entity and not a party to the contract, USAID will not become directly involved in the resolution of such protests. However, in accordance with subsection 3.5.5.2 of this chapter, the equitable settlement of such protests will be a consideration in the determination to grant USAID approval of the contract award. Costs incurred by the Contracting Agency in the adjudication and settlement of protests by offerors are not subject to reimbursement by USAID.

3.5 Contract Preparation

3.5.1 Invitation to Negotiate

Negotiations should commence promptly after the proposed contractor has been selected and, if required, approved by USAID. The highest ranked firm is asked to submit a cost proposal, and the time and place of negotiations is established.

3.5.2 Preparation of Cost Estimate by Contracting Agency

3.5.2.1 To be well prepared for its negotiations with the Contractor, the Contracting Agency should prepare its independent cost estimate in as much detail as possible. If it does so, it will be able to analyze quickly and thoroughly the cost proposal to be submitted by the Contractor, determine where the major differences are and concentrate during the negotiations on the critical items. The Contracting Agency must have substantial knowledge of the cost factors considered by contractors; Chapter 4 of this Mandatory Reference contains information on this subject.

The total cost of a contract is made up of three basic elements:

- direct costs
- indirect costs (overhead)
- profit (fee), if appropriate.

In order to avoid giving any offeror an unfair competitive advantage or jeopardizing the Contracting Agency's bargaining position, the amount of funds available and the amount and composition of the cost estimate should not be disclosed to other than host country or USAID personnel with a need to know.

3.5.2.2 Direct Costs

In contracts for services, salaries are the single most important cost item and indirect costs (overhead) are usually calculated as a Percentage of salary costs. Errors made in estimating basic salaries will, therefore, result in far greater errors in the total estimate. The Contracting Agency must attempt to collect up-to-date information on salaries for different categories of professional staff in the contractor's country. The Contracting Agency can use other recent contracts, published tables, or other information on salary costs which USAID may be able to provide.

Next, the Contracting Agency must estimate the number of work-months required to do the work. For large contracts involving hundreds of work-months, this is the most important estimate; it requires a fairly precise knowledge of the job that is to be done and needs to be prepared in sufficient detail to permit an analysis of differences between the contractor's approach to the job and that used by the Contracting Agency. Direct costs other than salaries require special attention since major items are easily overlooked. Attachment 1G may be used as a checklist.

3.5.2.3 Indirect Costs

The Contracting Agency can ascertain a particular contractor's current indirect cost (overhead) rate if it has recently negotiated a contract with the same contractor, or the rate may be available from the Overhead and Special Costs Branch, Office of Contract Management, USAID/W. It is difficult to estimate indirect costs because contractors use varying accounting systems to establish the rates.

3.5.2.4 Fee or Profit

Finally, the fee should be estimated based on recent experience with contractors in the host country. While all other contract costs can be analyzed and agreed upon if the facts or estimates on which they are based are accepted by both parties, the fee is a matter for negotiation. The Contracting Agency should, therefore, be prepared to discuss the fee with the contractor on the premise that the contractor should be allowed a reasonable but not exorbitant profit. In forming a judgment on the amount which might meet that criterion, the business risk to the contractor, the method and frequency of payment, the relationship between the fee and direct salary costs, between the fee and the total contract cost, the cost per work-month based on direct and indirect salary costs or on total contract cost should be considered as indicators of the range within which an acceptable fee might fall.

Attachment 1G (Cost-Reimbursement) and Attachment 1H (Fixed-Price) are recommended formats for analysis of costs. They are useful for initial cost estimating, for cost breakdowns and analysis during negotiations, and for recording final agreement on price for contract purposes and USAID approval.

3.5.3 Negotiations

3.5.3.1 General

The responsibility for contract negotiation lies with the Contracting Agency. USAID has a vital interest in the contract as a financier with contract approval rights; however, USAID is not a party to the contract. USAID is prepared to offer the negotiating parties, at the Contracting Agency's request, counsel and advice in the interest of reaching a fair and reasonable contract that meets the activity's needs. Useful roles for USAID include such actions as assisting the contractor in understanding local laws, regulations, procedures, and customs, explaining U.S. contracting principles and administrative procedures to the Contracting Agency, or clarifying what solutions would not be acceptable to USAID in approving the contract. It is difficult to maintain this advisory role which requires experience, flexibility, and tact.

3.5.3.2 Preparation for Negotiation

The Contracting Agency should prepare a position from which to negotiate well in advance of the parties' first meeting. This includes the cost estimate, and an analysis of any adjustments to the statement of work and the other contract provisions which either party wishes to propose.

Cost Estimate. See Section 3.5.2

Statement of Work. The prospective contractor may well offer an alternative approach in its proposal or make modifications in the statement of work as set forth in the Request for Technical Proposals. The Contracting Agency should analyze the offeror's proposal to consider which elements could be accepted, which should be further discussed or explained, and which should be rejected and why.

Other Contract Clauses. If the offeror has taken exception to any part of the contract as set forth in the Request for Technical Proposals, or if the Contracting Agency sees a need for changes, the contract clauses may be modified during negotiations. The contract clauses are discussed in detail in Section 4.3. A sample contract is contained in Section 5.

3.5.3.3 Unsuccessful Negotiations

Despite the best efforts of the parties to arrive at a mutually acceptable contract, there are cases where differences are irreconcilable. In those cases, the Contracting Agency should consult with USAID and obtain its approval, where required, and then it should inform the offeror that it considers further negotiations useless and wishes to terminate them. This determination should be confirmed in writing. The Contracting Agency then invites the next highest ranked offeror to submit a cost proposal and invites that firm for negotiations.

3.5.4 USAID Approval of Draft Contract

3.5.4.1 The end result of the negotiations is a draft contract acceptable to both the Contracting Agency and to the contractor. When USAID approval of the signed contract is required, it must also be acceptable to USAID. To avoid having to make changes in the signed contract and resulting delays, USAID approval of the draft contract should be obtained prior to contract award by the Contracting Agency submitting a complete draft of the contract and the following information:

- a. Analysis of the cost or price of the proposed contract. Attachment 1G (cost-reimbursement) or Attachment 1H (fixed-price), or a similar form may be used;
- b. If not previously submitted, the selection memorandum prepared pursuant to Section 3.4.4 above;
- c. Biographic data of key personnel, particularly with respect to qualifying experience; and
- d. Offeror protests and their disposition.

3.5.4.2 USAID Approval Criteria

USAID approval of the contract will be based on:

- a. The soundness of the contract document as a fair and workable instrument to accomplish the objective;
- b. Adequacy of the scope of work and work plan;
- c. Reasonableness of price based on the analysis prepared by the Contracting Agency and the considerations discussed in Section 3.5.2.;
- d. Conformity with the rules in Section 2;
- e. Appropriateness of the selection procedure, including the settlement of offeror protests; and
- f. Review of the "Lists of Parties Excluded from Federal Procurement and Nonprocurement Programs."

After USAID approval of the contract, the firms whose proposals were retained in case a satisfactory contract was not reached with the highest ranked offeror are notified of the award. Attachment 1J is an example.

3.5.5 Signature of Contract and USAID Approval

The contract is signed by the Contracting Agency and the contractor. When USAID approval of the signed contract is required, a copy is submitted to USAID for approval in accordance with the rule in Section 2.1. If USAID did not approve the final draft contract, the documentation listed in Section 3.5.4.1 should be submitted with the signed contract for approval in accordance with the criteria in Section 3.5.4.2.

After the Contracting Agency is advised in writing of USAID's approval, copies are distributed to USAID in accordance with the rule in Section 2.11. Additional copies may be distributed as appropriate.

3.6 Determining the Method of Payment

3.6.1 General

The method of payment to the contractor is described in the contract and should be chosen in consultation with USAID personnel. The three basic methods employed for payment are Direct Reimbursement to the Borrower/Grantee, Direct Letter of Commitment to the Contractor, and Letter of Commitment to a U.S. bank with subsidiary Letters of Credit. Each is especially useful in certain situations explained below. In each method, payments are made on the basis of submission of the appropriate documents discussed in Section 3.6.6 below.

3.6.2 Direct Reimbursement to the Borrower/Grantee

Under the Direct Reimbursement procedure, the Borrower/Grantee pays for the contract services and related commodities from its own resources, prepares a Request for

Reimbursement with the required supporting documentation, as listed in Section 3.6.6, submits it to USAID, and receives reimbursement.

3.6.3 Direct Letters of Commitment to the Contractor

The Direct Letter of Commitment (D L/COM) is an agreement between USAID and the contractor, under which USAID makes payment directly to the contractor for eligible commodities and services furnished under a country contract. The D L/COM is assignable under the Assignment of Claims Act, by the contractor to a banking institution and thus may serve as collateral for credit the contractor may require for working capital.

The steps involved in this method of U.S. dollar payments are:

- a. The Contracting Agency prepares a request for a Letter of Commitment and submits it to USAID.
- b. Based on the SOAG and SOAG Implementation Letter, the request for a Letter of Commitment, and the contract, USAID issues a Letter of Commitment directly to the contractor.
- c. The contractor presents the appropriate documents listed in Section 3.6.6 to USAID, and receives payment directly from USAID.

3.6.4 Letter of Commitment to U.S. Bank

The Bank Letter of Commitment (L/COM) is an agreement between USAID and a U.S. bank, under which the bank is authorized to make payments to the contractor for eligible commodities and services. The bank is reimbursed by USAID for payments made in accordance with the conditions set forth in the L/COM. This financing device utilizes established commercial banking channels to process payments to contractors. Under this financing arrangement, a party designated by the Borrower/Grantee (known as the "approved applicant," which is generally a host country bank) may either issue letters of credit to contractors, and request the L/COM bank to advise or confirm them or may request the L/COM bank to issue its own letters of credit to contractors.

a. Eligibility and Designation of U.S. Banks

Any banking institution organized under the laws of the United States, or any State, Territory or possession thereof, or Puerto Rico or the District of Columbia is eligible to be designated as an L/COM bank. It is the responsibility of the Borrower/Grantee to select the U.S. banking institution, and as a general rule, responsibility for selection of the U.S. bank is delegated to the approved applicant. Normally, an existing correspondent relationship between the approved applicant and the U.S. bank is the basis on which a U.S. bank is selected.

In those cases where the amount of the contract is \$50,000 or more, the contractor may, prior to signature on the contract, request the designation of a specific U.S. bank to receive the L/COM. The decision as to whether or not to comply with the contractor's request rests with the approved applicant which should make every effort to grant this request.

b. U.S. Bank Charges

U.S. banking institutions charge for their services under Letters of Commitment issued to them by USAID. These charges are for the account of the approved applicant, but may be financed by USAID from funds set aside in the L/COM, if so authorized by the terms of the underlying agreement. The schedule of fees and charges should be negotiated, and agreed upon by the approved applicant and the U.S. bank prior to the time a bank is designated as the L/COM bank. If the Contracting Agency elects to finance the bank charges under the L/COM, which is usually the case, the amount to be set aside in the L/COM should be specified by the Contracting Agency and not be estimated by USAID. USAID will not finance any banking charges other than those assessed by the L/COM bank.

c. The steps involved in this method of financing are:

- (1) The Contracting Agency requests USAID to issue an L/COM. The request should contain the L/COM amount including the amount of estimated banking charges; the name and address of the U.S. bank; the name and address of the approved applicant; and the expiration date of the letter of commitment.
- (2) USAID issues a Letter of Commitment to the specified U.S. bank. The L/COM sets forth the conditions under which USAID will reimburse the bank.
- (3) The L/COM bank, based on instructions received from the approved applicant, issues, advises, or confirms a letter of credit to the contractor. The Letter of Credit must be in accordance with the terms of the contract, including documentation requirements, and be consistent with the terms of the L/COM.
- (4) The contractor presents the documentation prescribed in the Letter of Credit to the U.S. bank and receives payment.
- (5) The U.S. bank submits its voucher and the prescribed USAID documentation to USAID and receives reimbursement. The documentation submitted to USAID by the bank is not pre-audited by USAID but, like all USAID-financed transactions, is subject to post-audit.

3.6.5 Advance Payment

3.6.5.1 Definition

Advance payments are payments of monies to a contractor prior to or in anticipation of future performance under a contract. They are not based on actual performance or actual costs incurred.

3.6.5.2 Conditions For Use

a. Non-Profit Contractors

These are non-profit organizations (including international research centers and educational institutions) which do not charge a fee and which are authorized advance payments. Thus, they will not be forced to utilize their own working capital or earmarked

funds to finance work carried out under USAID-financed contracts. However, before an advance is authorized, the recipient organization must have a financial management system which has been found by U.S. Government audit (or other acceptable audit) to be adequate for controlling and accounting for U.S. Government funds. If the contractor does not have an acceptable financial management system, payment shall be on a reimbursement, not advance, basis.

b. Non-Profit Contractors Which Charge a Fee

Paragraph c., below, discusses conditions for advance payments to such contracts.

c. Profit Making Contractors

Advance payments to profit making contractors or non-profit organizations which charge a fee may be authorized only when the approving official (Section 3.6.5.4 below) has made a positive determination in writing that USAID will benefit in terms of increased competition and/or lower prices. This determination must be made prior to the issuance of the RFTP so that all prospective contractors are made aware of the availability of advance payments. The contractor must post adequate security for the advance (e.g., advance payment bond or guaranty). The requirement for an acceptable management system determined by U.S. Government or other acceptable audit described in paragraph a, above, also applies to profit making organizations.

3.6.5.3 Amount of the Advance

The amount of the advance payment, whether in dollars or local currency, is to be based on an analysis of the working capital required under the contract, taking into consideration the reimbursement cycle and, in the case of profit making firms, the availability of their own working capital. The advance shall be limited to the minimum amount needed for immediate disbursing needs (i.e., up to 30 days from date received until expended).

3.6.5.4 Approvals

- a. Advances to non-profit organizations are authorized, subject to the concurrence of the USAID Controller serving the Mission, when the organization has an acceptable financial management system.
- b. Advances of \$100,000 or less to profit making firms, regardless of the percentage of the contract value, may be approved by the Mission Director with the concurrence of the USAID Controller serving the Mission.
- c. Advances to profit making firms of up to 10% of the contract value with a maximum of \$1 million may be approved by the Mission Director with the concurrence of the USAID Controller serving the Mission.
- d. Advances to profit making firms in excess of 10% of the contract value or \$1 million, whichever is less, must be approved by the regional Assistant Administrator with the concurrence of the USAID/W Controller (FA/FM/C).

3.6.6 Documentation for Payments

Regardless of the method of payment used, appropriate documentation, as discussed below, must be submitted in order to receive payment.

3.6.6.1 Voucher

The voucher, SF 1034, "Public Voucher for Purchases and Services Other Than Personal" (Attachment 1K), is to be submitted in an original and three copies, normally prepared by the U.S. banking institution under Letters of Commitment, by the Contracting Agency under Direct Reimbursement, or by the contractor under Direct Letters of Commitment.

3.6.6.2 Contractor's Invoice

The Contractor submits its invoice in the number of copies specified in the contract describing the services performed, and itemizing in the detail the costs, such as salary, travel, materials, and equipment, if any, for which payment is invoiced under cost reimbursement contracts. When the contractor seeks reimbursement for commodities and the value of the commodity transactions exceeds \$2,500, the contractor also submits a "Supplier's Certificate for Project Commodities (Form USAID 1450-4)*, executed by the commodity supplier. The invoice shall indicate that the contractor has already incurred costs for the items being claimed. Under fixed-price contracts, the invoice shall identify the sections or paragraphs in the covering contract which contain the terms of payment.

3.6.6.3 Contractor's Certificate and Agreement (Attachment 1L)

In accordance with the rule in Section 2.12.3, the Contractor's Certificate and Agreement with the Agency for International Development, form USAID 1440-3, shall be prepared in accordance with instructions thereon and submitted with each request for payment.

3.6.6.4 Borrower/Grantee's Certification for Reimbursement

When direct reimbursement to the Borrower/Grantee is used, the following certification, signed and dated by the Borrower/Grantee must accompany the required documentation:

"Pursuant to Agreement No. _____, dated _____ the Borrower/Grantee hereby requests reimbursement and certifies as follows:

*Form USAID 1450-4 is incorporated in Attachment 1S.

- a. The Borrower/Grantee has not applied for or received reimbursement for the cost of any of the items for which reimbursement is requested, and will not obtain such reimbursement out of the proceeds of any other loan or grant available to the Borrower/Grantee.
- b. If pursuant to a loan or grant agreement some portion of the total payment for the specific goods and services covered herein is to be met from other than USAID sources, the Borrower/Grantee certifies that the total payment was \$ _____, of which the sum of \$ _____ was borne by _____."

3.6.6.5 Certification of Performance for Payment Other Than Final

Under any of the payment methods, when the request for payment is made by the Contracting Agency or the contractor, a certificate, signed and dated by the Contracting Agency, is required to accompany invoices for payments (other than final payment) as follows:

"The Contracting Agency certifies that (a) the services (or equipment and materials) for which reimbursement is requested have been satisfactorily delivered, (b) the reimbursement requested is in accordance with the terms of the contract, and (c) reports or recommendations required under the contract have been received and are in accordance with the terms of the contract."

Contracts may provide that if the contractor submits an invoice and the Contracting Agency fails to execute and deliver a certification of performance within a given period; e.g., 30 days after submission of the voucher, payment will be made without such a certification, unless a certification of nonperformance of specific terms is delivered within such period. In such a case payment with respect to such items may be withheld subject to adjustments being made in subsequent billings.

3.6.6.6 Certificate of Performance for Final Payments

In addition to the above documentation, the following certificate, signed and dated by the Contracting Agency, is required to accompany the invoice for final payment under any of the payment methods:

"The Contracting Agency certifies that the services (or equipment and materials) for which final payment is invoiced meets in all respects the specifications prescribed in the covering contract, and the amount invoiced is properly due and payable under the terms of the contract.

3.6.6.7 Termination Claims

If the contract has been terminated pursuant to provisions contained therein, the claim for termination costs is accompanied by:

- a. Written justification by the contractor supporting in detail the claimed charge.
- b. One of the following:
 - (1) Written concurrence by the Contracting Agency to the contractor's claim, or
 - (2) A certified copy of an arbitration award.

3.6.6.8 Administrative Approval by USAID Activity Manager

An administrative approval by the USAID Activity Manager is to be shown on the original of the SF 1034 whenever Direct Reimbursement to the Borrower/Grantee is used. This administrative approval is not required when a Bank Letter of Commitment is used. When a Direct Letter of Commitment to the Contractor is used, the administrative approval is required unless the request for payment is solely for the cost of commodities and the contract provides for payment for commodities against invoices and shipping documents.

a. Direct Reimbursement to the Borrower/Grantee

The administrative approval should read:

"I have reviewed the voucher, the request for reimbursement and supporting documentation attached thereto. Based on this documentation and my personal knowledge of the activity, I see no reason to withhold payment. Therefore, the voucher is administratively approved for payment subject to the financial review and certification of the USAID paying office."

b. Direct Letter of Commitment to the Contractor

The administrative approval below is required unless the request for payment is solely for the cost of commodities and the contract provides for payment for commodities against invoices and shipping documents.

(1) When the USAID Activity Manager has ready access to the place of performance or direct personal knowledge of contractor performance the administrative approval should read:

"I have reviewed the voucher, the related invoice(s) and supporting documentation. Based upon: (a) my personal knowledge of the activity, (b) the representations of the Contractor in the Contractor's Certificate (form USAID 1440-3) or other documentation, and (c) the representations of the Borrower/Grantee in the Certificate of Performance, I see no reason to withhold payment. Therefore, the voucher is administratively approved for payment subject to the financial review and certification by the USAID Paying Office."

(2) When the USAID Activity Manager does not have ready access to the place of performance or does not have direct personal knowledge of contractor performance, the administrative approval should read: "Based on the summary data provided which is applicable to the voucher and supporting documentation, including representations of the Contractor and the Borrower/Grantee, and my personal knowledge of the activity, I see no reason to withhold payment. Therefore, the voucher is administratively approved for payment subject to the financial review and certification by the USAID Paying Office."

(3) If contrary to normal practice, the Activity for which a voucher is submitted has not been assigned to a Activity Manager and no other member of the Mission staff has personal knowledge of the activity, or if the activity has been assigned to a activity officer only just before the voucher is submitted, the Activity Manager or another Mission officer should approve the voucher with the following statement:

"I have reviewed the voucher, the related invoice(s) and supporting documentation attached thereto. I do not have and am unable to obtain promptly personal knowledge of the activity, because (state reasons). I have no reason to believe that payment of the amounts claimed in this voucher should be withheld. Therefore, the voucher is administratively

approved for payment subject to the financial review and certification by the paying office."

3.7 Contract Administration

The responsibility of the Contracting Agency and USAID for the contract does not cease when the contract is signed. The Contracting Agency has the primary responsibility for ensuring that the contractor performs in accordance with the terms of the contract. USAID may have certain approval responsibilities for contract administration actions (such as subcontracts, change orders, amendments, etc.) as set forth in a SOAG Implementation Letter. Also, USAID has certain responsibilities under the loan or grant which affect the contract, such as waiving nationality and source requirements, waiving marking requirements, etc. Both the Contracting Agency and USAID must make certain certifications in order for the contractor to be paid (see Section 3.6.6).

The Contracting Agency should be aware of contractor performance at all times. Any problems or delays should be analyzed and appropriate action taken as soon as possible. Appropriate action might include noncontractual remedies (such as expediting commodities through customs) or contractual action (change order, invoking force majeure, or termination).

3.8 Auditing the Contract

*Arrangements must be made for properly auditing cost-reimbursable contracts and subcontracts that exceed **\$300,000** to verify the costs claimed and to finalize provisional overhead rates. These arrangements will include setting aside SOAG funds to cover the cost of the audit, as necessary, and the selection of the auditing entity.

Audits of cost-reimbursable contracts under **\$300,000** and of contract requirements with regard to source, use of U.S.-flag carriers, etc. in all types of contracts will be conducted where there is reason to question contractor representations.

** U.S.-based firms - The host country contracting agency should request M/OP/PS/CAM, through the Mission, to arrange the audit of costs claimed under cost-reimbursable contracts in excess of **\$300,000** awarded to U.S.-based firms. Audits will be conducted by the cognizant U.S. audit agency or an independent auditor. As circumstances dictate, the contracting agency should also request audits of cost in smaller cost-reimbursable contracts and of other contract requirements.

Non-U.S.-based firms - The audit of non-U.S.-based firms shall be a cost-incurred, financial audit performed by the principal audit agency of the host country or an independent audit agency acceptable to the USAID Inspector General and as set forth in the SOAG or a SOAG Implementation Letter. When the need to audit the costs incurred under a cost-reimbursable contracts that is less than **\$300,000** or the need to audit other contract requirements is indicated, the Mission should be consulted to provide liaison with the USAID Inspector General concerning the arrangements to be made for the audit.

*The guidance contained in Guidelines for Financial Audits Contracted by Foreign Recipients, **July 1998**, shall be followed in selection of the acceptable auditors. Guidance in planning, conducting, and reporting on the results of the audit contained in the Guide for Financial Audits Contracted by the Agency for International Development, January 1991, shall be observed by

the auditors. These USAID Inspector General publications are available from IG/A/FA and the USAID Regional IG offices.

3.9 Contract Closeout

The contract should be closed out in an orderly fashion upon satisfactory completion of the work by the contractor. Final payment to the contractor is withheld until the contractor provides evidence that it has met all of its obligations under the contract and all required certifications (including acceptance of the work by the Contracting Agency) have been executed and the contract has been audited, as provided above. The USAID Activity Manager will be notified of contract closeout and contract files will be maintained in storage at least three years from the final disbursement under the SOAG.

4.0 Contents of Documents

4.1 Prequalification

4.1.1 Notice for Commerce Business Daily

The Notice for the Commerce Business Daily announcing the availability of prequalification questionnaires should contain the following information:

- a. A brief description of the activity and the services involved;
- b. The name of the Contracting Agency;
- c. The address(es) at which interested firms may obtain prequalification questionnaires;
- d. The deadline for receipt of prequalification information (see Section 3.3.4) and a statement of how late prequalification information will be handled;
- e. A statement regarding the eligible nationality of the contractor and the source of any incidental goods; and
- f. The address to which completed questionnaires are to be sent.

See Attachment 1M for more detailed guidance in preparing Notices.

4.1.2 Prequalification Questionnaire

The prequalification questionnaire requests information from interested firms regarding their experience, job capacity, financial capacity, and the like. Attachment 1B is an adaptation of the U.S. Government's Standard Form 225 which requests appropriate information. The Contracting Agency may develop another questionnaire requesting the necessary prequalification information.

4.2 Contractor Selection

4.2.1 Request for Technical Proposals (RFTP)

The request for Technical Proposals includes the following, as appropriate (see also Section 3.4.1):

- a. A detailed description of the activity, including its location, work environment, size, technical problems, etc., and a statement of the services required. (See Attachment 1N for guidance in preparing a statement of work.);
- b. The expected starting date of the services, completion dates for critical portions of the work, and the completion date for all services and reports;
- c. A request that the number and utilization of key persons proposed, and the approximate work-months of service each will perform be included in the proposal. The request will require the proposal to include biographic data on key persons named by the contractor. ("Key persons" are individuals whose services are deemed crucial to the success of the contractor's performance under the contract because such personnel are assigned the responsibility for a major aspect of the contract.);
- d. The type of contract contemplated;
- e. The required nationality, source, and origin of services and commodities;
- f. Classes of services ineligible for subcontracting, if any, and the maximum amount of subcontracting that will be permitted, in terms of a percentage of the contract price or otherwise;
- g. The currency in which the contractor will be paid;
- h. A draft of the contract unless the timing makes this impractical;
- i. The final date for submission of technical proposals and a statement of how late proposals will be handled;
- j. The address to which proposals should be sent;
- k. The criteria to be used in evaluating the proposal in order of importance. Attachment 1D lists some sample criteria;
- l. If prequalification has not been required, the Request shall require submission of the qualifications of the firm and business references to verify claims of previous performance.
- m. A statement whether or not the selected contractor will be eligible for follow-on work (Section 2.4.1.2).
- n. A statement that requests for clarification of the RFTP and explanations of the award should be addressed to the Contracting Agency.
- o. A statement whether or not late offers will be considered, and if so, the conditions under which they will be considered.

- p. A statement that U.S. firms must certify as to their compliance with equal opportunity obligations under Executive Order 11246.
- q. A statement that no offer, payment, consideration, or benefit of any kind which constitutes an illegal or corrupt practice shall be made, either directly or indirectly, as an inducement or reward for the award of the contract. Further, that any such practice will be grounds for cancelling the procurement, terminating an offeror's consideration for award, or terminating the award of the contract and for such other additional actions, civil and/or criminal, as may be applicable.

4.2.2 Notice for Commerce Business Daily

If prequalification was not used, the Notice for the Commerce Business Daily announcing the availability of Requests for Technical Proposals should contain the following information:

- a. A brief description of the activity and the services involved;
- b. The name of the Contracting Agency;
- c. The address(es) at which interested firms may obtain Requests for Technical Proposals;
- d. The deadline for receipt of technical proposals (see Section 3.4.1), and
- e. A statement regarding the eligible nationality of the contractor and the source of any incidental goods.

See Attachment 1M for more detailed guidance in preparing Notices.

4.3 Contract Clauses

While the format and content of each contract will vary, every contract for professional or technical services (other than contracts with educational institutions or international research centers) shall be prepared taking into account the rules and guidance of this chapter, unless specified otherwise in the SOAG, SOAG Implementation Letters, or other documents. Contracts should also reflect local laws and customs to the extent that these do not conflict with U.S. laws and regulations. The contract provisions listed in 2.12 are mandatory. Some other clauses discussed in this Section 4.3, while not mandatory, are so essential to sound contracting that their omission will rarely be justified. USAID's review will take the foregoing principles into account.

This section discusses points to be covered in the contract in terms of the effect the clause should have. A sample contract is included in Section 5 of this chapter. Because the contract must reflect the requirements of the activity and must be consistent with contracting principles of this chapter, collaboration between persons familiar with the activity and those experienced in contracting matters is necessary. Some of the clauses in Section 5 must be incorporated into the contract verbatim. Others should be used as written or modified if necessary in the particular situation.

Either a one-part or a two-part contract may be used. In a "one-part" contract (such as the one appearing in the sample in Section 5) all clauses are numbered consecutively with the

signatures of the parties appearing at the end of the completed document. A "two part" contract consists of a Schedule and General Provisions. The Schedule contains the highly variable clauses which must be tailored to fit the specific contract. The signatures appear at the end of the Schedule. The General Provisions are less variable, are numbered separately from the Schedule clauses, and are cited as a part of the contract in the Schedule.

Whether a one- or two-part contract is used, development of approved General Provisions to be used in a series of contracts will speed USAID approvals considerably since the review could be limited to the variable clauses and such changes to the General Provisions as may have been negotiated for the particular contract. The General Provisions would incorporate those clauses which are expected to vary little, if at all, from one contract to another in a series, such as several contracts for one activity, all contracts with one host country agency, or all contracts in the cooperating country.

Annexes may be used to incorporate supplementary contract requirements. Caution must be exercised to avoid contradiction between the contract clauses themselves and the provisions contained in the Annex. Such items as a contract budget or the payment procedure may be appropriate for inclusion as annexes. The USAID Strategic Objectives Agreement or SOAG with the cooperating country should never be annexes to the contract.

4.3.1 Introductory Clause (See Section 5.1)

This clause (a) identifies the parties to the contract, including their legal status, e.g., type of legal entity and place of organization; it also identifies the parties to the joint venture agreement, if any, (b) states the date and place of contracting, and (c) if a two-part contract or annexes are used, explains the relationship among the contract schedule, the General Provisions and Annexes, as appropriate, and states which element controls in case of conflict.

4.3.2 Definitions (See Section 5.2)

A definitions clause may be helpful to clarify recurring expressions, avoid repetition, or to introduce abbreviations used in the contract.

4.3.3 Language (See Section 5.3)

This clause specifies the governing version of the contract if it is prepared in more than one language. It also specifies which language is used in Notices prepared by either party. (See the rule in Section 2.8.1)

4.3.4 Law to Govern (See Section 5.4)

This clause specifies which laws govern the interpretation of the contract.

4.3.5 The Strategic Objectives (See Section 5.5)

A clause may be included which describes for perspective the strategic objectives toward which the contractor's services will contribute. The clause, if used, should be merely for background; it should not describe the services to be rendered.

4.3.6 Statement of Work (See Section 5.6 and Attachments 1N, 1P and 1Q)

The statement of work specifies what the contractor will do, and, to a large extent, how. It is the standard against which the contractor's obligation to perform is determined. The statement of work might not be the same as the one included in the Request for Technical Proposals. The statement of work specifically defines the nature of the services, who is to receive them, in what form, when, and where. The statement must also state actions to be taken, e.g., personnel recruitment; home office and field staff levels; goods procured; etc. To the extent practicable, all actions needed to get the work done are specifically stated. Considerable attention must be given to timing; a work schedule should be included here or in an annex.

4.3.7 Key Personnel (See Section 5.7)

"Key personnel" are individuals whose services are deemed crucial to the success of the contractor's performance under the contract because such personnel are assigned the responsibility for a major aspect of the contract. The contract clause lists the individuals deemed to be key personnel and specifies that any change in key personnel must be approved by the Contracting Agency. The list of key personnel is usually limited to the contractor's activity manager and other employees who meet the criterion in the definition. However, since the contractor was selected based, in part, on the personnel specified in the technical proposal, care must be exercised to ensure that those personnel (or others equally qualified) actually are employed under the contract.

4.3.8 Reports (See Section 5.8)

Written reports are generally essential in technical and professional work if the Borrower/Grantee is to fully utilize information, conclusions, and recommendations, create a history upon which future actions can be taken, and otherwise preserve the benefits of the work done.

This clause specifies the content and timing of reports, the number of copies of each, to whom they are submitted, and the language of all reports. Reports should be submitted in English, and if desired by the Contracting Agency, in the language commercially accepted in the host country. Reports should utilize the metric system of measurements in lieu of other measuring units, except as USAID determines in writing that such use is impractical or is likely to cause significant inefficiencies or the loss of markets to U.S. firms. (See 2.8.2.)

4.3.9 Term of Contract (See Section 5.9)

This clause states the beginning and ending dates of the contract. In setting the dates, consideration must be given to the dates contained in the SOAG (particularly the terminal date), and the contract's relationship to overall SOAG implementation. Intermediate completion dates or report submission dates should be included in the "Statement of Work" and "Reports" clauses, respectively. In cases when the beginning date or completion date cannot be determined at the time the contract is prepared, these dates may be expressed by reference to other events even though the contract becomes binding on the parties at the time of signature. For example, the beginning date of work under the contract may be stated as "the date of receipt by the contractor of a satisfactory Letter of Credit" or "the date of receipt of the Notice to Proceed." The terminal date could be stated as a fixed period (expressed in days, weeks, or months) after the completion of work by another contractor, or the completion of a training program of a specified length. Care must be taken, however, to establish the intent of the parties so that the contract cannot subsequently be construed as an open-ended commitment of either party.

When the notice to Proceed is used to define the beginning date of the contract, the Contracting Agency must be certain that the notice is not issued before the funds needed to finance the contract are available for disbursement. Thus all conditions precedent to disbursement listed in the SOAG with USAID must have been met and local currency needed must be under the control of the Contracting Agency.

4.3.10 Relationship of Parties, General Responsibilities (See Section 5.10)

This clause specifies the responsibilities and relationship of the parties to the contract. It may include such items as: (a) the name of the officials of the Contracting Agency and contractor who have responsibility for the contract and the limits of such authority/responsibility, (b) the obligation of the Contracting Agency to provide certain data or access to certain areas in the country, or (c) if the contract is for supervisory engineering services, the scope of the contractor's authority to make determinations, give approvals, and exercise other responsibilities of the Contracting Agency.

4.3.11 Legal Effect of USAID Approvals and Decisions (See Section 5.11)

In accordance with the rule in Section 2.12.1, the clause set forth in Section 5.11 must be included in every USAID-financed contract verbatim.

4.3.12 Contract Amount and Payment (See Section 5.12)

The content of this clause depends upon two variables:

- (1) the type of contract (e.g., cost reimbursement, fixed price, or other); and
- (2) the method of payment (e.g., direct reimbursement, direct letter of commitment or bank letter of commitment with a letter of credit).

a. Contract Amount

The contract amount is the total cost of the contract in dollars and local currency. For fixed price contracts, the amount stated is paid to the contractor, regardless of the costs actually incurred, if the contractor completes the work satisfactorily. For cost reimbursement or time-rate contracts, an amount is stated which is the maximum amount payable in accordance with the budget, unless subsequently amended. If the contractor incurs less cost than the budgeted amount (or for time-rate contracts, works fewer days than the number budgeted), the contractor is paid only the amount actually earned.

b. Payment Methods

The methods of payment are discussed in Section 3.6. This clause sets forth the procedures and documentation requirements to be followed by the contractor in obtaining payment. As specified in Sections 3.6.6.3 and 3.6.6.6, payments under any type of contract must be supported by the Contractor's Certificate and Agreement with USAID (form USAID 1440-3) and a certification of performance by the Contracting Agency.

c. Payment Schedule

The contract should set forth a schedule of payments to be made to the contractor. When payments are made periodically during the term of contract, the contractor needs to use less of its own resources (cash or credit) to finance its performance under the contract, and the total contract cost would not include the cost of such resources. (See also Section 4.3.35)

For fixed price contracts, payment may be made either in one sum at completion of the contract or partial payments may be scheduled at specified time intervals or upon completion of specified portions of the work.

For time-rate contracts, payment should be invoiced and paid at specified intervals, but not more often than monthly.

For cost-reimbursement contracts, payments for reimbursable costs should be invoiced and paid at specified intervals, but not more often than monthly.

d. Fee Payments

In contracts providing for a fixed fee, the contract should include a schedule for paying the fee to the contractor. The schedule of payments should be negotiated. The fee schedule may be arranged in one of four ways.

- (1) The fee, in its entirety, may be paid upon completion of the contract.
- (2) The fee may be paid in parts, based upon completion of certain stages of work under the contract.
- (3) The fee may be paid in parts based upon the amount of time the contractor has been working on the contract; e.g., 25% of the fee is payable every six months under a two-year contract.
- (4) The fee may be paid as a percentage of each billing under the contract. For example, in a contract of \$107,000 including the fixed fee of \$7,000, the contractor would add 7% of the costs billed to each voucher for its fee.

The four options listed above give the contractor declining incentives for performance under the contract. In option 1, the contractor does not receive any profit until all work is satisfactorily completed. Under Option 4, the contractor could collect substantial profit before performing very much work because the initial costs in a services contract (e.g., travel of personnel and their effects) are usually very high. However, in a long term contract, Options 3 or 4 may be more equitable to the contractor and result in a lower overall fee.

e. Retentions

Contracts may specify a schedule of retentions of a certain portion of each payment to the contractor. Retentions help to ensure that the contractor will complete work under the contract since the retained amount is included in the

final payment and is not paid to the contractor until all work has been completed to the satisfaction of the Contracting Agency. In some cases, the Contracting Agency may require a performance bond in lieu of or in addition to retentions.

4.3.13 Advances (See Section 5.13)

Advance payments may be authorized for nonprofit or profit making contractors in accordance with Section 3.6.5 of this Chapter. If an advance is authorized, the contract should specify the amount of funds advanced, the use to which they will be put, the procedure for liquidating the advance and the guaranties for the advance. Such guaranties may take the form of bonds, bank guaranties, letters of credit, or similar security devices. In determining both the amount of the advance and the adequacy of security, consideration may be given to factors such as whether the contractor is a nonprofit or profit making organization, the net worth of the contractor, the size of the contractor's business, the length of time the contractor has been in business, the contractor's credit rating, and the size of the advance.

Local currency advances should be from Borrower/Grantee resources.

4.3.14 Final Payment (See Section 5.14)

This clause provides that the final payment to the contractor, including retentions, is withheld until it has met all its obligations under the contract, unless the Contracting Agency and the contractor agree otherwise. The obligations include completion of all services and acceptance of the work by the Contracting Agency, receipt of required certifications and warranties for incidental commodities and a release by the contractor of all claims against the Borrower/Grantee.

4.3.15 Local Currency (See Section 5.15)

This clause specifies that the local currency costs of the contract shall not be reimbursed or paid to the contractor in United States dollars, but shall be met in local currency whether financed by USAID or otherwise. If it is necessary, for the purpose of the contract, for the contractor to convert U.S. dollars to local currency, the contract shall indicate where the contractor is to make such conversions (e.g., Mission Controller, central bank, etc.). The Mission Controller or U.S. Disbursing Officer should be consulted to determine the best place to make conversions.

4.3.16 Cost Provisions (See Section 5.16)

a. General

A standard must be set in every cost reimbursement contract against which expenditures may be compared in order to determine the propriety of reimbursable costs. Consequently, every cost-reimbursement contract must include a provision which sets forth clearly and specifically the elements of direct and indirect costs and the fee, if any. Chapter 4 of this Mandatory Reference provides guidance concerning the elements of such costs and fees. Cost limitations should be included in other types of contracts if provision is made for cost-reimbursement of specified portions of the contract. A budget may be set forth either in the body of the contract or in an annex. The degree of flexibility among the line items may vary depending upon the type of contractor and budget needs.

b. Direct Costs

The direct costs which may be specified in the budget include, but are not limited to the following:

- Salaries of employees and consultants;
- Benefits, such as holidays, sick leave, vacation leave, retirement, insurance, and other payroll costs unless reimbursed through indirect costs;
- Travel costs of personnel;
- Transportation costs of household effects, baggage, material, equipment, and supplies;
- Allowances, such as subsistence, quarters, education; and
- Equipment, materials, and supplies.

c. Indirect Costs

Provision must also be made for reimbursement of indirect costs or "overhead."

(1) Provisional Rates

If the contractor has an established accounting system, provisional overhead rates may be appropriate. Since it is difficult to prospectively determine precisely what portion of a contractor's general operating expenses are attributable to a given contract, a formula is derived based on previous experience for all contracts; e.g., "a 42% provisional rate applied to a base of direct salaries" for a stated period. If the contractor will be performing in a location where it is not headquartered, separate rates are usually utilized for home office and field operations. A final rate to be applied to the actual contract period must be determined after the fact, and an appropriate adjustment made in funds payable under the provisional rate. Current audited rates for use as provisional rates for many U.S. contractors are available from the Defense Contract Audit Agency, the Department of Health, Education and Welfare, or USAID/Washington. Where possible, Contracting Agencies and contractors should be encouraged to use these rates because they are routinely audited by the respective U.S. Government audit agencies and negotiated with the contractor.

(2) Fixed Amount

In many instances, fixed amount overhead may be preferable in contracts with small or local firms, since such firms may have no auditable system of accounting. In such cases (or where the contract amount is small and post auditing is not worth the expense) a negotiated fixed amount in lieu of overhead, based on past experience, future sales, or other relevant factors, may be appropriate.

(3) Fixed Percentage Rates

USAID will not approve a contract where the overhead is expressed as a fixed percentage rate which is not subject to adjustment based on audit. This is a form of cost-plus-percentage-of-cost contracting because overhead increases proportionately as salary costs increase.

4.3.17 Limitation of Costs (See Section 5.17)

Cost control considerations make it appropriate that cost-reimbursement contracts require the contractor to notify the Contracting Agency when it has expended a stated percentage of the maximum amount of funds payable under the contract. The contract may spell out options of the Contractor and/or Contracting Agency to increase the funds, terminate the contract, or let it expire.

4.3.18 Audit and Records (See Section 5.18)

In accordance with the rule in Section 2.12.11, the clause set forth in 5.18 must be included substantially as written in all contracts for professional and technical services. This clause requires the Contractor to maintain adequate books and records concerning transactions under or in connection with the contract, and to make them available for inspection and audit during the contract term and for a period of 3 years after final payment to insure compliance with the requirements of the contract.

4.3.19 Assignment (See Section 5.19)

This clause limits the right of the contractor to assign its obligations under the contract except with the prior written consent of the Contracting Agency with USAID concurrence. While assignment of the right to receive payments is usually a legitimate business practice, assignment could be a sign of financial problems of which the Contracting Agency should be aware. Consequently, the contract may require that the Contracting Agency must agree to such assignment.

4.3.20 Host Country Taxes (See Sections 5.20)

In accordance with the rule Sections 2.12.7, this clause indicates the extent to which the contractor and its employees are exempt from all taxes (including the customs duties, registration fees, and the like) imposed by or in the host country. To the extent the Government does not provide such exemption, the contract should provide the extent to which all such taxes are to be shown as a local expense and reimbursed to the contractor or paid directly by the Borrower/ Grantee. As specified in the Agreement, SOAG Implementation Letters, or other related documents, the contract should enumerate the taxes subject to this provision. Normally these will not include taxes (such as value added) included in other local costs and not readily identifiable.

4.3.21 Contracting Agency Furnished Property and Logistic Support (See Section 5.21)

If the Contracting Agency will provide any property or logistic support for the performance of the contract, a clear descriptive statement must be included which specifies the types of property or services to be made available, the dates by which they will be supplied, and any limitations on their use. The purpose of this clause is to define the responsibilities of the parties in this area

and, if clearly written, minimizes disputes and delays in contract implementation. In addition, the contract should specify:

- a. The rights of the parties if the property or services are not supplied as required;
- b. In whom title to the property vests;
- c. Responsibility for maintenance, protection, and custody of the property;
- d. Who bears the risk of loss; and
- e. Ultimate disposition of the property.

4.3.22 Nationality of Suppliers of Services (See Section 5.22)

This clause states the eligible nationality of any subcontractors for services. The eligible countries must match those stated in the SOAG, unless a waiver has been obtained (see Section 2.6.2.3). This is a mandatory contract clause. (See Section 2.12.2.)

When a contract for professional and technical services (or certain contract items) is funded by the Development Fund for Africa (DFA), Code 935 is the eligible source area and special rules apply, as specified in USAID ADS Chapter 310 and Memorandum from John F. Hicks, February 1, 1993, Subject: Update and Reissuance of Africa Bureau Instructions on Implementing Special Procurement Policy Rules Governing the Development Fund for Africa (DFA) (Attachment 1T). The clause should be modified accordingly.

4.3.23 Air Travel and Transportation (See Clause 5.23)

a. General

If performance under a cost reimbursement contract requires travel by contractor personnel, the contract should specify trips allowable, who may travel, what per diem rates will apply, etc.

b. Grant-Financed Contracts

A U.S. Government statute requires the use of United States flag carriers for all USAID grant-financed international travel and transportation unless such service is not available, regardless of whether the contract is on a fixed price or cost-reimbursement basis. The language in the clause defining this requirement may not be changed. (See also Section 2.12.4.)

c. Loan-Financed Contracts

In accordance with the rule in Section 2.12.4, when Geographic Code 000 is authorized under a loan, the clause in Section 5.23 is used as discussed in paragraph b. above. If the authorized Code is 941, cooperating country, U.S., or other Geographic Code 941 flag air carriers are authorized. If the contractor certifies that authorized carriers are not

available in accordance with the criteria in Section 5.23, any Code 899 flag air carrier may be used.

4.3.24 Subcontracts and Purchase Order (See Section 5.24)

a. Subcontracts for Services

Since the contractor has been selected based on its qualifications, this clause specifies what duties or what value of the contract (percentage or monetary) may be subcontracted and the extent to which USAID and the Contracting Agency must approve subcontracts in writing in advance. To avoid unnecessary delays, subcontracts and purchase orders for small value or administrative purchases usually should not require approval requirements. Subcontracts not approved by USAID, when such approval is required by the contract, will not be financed by USAID.

Cost-plus-percentage-of- cost subcontracts are not eligible for USAID financing if the prime contract is on a cost reimbursement basis.

This clause may also list any prime contract clauses that must be incorporated into subcontracts in order for USAID (of Contracting Agency) approval to be granted.

b. Subcontracts for Equipment and Materials

(1) Under cost reimbursement prime contracts, the contractor is normally required to procure equipment and materials (i.e., commodities) in accordance with Chapter 3 of this Mandatory Reference, which is incorporated into the contract by reference. However, if the Mission Director waives the requirement to use Chapter 3 in its entirety, certain provisions included in that Chapter must be incorporated into the prime contract. They are:

Title	Chapter 3 Reference
Nationality and Source	2.13.2
Supplier's Certificate and Agreement with USAID for Project Commodities/Invoice and Contract Abstract (Form USAID 1450-4)	2.13.4
Marking	2.13.5
Vesting of Title and Diversion Rights	2.13.9

In addition, any requirements for Contracting Agency or USAID approval of subcontracts for commodities are set forth in this clause.

(2) Under fixed price prime contracts, the contractor procures commodities in accordance with its established procedures. However, the following requirements, as set forth in Chapter 3 of this Supplementary Reference, must be included in the prime contract. They are: Nationality and Source (see Section 2.13.2 of Chapter 3), Marking (see Section 2.13.5 of Chapter 3), and Vesting of Title and Diversion Rights (see Section 2.13.9 of Chapter 3).

c. Local Procurement

This clause permits the contractor to procure certain commodities that are available locally. Such local procurements are not covered by Chapter 3 of this Mandatory Reference. Consequently, the paragraph should be included whether or not Chapter 3 is incorporated by reference to cover common elements of local procurement.

4.3.25 Change Orders (See Section 5.25)

This clause allows the Contracting Agency to issue Change Orders providing for changes in the work required and for equitable adjustment in the contract price, if appropriate. The Change Order is used in situations requiring swift action and lays the basis for later contract amendment. Change Orders may only be issued to make changes within the scope of the contract. For example, Change Orders are appropriate to increase or decrease contracting agency-furnished property, extend interim completion dates, and the like.

4.3.26 Amendments (See Section 5.26)

This clause provides for modification of the contract by written amendment. Letter agreements and other such "informal" arrangements normally should not be used. The contract should specify what kinds of amendments must be approved by USAID. As a minimum it is recommended that any amendments which increase the contract amount or extend the completion date be approved by USAID.

4.3.27 Settlement of Disputes (See 5.27)

(1) The contract must contain a clause which specifies impartial and effective procedures to settle disputes arising from the performance of the contract. Settlements negotiated between the parties are preferable because formal arbitration is time consuming and costly, and attempts to reach amicable settlements between the parties are stressed, but provision for final resolution through binding arbitration is required. Except as provided for in (4), the clause must conform to either (2) or (3) below. (See 2.12.8.)

(2) The clause (27, Settlement of Disputes) may provide for final resolution, in the event an amicable settlement can not be reached, in accordance with the Rules of Conciliation and Arbitration of the International Chamber of Commerce (ICC) or the Arbitration Rules of the United Nations Commission of International Trade Law (UNCITRAL). USAID does not specify a general preference between the ICC rules and the UNCITRAL rules.

(3) Alternatively, the parties may establish final settlement procedures other than those stated in (2) above, provided these procedures (a) specify the use of an established, impartial institution to administer arbitration in accordance with its rules; (b) permit non-nationals of the parties to the dispute to serve on the panel of arbitration and permit each party to select at least one arbitrator of its choice; and (c) permit conduct of the arbitration in a third country, which will be specified in the contract, if it is requested by one of the parties.

(4) Except for reasonable modifications in the time periods specified in clause set forth in 5.27 and for contracts with host country firms, further modifications, including the establishment of ad hoc arbitration procedures, require USAID approval by the USAID Procurement Executive (with GC/CCM clearance) on a case-by-case basis.

4.3.28 Disposition of Personal Property in the Cooperating Country (See Section 5.28)

This clause is mandatory for all host country contracts, both loan and grant funded, that provide an exemption of Cooperating Country import restrictions, customs duties, or taxes to employees posted in the Cooperating Country. It implements the rule in 2.12.9 to regulate the disposition of personal property by contractor employees. It also applies to the contractor, if the contract is with an individual, and to family members thereof who are in the Cooperating Country by virtue of their dependent status under the contract. A violation of the rule will be treated as a breach of contract and be subject to appropriate remedies (but USAID does not have access to the remedy of ordering the violator's removal from the country).

4.3.29 Inspection (See Section 5.29)

The clause provides that the Contracting Agency and USAID and their representatives have the right to inspect the work under the contract at any reasonable time.

4.3.30 Report of Delays (See Section 5.30)

This clause places responsibility upon the contractor to notify the Contracting Agency of known factors which may delay the work and possibly interfere with the contract schedule.

4.3.31 Force Majeure (See Section 5.31)

This clause provides for events beyond the control of the Contractor which, should they occur, would make further performance of the work, in whole or in part, impossible. The clause must also provide for an orderly modification or termination of the work and the contract in the event a force majeure continues to impede performance for a stated period of time.

4.3.32 Suspension of Work (See Section 5.32)

This clause provides that the Contracting Agency may order the Contractor to suspend all or part of the work under the contract for a specified period of time, and then either terminate the contract, extend the contract period, increase the contract amount, or otherwise amend the contract.

4.3.33 Termination by the Contracting Agency for Default (See Section 5.33)

This clause permits the Contracting Agency to terminate the contract for default if the contractor fails to perform under the contract. It is not possible to spell out all ramifications of termination but some direction should be given which facilitates an orderly withdrawal by the Contractor with a minimum of dispute. The clause defines the obligations of the Contractor upon receipt of a termination notice, and the extent of the Contractor's right to compensation in the event of termination for default.

4.3.34 Termination by the Contracting Agency for Convenience (See Section 5.34)

This clause permits the Contracting Agency to terminate the contract for convenience; i.e., when it is desirable to cancel the contract through no fault of the contractor. Conditions leading to termination for convenience might include cancellation of the activity, a force majeure event, and the like. This clause defines the obligation of the Contractor upon receipt of a termination notice, and the Contractor's right to compensation in the event of termination for convenience.

4.3.35 Termination by the Contractor for Nonpayment (See Section 5.35)

This clause, giving the Contractor the right to terminate the contract if its invoices are not processed reasonably promptly, may be included in the contract. If the Contract provides that the contractor will be paid unless a notice of nonperformance is prepared within a certain time period (see Section 3.6.5.5), do not use this clause.

4.3.36 Contract Employees (See Section 5.36)

This clause provides for removal or replacement of any contractor employee upon written request of the Borrower/Grantee.

4.3.37 Physical Fitness of Employees and Dependents (See Section 5.37)

This clause, for inclusion in cost-reimbursement contracts with United States or other eligible country firms, states that the Contractor will provide medical examinations for its employees and their dependents and will not be paid for any additional costs (e.g., evacuation or travel and replacement) incurred because there was no medical examination of the employee (and dependents authorized to accompany such employee) or which might have been anticipated as a result of a medical examination. This clause does not apply to employees hired in the host country and is not necessary in fixed-price contracts since the risk, by the nature of the contract, is on the contractor. In locations where special health hazards exist, USAID, in order to guard against activity delays due to illness of personnel (apart from financial considerations), may require inclusion of this clause or a similar clause in all types of contracts.

4.3.38 Employee Conduct (See Section 5.38)

This clause precludes Contractor employees from engaging in other business in the host country or receiving compensation from other sources for services performed under the contract.

4.3.39 Equal Employment Opportunity (See Section 5.39)

This clause is required for all contracts with U.S. firms; it may be waived only by the Administrator. The clause requires that the Contractor will not discriminate in the recruitment or employment of personnel in the United States for the performance of the contract because of race, color, religion, sex, or national origin.

4.3.40 Labor Standards (See Section 5.40)

This clause specifies the extent to which labor standards (e.g., safety, sanitation, work hours) prescribed by local laws, regulations, customs, and practices apply to the Contractor. These should be identified as specifically as possible.

4.3.41 Worker's Compensation Insurance (See Section 5.41)

- a. Every contract financed by USAID must require worker's compensation coverage for contractor employees. (See Section 2.12.5.) All contracts financed by USAID involving performance outside the United States (except contracts exclusively for furnishing of materials and supplies) must provide for such coverage as required by the Defense

Base Act (42 USC 1651, et seq.), unless a waiver is obtained from the U.S. Department of Labor. (See Section 4.3.41.c below.)

***b. All Defense Base Act (DBA) Insurance coverage under country contracts must be placed with in accordance with the blanket contract for guaranteed rates negotiated between USAID and Fidelity and Casualty Company of NY. In order to obtain coverage, contractors should contact:**

**Rutherford International, Inc.
5500 Cherokee Avenue, Suite 300
Alexandria, VA 22312
(703) 354-1616**

Agent for:

**Fidelity and Casualty Company of NY
333 South Wabash Avenue
Chicago, IL 60604**

c. The U.S. Department of Labor may authorize the following exemptions to procuring DBA coverage under a contract:

1. Contractors with a DBA self-insurance program approved by , and
2. Contractors with an approved retrospective rating plan for DBA.

d. Contractors should be prepared to provide the following information from when applying for DBA coverage:

- Company name and address,
- Point of contact,
- Telephone and fax numbers,
- Contract number,
- Brief description of type of work to be performed,
- Period of performance,
- Number of nonwaived employees,
- Country of performance, and
- Projected employee remuneration (defined as overseas salary, post differential, and any overseas recruitment incentive).

e. Waivers may be obtained for third-country nationals and cooperating country nationals but cannot be obtained under any circumstances for persons who are hired in

the United States or who are citizens or residents of the United States. Waivers of the Defense Base Act insurance requirements are prepared by M/OP/E, USAID/W. Blanket waivers of the Defense Base Act insurance requirements for third-country nationals and cooperating country nationals are in effect in the following countries:

*

DEFENSE BASE ACT (DBA) WAIVER LIST

Afghanistan	Haiti	St Lucia
Albania	Honduras	St. Vincent
Antigua	Hungary	Senegal
Armenia	India	Serbia
Azerbaijan	Indonesia	Seychelles
Bahamas	Israel	Sierra Leone
Bangladesh	Italy	Slovak Republic
Barbados	Jamaica	Slovenia
Belarus	Jordan	Somalia
Belize	Kazakhstan	South Africa
Benin	Kenya	Sri Lanka
Bolivia	Korea	Sudan
Bosnia & Hercegovina	Krygyzstan	Swaziland
Botswana	Latvia	Syria
Brazil	Lebanon	Tajikistan
Bulgaria	Lesotho	Tanzania
Burkina Faso	Liberia	Thailand
Burundi	Lithuania	Togo
Cambodia	Macedonia	Tonga
Cameroon	Madagascar	Tunisia
Cape Verde	Malawi	Turkey
Chad	Mali	Turkmenistan
Chile	Mauritania	Uganda
Colombia	Mauritius	Ukraine
Costa Rica	Mexico	Uruguay
Cote d'Ivoire	Moldova	Uzbekistan
Croatia	Mongolia	Vietnam
Czech Republic	Montenegro	Western Samoa
Democratic Republic of the Congo	Morocco	Yemen
Djibouti	Mozambique	Yugoslavia
Dominica	Namibia	Zambia
	Nepal	Zimbabwe
	New Caledonia	

Dominican Republic	Nicaragua
Ecuador	Niger
Egypt	Nigeria
El Salvador	Oman
Equatorial Guinea	Pakistan
Estonia	Panama
Ethiopia	Papua New Guinea
Fiji	Paraguay
Gambia	Peru
Georgia	Philippines
Ghana	Poland
Grenada	Portugal
Guatemala	Romania
Guinea	Russian Federation
Guinea-Bissau	Rwanda
Guyana	St. Christopher & Nevis

A condition imposed by these blanket waivers is that the waived employee(s) must be provided worker's compensation coverage as required by local law or custom.

4.3.42 Insurance (See Section 5.42)

Each contract should specify the types of insurance which the Contractor and its employees must carry. The requirement will vary depending upon the contract. Marine insurance is not necessary when the Borrower/Grantee is able to replace from its own resources any equipment or materials furnished by USAID which are lost, damaged, or destroyed in transit or storage.

4.3.43 Publications and Patents (See Section 5.43)

This clause states the rights of the parties to data developed under the contract and the rights of the parties to publish. The contract should include language which indemnifies and holds harmless the Borrower/Grantee for infringement of patents and copyright in the country of the contractor. If a process or invention which may be patented is involved in contract performance, the contract should also state what the responsibilities are if the Contractor becomes involved in a patent or copyright suit.

4.3.44 Participant Training (See Section 5.44)

When a contract provides for participant training, this clause is used to require the contractor to provide such training pursuant to the provisions of USAID's ADS Ch. 253, Training for Development Impact, as amended. This directive may be accessed on the USAID Internet web site, URL: http://www.info.usaid.gov/ftp_data/pub/handbooks/200/253.dos

4.3.45 Notices (See Section 5.45)

This clause states either by name or title persons designated by the parties to receive official notices under the contract, e.g., Notice to Proceed, Stop Work Orders, Notices of Termination, and the like.

4.3.46 Signature (See Section 5.46)

A clause must be included which contains the signatures of the authorized representatives of the parties to the contract. If the contract is signed by the parties before USAID approval (in accordance with Section 2.2 above) is obtained, this clause also state that the contract will not be financed by USAID unless and until USAID approval has been obtained.

4.3.47 Anti-Corruption Provisions (See Section 5.47)

A clause must be included which contains the DAC Anti-Corruption Provisions, substantially as specified in Section 5.47.

5.0 Sample Contract Format

This sample one-part contract format is for guidance only. Each clause is discussed in Section 4.3 of the chapter. Other than the mandatory clauses specified in Section 2.12, the sample clauses contained in this section may be modified or redrafted in order to reflect the circumstances of the particular procurement.

This sample contract is a cost-reimbursement level-of-effort contract. Material in boldface or underlined is included only to show how a complete contract might appear. A sample statement of work for architect-engineer services (including construction supervision) is shown in Attachment 1P to this chapter; a sample statement of work for a fixed-price end product is shown in Attachment 1Q.

1. Introductory Clause (See discussion in Section 4.3.1)

This contract is entered into a Propowog, Erewhon, on the 15th day of October, 1997, between the Secretariat of Health (Contracting Agency) and Health Reform, Inc, a corporation organized under the laws of Massachusetts, U.S.A. (Contractor). The contract includes Annexes I and II, entitled "Summary Table, Contractor Activities" and "Budget," respectively, attached hereto which, by this reference, are made a part hereof. In case of conflict between any Annex and any other provision of this contract, the contract provision shall control.

2. Definitions (See discussion in Section 4.3.2)

- A. "USAID" means the Agency for International Development of the United States of America.
- B. "Contracting Agency" means the contracting instrumentality of the Government.
- C. "Eligible Countries" means a country designated in clause 22 entitled "Nationality and Source" from which goods and services may be obtained.
- D. "Government" means the Government of Erewhon.

E. "Host Country" means the country of the Government.

F. "Strategic Objectives Agreement" means the overall undertaking of the Government and USAID, of which the work under this contract is only a part.

3. Language (See discussion in Section 4.3.3)

The English language version of this contract shall govern. All Notices pursuant to the provisions of this contract shall be in English.

4. Law to Govern (See discussion in Section 4.3.4)

This contract shall be interpreted in accordance with the laws of Erewhon.

5. Strategic Objectives (See discussion in Section 4.3.5)

The Contracting Agency has undertaken an activity, supported jointly by the Government and USAID, for administrative reform of the Secretariat of Health. The objectives of the activity are to provide technical assistance to the Secretariat of Health to undertake the administrative reform of the Secretariat in the priority areas of human resources development and personnel administration; planning, programming and evaluation systems; information systems, including biostatistics and audit procedures; hospital administration systems; and maintenance, transportation and supply systems. In doing so, the Contractor should emphasize those approaches which will foster a preventive care approach to health problems, which will reach the majority of Erewhonese, rather than the traditional curative medical services which have not been completely effective.

6. Statement of Work (See discussion in Section 4.3.6)

A. In consideration of the compensation to be paid to the Contractor, the Contractor shall perform the following services:

The Contractor will work directly for the Secretary of Health within the newly formed Office for Reform (OFR) and will identify problem areas, recommend solutions, and initiate and implement reforms which have been adopted. While the Contractor will be accountable to the Director of the OFR, it will be necessary for the Contractor to assist the various operational offices of the Secretariat and coordinate among these offices and the OFR.

In order to bring about some of the desired administrative and organizational changes, the Contractor will assist the OFR in the following identified areas of need:

(1) Human Resources and Personnel Administration

Assist the newly formed Human Resources Division to become operational to perform its functions of a) guiding the total program of human resources investment of the Secretariat, including that of training, b) studying the national needs for human resources in the areas of health, their availability, production and utilization, and c) maintaining an information system relating to executive development. This will also involve helping the Division program foreign training

for approximately 80 individuals in 9 subject areas and domestic training for approximately 1,450 individuals in 16 courses, and developing trainee evaluation and utilization systems.

Assist the Personnel Division in a) completing the classification of all positions in the Secretariat and the relating of job requirements to salaries, b) the creation of a computerized record system for personnel actions, c) reorganizing the personnel department to improve performance, d) decentralizing personnel administration, and e) setting standards for the selection of personnel.

(2) Planning, Programming and Evaluation

Assist the Planning Division of the Secretariat in strengthening its planning, programming and evaluation functions by a) developing long-term planning for the health sector, including development of a National Health Plan, b) developing a systematic method of preparing activity proposals, c) adopting better analytic techniques in budget analysis and better methods of preparing and presenting the Secretariat's yearly operational budget, d) developing procedures for evaluating all Divisions in the Secretariat, e) coordinating and planning all foreign donor health assistance, and f) developing licensing procedures for all national health facilities.

(3) Information Systems

Assist the Statistics Section in developing information systems, using computers as appropriate, that will result in a) improved registration of births and deaths, b) improved reporting of the activities of the facilities operated by the Secretariat regarding curative, preventive, educational, or rehabilitative health services with special attention to the maternal and child health programs, and c) significant improvement in the expeditious reporting of communicable diseases for the entire health sector, public and private. In addition, program on-the-job training for approximately 270 regional and local level biostatistics personnel and set up biostatistical offices in each health region.

Undertake a study of current financial management and accounting systems used by the Secretariat, recommend improvements, and establish norms and procedures for the improved use of funds and property. At the same time help create a central office of internal inspection and audit and institutionalize the internal audit function at the regional level.

(4) Hospital Administration

Assist OFR in getting the position of Hospital Administrator operational within the Hospital Directorate. Assist in designing a regional model for hospital administration including the preparation of manuals of procedure and personnel manuals. Assist in getting the model operational for hospitals, subcenters, clinics and health care facilities in a pilot region, and in the training of personnel in administrative procedures at the central level. Provide in-service training for Secretariat staff in health services administration. Establish standards for licensing health facilities, and establish standards and procedures for health facilities based on the model utilized in a pilot region.

(5) Maintenance, Transportation, and Supply Systems

(a) Maintenance - Assist OFR in separating the maintenance function from the Division of Architecture and in the creation of a new Division of Maintenance. Assist in providing adequate physical facilities for the new Division, including offices, shops and warehouse space; budgeting positions for maintenance, in number and grade adequate to service immediate critical needs while at the same time developing longer range programs to meet the system's total requirements; providing on-the-job training for all personnel involved in maintenance; securing the equipment essential for the maintenance function; and providing an administrative and financial structure capable of supporting a sound maintenance program with appropriate regulations and procedures, including a complete, detailed operational plan for regionalized maintenance activities with centralized operation activities only in areas where specialized expertise is required.

(b) Transportation - Assist in developing an improved system for the control, operation and maintenance of vehicles. This will include completing an inventory of existing vehicles with an analysis of the improvements needed in the transportation system, surveying the use of all vehicles to identify those which are now inoperative and identifying those which can be repaired or should be replaced, and establishing a Transportation Section outside the new Division of Maintenance with appropriate staff and functions.

(c) Supply - Assist in developing a modern inventory control system for supplies which will facilitate the timely purchase and distribution of needed materials and equipment. This will include identifying qualified personnel to operate the inventory system, setting of uniform procedures and practices, identifying appropriate warehousing points, and analyzing logistics and economical order quantities.

B. Work Plan (November 1, 1997 - October 31, 1998)

The first six months will be employed in collaboration with OFR in an analysis of Secretariat operations and management and in tentative development of two or three alternative models, including an appropriate information system. During the ensuing period, the Contractor will assist in selection of the most appropriate model, in its modification, and will initiate implementation. Early strategy following on or coincident with development of the model addresses two principal elements simultaneously: development of a planning, programming, and evaluation capability in the Secretariat and development of human resources capability through improved personnel administration and appropriate training mode. In developing the model attention will be directed to the relationship of the Secretariat to other institutions, public or private, where they have a clearly stated responsibility for activities within the health sector, or with which the Secretariat could collaborate in order to reach overall national goals.

(1.) November 1, 1997 - April 30, 1998

During the first six months, Contractor will examine, analyze and evaluate current Secretariat operations and management and develop two or three tentative alternative models. Operational systems or subsystems will be developed which, taking into account current trends in the development of the Secretariat, will optimize the future operation. In addition, Contractor will outline alternate plans and programs for implementation of such operational systems or subsystems as may be approved by the Secretariat. Priority area activities, such as training, which are not constrained by the choice of model and which are necessary to support administrative reform, will be initiated during this period. A schedule is envisioned which provides one day per week for review and analysis of information gathered, for planning the coming week's activities, and for preparation of reports. One day per month is set aside for major review and presentation by OFR of a progress report and forthcoming requirements to the Secretary of Health.

During this initial period, a minimum of four full-time staff will be utilized, supplemented by short-term specialists in priority areas. More specifically, staff experience, composition and utilization will be as follows:

(a) Specialists in Public Health Administration

(1) Qualifications

Specialist with education equivalent to doctorate. Six years of experience in administrative reform who will serve as team leader. (Permanent Consultant, six person-months in this half year.)

(2) Duties

Coordinate with national counterpart in the development and implementation of technologies, principles and strategies which will support the program, promote continuity of administrative processes and result in the qualitative and quantitative improvement of health services.

Head and coordinate the technical assistance within program outlines and objectives, to help the program achieve its goals, particularly in relation to transference of technologies adapted to the national situation, knowledge and experience, as means of promoting a national administrative and technical capacity for the autonomous direction of the institutional development.

Promote an integral view of the program, by adapting its contents, scope of institutional coverage and specific actions to the purposes and principles which orient it and making possible multidisciplinary and multi-institutional participation.

(b) Health Planning Specialist

(1) Qualifications

Expert with education equivalent to PHD and several years of experience in health planning in Latin America, who will serve as chief consultant on planning, programming, and evaluation (Permanent advisor; six person-months in this first half year period.)

(2) Duties

Direct and coordinate all advisory services to be undertaken in the course of planning, programming, and evaluation through direct assistance to the activities indicated below and complementing or coordinating the services of short-term consultants and other advisors who directly intervene in the specific assistance of this area.

Be part of the permanent program advisory team, supporting the head of the team and cooperating with the activities of the other members.

Perform with a permanent attitude of transference of knowledge and experience, carrying out activities jointly with the assigned national counterpart(s).

Assist the Government in setting up and development of the five processes included in the area: Planning, Programming, Evaluation, Budgetary Analysis, and Foreign Assistance management.

Collaborate in these activities advising on the implementation of the doctrine, methods, systems, norms and procedures, as well as reaching and providing in-service training to the personnel.

(c) Human Resources and Personnel Administration Specialist

(1) Qualifications

Expert in Personnel Administration with professional knowledge of the economics of human resources, and sound experience in Latin American health systems. (Permanent advisor; six person-months in this first half year.)

(2) Duties

Collaborate in the preparation, implementation and evaluation of the human resources development program, and in particular, in the following activities:

Survey the production capacity and program contents of the educational infrastructure involving the needs of the sector.

Survey human resources needs of the sector.

Assist in development and implementation of objectives and strategies for harmonizing educational activities as a whole with the needs of the Secretariat (regionalization and institutional development, in particular) and with the needs of the Secretariat (regionalization and institutional development, in particular) and with the needs of the sector in general.

Collaborate in the design and establishment of systems and procedures for the rational administration of Secretariat human resources, especially in relation to admission regulations, salary classification and administration, personnel actions, and registering.

Direct and coordinate the short term advisory services in organization, personnel administration, and human resources development.

(d) Specialist in Budget and Supply Administration

(1) Qualifications

Expert in financial systems in health agencies and in logistic systems administration, including pharmaceutical systems, with experience in Latin America. (Permanent advisor; six person-months in the first six-month period.)

(2) Duties

Collaborate in the gradual development of the budget administration system towards the establishment of a program budgeting methodology; in the design and application of the accounting system and particularly of a costs methodology and of instruments of production analysis, efficiency, and efficacy of used resources; and audit system.

Advise in the design and implementation of administration, conservation, and maintenance systems of Secretariat facilities and equipment.

Promote adaptation of the financial administration and of the facilities and equipment objectives to those of the institutional development program.

Direct and coordinate assistance in specialized areas of financial administration and of facilities and equipment resources.

(e) Specialist in Supply Administration

(1) Assignment

Short Term Advisor; two person-months in the first six-month period.)

(2) Duties

Advise in the design of a General Supply Catalogue.

(f) Specialist in Maintenance

(1) Assignment (Short Term Advisor, four person-months.)

(2) Duties

Assist to determine the organization system and resources needed in the establishment of a maintenance services network for the health facilities of the Secretariat, and develop a program for its operation.

Collaborate to start activities of the above-mentioned program.

(2.) May 1, 1998 - October 31, 1998

During this second six months, Contractor will assist OFR in considering alternative approaches, selecting and modifying the most appropriate model, developing a plan for implementation of the model chosen, orienting staff to the model and plan selected (possibly through a series of problem-oriented workshops), and commencing implementation of the new model. Contractor will also be involved in implementing individual operational systems or subsystems approved by the Secretariat; in the formulation of alternative plans and programs for evaluation and operational control of such systems; and in the surveillance, evaluation, and control of systems or subsystems already implemented. One day per week is allocated for review and analysis of information gathered, for planning the coming week's activities, and for preparation of reports. One day per month is set aside for major reviews and presentations by OFR to the other elements of the Secretariat.

During this second six-month period, a minimum of four full-term staff will be utilized, supplemented by short term specialists in priority areas, and two unallocated person-months of consultation to allow flexibility in addressing problems which may be uncovered as activity implementation progresses. More specifically, staff composition and utilization will be as follows:

(a) Specialist in Health Administration (Six person-months.) Duties: (See paragraph B1a(2)1).

(b) Specialist in Health Planning (Six person-months.) Duties: (See paragraph B1b(2)).

(c) Specialist in Human Resources and Personnel Administration (Six person-months.) Duties: (See paragraph B1c(2)).

(d) Specialist in Budget and Supply Administration (Six person-months.)
Duties: (See paragraph B1d(2)).

(e) Specialist in Supply Administration (Two person-months.) Duties:
(See paragraph B1e(2)).

(f) Specialist in Evaluation

(1) Assignment

Short-term advisor; two person-months.

(2) Duties

Assist counterparts in the initial establishment of methods, systems, rules and procedures to carry out the health administration process evaluation of the Secretariat.

(g) Specialist in Human Resources

(1) Assignment

Short term advisor; three person-months.

(2) Duties

Advise in the identification of education and training requirements for the Regionalization programs.

(h) Specialist in Job Description

(1) Assignment

Short term advisor; four person-months.

(2) Duties

Collaborate in the Job Description Manual design.

(i) Specialist in Auditing

(1) Assignment

Short term advisor; two person-months.

(2) Duties

Advise in audit system design.

(j) Specialist in Health Facilities Administration

(1) Assignment

Short term advisor; five person-months.

(2) Duties

Collaborate in the review and adjustment of the National Hospital Regulations, rules and regulations of health facilities administration. Participate in the training of the medical administrators of regional facilities.

Collaborate in the programming and implementation of a facility administration model in a selected region.

(k) Specialist in Public Health Laboratories

(1) Assignment

Short term advisor; three person-months.

(2) Duties

Design of infrastructure (organization, regulations, and resources) for the establishment and operation of a laboratories system.

7. Key Personnel (See discussion in Section 4.3.7)

A. The key personnel under this contract are:

Dr. Sam White	Specialist in Public Health Administration (Team Leader)
Dr. Joe Brown	Health Planning Specialist
Mrs. Jane Doe	Human Resources and Personnel Administration Specialist
Mr. John White	Specialist in Budget and Supply Administration

B. The personnel listed above are considered to be essential to the work under this contract. Prior to removing or replacing any of the specified individuals, the Contractor shall notify the Contracting Agency 30 days in advance and shall submit justification (including proposed substitutions) in sufficient detail to permit evaluation of the impact on the contract. No removal or replacement shall be made by the Contractor without the written consent of the Contracting Agency.

8. Reports (See discussion in Section 4.3.8)

A. The Contractor shall submit 5 copies of progress reports on a quarterly basis which summarize the work performed during the period, problems encountered and the ways they were (or are being) overcome, and significant findings. The first progress report is due on January 30, 1998.

B. The Contractor shall submit 5 copies of a final report which will provide an overview of the work performed under the contract and the resulting findings. Problems or issues affecting the overall activity and its success in the future shall be highlighted. The final report is due on November 30, 1998.

C. The Contractor shall submit to the Secretary of Health, Health Ministry Building 1, Propowog, Erewhon, all reports required by paragraphs (a) and (b) above. All reports shall be delivered no later than the required submission dates.

D. Reports shall utilize the metric system of measurements in lieu of other measuring units, except as USAID determines in writing that such use is impractical or is likely to cause significant inefficiencies or the loss of markets to U.S. firms.

E. All reports shall be printed or typewritten and may include photographs or other illustrative material as appropriate to assist in understanding.

F. All reports (other than routine tabulations) shall commence with a summary of the report and a statement of conclusions and recommendations followed by the detailed report itself.

G. Three copies of each report shall be in the Erewhonese language with 2 additional copies in English.

9. Term of Contract (See discussion in Section 4.3.9)

The Contractor shall commence work on the date of receipt by the Contractor of a Notice to Proceed confirming that payment arrangements have been established. All work under the contract (including submission of the final report) shall be completed within 13 months after the date of receipt of the Notice to Proceed. All documentation for payment shall be submitted to the paying authority not later than 90 days after the completion date.

10. Relationship of Parties, General Responsibilities (See discussion in Section 4.3.10)

A. The official of the Contracting Agency who has primary responsibility for operations under this contract is Sr. Juan Smith, Director, Office of Reform.

(1) The Contractor's Team Leader is responsible for: keeping the Contracting Agency currently informed of the work progress under the contract through submission of the progress reports required by the "Reports" clause of this contract and by additional briefings, as appropriate.

(2) The Director, Office of Reform, will assist the Contractor in: ensuring that the Government's commitments under the "Contracting Agency Furnished Property and Logistic Support" clause are met on schedule and will provide a liaison with other Government officials. He has the authority to issue change orders, pursuant to the "Change Orders" clause of this contract. He shall provide the "Borrower/Grantee's Certificate of Performance" required by the "Allowable Cost and Payment" clause of this contract.

B. The Contracting Agency shall furnish the "Working Paper on Reform of the Secretariat of Health" to the Contractor, and provide access to regional hospitals.

11. Legal Effect of USAID Approvals and Decisions* (see discussion in Section 4.3.11)

The parties hereto understand that the contract has reserved to USAID certain rights such as, but not limited to, the right to approve the terms of this contract, the Contractor, and any or all plans, reports, specifications, subcontracts, bid documents, drawings, or other documents related to this contract and the activity of which it is part. The parties hereto further understand and agree that USAID, in reserving any or all of the foregoing approval rights, has acted solely as a financing entity to assure the proper use of United States Government funds, and that any decision by USAID to exercise or refrain from exercising these approval rights shall be made as a financier in the course of financing this activity and shall not be construed as making USAID a party to the contract. The parties hereto understand and agree that USAID may, from time to time, exercise the foregoing approval rights, or discuss matters related to these rights and the activity with the parties jointly or separately, without thereby incurring any responsibility or liability to the parties jointly or to any of them. Any approval (or failure to disapprove) by USAID shall not bar the Government or USAID from asserting any right, or relieve the Contractor of any liability which the Contractor might otherwise have to the Government or USAID.

* This clause must be used verbatim in every contract.

12. Contract Amount and Payment (See discussion in Section 4.3.12)

A. *Based upon the estimated budget in Annex I, the maximum amount payable under this contract (including the Contractor's fee of \$42,000) is \$700,000 plus 6000 Erewhonese pounds, neither of which may be exceeded unless the contract is amended to increase the maximum amount.

B. Payment Method

Payment due the Contractor under this contract shall be made upon the Contractor's written request accompanied by the following documentation:

- (1) The Contractor's Invoice with supporting information.
- (2) Contractor's Certificate and Agreement with the Agency for International Development (form USAID 1440-3)
- (3) "Public Voucher for Purchases and Services Other Than Personal" (SF 1034) in an original and three copies.
- (4) "Supplier's Certificate and Agreement with the Agency for International Development for Project Commodities/Invoice and Contract Abstract" (form USAID 1450-4), completed by the supplier of the commodities, whenever the

contractor requests reimbursement for a commodity transaction which exceeds \$2,500 in value.

* Note: For fixed price contracts insert the following paragraph in lieu of the one specified above:

The Contractor shall submit the request and documentation to the Contracting Agency official specified in the "Relationship of Parties, General Responsibilities" clause. The official shall provide a "Certification of Performance" or "Certification of Nonperformance of Specific Items", within 30 days, the Contractor shall be paid by the Contracting Agency. If the Director, Office of Reform, provides a certification of nonperformance with respect to specific items, payment with respect to such items shall be withheld. Any disputes regarding payment which can not be informally resolved will be handled in accordance with clause no. 26, "Disputes and Appeals."

C. Payment Schedule

The Contractor shall be paid by the Contracting Agency at monthly intervals.*

D. Fee Payments

The Contractor shall be paid the fixed fee of \$42,000 in an amount which is in the same ratio to the total fixed fee as the related payment being made on account of allowable cost is to the total estimated cost.

E. Retentions

Invoices (except the final invoice) shall be paid subject to a retention of 10 percent of the amount of the fixed fee.

13. **Advances (See discussion in Section 4.3.13)**

The Contracting Agency will deposit an advance payment of \$25,000 to an account to be designated by the Contractor. The Contractor shall furnish an advance payment bond as security for the advance. The Contractor may draw against this account only to meet contract expenses during the 30-day advance period. If the advance results in accrual of interest to the Contractor, the Contractor will refund to USAID an amount equivalent to the amount of interest accrued.

* For fixed price contracts, payments may be withheld until completion of the contract and acceptance of all work.

Fifty percent of the dollar portion of each partial payment will be withheld and credited as repayment of the dollar advance until the entire dollar advance has been so withheld and credited. If the advance fund is not sooner repaid, the entire remaining balance of the advance fund will be liquidated by the Contractor when the work required under this contract has been

completed or, if sooner terminated, when terminated. The Contracting Agency shall hold a lien paramount to all liens against the account and against any and all assets of the Contractor in the host country to the extent of any unliquidated advance.

14. Final Payment (See discussion in Section 4.3.14)

Final payment of all amounts due the Contractor (including retentions) will be promptly made upon submission of the documentation required by "Contract Amount and Payment" clause and after all services specified in this contract have been completed, all required inspections have been made, all required certifications have been received, and a release of all claims against the Contracting Agency has been furnished to the Contracting Agency.

15. Local Currency (See discussion in Section 4.3.15)

Unless directed otherwise by the Contracting Agency, all local currency costs paid or incurred by the Contractor under the contract, including, without limitation, all local taxes, duties, and imposts, when not exempted, shall be reimbursed to the Contractor in local currency and not by payment of United States dollars.

Except as otherwise approved in writing by the Contracting Agency, when it is necessary for purpose of this contract for the Contractor to convert United States dollars to local currency, such conversion shall be made through arrangements with the U.S. Disbursing Office.

16. Cost Provisions (See discussion in Section 4.3.16)

A. General

* All reimbursable costs under this contract shall be allowable, allocable, and reasonable as defined in USAID ADS Chap 305, Mandatory Reference, Country Contracting, **Chapter 4, Cost Principles for Country Contracts**. A copy of Chapter 4 is attached hereto.

B. Indirect (Overhead) Costs-Provisional*

(1) An overhead rate or rates shall be established for the period beginning May 1, 1997 and ending April 30, 1998, and for subsequent periods until completion of the contract.

*Use paragraph B. above when a provisional overhead rate is used. When fixed amount in lieu of a provisional overhead rate is used, use the following paragraph B.

(2) Pending establishment of final overhead rates for the initial period, payments for allowable indirect costs shall be made on the basis of the provisional rates applied to the base(s) which are set forth below:

Home Office	57% Rate	Home Office Salaries Base to which rate is applied	5/1/97-10-31/97 Period
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Field Office (Local currency)	100% Rate	Field Staff Salaries Base to which rate is applied	5/1/97-10/31/97 Period
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(3) The Contractor, as soon as possible but not later than 6 months after the close of each fiscal year during the term of this contract, shall submit to the Contracting Agency a proposed final overhead rate or rates for the period together with supporting cost data. The Contracting Agency shall have the rate audited and the agreed final rate shall be set forth in a contract amendment and approved by USAID. The amendment shall specify (a) the agreed final rate(s), (b) the base to which the rates apply, and (c) the period to which the rates apply.

17. Limitation of Costs (See discussion in Section 4.3.17)

A. If at any time the Contractor has reason to believe that the total cost which it expects to incur in the performance of this contract in the next succeeding 60 days, when added to all costs previously incurred, will exceed 75 percent of the maximum amount payable or if, at any time, the Contractor has reason to believe that the total cost to the Contracting Agency for the performance of this contract will be greater than the maximum amount payable, the Contractor shall notify the Contracting Agency in writing to that effect, giving the revised estimate of the total cost for the performance of this contract.

The Contracting Agency is not obligated to reimburse the Contractor for costs in excess of the maximum amount payable, nor is the Contractor obligated to continue performance and incur costs in excess of the maximum amount payable unless the contract is amended in accordance with the "Amendments" clause.

B. The fixed overhead amount under this contract is \$200,000 plus 2,000 Erewhonese pounds which may not be exceeded unless increased by an amendment to the contract. Payments will be made in the amount of \$16,000 and 166 Erewhonese pounds for each billing period.

18. Audit and Records (See discussion in Section 4.3.18)

A. The Contractor shall maintain books, records, documents, and other evidence to substantiate, without limitation, all costs incurred under or in connection with the contract and to substantiate the other contract requirements in accordance with generally accepted accounting principles prevailing in the United States, the Cooperating Country, or the International Accounting Standards Committee (an affiliate of the transactions under or in connection with the contract. This clause does not apply to cost records for nonreimbursable cost items incurred under fixed-price (lump sum or unit price) contracts, but it does apply to records concerning source of goods and other comparable contract requirements applicable to such items. The foregoing constitute "records" for the purpose of this clause.

B. The Contractor shall maintain such records during the contract term and for a period of 3 years after final payment. However, records which relate to appeals under the "Disputes and Appeals" clause or litigation or the settlement of claims arising out of the performance of this contract shall be retained until such appeals, litigation, or claims have been finally settled.

C. All records shall be subject to inspection and audit by the Contracting Agency (or its authorized agents) at all reasonable times. The Contractor shall afford the Contracting Agency proper facilities for such inspection and audit.

D. The Contractor further agrees to include in all its subcontracts hereunder a provision that the subcontractor agrees to maintain such records and that the U.S. Government, the Contracting Agency or any of its authorized agents, shall, until the expiration of 3 years after final payment under the subcontract, have access to and the right to examine any records of such subcontractor involving transactions related to the subcontract.

19. Assignment (See discussion in Section 4.3.19)

The Contractor may not assign its obligation to perform under the contract except with the prior written consent of both the Contracting Agency and USAID. The Contractor may not assign its rights to receive payment under the contract except with the prior written consent of both the Contracting Agency and USAID.

20. Host Country Taxes (See discussion in Section 4.3.20)

A. The Contractor and those of its employees who are not citizens or permanent residents of the host country shall be free of all taxes, fees, levies, or impositions imposed under laws in effect in the host country with respect to all work and services performed under this contract.

B. The personal effects (including vehicles) of the Contractor and those of its employees who are not citizens or permanent residents of the host country shall be free of all taxes imposed under laws in effect in the host country with respect to such personal effects.

C. The Government will allow the Contractor to import free of customs and duties such materials and equipment as may be required for the services under this contract provided such items are consumed in contract performance, re-exported or transferred to the Government at the conclusion of the contract.

21. Contract Agency Furnished Property and Logistic Support (See discussion in Section 4.3.21)

A. The Contracting Agency will provide the Contractor with the following services, logistic support and/or property:

- 200 sq. meters of office space in Health Ministry building
- One full-time secretary
- One interpreter, as needed -- The Contractor shall give the Director, OFR, 24 hours notice so that the interpreter may be made available.
- A car and driver for visit to the regional facilities.

B. The completion date for the contract is based upon the expectation that Contracting Agency-furnished support suitable for use will be made available to the Contractor as indicated. If such Contracting Agency-furnished support is not made available to the Contractor as required, the Contractor shall give the Contracting Agency written notice of such fact, and the Contracting Agency shall cure the failure to supply. The Contracting Agency shall then make a determination of the delay and equitably adjust the completion date or contract price, or both, as appropriate.

C. Title to Contracting Agency-furnished property (including property acquired by the Contractor for the Contracting Agency's account) shall remain in the Contracting Agency regardless of its incorporation or attachment to any property not owned by the Contracting Agency.

D. The Contracting Agency-furnished property shall, unless otherwise provided, be used only for the performance of this contract.

E. The Contractor shall maintain and administer, in accordance with sound business practice, a program for the maintenance, repair, protection, and preservation of Contracting Agency-furnished property, until disposed of in accordance with this clause.

F. Except for loss, destruction, or damage resulting from willful misconduct of a Contractor employee or a failure of any of the Contractor's personnel in a supervisory capacity to administer the program for the maintenance, repair, protection, and preservation of Contracting Agency-furnished property, and except as specifically provided elsewhere in this contract, the Contractor shall not be liable for loss or destruction of, or damage to, the Contracting Agency furnished property.

G. This clause shall not be construed as relieving a subcontractor from liability for loss or destruction of, or damage to, the Contracting Agency furnished property while in its possession or control.

H. If there is any loss or destruction of, or damage to, any Contracting Agency-furnished property not chargeable to the Contractor, the Contractor shall notify the Contracting Agency and the Contracting Agency shall instruct the Contractor whether to dispose of or repair such property. If such loss or destruction is chargeable to the Contractor, it shall take immediate steps to repair or replace such property at its own expense.

I. Except to the extent of any loss or destruction of, or damage to, Contracting Agency-furnished property for which the Contractor is relieved of liability under this clause, and except for reasonable wear and tear or depreciation, or the utilization of the Contracting Agency-furnished property in accordance with the provisions of this Contract, the Contracting Agency-Furnished property shall be returned to the Contracting Agency in as good condition as when received by the Contractor.

22. Nationality of Suppliers of Services (See discussion in Section 4.3.22)

A. Unless otherwise specified in paragraph C. or D., below, or in the clause entitled "Air Travel and Transportation," the eligible nationality for the contractor and subcontractors providing services under this contract shall be those countries listed in USAID

Geographic Code* 941 in effect on the date of acquisition or in Erewhon, (Eligible Countries).

B. Suppliers of Services

A subcontract or providing services under an USAID-financed contract for services must fit one of the following categories (1), (2), (3) or (4) to be eligible for USAID financing:

(1) Privately Owned Commercial Suppliers

An individual or a privately owned commercial firm is eligible for financing by USAID as a subcontractor providing services only if the criteria in subparagraphs a, b, or c below are met and, in the case of the categories described in b and c, the certification requirements in subparagraph d are met.

a. The supplier is an individual who is a citizen of and whose principal place of business is in a country or area included in the authorized geographic code or a non-U.S. citizen lawfully admitted for permanent residence in the United States whose principal place of business is in the United States.

b. The supplier is a privately owned commercial (i.e., for profit) corporation or partnership that is incorporated or legally organized under the laws of a country or area included in the authorized geographic code, has its principal place of business in a country or area included in the authorized geographic code, and meets the criteria set forth in either subparagraph (i) or (ii) below:

(i) The corporation or partnership is more than 50% beneficially owned by individuals who are citizens of a country or area included in the authorized geographic code and non-U.S. citizens lawfully admitted for permanent residence in the United States. In the case of corporations, "more than 50% beneficially owned" means that more than 50% of each class of stock is owned by such individuals; in the case of partnerships, "more than 50% beneficially owned" means that more than 50% of each category of partnership interest (e.g., general, limited) is owned by such individuals. (With respect to stock or interest held by companies, funds or institutions, the ultimate beneficial ownership by individuals is controlling.)

(ii) The corporation or partnership

(a) has been incorporated or legally organized in the United States for more than 3 years prior to the issuance date of the invitation for bids or request for proposals, and

(b) has performed within the United States similar administrative and technical, professional, or construction services under a contract or contracts for services and

derived revenue therefrom in each of the 3 years prior to the date described in the preceding paragraph, and

(c) employs United States citizens and non-U.S. citizens lawfully admitted for permanent residence in the United States in more than half its permanent full-time positions in the United States, and*

(d) has the existing capability or can provide the necessary resources in the United States to perform the contract.

c. The supplier is a joint venture or unincorporated association consisting entirely of individuals, corporations, partnerships, or nonprofit organizations which are eligible under (1a) or (1b), above, or (2) below.

d. A duly authorized officer of a firm or nonprofit organization shall certify that the participating firms or nonprofit organization meets either the requirements of subparagraphs (1)b(i) or (ii), or (2). In the case of corporations, the certifying officer shall be the corporate secretary. With respect to the requirements of subparagraph (1)b(i), the certifying officer may presume citizenship on the basis of the stockholder's record address, provided the certifying officer certifies, regarding any stockholder (including any corporate fund or institutional stockholder) whose holdings are material to the corporation's eligibility, that the certifying officer knows of no fact which might rebut that presumption.

(2) Nonprofit Organizations

Nonprofit organizations, such as educational institutions, foundations, and associations, are eligible for financing by USAID as contractors or subcontractors for services if they meet all of the criteria listed in subparagraphs a, b, and c below, and the certification requirement in (1)d, above is met.

Any such institution must:

- a. Be organized under the laws of a country or area included in the authorized geographic code; and
- b. Be controlled and managed by a governing body, a majority of whose members are citizens of countries or areas included in the authorized geographic code; and
- c. Have its principal facilities and offices in a country or area included in the authorized geographic code.

(3) Government-Owned Organizations

Firms operated as commercial companies or other organizations (including nonprofit organizations other than public educational institutions) which are wholly or partially owned by governments or agencies thereof are not eligible for

financing by USAID as subcontractors, except if their eligibility has been established by a waiver approved by USAID.

(4) Joint Venture

A joint venture or unincorporated association is eligible only if each of its members is eligible in accordance with B(1), (2) or (3), above.

C. Ineligible Suppliers

Citizens of any country or area, and firms and organizations located in or organized under the laws of any country or area which is not included in USAID Geographic Code 935 are ineligible for financing by USAID as suppliers of services or commodities or as agents acting in connection with the supply of services, except that non-U.S. citizens lawfully admitted for permanent residence in the United States are eligible regardless of such citizenship.

D. Nationality of Employees under Contracts and Subcontracts for Services

The nationality policy of paragraph B above, does not apply to the employees of contractors or subcontractors. Such employees must, however, be citizens of countries included in USAID Geographic Code 935 or, if they are not, have been lawfully admitted for permanent residence in the United States.

23. Air Travel and Transportation (See discussion in Section 4.3.23)

A. The Contractor shall be reimbursed for the costs of economy class commercially scheduled air travel as follows:

(1) Round trip air fares for the Contractor's employees assigned to work in the host country and their authorized dependents.

(2) Up to 3 round trips for the Contractor's home office staff to inspect work under the contract or consultant with field staff and Contracting personnel.

Per diem during such travel shall be paid in accordance with The Contractor's usual practice.

*B. Use of U.S. Flag Air Carriers

1. The Contractor shall utilize U.S. flag air carriers for international air transportation of personnel (and their personal effects) or property to the extent service by such carrier is available, in accordance with the following criteria:

(a) If a U.S.-flag air carrier cannot provide the international air transportation needed, or if the use of a non-U.S. flag carrier is approved by USAID in order to accomplish the Agency's mission, foreign-flag air carrier service may be deemed necessary.

(b) Passenger or freight service by a U.S.-flag air carrier is considered available even though:

- (1) Comparable or a different kind of service can be provided at less cost by a foreign-flag air carrier;
- (2) Foreign-flag air carrier service is preferred by, or is more convenient for, the Contractor or traveler; or
- (3) Service by a foreign-flag air carrier can be paid for in excess foreign currency (unless U.S.-flag air carriers decline to accept excess or near excess foreign currencies for transportation payable only out of such monies).

*This paragraph must be used verbatim in all USAID grant-financed contracts and in loan-financed contracts when the authorized Geographic Code is 000. When a loan authorizes Geographic Code 941, the paragraph is used verbatim except to substitute "host country, U.S., or other Code 941" for "U.S." wherever it appears.

(c) Except as provided in paragraph (a) above, U.S.-flag air carrier service shall be used for commercial foreign air travel under this contract if service provided by U.S.-flag air carriers is available. In determining availability of a U.S.-flag air carrier, the following scheduling principles shall be followed unless their applications would result in the last or first leg of travel to or from the United States being performed by a foreign-flag air carrier:

- (1) U.S.-flag air carrier service available at point of origin shall be used to destination, or in the absence of direct or through service, to the farthest interchange point on a usually traveled route.
- (2) When an origin of interchange point is not served by a U.S.-flag air carrier, foreign-flag air carrier service shall be used only to the nearest interchange point on a usually traveled route to connect with U.S.-flag air carrier service.
- (3) When a U.S.-flag air carrier involuntarily reroutes the traveler via a foreign-flag air carrier, the foreign-flag air carrier may be used notwithstanding the availability of alternative U.S.-flag air carrier service.

(d) For travel between a gateway airport in the United States and a gateway airport abroad, passenger service by U.S.-flag air carrier shall not be considered available if:

- (1) The gateway airport abroad is the traveler's origin or destination airport and the use of U.S.-flag air carrier service would extend the time in a travel status, including delay at origin

and accelerated arrival at destination, by at least 24 hours more than travel by a foreign-flag air carrier; or

(2) The gateway airport abroad is an interchange point and the use of U.S.-flag air carrier service would require the traveler to wait 6 hours or more to make connections at that point, or if delayed departure from, or accelerated arrival at, the gateway airport in the United States would extend time in a travel status by at least 6 hours more than travel by a foreign-flag air carrier.

(e) For travel between two points outside the United States, the rules in paragraphs (a), (b), and (c) shall be applicable, but passenger service by a U.S.-flag air carrier shall not be considered to be available if:

(1) Travel by a foreign-flag air carrier would eliminate two or more aircraft changes en route;

(2) One of the two points abroad is the gateway airport en route to or from the United States and the use of a U.S.-flag air carrier would extend the time in a travel status by at least 6 hours more than travel by a foreign-flag air carrier, including accelerated arrival at the overseas destination or delayed departure from the overseas origin, as well as delay at the gateway airport or other interchange point abroad; or

(3) The travel is not part of the trip to or from the United States and the use of a U.S.-flag air carrier would extend the time in a travel status by at least 6 hours more than travel by a foreign-flag air carrier including delay at origin, delay en route, and accelerated arrival at destination.

(f) For all short-distance travel under either paragraph (d) or paragraph (e) above, U.S. air carrier service shall not be considered available when the elapsed travel time on a scheduled flight from origin to destination airport by foreign-flag air carrier is 3 hours or less and service by a U.S.-flag air carrier would involve twice such travel time.

2. In the event that the Contractor selects a carrier other than a U.S.-flag air carrier for international air transportation, it will include a certification on vouchers involving such transportation which is essentially as follows:

CERTIFICATION OF UNAVAILABILITY OF U.S. FLAG AIR CARRIERS

I hereby certify that transportation service for personnel (and their personal effects) or property by U.S.-flag air carrier was unavailable for the following reasons:

[State reasons]

3. If travel is by indirect route or the traveler otherwise fails to use available U.S.-flag air carrier service, and the certification required by paragraph (2.) above

is not attached to the applicable voucher, USAID will not finance the amount determined under the following formula:

Sum of U.S.-flag carrier segment mileage
_____ authorized _____ X
Fare payable by
Sum of all segment mileage authorized Government

MINUS

Sum of U.S.-flag carrier segment mileage
Through fare
_____ traveled _____ X paid
Sum of all segment mileage traveled

4. The terms used in this clause have the following meanings:

(a) "Gateway airport abroad" means the airport from which the traveler last embarks en route to the United States or at which the traveler first debarks incident to travel from the United States.

(b) "Gateway airport in the United States" means the last U.S. airport from which the traveler's flight departs or the first U.S. airport at which the traveler's flight arrives.

(c) "International air transportation" means transportation by air between a place in the United States and a place outside the United States or between two places both of which are outside the United States.

(d) "U.S.-flag air carrier" means an air carrier holding a certificate under Section 401 of the U.S. Federal Aviation Act of 1958 (49 U.S.C. 1371).

5. The Contractor shall include the substance of this clause, including this paragraph (5.), in each subcontract or purchase order hereunder, which may involve international air transportation.

24. Subcontracts and Purchase Orders (See discussion in Section 4.3.24)

A. Subcontracts for Services

Subcontracts must comply with the nationality requirements of this contract. The contractor agrees to include the following provisions of this contract in all subcontracts hereunder:

"Host Country Taxes";
"Paragraph B. of "Air Travel and Transportation";
"Nationality";
"Worker's Compensation Insurance"; and

(Specify any additional provisions by clause title.)

All subcontracts in excess of \$100,000 shall only be awarded with the prior written consent of the Contracting Agency and USAID and such consent, if given, shall not relieve the Contractor from any liability or obligation under this contract. Cost-plus-percentage-of-cost subcontracts shall not be utilized for performance of any work.

B. Subcontracts and Purchase Orders for Equipment and Materials*

The Contractor will procure all equipment and materials imported specifically for the activity in accordance with Chapter 3, "Procurement of Equipment and Materials," of Country Contracting Handbook, USAID ADS CHAPTER 305 Supplementary Reference, as in effect on the date that offers are solicited. A copy of the current Chapter 3 is attached, and hereby incorporated into this contract. The authorized Geographic Code for the procurement of equipment and materials is 941.**

C. Local Procurement

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

(2) All local procurements must be covered by source/and nationality waivers, with the following exceptions:

* If the Mission Director has waived the use of Chapter 3 for the particular contract, or if a fixed price contract is used, see the Alternate requirements discussed in Section 4.3.24.b.

** Use the Code specified in the underlying Agreement.

(a) Locally available commodities of U.S. origin, which are otherwise eligible for financing, if the value of the transaction is estimated not to exceed the local currency equivalent of \$100,000 (exclusive of transportation costs).

(b) Commodities of geographic code 935 origin if the value of the transaction does not exceed \$5,000 (exclusive of transportation costs).

(c) Professional services contracts estimated not to exceed \$250,000.

(d) Construction services contracts estimated not to exceed \$5,000,000.

(e) The following commodities and services which are available only locally:

1. Utilities including fuel for heating and cooking, waste disposal, and trash collection;

2. Communications -- telephone, telex, fax, postal and courier services;
3. Rental costs for housing and office space;
4. Petroleum, oils and lubricants for operating vehicles and equipment;
5. Newspapers, periodicals and books published in the cooperating country;
6. Other commodities and services (and related expenses) that, by their nature or as a practical matter, can only be acquired, performed, or incurred in the cooperating country, e.g., vehicle maintenance, hotel accommodations, etc.

25. Change Orders (See discussion in Section 4.3.25)

The Contracting Agency may at any time by a written order make changes within the scope of work and schedule under this contract. If any such change causes an increase or decrease in the work or the time required for performance of this contract, an equitable adjustment shall be made in:

- (1) the contract price or completion date, or both, and
- (2) in any other affected provisions, and the contract shall be amended to reflect the change.

26. Amendments (See discussion in Section 4.3.26)

Modification of the terms of this contract shall be made by amendment signed by the parties. Any amendments, including letter amendments, which increase the contract amount or extend the completion date of the contract must be approved by USAID.

27. Disputes and Appeals (See discussion in Section 4.3.27)

- A. In the event of a dispute under this contract, the Contractor shall submit a written statement to the Contracting Agency, briefly describing the nature of the problem, the position of the Contractor regarding the issue and a narrative of facts in support of the Contractor's position.
- B. Within 10 days after receipt of the Contractor's statement, the Contracting Agency shall decide the issue and deliver a written statement of the decision to the Contractor, including the reasons supporting the decision, if adverse to the Contractor.
- C. Within 30 days after receipt of the Contracting Agency's decision or the date such decision was due, the Contractor may submit to the Contracting Agency a written Notice of Appeal including a detailed description of the facts of the dispute with the dates of events, names of persons involved, references to documentation bearing on the matter (with copies attached), the relevant contract provisions(s), the Contractor's contentions

and conclusions, and a statement of why the Contracting Agency's decision is being questioned.

*D. If within 30 days after delivery of a Notice of Appeal, the parties cannot mutually agree to a satisfactory settlement, the matter shall be presented for arbitration, following the rules of Conciliation and Arbitration of the International Chamber of Commerce (ICC) (or the Arbitration Rules of the United Nations Commission on International Trade Law (UNCITRAL)).

28. Disposition of Personal Property in the Cooperating Country (See discussion in Section 4.3.28)

A. When a contractor employee, a contractor--if the contract is with an individual person, or a family member thereof who is present in the Cooperating Country as a dependent under the contract disposes of personal property which has been imported or acquired under an exemption of Cooperating Country import restrictions, customs duties, or taxes by virtue of his/her status under this or a predecessor USAID-financed contract; such disposition shall be subject to rules contained in 22 CFR Part 136 to the extent that these rules are applicable to the employees of U.S. Government contractors in the Cooperating Country. This

*Use the following paragraphs D., E., and F., if the ICC or UNCITRAL rules are not utilized.

B. Within 30 days after delivery of a Notice of Appeal, each party will select at least one arbitrator of its choice (non-nationals of the parties are permitted) who will select another arbitrator to chair the panel, and arbitration will be conducted under the rules of _____ (an established, impartial institution). At the request of one of the parties, the arbitration will be conducted in _____ (a third country). If the panel is not fully constituted within 20 days, either party may apply to a court of competent jurisdiction. Such court may fill the vacancy and in its discretion, charge all costs of the court proceeding to the other party.

C. The panel shall examine the claims and all documentation or witnesses offered in support of the positions of the parties and shall resolve the issue by a written decision which may include a monetary award (but not a penalty), as appropriate.

D. Judgment upon the award rendered may be entered in any court having jurisdiction or application may be made to such court for a judicial acceptance of the award and an order of enforcement.

restriction applies under either grant- or loan-funded contracts, notwithstanding reference to only grant-funded contracts in 22 CFR Part 136. As used in this clause, the term "contractor employee" includes any consultants, experts, or other personnel of the contractor.

E. (This paragraph does not apply to a contract with an individual.) The contractor will (1) develop and apply appropriate disciplinary procedures for violations of the rules--procedures that are comparable to those applicable to U.S. Government employees at the same post, (2) notify those employees that are subject to the rules of the content and implications of the rules and the disciplinary procedures, and (3) obtain (and retain in the contractor's records) written acknowledgment of this notification from those employees.

F. The contractor agrees to incorporate the substance of this clause, including this paragraph c. in all subcontracts under this contract if performance in the Cooperating Country is required.

29. Inspection (See discussion in Section 4.3.29)

The Contractor agrees to permit authorized representatives of the Contracting Agency and USAID at all reasonable times to inspect the facilities, activities, and work pertinent to this contract, to take measurement of work in place, and to conduct tests.

30. Report of Delays (See discussion in Section 4.3.30)

The Contractor shall report in writing to the Contracting Agency any event or condition which might delay progress or prevent completion of the work under this contract as soon as the facts are known to the Contractor.

31. Force Majeure (See discussion in Section 4.3.31)

A. The term "Force Majeure" means any cause beyond the control of the Contractor, which the Contractor could not foresee and/or reasonably provide against and which prevents the Contractor from wholly or partly performing any duties under the contract. Force majeure includes, but is not limited to, any of the following:

- War, revolution, insurrection or hostilities (whether declared or not);
- Riot, civil commotion or civil uprising (other than among the Contractor's employees);
- Earthquake, flood tempest, hurricane, lightning, or other natural disaster;
- Any fire of major proportions, or explosion;
- Epidemic;
- Strike or lockout; or
- Act of the Government

B. If any event occurs constituting force majeure, the Contractor shall give written notice to the Contracting Agency as soon as possible after the occurrence but within 15 days, including a statement describing the force majeure and its effect upon the performance of this contract. The parties shall, within 10 days after such notice, consult regarding action to be taken.

C. In the event of a force majeure, the Contractor, unless otherwise directed by the Contracting Agency in writing, shall continue to undertake and perform the duties set forth in this contract as far as is reasonably practicable.

D. In the event of a force majeure resulting in a suspension of work, this contract shall be extended by a period equal to that for which the Contractor was prevented from performing.

E. The Contractor shall be entitled to reasonable costs incurred as a consequence of a force majeure.

F. If the Contractor's inability to perform by reason of the force majeure lasts for more than 45 days after notice has been given to the Contracting Agency, either party may terminate this contract and the Contractor shall be entitled to any sums which would be payable in case of termination of this contract for convenience of the Government.

32. Suspension of Work (See discussion in Section 4.3.32)

A. The Contracting Agency may, at any time, by written order to the Contractor (Suspension of Work Order), require the Contractor to stop all, or any part, of the work required by the contract for a period of up to 90 days from the specified effective date.

B. Upon receipt of such an order, the Contractor shall immediately comply with its terms and take all reasonable steps to minimize the incurring of costs allocable to the work covered by the order.

C. Within the period of the Suspension of Work Order, the Contracting Agency shall either:

1. Cancel the Suspension of Work Order; or
2. Terminate the work covered by such Order as provided in the termination clause of the contract.

D. If the Suspension of Work Order is cancelled or the Order expires, the Contractor shall resume work. An equitable adjustment shall be made as necessary in the time schedule, the budget, or a combination thereof, or any other provisions of the Contract that may be affected and the contract shall be amended accordingly, if the Contractor asserts a claim for such adjustment within 30 days after the end of the period of work suspension. Failure to agree to any adjustment shall be a dispute under the "Disputes and Appeals" clause of the contract.

33. Termination by the Contracting Agency for Default (See discussion in Section 4.3.33)

A. The performance of work under the contract may be terminated by the Contracting Agency in whole, or from time to time in part, in accordance with this clause, whenever the Contractor defaults in performance of this contract and shall fail to cure such default within a period of 10 days (or such longer period as the Contracting Agency may allow) after receipt from the Contracting Agency of a written notice specifying the default. For the purposes of this clause, "default" means:

1. Failure to perform the work within the time(s) specified or any extension thereof, or

2. Failure to perform any of the other provisions of this contract, or
3. Failure to prosecute the work so as to endanger performance of this contract in accordance with its terms.

B. Termination shall be effected by a Notice of Termination to the Contractor specifying that termination is for the default of the Contractor, the extent to which performance of work under the contract is terminated, and the date upon which such termination becomes effective.

C. After receipt of a Notice of Termination and except as otherwise directed by the Contracting Agency, the Contractor shall:

- (1) Stop work under the contract on the date and to the extent specified in the Notice of Termination; and place no further orders or subcontracts except as may be necessary for completion of the portion of the work under the contract which is not terminated;
- (2) Terminate all orders and subcontracts to the extent that they relate to the performance of work terminated by the Notice of Termination;
- (3) Assign to the Contracting Agency as it may direct, all of the right, title, and interest of the Contractor under the orders and subcontracts so terminated, in which case the Contracting Agency shall have the right to settle or pay any claims arising out of the termination of such orders and subcontracts;
- (4) With the approval or ratification of the Contracting Agency, to the extent the Contracting Agency may require, which approval or ratification shall be final and conclusive for all purposes of this clause, settle all outstanding liabilities and all claims arising out of such termination of orders and subcontracts, the cost of which would be reimbursable in whole or in part in accordance with the provisions of this contract;
- (5) Transfer title to the Contracting Agency and deliver as directed by the Contracting Agency, the completed or partially completed plans, drawings, information, and other property which would be required to be furnished to the Contracting Agency under the contract except that this requirement shall not apply to goods for which the Contractor has not been reimbursed;
- (6) Complete performance of the part of the work which has not been terminated by the Notice of Termination; and
- (7) Take such action as may be necessary for the protection of the property related to this contract which is in the possession of the Contractor and to which the Contracting Agency has title.

D. The Contractor shall submit to the Contracting Agency its written claim promptly but not later than three months from the effective date of termination, except as the Contracting Agency may agree in writing.

E. The Contractor and the Contracting Agency shall consult within 30 days of the submission of the claim concerning the whole or any part of the amount to be paid (including any allowance for the fee) to the Contractor by reason of the termination of work. The contract shall be amended accordingly, and the Contractor shall be paid the agreed amount.

F. If the Contractor and the Contracting Agency fail to agree to the amounts to be paid to the Contractor pursuant to this clause, the Contracting Agency shall pay the amount, if any, it determines to be due the Contractor considering:

(1) Costs and expenses reimbursable in accordance with this contract, not previously paid, for the performance of this contract prior to the effective date of the Notice of Termination, and such costs as may continue for a reasonable time thereafter with approval of or as directed by the Contracting Agency.

(2) The cost incurred by the Contractor in settling and paying claims arising of the termination of work under subcontracts or orders which are properly chargeable to the terminated portion of the contract. Any amount for preparation of the Contractor's settlement claim shall not be included.

G. In deciding the amount due the Contractor, all unliquidated advance or other payments made to the Contractor applicable to the terminated portion of this contract; all settled claims which the Contracting Agency may have against the Contractor in connection with this contract; and the agreed price for, or the proceeds of sale of property acquired by the Contractor or sold and not otherwise recovered by or credited to the Contracting Agency, shall be deducted.

H. If the total of payments in connection with the terminated portion of the contract exceeds the amount determined to be due under this clause, such excess shall be payable by the Contractor to the Contracting Agency upon demand, together with interest computed at the rate of _____ per annum, for the period from the date such excess payment was received by the Contractor to the date on which such excess is repaid to the Contracting Agency.

I. Any disagreement regarding termination amounts or procedures shall be settled under the clause of this contract entitled "Disputes and Appeals."

34. Termination by the Contracting Agency for Convenience (See discussion in Section 4.3.34)

A. The performance of work under the contract may be terminated by the Contracting Agency in whole, or from time to time in part, in accordance with this clause whenever the Contracting Agency shall determine that such termination is in the best interest of the Contracting Agency.

B. Termination shall be effected by a Notice of Termination to the Contractor, specifying that termination is for the convenience of the Contracting Agency, the extent to which performance of work under the contract is terminated, and the date upon which such termination becomes effective.

C. After receipt of a Notice of Termination and except as otherwise directed by the Contracting Agency, the Contractor will:

- (1) Stop work under the contract on the date and to the extent specified in the Notice of Termination; and place no further orders or subcontracts except as may be necessary for completion of the portion of the work under the contract which is not terminated;
- (2) Terminate all orders and subcontracts to the extent that they relate to the performance of work terminated by the Notice of Termination;
- (3) Assign to the Contracting Agency as it may direct, all of the right, title, and interest of the Contractor under the orders and subcontracts so terminated, in which case the Contracting Agency shall have the right to settle or pay any claims arising out of the termination of such orders and subcontracts;
- (4) With the approval or ratification of the Contracting Agency, to the extent the Contracting Agency may require, which approval or ratification shall be final and conclusive for all purposes of this clause, settle all outstanding liabilities and all claims arising out of such termination of orders and subcontracts, the cost of which would be reimbursable in whole or in part in accordance with the provisions of this contract;
- (5) Transfer title to the Contracting Agency and deliver as directed by the Contracting Agency, the completed or partially completed plans, drawings, information, and other property which would be required to be furnished to the Contracting Agency under the contract except that this requirement shall not apply to goods for which the Contractor has not been reimbursed;
- (6) Complete performance of the part of the work which has not been terminated by the Notice of Termination; and
- (7) Take such action as may be necessary for the protection of the property related to this contract which is in the possession of the Contractor and to which the Contracting Agency has title.

D. The Contractor shall submit to the Contracting Agency its written claim promptly but not later than three months from the effective date of termination, except as the Contracting Agency may agree in writing.

E. The Contractor and the Contracting Agency shall consult within 30 days of the submission of the claim concerning the whole or any part of the amount to be paid (including any allowance for the fee) to the Contractor by reason of the termination of work. The contract shall be amended accordingly, and the Contractor shall be paid the agreed amount.

F. If the Contractor and the Contracting Agency fail to agree to the amounts to be paid to the Contractor pursuant to this clause, the Contracting Agency shall pay the amount, if any, it determines to be due the Contractor considering:

(1) Costs and expenses reimbursable in accordance with this contract, not previously paid, for the performance of this contract prior to the effective date of the Notice of Termination, and such costs as may continue for a reasonable time thereafter with approval of or as directed by the Contracting Agency;

(2) The cost incurred by the Contractor in settling and paying claims arising out of the termination of work under subcontracts or orders which are properly chargeable to the terminated portion of the contract;

(3) The reasonable costs of the preparation of settlement claims and supporting data with respect to the terminated portion of the contract and for the termination and settlement of subcontracts, together with reasonable costs incurred in connection with the protection or disposition of termination inventory; and

(4) The percentage of the total fee proportionate to the percentage of the work completed prior to termination related to the estimated cost of the contract. Subcontractor effort included in subcontractors' termination claims, and fee payments previously made are not included.

G. In deciding the amount due the Contractor, all unliquidated advance or other payments made to the Contractor applicable to the terminated portion of this contract; all settled claims which the Contracting Agency may have against the Contractor in connection with this contract; and the agreed price for, or the proceeds of sale of property acquired by the Contractor or sold and not otherwise recovered by or credited to the Contracting Agency, shall be deducted.

H. If the total of payments in connection with the terminated portion of the contract exceeds the amount determined to be due under this clause, such excess shall be payable by the Contractor to the Contracting Agency upon demand, together with interest computed at the rate of ____ percent per annum, for the period from the date such excess payment was received by the Contractor to the date on which such excess is repaid to the Contracting Agency.

I. Any disagreement regarding termination amounts or procedures shall be settled under the clause of this contract entitled "Disputes and Appeals."

35. Termination by the Contractor for Nonpayment (See discussion in Section 4.3.35)

A. If any amounts invoiced by the Contractor have not been either authorized or certified for payment as provided in this contract, or disallowed by the Contracting Agency by written notice to the Contractor within 60 days of receipt by the Contracting Agency of such invoice, the Contractor may, at its option, after 30 days notice in writing to the Contracting Agency, terminate this contract by delivery of a Notice of Termination specifying the effective date of and reason for termination.

B. Within 30 days after the effective date of the Notice of Termination, the Contractor shall submit to the Contracting Agency its termination claim which shall be processed and settled in the same manner as in the case of termination for convenience of the Contracting Agency.

36. Contractor Employees (See discussion in Section 4.3.36)

A. Upon the written request of the Contracting Agency, the Contractor will remove or replace any of its employees present in the host country. The Contractor shall not be reimbursed or paid extra amounts for the return transportation costs of any employee, his or her dependents and their household effects nor shall the Contractor be reimbursed for transportation costs to the host country of a replacement for such employee, his or her dependents and their household effects, if any employee removed under this paragraph has not performed satisfactorily or is guilty of misconduct.

B. All Contractor and subcontractor employees shall at all times while in the host country conduct themselves within the laws of such country.

37. Physical Fitness of Employees and Dependents (See discussion in Section 4.3.37)

A. The Contractor shall ensure that all employees (other than those hired in the host country) and dependents authorized to accompany the employee to the host country are physically fit for work under this contract and/or residence in the host country.

B. The Contractor shall require all such employees and their authorized dependents to be examined by a doctor of medicine, prior to departure for the host country.

C. The doctor shall certify that, in the doctor's opinion, the employee is physically qualified to engage in the type of activity for which he or she is employed and the employee and authorized dependents are physically qualified to reside in the host country.

D. If the Contractor has no medical certificate on file prior to the departure for the host country of any employee or authorized dependent, and the employee is unable to perform the type of activity for which employed and complete the tour of duty because of any physical disability (other than physical disability arising from an accident while employed under this contract) or an authorized dependent is unable to reside in the host country because of any physical disability (other than physical disability arising from an accident while a dependent under this contract), the Contractor shall not be reimbursed for the return transportation costs of the physically disabled employee and/or dependents and their household effects, nor shall the Contractor be reimbursed for travel to the host country and shipment of household effects for a replacement of such disabled employee.

38. Employee Conduct (See Section 4.3.38)

Other than work to be performed under this contract for which an employee or consultant is assigned by the Contractor or except as the Contracting Agency shall agree in writing, no such employee or consultant of the Contractor shall engage, directly or indirectly, either in his own name or in the name or through the agency of another person, in any business, profession or occupation in the host country. Other than as specified in this contract no employee or consultant of the Contractor shall directly or indirectly, either in his own name or in the name or through the agency of another person, receive, agree to receive, or solicit any compensation for any services rendered or to be rendered by said employee or consultant under this contract.

39. Equal Employment Opportunity (See discussion in Section 4.3.39)

The Contractor will not discriminate in recruitment or employment conditions of personnel hired in the United States because of race, religion, color, sex, or national origin and will maintain compliance with its equal employment opportunity obligations under Executive Order 11246 dated September 24, 1965.

40. Labor Standards (See discussion in Section 4.3.40)

A. The Contractor shall comply with the existing local labor laws, regulations, and labor standards. (Specify, if possible.)

B. The Contractor shall formulate and enforce an adequate safety program with respect to all work under this contract, whether performed by the Contractor or subcontractors. The Contracting Agency assures the Contractor of cooperation where the implementation of these safety measures require joint cooperation.

C. Wage rates, benefits, working hours, and conditions of employment for host country personnel employed by the Contractor for work under this contract shall meet, as a minimum requirement, the standards set forth in the schedule of wage rates below. Deviations from these wage rates and employment conditions will be made only with prior concurrence of the Contracting Agency.

(Attach a Wage Schedule according to the Wage Law of the Government).

41. Worker's Compensation Insurance* (See discussion in Section 4.3.41)

A. The Contractor shall provide and thereafter maintain Worker's Compensation Insurance in accordance with the Defense Base Act (DBA) (42 U.S.C. 1651) for overseas employment under this contract of all employees who are hired in the United States or who are American citizens or bona fide residents of the United States.

B. To the extent that such a USAID contract is available to provide DBA insurance, the Contractor agrees to procure the DBA insurance required by this clause from the DBA insurance carrier under contract with USAID, unless the Contractor has a DBA self insurance program approved by the Department of Labor or has an approved retrospective rating agreement for DBA. Information on obtaining coverage under the USAID requirements contract and the list of countries for which USAID has secured waiver of DBA coverage for Contractor's employees who are not citizens of, residents of, or hired in the United States, is shown in USAID Country Contracting Handbook, Chap 1, 4.3.41, Mandatory Reference to ADS Chap 305.

C. The Contractor agrees to provide employees who are not citizens of, residents of, or hired in the United States 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, or in the absence of such law, employer's liability insurance.

D. With respect to all employees who are hired for employment outside the country in which they are to be employed, this insurance coverage shall be provided prior to the departure for overseas employment under this contract.

E. The Contractor shall insert a clause similar to this clause, including this sentence, in all subcontracts except those exclusively for furnishing equipment and/or materials.

* This clause assumes that a waiver has been obtained from Defense Base Act insurance requirements for host country and third country nationals.

42. Insurance (See discussion in Section 4.3.42)

The Contractor shall secure and maintain for the duration of this contract, the following insurance coverage with a reputable insurance company and shall furnish to the Contracting Agency a certificate of insurance fully executed by the insurance company for the insurance policies required by this clause.

A. Marine Insurance

The Contractor shall insure all goods, equipment, and materials financed hereunder or supplied to it by the Contracting Agency against risks incident to their transit to the point of their use in the performance of this contract, and to their storage, if any, prior to incorporation in the activity. Such insurance shall insure the full value of the goods, equipment and materials and the insurance proceeds shall be payable in U.S. dollars or any fully convertible or acceptable currency. With respect to goods, equipment, materials, the cost of which is reimbursable under this contract, the Contractor shall give prompt notice of payment to it of proceeds from insurance on any such item. Such proceeds shall be used to pay for the replacement of the items from any Code 935 country.

B. Public Liability Insurance

With respect to performance under this contract by the Contractor and its subcontractors, the Contractor shall carry public liability (including motor vehicle) insurance providing for a limit of not less than U.S. \$ _____ for all damages arising out of bodily injuries to, or death of, one person, with an aggregate limit of U.S. \$ _____ with respect to bodily injuries or death of two or more persons in any one accident or occurrence and, for a limit of not less than U.S. \$ _____ for all damages arising out of injury to or destruction of property in any one accident or occurrence and an aggregate limit of U.S. \$ _____ for all damages arising out of injury to or destruction of property during the policy period.

C. Insurance on Private Automobiles

If the Contractor or any of its employees or their dependents ship to (whether or not at contract expense), or purchase privately owned automobiles in, the host country, the Contractor will ensure that all such automobiles are covered by a paid-up insurance

policy issued by a reliable company providing the following minimum coverages (or such other minimum coverages as the Government may set) payable in United States dollars or local currency equivalent: injury to persons, \$10,000/\$20,000; *property damage, \$5,000.* The premium costs for such insurance shall not be a reimbursable cost under this contract.

D. Each insurance policy shall provide that the insurer agrees to investigate and defend the insured against all claims for damages even if groundless.

43. Publications and Patents (See discussion in Section 4.3.43)

A. Technical data, recommendations, notes, memoranda and other information and data prepared by the Contractor pursuant to or developed in connection with this contract shall become the property of the Contracting Agency. This provision shall not be interpreted to limit the right of the Contractor or its personnel to make, keep, and use copies of personal or professional records, notes, reports, or other data. Neither party shall publish any material referring to information obtained or developed pursuant to the Contract without giving 30 days notice to the other party of its intention to publish, together with a copy of the proposed material. All publications shall acknowledge the contributions of the parties to the contract unless such acknowledgement is not desired by the contributing party.

* Amounts provided should be established on a country-by-country basis.

B. The Contracting Agency and USAID shall be granted all benefits of any patentable results developed under this contract. The Contractor agrees to cooperate in the preparation and prosecution of any domestic and foreign patent applications, to execute all papers requisite in the prosecution of such application, and to secure the cooperation of any employee.

C. The Contractor shall report to the Government, promptly and in reasonable detail, each notice or claim of patent or copyright infringement based on the performance of this contract of which the Contractor has knowledge. The Contractor shall furnish to the Government, upon request, all evidence and information in its possession pertaining to the suit or claim at the expense of the Government. The Contractor indemnifies in the Contracting Agency against any patent or copyright infringement of patents or copyrights held in the Contractor's home country.

44. Participant Training (See discussion in Section 4.3.44)

A. Participant training, i.e., the training of non-U.S. nationals outside their home countries, under this contract will be accomplished in accordance with the provisions of USAID's ADS Ch. 253, Training for Development Impact, as from time to time amended, and attendant Participant Training Notices that are issued thereunder by the USAID Center for Human Capacity Development.

B. Changes in this directive and additional notices that are issued by USAID during the term of the contract shall constitute change orders to the contract in accordance with the

clause entitled Change Orders, as though the change order has been issued by the Contracting Agency. Such changes shall be effective as of the date of the issuance by USAID or such other date as may be specified in that change.

45. Notices (See discussion in Section 4.3.45)

Any notice given by either party shall be sufficient only if in writing and delivered in person or sent by telegraph, registered, or regular mail to the following addresses:

To Contractor: Fred Smith
Activity Manager
Health Reform, Inc.
Health Ministry Building
000 Commonwealth Avenue
Boston, Massachusetts 02138

To Contracting Agency: Sr. Juan Smith
Director, Office of Health
Health Ministry Building 1
Propowog, Erewhon

Notices shall be effective when delivered or on the effective date of the notice, whichever is later.

46. Signature (See discussion in Section 4.3.46)

The parties hereto, through their duly authorized representatives hereby agree to the provisions of this contract.

_____	_____
Contractor	Contracting Agency
By: _____	By: _____
Title	Title
Date: _____	Date: _____

***47. Anti-Corruption Provisions (See discussion in Section 4.3.47)**

No offer, payment, consideration, or benefit of any kind which constitutes an illegal or corrupt practice shall be made, either directly or indirectly, as an inducement or reward for the award of this contract. Any such practice will be grounds for cancelling the award of this contract and for such other additional actions, civil and/or criminal, as may be applicable.

Attachment 1A – Relevant USAID Geographic Codes

000 United States

*899 Any area or country, except the cooperating country itself and the following foreign policy restricted countries: Libya, Cuba, Laos, Iraq, Iran, North Korea, and Syria.

935 Any area or country, including the cooperating country, but excluding the foreign policy restricted countries.

941 The United States and any independent country except 1. the cooperating country itself, 2. the foreign policy restricted countries, and 3. the following:

Europe		Other	
Albania	Lithuania	Angola	Kyrgyzstan
Andorra	Luxembourg	Australia	Mongolia
Armenia	Macedonia*	Bahamas	New Zealand
Austria	Malta	Bahrain	People's Republic of China
Azerbaijan	Moldova	Canada	Qatar
Belgium	Monaco	Cyprus	Saudi Arabia
Bosnia and Herzegovina	Montenegro*	Gabon	Singapore
Bulgaria	Netherlands	Hong Kong	South Africa
Belarus	Norway	Iceland	Taiwan*
Croatia	Poland	Japan	Tajikistan
Czech Republic	Portugal	Kazakhstan	Turkmenistan
Denmark	Romania	Kuwait	United Arab Emirates
Estonia	Russia	Uzbekistan	
Finland	San Marino		
France	Serbia*		
Georgia	Slovak Republic		
Germany	Slovenia		
Greece	Spain		
Hungary	Sweden		
Ireland	Switzerland		
Italy	Ukraine		
Latvia	United Kingdom		
Liechtenstein	Vatican City		

*Has the status of a "geopolitical entity," rather than an independent country.

**Attachment 1B – Architect-Engineer and Related Services
Questionnaire for Specific Project**

11At1B01.tif Standard Form (SF) 255

OMB No. 3090-0029

(Architect-Engineer and Related Services Questionnaire for Specific Project)
(11 pages)

Attachment 1C – Example of a Letter to Firms Not Selected for Submission of Technical Proposals

(Insert name and address)

Dear M _____ :

We have carefully reviewed all the prequalification data received from various firms in response to our announcement of the _____ activity. We regret to advise that your firm was not one of those selected for the development of a technical proposal. Thank you for your submission. We appreciate your interest in (insert identity of activity) and hope you will continue to be interested in activities of (Borrower/Grantee).

Very truly yours,

Attachment 1D – Example--Evaluation Chart

11At1D01.tif

Attachment 1E – Example of a Letter to Firms Whose Proposals Will Not Be Further Considered

(Insert name and address)

Dear M _____:

We carefully evaluated the proposal you submitted to us on the _____ activity. We regret to advise you that your firm was not selected for the negotiation of the contract.

We want to thank you very much for your proposal. We appreciate your interest in (insert identity of activity) and hope that you will continue to be interested in activities of (Borrower/Grantee).

Very truly yours,

Attachment 1F: Example of Letters to Firms Not Selected for Negotiation but Whose Proposal (Normally Ranked Second or Third and Possible Fourth) is being Retained in the Event Negotiations are unsuccessful with Firms whose Proposals were Ranked Ahead

(Insert name and address)

Dear M _____:

We wish to inform you that we have selected another firm with which to negotiate a contract for _____ activity. However, there is always the possibility that negotiations with the selected firm may not be successfully concluded. In that event, we will attempt to negotiate with the next ranked qualified firm. We therefore wish to keep open the possibility of negotiating with you in case we are not successful with the firm or firms whose proposals are ranked before yours. We will let you know as soon as possible whether the contract negotiations have been successfully concluded.

Thank you very much for your continuing interest.

Very truly yours,

Attachment 1G – Format Analysis of Estimated Costs - Cost-Reimbursement

Main Form

Analysis of Estimated Costs - Cost-Reimbursement

(Firm Name) _____

Items	Details on Schedule	Work-Months	Local Currency Costs (U.S.\$)	Dollar Costs	Total Costs (U.S.\$)
1. Base salaries - Field staff	1		\$	\$	\$
2. Field staff differential, if any					
3. Overhead-field staff* Percentage rate (%)					
4. Home office salaries	2				
5. Overhead-home office. Percentage rate (% %)					
6. Fixed-fee					
7. SUBTOTAL			\$	\$	\$
8. Subcontract costs, if any (Submit details on separate schedule.)					
9. Costs of consultants, if any (Submit details on separate schedule.)					
10. Travel and per diem - personnel:	3				
(a) International travel and per diem					
(b) Travel and per diem in the contractor's country	3				
(c) Local Travel and per diem – borrower country	3				
11. Transportation- personal baggage					
12. Transportation-household effects					
13. Transportation-equipment		\$	\$	\$	\$
14. Equipment	4				
15. Other direct costs:	5				
(a) Insurance					
(b) Miscellaneous	5				
16. SUBTOTAL (8 through 15)		\$	\$	\$	\$
17. TOTAL COSTS (7 plus 16)		\$	\$	\$	\$

*Overhead: Items included in overhead shall not be included elsewhere on cost estimate, and overhead shall not be applied on field staff differential.

Schedule 1 – Base Salaries (Field Staff)

Estimated Annual Base Salary Dollar

Position or Job Title	Staffing Regular	Proposal* Recruit	Estimate of Work-Months	(Local Currency	Costs (U.S.\$)	Total Costs (U.S.\$)
					\$	\$
Total Field Staff**					\$	\$

*For those positions to be filled with principals, officers, or partners of the firm, so indicate in the "Regular" column by entering the appropriate designation (e.g., officer).

**Transfer totals to line 1, page 1, of Attachment 1G.

Schedule 2 – Home Office Salaries

Home Office

Position or Job Title	Staffing Regular	Proposals Recruit	Estimate of Person-Months	Estimate Annual Base Salary (in U.S. \$)
				\$
				\$
				\$
Total Home Office**				

*For those positions to be filled with principals, officers, or partners of the firm so indicate in the "Regular" column by entering the appropriate designation (e.g., officer).

**Transfer totals to line 4, page 1, of Attachment 1G.

Schedule 3 – Travel and Per Diem - Personnel

	Number of Round Trips	Total Number of Personnel	Local Currency Cost	U.S.\$ Costs	\$ Costs (U.S.\$)
<i>International Travel for:</i>					
Field Staff					
Dependents					
Principals, officers, or other home office personnel					
<i>International Travel Per Diem for:</i>					
Field Staff					
Dependents					
Principals, officers, or other home office personnel					
TOTAL INTERNATIONAL TRAVEL AND PER DIEM (Transfer to Line 10 a, p. 1, Att. 1G.)					
<i>Travel In The Contractor's Country for:</i>					
Field Staff					
Dependents					
Principals, officers, other home office personnel					
(Transfer to Line 10 a, p. 1, Att. 1G.)					
<i>Travel Within Borrower Country</i>					
Field Staff-nonlocal personnel					
Field Staff-local personnel					
<i>Per Diem Within Borrower Country:</i>					
Field Staff-nonlocal personnel					
Field Staff-local personnel					
TOTAL TRAVEL AND PER DIEM - BORROWER COUNTRY (Transfer to Line 10 c, p. 1, Att. 1G.)					
GRAND TOTAL, TRAVEL AND PER DIEM					

Schedule 4 – Cost of Equipment (Purchased or Rented)

Quantity	Equipment	Rental Period	Price or Rate	Local Currency	Costs U.S. \$	Total Costs U.S. \$
TOTAL COST OF EQUIPMENT (Transfer to line 14, page 1, ATTACHMENT 1G.) (Prepare additional pages of Schedule 4 as required.)						

Schedule 5 – Other Direct Costs

	Local Currency Costs	U.S. \$ Costs	Total Costs (U.S.\$)
Insurance (List kinds and face amounts)			
		\$	\$
TOTAL INSURANCE Transfer to line 15a., page 1, Attachment 1G.)		\$	\$
Miscellaneous			
Cables		\$	\$
Telephone			
Postage			
Field personnel			
Passports			
Visas			
Inoculations			
Health examinations			
Supplies and materials, including transportation (but excluding equipment listed in Schedule 4)			
Other (Specify)			
TOTAL MISCELLANEOUS Transfer to line 15b, page 1, Attachment 1G.		\$	\$

Attachment 1H – Format Analysis of Proposed Price - Fixed Price

Main Form

Firm Name

Items	Work-Months	Local Currency (U.S. \$1 =) Costs	U.S.\$ Costs	Total Costs (U.S. \$)
1. Home office salaries 1/				
2. Overhead on home office salaries 2/ (percentage rate %)				
3. Field staff salaries at base pay 1/				
4. Field staff differential, if any (%)				
5. Fringe benefits (payroll costs)				
6. Overhead on field staff salaries 2/ (percentage rate %)				
7. Subtotal (1 through 6)				
8. Travel and per diem - personnel				
(a) International travel and per diem				
(b) Travel and per diem within Contractor's country				
(c) Local Travel and per diem – borrower country				
9. Transportation – personal baggage				
10. Transportation – household effects				
11. Transportation-equipment & supplies				
12. Other Direct costs:				
(a) Insurance				
(b) Miscellaneous 3/				
13. Subtotal (8 through 12)				
14. Grand Total (7 plus 13)				
15. Profit or Fee				
16. Total Price				

1/ List individual salaries on Schedule 1. 2/ Items included in overhead shall not be included in other items in cost breakdown, and overhead shall not be applied on field staff differential.

3/ Itemized separately on Schedule 2.

Schedule 1 - Base Salary

(Field Staff)

Position or Job Title	Estimated Work Months	Annual Base Salary		Total Costs (in U.S. \$)
		Local Currency Cost	Dollar Cost	

(Home Office)

Position or Job Title	Estimated Work Months on This Activity	Annual Base Salary (in U.S. \$)	Total Salary for Activity (in U.S. \$)

Schedule 2 - Miscellaneous

Items	Local Currency Costs	Dollar Costs	Total Costs (in U.S. \$)
Cables, telephone, and postage			
Passports and visas			
Inoculations and health exams examinations			
Total Miscellaneous			

Attachment 1I – (Reserved)

**Attachment 1J – Example of a Letter to Firms Whose
Proposals Were Retained but Were
Not Awarded the Contract**

(Insert name and address)

Dear M_____:

We wish to inform you that _____(contractor)_____ has been selected for the
_____ activity. We appreciate your interest in this activity, and hope you
will continue to be interested in the activities of (Borrower/Grantee)_____.

Very truly yours,

**Attachment 1K – Public Voucher for Purchases and
Services Other than Personal**

11At1K01.tif Standard Form 1034<\A>

**Attachment 1L – Contractor's Certificate and Agreement With the
Agency for International Development Contractor's Invoice-and-
Contract Abstract**

11At1L01.tif OMB No. 0412-0017/AID 1440-3 (8-90)
(4 pages)

Attachment 1M – Commerce Business Daily Notices: Preparation and Transmittal

1. Transmittal

Contracting agencies should submit synopses of proposed procurements and contract awards to M/OP/PS/SUP, USAID/W*, by the most expeditious and reliable means available i.e., electronic memo, telegram, or **telefax**. **Telefax No. is** (202) 216-3395. When electronic transmission is not feasible, synopses should be sent by mail or other printed-copy delivery to:

U.S. Agency for International Development
M/OP/PS/SUP
Washington, D.C. 20523-7801

The Office of Small and Disadvantaged Business Utilization/Minority Resource Center (OSDBU) will review the synopses for conformance with small business and disadvantaged business considerations, particularly the allocation of sufficient offeror response time.

Procurement schedules should normally establish the closing dates for receipt of proposals or prequalification questionnaires at least forty-five days after the anticipated date of synopsis publication in the Commerce Business Daily (CBD) and/or USAID Procurement Information Bulletin (PIB)**. In addition, nine business days should be allowed for OSDBU review and for CBD to publish synopses after their receipt.

OSDBU will contact the USAID mission to resolve any problems before sending the synopses to CBD. Early contact with OSDBU is advised to avoid delays when such problems are foreseen.

2. General Format

The Contracting Agency should prepare the synopses in the following format:

*Prior USAID approval may be required under Section 2.1 of Chapter 1, and in such case, the notice should be transmitted to USAID/W through the USAID mission.

**When procuring the services of a procurement services agent which are not anticipated to exceed \$100,000 and CBD synopsis is not desired, the transmittal should be tagged "PIB ONLY".

A. General

Format for all synopses should employ conventional English language typing with abbreviations, capitalization, and punctuation all grammatically correct--to the extent that the means of transmission permits. Each synopsis should include all 17 format items. Do not include the title of the format item.

B. Length of Text

Overall length of the text of synopses should not exceed 12,000 characters, approximately 3.5 single-spaced pages.

C. Spacing

Begin each line flush with the left margin and separate each format item with a blank line. If more than one synopsis is sent in a single transmission, separate each synopsis with four blank lines and begin each new synopsis with format item number 1.

D. Abbreviations

Limit the use of abbreviations and acronyms to those commonly used by the general U.S. public. (NOTE: USAID will provide advice on accepted usage, as required.)

E. Standard Format

Prepare each synopsis in the following manner. Begin each format item with the number of the item followed by a period (e.g., 1.). Then leave two spaces after the period. Next type the appropriate information for each format item. Then conclude each format item (except the last one of the synopsis) with two exclamation points (i.e., !!). Conclude each complete synopsis, following format item 17, with five asterisks (i.e., *****). If the means of transmission does not permit complete conformance to this format, adhere to it to the extent possible and note items of non-conformance in explanatory footnotes, and the transmission will be reformatted in USAID/W for forwarding to CBD. (CAUTION: USE OF ASTERISKS IN SOME TELEGRAM SYSTEMS WILL DELETE TEXT; THIS REQUIREMENT SHOULD BE DISREGARDED IN SUCH CIRCUMSTANCES.)

FORMAT ITEM EXPLANATION/DESCRIPTION OF ENTRY

1. ACTION CODE--A single alphabetic letter denoting the specific action related in the synopsis. "P" = Presolicitation notice/procurement. "M" = Modification of a previously announced procurement action (a correction to a previous CBD announcement). "A" = Award announcement. "N/A" = Not applicable; it is to be used for notices of events (pre-proposal conferences, etc.) that do not fit any of the preceding categories. (NOTE: CBD has discontinued the use of entry "F" for foreign procurement or tender.)
2. DATE--Date on which synopsis is transmitted for publication. Use a four digit number indicating month in two digits and date in two digits, in the U.S. style, with the month preceding the day (MMDD). All four spaces must be used--use a preceding "0" for months January through September (e.g., 0225 for February 25).
3. YEAR--Two numeric digits denoting the calendar year of the synopsis (e.g., 98 for 1998).
4. GOVERNMENT PRINTING OFFICE (GPO) BILLING ACCOUNT CODE. Host-country contracting agencies should use the code number assigned to USAID by the GPO. Enter: GPO471AID.

5. CONTRACTING AGENCY ZIP CODE--The geographic zip code for the contracting agency if a U.S. or APO/FPO address is specified. If an overseas address is specified, indicate "N/A". Up to nine numeric characters may be entered. When using a nine digit zip code, separate the first five digits and last four digits with a hyphen (e.g., 23456-1234).

6. CLASSIFICATION CODE--Service or supply code number. For professional and technical services, see Table 1M-1 For other classifications, consult Attachments 2B and 3C. Each synopsis should classify the services or supplies under one grouping. If the action is for a multiplicity of goods and/or services, the preparer should group the action under the category best defining the overall acquisition based upon value. Inclusion of more than one classification code, or failure to include a classification code, will result in rejection of the synopsis by CBD.

7. CONTRACTING AGENCY ADDRESS--The complete name and mailing address of the contracting agency. The permissible length of this entry is open but is generally not expected to exceed 90 alpha-numeric characters. Failure to include a complete mailing address will result in rejection of the synopsis by CBD.

8. SUBJECT--Insert the classification code (must be the same as in Format Item 6 above) and a brief title description of the supplies being procured by the contracting agency. Code and description must be separated by a hyphen. This will appear in the CBD as the bold-faced title in the first line of the description.

9. PROPOSED SOLICITATION NUMBER—Contracting agency number for control, tracking, and identification. For solicitations; if not a solicitation, enter "N/A".

10. OPENING/CLOSING RESPONSE DATE—For solicitations; if not a solicitation, enter "N/A". Contracting agency deadline for receipt of bids, proposals, or responses. Use a six digit date, in the U.S. style, with the month preceding the date and then the year (MMDDYY). All six spaces must be used-- use a preceding 0 for the first digit in the months January through September (e.g., 041598). Explanation may appear in text of synopsis in Format Item 17.

11. CONTACT POINT/CONTRACTING AGENCY—Include name and telephone number (with country and city codes, as necessary) of the contracting agency contact. Indicate if the telephone number is an international number (to avoid responders confusing country and city codes with U.S area codes). Also consider including the name and telephone number of a U.S. contact (in host country's embassy to U.S., OSDBU, or the cognizant USAID/W program office, etc.) whom potential offerors may query for information regarding the procurement. (NOTE: Consult with USAID and the intended contact prior to designating a U.S. contact.) This will appear as the first item of information in the published entry. This entry may be alpha-numeric and up to 320 character blocks in length.

12. CONTRACT AWARD AND SOLICITATION NUMBER--For awards; if not an award, enter "N/A". The award, solicitation, and/or activity number assigned by

the contracting agency or USAID to provide a reference for bidders/subcontractors. Seventy-two character blocks are available for alpha-numeric entries plus slashes and dashes.

13. CONTRACT AWARD DOLLAR AMOUNT--For awards; if not an award, enter "N/A". Enter whole U.S dollars preceded by a "\$" sign (spell-out "U.S. Dols" in telegrams) and/or local foreign currency, as applicable, with unit of foreign currency spelled-out.

14. CONTRACT LINE ITEM NUMBER--For awards as desired; if not an award, enter "N/A". The alpha-numeric field with dashes and slashes may not exceed 32 spaces. If sufficient space is not available enter "N/A" and insert the contract line item number(s) in Format Item 17.

15. CONTRACT AWARD DATE--For awards; if not an award, enter "N/A." A six-digit entry showing the date the award is made or the contract let, with the month preceding the date and then the year (MMDDYY). All six spaces must be used--use a preceding "0" for months January through September (e.g., 091598).

16. CONTRACTOR--For awards; if not an award, enter "N/A." Name and address of successful offeror. Ninety character spaces are allowed for full identification.

17. DESCRIPTION--This block is open-ended for entry of the substantive description of the contract action. Suggested sequence of content and items for inclusion in a solicitation synopsis are specified in Item 3, Format for Item 17, "Description" below. Do not enter classification code from Block 6. On award notices insert "N/A" or the contract line item number(s) if not listed in Item 14:

F. Non-Applicable Format Items

When a format item is not applicable, type the item number, a period, two blank spaces, and "N/A" (e.g., 10. N/A).

G. Rejection

CBD will reject synopses that are not in the proper format. Contracting agencies are cautioned to adhere to the format as closely as possible and to direct synopses to USAID/W so that elements of format that cannot be transmitted in international telegrams may be included and the synopses forwarded to CBD.

H. Illustrative Request to Publish a Solicitation Synopsis

SEC STATE, WASHDC

ADM USAID

FOR USAID/M/OP/PS/SUP

SUB: SYNOPSIS FOR PUBLICATION IN COMMERCE BUSINESS

DAILY

1. P!!
2. 0225!!
3. 98!!
4. GPO471AID!!
5. N/A!!
6. R!!
7. Office of Contracts, Ministry of Water Resources, Government of Erewhon, Room 1776, 1824 Plaza d'Independence, Propowog, Erewhon!!
8. R-Engineering Studies for Aqueduct Systems!!
9. MWR-RFTP-98-9876!!
10. 061598!!
11. (a) Juan Smith, MWR, Int'l Tel No. 98-2-34-56789, or (b) Mary Doe, Agency for International Development, OSDBU, Washington, DC 20523-1414, (703) 875-1551!!
12. N/A!!
13. N/A!!
14. N/A!!
15. N/A!!
16. N/A!!
17. The Ministry of Water Resources, Government of Erewhon, (Propowog, Erewhon) requests prequalification data from U.S. and other eligible country (Geographic Code 941) firms and joint ventures of such firms who can qualify, through experience with activities of similar magnitude, for engineering studies, including preliminary plans, for proposed, large aqueduct systems, approximately 350 km in length, for supplying potable water to 20 villages in Western Highlands Province. It is estimated that the activity will require the services of five professionals in the disciplines of hydraulic and environmental engineering for an estimated four work months each. Performance beginning approximately October 1, 1998 and completion by May 1, 1999. A cost-reimbursement contract is anticipated. Payment will be made in U.S. and local currency. Financing will be under USAID Loan 123-4567. Prequalification questionnaires and additional information are available from above contacts. Deadline for submission of questionnaires is June 15, 1998. Late submissions will not be considered. If a

joint venture seeks prequalification, information must be submitted for all firms in joint venture.*****

** END OF SECTION **

3. Format for Item 17, "Description"

A. Prepare the synopsis to ensure that it includes a clear description of the professional or technical services to be contracted for, is not unnecessarily restrictive of competition, and will allow a prospective offeror to make an informed business judgment whether to request a copy of a solicitation or a prequalification questionnaire.

B. In order to assist USAID/W in locating synopses of contracting agency requirements that have been published in the CBD, one of the terms "USAID," "USAID," or "Agency for International Development" should be included in the text of Format Item 17.

C. Include the following elements, to the extent applicable, in sequence. Do not include the numeral designator preceding each element shown below or the service classification code.

- i. Description of service or activity.
- ii. Qualification requirements.
- iii. Eligible source country code(s).
- iv. Scope of services.
- v. Estimated starting and completion dates.
- vi. Type of contract.
- vii. Currency in which payment will be made.
- viii. USAID loan or grant number under which project will be financed.
- ix. Availability of plans, drawings, specifications, or other technical data if not distributed with the solicitation.
- x. Other special conditions that will assist the offeror in determining whether to pursue interest in procurement, e.g., policy on late submissions, etc.

D. Synopses of contract awards should include a statement of the industries, crafts, processes, or component items for which subcontractors are desired, when requested by the prime contractor.

** END OF SECTION **

4. Confirmation of Publication

USAID/W (Office of Procurement, Procurement Support Division) will confirm the date that the synopsis is published in the CBD by telegram to the USAID mission for forwarding to the contracting agency.

** END OF SECTION **

Table 1M-1 – Service Classification Codes

Code	Description
A	Research and development
B	Special Studies and analysis--not R&D
C	Architect and engineering services
D	Automatic data processing and telecommunications services
E	Purchase of structures and facilities
F	Natural resources and conservation services
G	Social services
H	Quality control, testing, and inspection services
J	Maintenance, repair, and rebuilding of equipment
K	Modification of equipment
L	Technical representative services
M	Operation of government-owned facilities
N	Installation of equipment
P	Salvage services
Q	Medical services
R	Professional, administrative, and management support services
S	Utilities and housekeeping services
T	Photographic, mapping, printing, and publication services
U	Education and training services
V	Transportation, travel, and relocation services
W	Lease or rental of facilities

Z Maintenance, repair, and alteration of real property

Attachment 1N – Guidance for Preparation of Statement of Work

INTRODUCTION

The statement of work constitutes the essence of the agreement between the parties on what is to be done and fundamentally binds the contractor and the Contracting Agency in their respective obligations. While other clauses further define rights and responsibilities and elaborate on what happens in particular circumstances, it is the statement of work which spells out contract objectives and the steps which will be taken to achieve them. Any contract must be read in its entirety, but the statement of work stands out as being of prime importance and must be thoughtfully and carefully prepared jointly by personnel familiar with the activity itself and those experienced in contracting.

JOINT RESPONSIBILITY OF PERSONNEL

All parties should be working toward the objective of defining the required work or services in a manner that is mutually understood by the Contracting Agency, contractors, USAID, and any other parties who may subsequently evaluate results or become involved in the event of a dispute. The statement should leave no question as to the intent of the parties.

Time spent preparing a good statement of work is more than compensated for in time saved in contract implementation, when questions regarding inadequate statements of work are difficult and may be time-consuming to resolve. Not only is administrative time lost while attempting to clarify what is intended, but in many cases activity implementation is delayed as a consequence. Therefore, the objective is to write statements of work that are explicit and comprehensive.

STYLE

In developing statements of work, words which have multiple meanings, are too generic, or are terms of art not generally understood should be avoided. Direct, mandatory language (e.g., shall, must, has to) should be used rather than suggestive language (e.g., should, ought, is expected to). The drafters should put themselves in the position of contractors and read the statements of work in the context of the question "what does it say I have to do?" Anything which you expect the contractor to do must be expressed in mandatory language.

FORMAT

The goal should be to arrange the statement in a logical and readable manner that accentuates the most important elements and conveys to the contractor exactly what must be done to reach the objectives of the activity. There are several accepted techniques for logically arranging a statement of work. One is to first state the contract objective and then enumerate the specific work or services the contractor must perform to achieve the objective. It is suggested that this practice be followed except in unusual circumstances. In describing the specific work or services to be performed by the contractor the text should be arranged methodically (e.g., chronologically, by priority, or by function).

The simplest, and generally most readable, method for lengthy work statements is to arrange tasks chronologically. Having first stated the objective, this leads the reader in logical sequence through the steps which will be taken to reach that objective.

Another method is to state the tasks in order of importance. This method is particularly suited for "level of effort" type contracts where it may be desirable to indicate to the contractor those tasks which require the most emphasis.

Still a third method is to group the tasks under major functional headings. This method is particularly suited for large contracts covering a number of diverse tasks.

LEVEL OF EFFORT AND COMPLETION TYPE CONTRACTS

In a completion type contract the contractor is responsible for accomplishing a clearly defined task or an output such as a final report of research or investigatory results. In this type of contract the end product or the nature of the service must be defined in detail. As with any end activity or service, the description should indicate when it is required, how it will interface with other goods or services and the purpose for which it will be used.

In a level of effort type contract, the statement of work expresses the obligations of the contractor to provide specified inputs, usually in work months broken down by specialty, for a stated period of time in pursuit of a stated objective.

The completion type contract is preferable whenever the work or specific milestones can be defined with sufficient precision to permit the development of realistic cost estimates within which prospective contractors can be expected to complete the work. Contracts for engineering services and most implementing technical assistance contracts should be completion contracts. Level of effort contracts are appropriate when the end product can not be defined with precision but the objective can. They are most often used for basic research and may be appropriate for technical assistance activities involving feasibility studies or activity identification.

An example of a level of effort contract might be a research contract where the objective is to develop a type of corn with a high yield in an arid climate with a short growing season. Obviously this objective has to be further defined in the contract to indicate where the corn is going to be grown, what trade-offs are acceptable - e.g., must it have a certain nutritional content, be able to withstand certain diseases, be capable of lengthy storage, etc. It is equally important in this type of statement of work to specify what inputs the contractor is required to use; where inputs other than manpower are involved, e.g., commodities, training, specialized equipment etc., these should be clearly indicated. Other considerations which might be addressed include the following: should the contractor limit research to known hybrids; should it employ six researchers or ten; should the researchers be Ph.D.'s - if so, should they have a particular research background; should six varieties of corn be tested; or should different planting techniques and sites be utilized? The more defined the constraints and contractor inputs, the better the Contracting Agency is able to direct the research toward the specific goal in mind. If, as sometimes happens, the Contracting Agency doesn't want to direct the methods of accomplishment but wants to give the contractor latitude toward accomplishment of the goal, then it is essential that definition of the goal be given added emphasis so that the contractor knows exactly where it should be headed.

Whichever type contract is ultimately decided on, the work statement should be specific and detailed as to what the Contracting Agency wants the contractor to do, and when it should be done. In some cases this may require that the work be divided into discrete phases of accomplishment, each of which must be completed and approved before the contractor may proceed to the next. For example, a single contract could be divided into stages of situation

assessment, test, evaluation, and performance. The advantage of this approach is that it establishes specified points that permit periodic evaluation of the contractor's progress and permits correction of false starts. Unfortunately dividing a contract into discrete stages is not practical in every situation, as when a multitude of tasks must be performed simultaneously and the results are interdependent.

As a final test of whether or not a contract statement of work has been well defined, it should be read from the perspective of the uninformed reader. It should state everything that must be accomplished, leave no questions on rights and responsibilities and provide for progress indicators that will facilitate administration and successful contract completion.

Attachment 10 – Reserved

Attachment 1P – Sample Statement of Work Architect/Engineer and Supervisory Construction Contract

A. Statement of Work

Article 6 - Statement of Work

A. This Contract engages the Contractor to provide engineering and construction supervision services in connection with the improvement and expansion of the City water system and wastewater system. The services of the Contractor shall include: design of facilities such as power generation; technical advice on operations and remedial work; investigation and design of a system to use treated effluent in irrigation; supervision of well field drilling; evaluation of construction bids and recommendations on award; evaluation of quotations on bulk supply materials and recommendations on award; assistance in negotiating contracts for construction work and supply of bulk materials; inspection of bulk materials; and supervision of the construction contract.

B. Duties of Contractor

The Contractor shall serve as the Engineer to the City Water and Sanitation Works (CWSW) and shall furnish complete engineering and advisory services including all necessary labor, materials, tools, and equipment needed, except as specified otherwise in this Contract. The Contractor shall undertake to provide in a workmanlike and professional manner such engineering, advisory, management, and all other relevant services as may be necessary to attain the contract objectives and further, it agrees to complete the scope of work in a manner acceptable to CWSW.

C. Scope of Work

1. The scope of Engineering shall be as follows:
 - a. Supervision of drilling of up to 21 wells in zones 1,2, and 3 of the City.
 - b. Technical advice to CWSW, principally on remedial work and operations.
 - c. Design of additional activity facilities.
 - d. Investigation and design of facilities to use treated wastewater in irrigation.
 - e. Evaluation of construction tenders and recommendations on selection of a contractor.
 - f. Review, evaluation, and recommendation on bulk supply contracts.
2. The scope of Construction Supervision shall be as follows:
 - a. Assistance in award of construction and bulk supply contracts plus establishing letters of credit or other disbursement arrangement.
 - b. Inspection of bulk supply materials.

c. Supervision of construction contracts.

3. General

a. Establish the requisite activity organization with adequate staff under the supervision of a resident Activity Manager in City and supported by the United States office of the Contractor.

b. Provide necessary consultation, cooperation, and coordination with CWSW to effect the earliest completion of the activity.

4. Supervision of Well Field Drilling

a. Provide the services of a senior hydro-geologist for up to twelve months to direct the drilling of production wells in zones 1, 2, and 3.

b. Provide the services of Consulting Hydrogeologists on a subcontract basis, to advise on the organization of the drilling program.

c. Provide the services of an aerial photographic mapping consultant on a subcontract basis to map the valley for use in designing the expanded (21 wells) well field.

d. CWSW is expected to provide the well drilling, development, and test pumping. If this does not occur, the Contractor will assist CWSW in contracting for this work with an outside well drilling company.

e. Prepare a final report evaluating and documenting the geologic and geophysical data, the details of well construction, the results of pumping tests, and evaluation of the continuous safe pumping rate of well field.

5. Technical Advice to CWSW

Provide the services of a Technical Advisor to the CWSW for a period of up to eight (8) months to advise CWSW and to direct and train technicians selected by CWSW in routine maintenance procedures and in the following remedial measures necessary to keep the water system operative.

a. Installation of temporary 300 mm (diameter) parallel transmission main from Zone 1 to the Main Yard.

b. Installation of pumps, discharge piping, electrical poles, wiring, pump testing, etc., for Well Nos. 7 and 10 in Zone 1 and Wells Nos. 11 and 14 in Zone 2.

c. Inspection and rebuilding of Main Yard engine and generator.

d. Training of staff in pipe location and leak detection surveys.

e. Repair and reconditioning of steel water storage tanks.

f. Installation of pumps, discharge piping, electrical poles, wiring, testing, etc. for wells in Zone 3.

g. Installation and testing of chlorination facilities for wells in Zones 1, 2, and 3.

6. Design of Additional Activity Facilities

a. Prepare detailed designs, including contract plans, and specifications, of the electrical facilities, such as generators and transmission lines, needed to assure that the water and sewerage facilities can operate independently of the Electric Corporation, if necessary.

b. Prepare alternate designs to the present activity design as may be necessary, as requested by CWSW or as requested by contractors during the tender period as simpler and/or less expensive alternates. Alternate designs include, but are not limited to, concrete slab roofs, reinforced concrete storage tanks, etc.

7. Utilization of Treated Wastewater in Irrigation

a. Conduct an investigation of the potential uses of the effluent from the sewage treatment facility for irrigation in the surrounding area.

b. During the course of the study, consult and coordinate with the officials of the Ministry of Agriculture, United Nations Development Program (UNDP), Ministry of Rural Development, and others who may have an interest.

c. Prepare a report, including recommendations and estimates of construction costs and potential revenues, of the various potential effluent uses.

d. After approval of the report by CWSW prepare detailed designs including contract plans and specifications of the selected effluent utilization facilities.

8. Selection of Construction Contractor

Prepare an analysis and evaluation of all bids received from previously prequalified contractors to determine their responsiveness, compliance with legal conditions and technical specifications, lowest reasonable bid, and reasonableness of price. Submit bid tabulations, analysis and evaluations, together with recommendations to CWSW, USAID and other financial donors for award of the construction contract.

9. Selection of Bulk Material Suppliers

a. Assist CWSW in advertising the contract(s) both in the United States and internationally. The tenders will be received in the City.

b. Prepare an analysis and evaluation of all quotations received to determine responsiveness, compliance with commercial conditions, and technical specifications; and the lowest responsive bid and reasonableness of price. Submit bid tabulations, analysis and evaluations together with recommendations to CWSW, USAID and other donors for award of contracts.

10. Assistance in Award of Contracts

Assist CWSW as needed in negotiating contracts with approved construction contractors and bulk material suppliers. Assist in establishing USAID letters of commitment, letters of credit, or other disbursement documentation as required. Assist CWSW in setting up required documentation for and administering donor financing.

11. Bulk Supply Contracts

- a. Assist CWSW in expediting procurement, testing, and delivery of materials. Certify partial and final payment invoices for procurement and delivery of materials. Assist CWSW in arranging payments.
- b. Render assistance and advice to CWSW in connection with any claims arising from the procurement program. Prepare and execute claims for insurance purposes.
- c. Establish and implement proper procedures for documenting and controlling the receipt, storage, and use of all materials procured by CWSW for the activity. CWSW shall provide any assistance needed by the Contractor in performing the bulk inspection work at the port.
- d. Provide an inspection firm to inspect and certify the materials imported to City under a subcontract to the Contractor.

12. Supervision of Construction

The Contractor shall supervise construction, acting as the CWSW's representative with regard to approvals, certifications, and changes. Supervising services shall include the following:

- a. Review, comment as necessary, and approve the construction contractor's schedule with special attention given to coordination of this construction schedule with delivery dates of CWSW procured equipment and materials.
- b. Check and certify all drawings including shop and erection drawings submitted by the construction contractor including the review and certification of laboratory, shop and mill test reports on the materials and equipment for compliance with specifications.
- c. Monitor, coordinate and provide engineering supervision and inspection of construction work to ensure continuous, efficient progress. Supervision of construction activities shall include but not be limited to witnessing and certification of all performance tests of installed equipment such as well pump, electric power generators, sewage treatment plant equipment, etc., as to compliance with performance standards; all hydrostatic tests performed on completed pipelines (water and sewer) prior to acceptance by CWSW; supervision of sterilization of water pipelines prior to placing into service, and such other performance tests as are necessary or specified, to assure satisfactory operation of all equipment and system components.

- d. Interpret drawings and specifications and consult with CWSW, the construction contractor, and subcontractors, if any, to ensure compliance with said documents and to ensure timely progress of construction work.
- e. Review and approve any changes which might be required, and issue necessary change orders. Any change orders resulting in an increase of the construction contract of \$10,000 or more will require the approval of CWSW and, as applicable, the donors.
- f. Maintain location records of pipe and accessories as installed, including at least two ties to each valve location, and including such field changes as are necessary, and record such locations and dimensions on one set of construction drawings reserved for the purpose. This set of drawings will be turned over to CWSW as the conclusion of the work, and shall constitute the "as-built" drawings and plans of the activity.
- g. Monitor and determine actual construction progress, certify the progress cited in progress payment invoices submitted to CWSW by the construction contractor.
- h. At the satisfactory completion of all construction work, (which includes the transfer to CWSW of any excess pipe, fittings or other material paid for under the construction contract or issued to the construction contractor for installation and remaining after all construction is complete) the Contractor shall certify the invoice for the construction contractor's final payment.
- i. Administer the construction contract.
- j. Coordinate schedule of installation representatives for mechanical/electrical equipment with construction contractor's schedule and work progress.

D. Maintenance Services

In addition to the supervision of construction services provided herein, the Contractor shall also provide the advisory services of one Maintenance Engineer to cover the period of time from completion of this contract for supervision of construction services to the end of the maintenance period as specified in the construction contract documents, i.e., 365 calendar days beginning with the date of issuance of the "Certificate of Completion."

The Contractor's Maintenance Engineer shall advise and assist CWSW in establishing the necessary organization and procedures for proper maintenance of the activity and shall supervise the construction operations throughout the Maintenance Period in accordance with the construction contract documents.

E. Contractor's Home Office Responsibilities

In addition to the services provided by the staff in City, the Contractor's home office in St. Louis shall provide overall management direction and support for the field supervisory staff to include, but not necessarily be limited to:

1. Recommendation of all key personnel assigned to the resident staff in City.

2. General administration and management of the construction supervision which will include at least quarterly visits by senior responsible management to the activity site.
3. Assistance in procurement matters where necessary.
4. Provision for expert opinion of specialists in the United States or from any branch office as required for the solution of problems related to the activity.

Attachment 1Q – Sample Statement of Work Fixed Price Contract for End Product

A. General

Contractor shall develop, conduct, and evaluate a pilot management training program for employees of the Government who have received technical training in the United States. The pilot program developed pursuant to this contract shall be of a short, intensive nature, and fulfill the requirements for additional management skills imposed on the employee by the training he/she received in his/her individual area of expertise, thus preparing him/her to employ more effectively the newly acquired technical knowledge upon return to his/her job.

This contract constitutes the pilot phase of an anticipated long-term arrangement whereby such training will be provided to substantial numbers of employees periodically and on a continuing basis. During the pilot phase, the Contractor shall conduct the program developed two times. The dates of each program shall be mutually determined in writing by the Contractor and the Director, Training Office, Ministry of Education. It is anticipated, however, that the programs will be conducted during the summer months shortly after the employees return from their technical training.

B. Specific

1. The Contractor shall develop and conduct at the Ministry of Education a short, intensive program having the following objectives:

a. Provide the participants with an understanding of:

(i) generally accepted concepts of administrative management and the role and relationship between top and middle levels in the management process;

(ii) the importance and functioning of management to both overall development activities and to specific activities;

(iii) practical approaches, management skills and techniques relevant to present and anticipated responsibilities of the individuals;

b. Provide, to the extent possible in a short-term program, an exposure to one area of individual choice in the administrative-management sciences;

c. Provide readily available printed materials which could be used to orient or train others in management or to use for personal development.

2. The program developed by the Contractor shall be applicable to the types of participants described below:

a. Employees occupying middle echelon Government positions;

- b. Employees (in any one program) from a variety of technical specialties, including both the physical and social sciences, and from various geographic areas;
 - c. Employees with no significant prior formal training in modern management techniques;
 - d. Employees not receiving public administration or business administration as part of the technical training;
 - e. Employees whose technical training has been acquired in universities, frequently at the advanced degree level; and
 - f. Employees who will return to their jobs to participate as managers in specific activities related to their respective areas of technical expertise and not in broad planning or administrative responsibilities.
3. The program shall be of two week's duration and shall be developed in such a manner as will efficiently and effectively accommodate groups ranging from a minimum of 20 participants to a maximum of 25 participants.
4. After completion of the pilot programs, the Contractor shall prepare a final report including:
- a. A detailed outline of the topics discussed in the program;
 - b. A bibliography of textbooks and other published material used in the program;
 - c. One copy each of any unpublished material and forms distributed to participants;
 - d. A summarization of participants' evaluations of, and suggestions for, the program; and
 - e. The Contractor's recommendations for improving the effectiveness of the program.

Attachment 1R – Participant Data

11At1R01.tif PARTICIPANT DATA

**Attachment 1S – Supplier's Certificate and Agreement with USAID for
Project Commodities/Invoice and Contract Abstract**

1450_4.tif

ATTACHMENT 1S
(4 pages)

**Attachment 1T – Memorandum from John F. Hicks, February 1, 1993,
Subject: Update and Reissuance of Africa Bureau Instructions on
Implementing Special Procurement Policy Rules Governing the
Development Fund for Africa (DFA**

RESERVED

Attachment 1U – Performance-Based Contracting Methods

Performance-based Contracting Methods:

Performance-based contracting methods include:

- writing statements of work in terms of "what" has to be accomplished rather than "how" it should be accomplished;
- using quality assurance plans that measure performance against standards;
- applying incentives/disincentives to encourage quality performance;
- using past performance as a major source selection criterion;
- converting term to completion and completion to fixed price contracts on follow-on or repetitive contracts;
- exercising options on multi-year contracts based on current performance; and
- using contract types most likely to motivate contractors to perform at optimal levels.

Describing the Service Requirement:

The technical office requesting the contracting of a service is:

- responsible for accurately describing the need to be filled or problem to be resolved through service contracting and should obtain assistance from contracting officials, as needed. (OFPP Policy Letter 93-1, "Management Oversight of Service Contracting.")

A performance statement of work is used to describe a need to be filled or a problem to be resolved through service contracting and is referred to as a performance work statement (PWS). A PWS focuses on three critical elements: a statement which describes the service or services in terms of outputs and results; a quality assurance plan which describes how performance standards will be applied; and appropriate incentives to encourage quality performance. A PWS provides answers to five basic questions: what, when, where, how many and how well.

Preparing a PWS is a joint responsibility of the requesting technical office and the cognizant contracting officer. Technical officers are best qualified to describe the needs to be filled or the problem to be resolved. Contracting officials assist the technical officers, particularly in developing the quality assurance plan and identifying the appropriate contracting type.

Once the PWS is completed, the contracting officer identifies the type of contract that is appropriate. For example, if the PWS describes the services as routine, frequently acquired, and require no more than a minimal acceptable level of performance, the contracting official would use a fixed price contract. If on the other hand, the services can only be defined in general terms and for which the risk of performance is not reasonably manageable, the contracting official would use a cost reimbursable contract.

Content of a Performance Work Statement:

A suggested outline for a performance work statement (PWS) is described below. A performance requirement summary table is usually appended as well as the evaluation criteria for source selection.

1.0 Introduction, Overview, or Background:

This section provides information on the technical office's mission, how the services contribute to the achievement of the results package and impact on the strategic objectives, where the services are to be provided, the importance of the service to the ultimate beneficiaries, any previous efforts germane to this effort, and the resources presently available.

2.0 Objective:

This section gives a summary description of the purpose of the contract.

3.0 Scope:

This section is an overview of the performance work statement and defines the parameters of the required service such as the magnitude of the effort, the outside boundaries of the contractor's performance responsibilities, and the most important aspects of the requirement.

4.0 Performance Requirements:

Performance requirements are statements that describe each major task in terms of output. They should express each in clear, concise, commonly used, easily understood, measurable terms. They should not include detailed procedures that dictate how the work is to be accomplished.

5.0 Performance Standards:

The performance standards establish the performance levels required by the technical office. These standards are based on experience and/or the best judgment of the cognizant technical officer. The technical office should ensure that each standard is necessary, carefully chosen, and not unduly burdensome.

6.0 Quality Assurance Plan:

The quality assurance plan focuses primarily on what the Agency must do to ensure that the contractor has performed in accordance with the performance standards. It defines how the performance standards will be applied, the frequency of surveillance, and the value of each performance requirement as a percentage of the overall contract. A good quality assurance plan should include a surveillance schedule and clearly state the surveillance methods to be used in monitoring the contractor's performance.

7.0 Incentives - Positive and Negative

Positive - Actions to take if the work exceeds the standards.

Negative - Actions to take if work does not meet standards. Incentives should be used when they will encourage better quality performance and may be either positive, negative, or a

combination of both. It is necessary to balance value to the Government and a meaningful incentive to the contractor. Incentives should correlate with results.

8.0 Performance Requirement Summary

The performance requirements summary illustrates the elements presented in the performance work statements. For each performance requirement there can be one or more standards, defined maximum allowable degree of deviation from the standard(s), method(s) of surveillance to determine adherence to the standard(s), and positive and negative incentives for meeting, exceeding, or failing to meet the standards.

Examples:

Performance Requirement Summary

Required Service	Standard	Maximum Allowable Degree of Deviation Requirement	Method of Surveillance	Maximum Payment Percentage for Meeting/Exceeding The AQL
<i>(Performance Requirements)</i>	<i>(Performance Standards)</i>	<i>(AQL)</i>	<i>(Quality Assurance)</i>	<i>(Incentives)</i>
1. During the life of the contract verify conformance with agency specific information processing standards and functional requirement. Prior to delivery of new software, demonstrate the operation capability of the system software	Functionality of the software to meet required systems architecture and processing capabilities	<p>All requirements mandated by law or regulation must be 100% compliant.</p> <p>Functionality defined in the requirements must be prioritized and tolerances for deviation assigned for each component.</p> <p>% of operational capability is acceptable, as determined by the Quality Assurance Plan.</p> <p>Value to be determined by the Agency's requirements, on a case-by-case basis.</p>	<p>Independent verification and validation (IV&V) for testing new releases of software to determine that required functionality is delivered.</p> <p>Customer satisfaction as measure through limited validated customer complaints, feedback, and surveys.</p> <p>For conversion project, independent verification and validation (IV&V) for developing or maintaining system processing/benchmark during processing.</p>	<p>100% payment for meeting all mandated requirements. Nonconformance is unacceptable.</p> <p>Payment is contingent on amount or degree of functionality delivered, according to priority of each function.</p> <p>Value to be determined by the Agency's requirement on a case-by-case basis. Percentage of payment for each component shall be determined in the Quality Assurance plan</p>

Required Service	Standard	Maximum Allowable Degree of Deviation Requirement	Method of Surveillance	Maximum Payment Percentage for Meeting/Exceeding The AQL
<i>(Performance Requirements)</i>	<i>(Performance Standards)</i>	<i>(AQL)</i>	<i>(Quality Assurance)</i>	<i>(Incentives)</i>
2. Interfaces must maintain compatibility among system components in the operational environment.	<p>Service Level for software:</p> <p>a. Through-put in terms of processing response time, number of transactions processed per second, volume of data processed over time.</p> <p>b. Compatibility with particular hardware and software within the existing processing environment.</p> <p>Functionality of software to meet required systems architecture and processing capabilities.</p>	No deviation.	<p>Customer satisfaction as measured through limited validated customer complaints, feedback and surveys.</p> <p>Operational monitoring by use of system statistics and logs.</p> <p>Independent verification and validation (IV&V) for testing new software, including verifying results to determine that requirements and specification are met.</p>	100% payment.
3. Documentation for deliverables must match the agency specific system processing and operational procedures.	Documentation meets agency specific formats for accuracy and completeness.	<p>% of deviation.</p> <p>Values to be determined by the agency's requirements on a case-by-case basis.</p>	Independent verification and validation (IV&V) for determining that documentation delivered by the contractor matches the system processing and operational procedures.	100% payment.

9.0 Evaluation Criteria

The evaluation criteria are developed based on the requirements. Critical areas discussed in the performance work statement and the relative order of importance assigned to each of these areas for source selection purposes should be identified. Past Performance must be included as a criterion.

Annex A – Contracting with Individuals for Services

1.0 Introduction

This Annex furnishes guidance in the application of Chapter 1 to contracting for the services of an individual alone. An individual, for the purposes of this Annex, is defined as a person acting solely as a principal unincorporated party to the contract. Utilization of this Annex is restricted to contracts for the individual's own services (e.g., typing, translation, transportation, etc.) required to perform the contract.

Many of the rules, and much of the guidance, applied to contracts with organizations also apply to contracts with individuals. There is, however, a need for greater flexibility and a simplified approach in contracting with individuals.

The procurement of services from an individual by the Borrower/Grantee, rather than by USAID, is preferred in accordance with USAID policy. USAID's role in host country contracting with individuals is to ensure that the resulting contracts are responsive to activity requirements, equitable, and otherwise meet USAID financing criteria. Circumstances which may justify exceptions to this preference are described in Section 2.1.1 of Chapter 1. Requirements for USAID approval of contracts with individuals are set forth in Sections 2.2 and 3.2 of Chapter 1.

Except as otherwise provided in this Annex, the contents of Chapter 1 should be applied to contracts with individuals. The coverage in this Annex is limited to the differences in the two contracting methods.

2.0 Rules

The rules promulgated in Chapter 1 apply, except with regard to Sections 2.3, 2.4, and 2.5. The rules for Method, Competition, and Advertising are as follows:

2.1 Contracting Method

Contracts with individuals are awarded on the basis of negotiation. Contractor selection is based on evaluation of the professional qualifications required to meet the needs of the activity and available at a reasonable cost.

2.2 Competition

Although formal competitive procedures are not required in selection of contractors performing as individuals, consideration of a reasonable number of candidates is recommended.

2.3 Advertising

Although the advertising rule in Section 2.5 of Chapter 1 does not apply, solicitations of interest from persons believed to be qualified and available may be accomplished informally or by advertising in trade journals, newspapers, etc.

3.0 Guidance

The process for selection of an individual as contractor may be based upon the Contracting Agency's normal procedures, which should be reviewed and concurred in by USAID, or alternatively, in accordance with the procedure in this Annex. Any understandings between USAID and the Contracting Agency regarding contracting guidelines should be established and documented in advance of commencement of the contracting process. These guidelines could include basic guidance on salary negotiation (e.g. salary limitations based on needs of the position and prior earning history, or salary ceilings) or benefits and allowances to be provided to the contractor.

3.1 Nature of Services and Type of Contract

The Contracting Agency should first determine that the nature of the contract requires the services of an individual as contractor, and then determine the type of contract to be used.

3.2 Advertising

If, in addition to contacting known candidates, advertising is to be used, the Contracting Agency develops an announcement for publication. The announcement should include a brief description of duties and duration of assignment, and may also specify salary criteria (e.g. "commensurate with qualifications and experience"), contract benefits, and other relevant factors.

The announcement usually calls for response to be addressed to the Contracting Agency, and request inclusion in the response of the technical and academic qualifications, salary history, relevant experience, and other factors considered important to selection of the contractor. Attachment A to this Annex is a sample advertisement.

3.3 Qualification Questionnaire

If considered necessary, the Contracting Agency will develop a questionnaire for individuals to present their qualifications so as to ensure consistency in the submission of information to the Contracting Agency. The questionnaire usually requires submission of information regarding technical and academic qualifications, salary history, experience and other relevant data. Attachment B to this Annex is a sample questionnaire for this purpose.

3.4 Selection

The Contracting Agency evaluates the responses received to the solicitation or announcement and selects the individual considered to be the best qualified to undertake the contract, basing its evaluation and selection on the qualifications presented. If USAID approval of the selection is required, the candidate's qualifications and other relevant data are submitted to USAID for concurrence in the selection prior to negotiation.

3.5 Contract Negotiation

Negotiations should commence promptly with the selected candidate. Discussions are undertaken by the means most convenient to both parties; either by correspondence or an interview. The costs of negotiation, including travel and per diem costs of the candidate, are normally borne by the Contracting Agency (with USAID financing as appropriate), and not the prospective contractor. Reimbursement of a prospective contractor's expenses should be

agreed to and arranged in advance according to Contracting Agency procedures. USAID should review these arrangements and agreements in advance when USAID financing is used.

A draft contract may be furnished by the Contracting Agency to the prospective contractor in advance to facilitate negotiations. If USAID approval of the contract is required, it is advisable to obtain USAID's concurrence in the draft before negotiations.

After the contract has been negotiated, but prior to signing, contracts requiring USAID approval should be submitted for review and be accompanied by any documentation required for review by USAID. Pre-review by USAID will serve to avoid subsequent need for modification to the final version of the contract.

3.6 Contract Signature

After the parties sign the contract the Contracting Agency submits the designated number of copies to USAID for final approval. Any documentation required to make financial arrangements are also submitted at this time.

4.0 Clauses

The sample contract furnished in Section 5 of Chapter 1 may be used, with appropriate modification as discussed below, for contracts with individuals. Those clauses in the model contract which are inappropriate should be deleted.

4.1 Statement-of-Work

In addition to the Chapter guidance regarding contract statements-of-work, when the individual acts as an advisor to the Contracting Agency the Contracting Agency may append a descriptive work plan which details specific duties to be undertaken.

4.2 Cost Provisions

Contracts with individuals usually fix a rate of payment for a specified time period. In addition, provisions for the reimbursement of costs of such items as housing, allowances, travel, and transportation can be included in the contract when appropriate. The basis for reimbursement of these costs and the rates or limitations of reimbursement should be developed in consultation with USAID and clearly stated in the contract.

Host Country contracts with individuals are subject to audit in accordance with the provisions of Chapter 4, "Cost Principles for Country Contracts."

4.3 Allowances and Benefits

Host country contracts with individuals generally provide for benefits and allowances based on general practice in the host country. Attachment C lists many of the benefits and allowances normally included in USAID-financed contracts, and their applicability should be shown in the draft contract and agreed upon during contract negotiations.

The benefits and allowances afforded to individuals should be consistent among categories of contractors working in the host country. An individual recruited in the U.S. for a long-term

assignment (i.e. one year or more), for example, would receive a different "package" of benefits than an individual recruited in the Cooperating Country for short-term work.

As with other items of reimbursement, the conditions under which individuals are entitled to allowances and benefits and respective amounts should be clearly stated in the contract. The estimated cost of each allowance should be set forth in the contract budget.

4.4 Advance Payments

Contracts with individuals often require establishment of advance payment provisions to facilitate contract performance because individuals are frequently unable to finance contract costs themselves. The amount and frequency of payment for costs not yet incurred should be limited to the minimum amount required to cover the contractor's costs, or disbursement needs for a specific period. Advance payments should be liquidated as soon as practicable.

The contract should specify the amount of advance payments, the purposes for which they may be used, and the procedure for liquidating such payments.

The USAID Controller should be consulted with regard to use of advance payments. In the case of a contract with an individual which calls for an unusually large amount of costs to be incurred prior to performance, it may be preferable to establish means other than an advance payment (e.g., a Direct Reimbursement Authorization or a Direct L/COM) to pay for such items as travel and transportation, worker's compensation insurance or housing rental costs.

4.5 Worker's Compensation Coverage

Contracts with individuals financed by USAID involving performance outside the United States must provide for worker's compensation coverage as required by the Defense Base Act (DBA). DBA coverage must be provided for the individual unless a waiver is obtained from the U.S. Department of Labor (see Sections 2.12.5 and 4.3.41 of Chapter 1). The Contractor agrees to procure the DBA insurance required by this clause from the DBA insurance carrier under contract with AID, when it has such a contract in force to provide this insurance to Contractors*.

Waived individuals may be reimbursed for other reasonable worker's compensation insurance.

* USAID's prior blanket contract to provide worker's compensation insurance, under DBA, for host country contract employees has lapsed, and it does not anticipate award of such an insurance contract before June, 1998. Pending a new USAID award for blanket DBA insurance coverage, the Contractor may be reimbursed for other reasonable worker's compensation insurance that meets the requirements of the DBA.

Attachment A – Sample Announcement

WORK OPPORTUNITY IN EREWHON

The Secretariat of Health, Government of Erewhon, seeks an exceptionally well-qualified resident advisor to the newly formed Office of Nutrition. The Advisor will be posted in Erewhon under contract for a period of two years and may be accompanied by immediate family.

The Advisor will be responsible for assisting the Office Director in development and implementation of maternal and child health care activities, with a concentration in the rural areas of Erewhon.

The individual selected for this assignment will have at least a Master's Degree in Public Health from an accredited U.S. University and ten years experience in maternal and child health care programs in a less developed country.

The successful candidate will receive a salary commensurate with qualifications and experience and the following benefits: tax exempt status, housing, transportation of family and household goods, vacation and holidays, and provision for health and accident insurance.

Individuals interested in this assignment should submit a written request for a qualification questionnaire from the Secretariat of Health, Government of Erewhon, at the following address:

Secretariat of Health
Attn: MCH Project
Erewhon City, Erewhon

Requests for qualification questionnaires must be received within two weeks from the date of this advertisement.

Attachment B – Contractor Employee Biographical Data Sheet

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(2 pages)

Attachment C – Benefits and Allowances

The following is a listing of benefits, allowances, and other direct costs which may serve as a checklist in host country contracts with individuals and may be considered for inclusion in contracts with individuals recruited outside the cooperating country.

Agreement regarding the amount and applicability of each benefit, allowance, or cost to be reimbursed which is included in the contract should show in the contract budget. USAID's Standardized Regulations or contract "General Provisions" may be used as guidelines for establishing contract benefits.

Benefits/Allowances

- Post Differential
- Living Quarters Allowance
- Temporary Lodging Allowance
- Post Allowance (Cost of Living)
- Payments During Evacuation

- Educational Allowance
- Educational Travel
- Separate Maintenance Allowance
- Rest/Recuperation Travel
- Leave/Holidays
- Worker's Compensation
- Insurance for Private Personal Property Losses
- Exoneration from customs duties of personal or activity goods

Other Allowable Costs

- Orientation and Language Training
- Health/Life Insurance
- Physical Examinations/Inoculations
- Passport/Visa Costs

Logistical Support

- Housing
- Furnishings
- Vehicle Support

Travel/Transportation

- Shipment of Household Effects
- Storage of Household Effects
- Dependent's Travel/Transportation
- Unaccompanied Baggage
- Emergency or Irregular Travel/Transportation
- Per Diem

(Other official logistic support which may be made available in accordance with the strategic objective agreement or host country policy).

Annex B – Special Collaborative Assistance Selection Procedures for Educational Institutions, International Research Centers, or Cooperative Development Organizations

1.0 Introduction

1.1 Applicability

This Annex B to Chapter 1 of the USAID Mandatory Reference to ADS Chapter 305 sets forth special selection procedures to be used when the activity requires the services of an educational institution, international research center, or cooperative development organization, and a collaborative assistance relationship is desired. This Annex replaces Sections 2.3, 2.4, and 2.5 of the Rules set forth in Chapter 1, and Sections 3.3 and 3.4 of the guidance. If a collaborative assistance relationship is not appropriate, the text of Chapter 1 applies to the procurement.

1.2 Background

A. This Annex describes an alternative contractual relationship (established by an USAID Policy Determination of January 16, 1976) known as the Collaborative Assistance approach which increases the joint implementation authority and responsibility of the contractor and the host country and encourages more effective collaboration between all participating parties (USAID, host country, and contractor) at important stages, including the design state of a technical assistance activity. It is particularly appropriate to use with Host Country contracts.

B. The collaborative assistance approach represents an alternative method for long-term technical assistance which involves professional collaboration with educational institutions, international research centers, or cooperative development organizations and host country counterparts for a problem-solving type activity to develop new institutional forms and capabilities, to devise operating systems and policies, and to conduct joint research and development -- including training. In such an activity, the difficulty of defining, in advance, precise and objectively verifiable contractor inputs and long term activity content as a basis for payment usually requires a flexible approach to activity design, contracting and activity implementation. Such flexibility is also essential to the collaborative style which is responsive to host country desires in problem areas of great complexity and varying uncertainty. Other types of technical assistance, which are usually shorter in term, are amenable to more precise definition in advance, or involve closely defined and relatively standardized services, or are otherwise more analogous to commodity resource transfers, may be more suitable for other contracting methods, e.g., certain forms of institution building, on-the-job training, resource surveys, etc. The collaborative assistance method is an approved method of providing technical assistance, when used in accordance with the circumstances outlined above, and with the guidelines set forth elsewhere in this Annex B.

C. In order for this relationship to work effectively, even when the proposed activity fits the criteria described above, there must also be:

1. Agreement that the host country, in consultation with the contractor, is in the best position to make tactical, day-to-day decisions on activity inputs within agreed upon limitations and output expectations;
2. Sufficient trust and respect between the Contracting Agency and the contractor to allow this flexible implementation authority;
3. An activity monitor with appropriate background to be knowledgeable of progress and to assist in an advisory and facilitative capacity, both during and between periodic reviews.
4. Adequate pre-activity communication between, and identification of assistance required by, the host government and USAID.
5. Full joint* planning and improved activity design;
6. Careful contractor selection, i.e., matching of the contractor's technical and managerial capabilities to the anticipated requirements of the overseas activity;

*"Joint" as used herein refers to the primary parties, i.e., the collaborating institution, as well as the host government, and USAID. In some instances, it can also include other donors.

7. Establishment of relationships between host country, USAID and contractor staff to include host country leadership, flexible implementation authority, and effective management by the contractor;
8. Improved joint activity evaluation, feedback, and replanning; and
9. Simplified administrative procedures and greater reliance on in-country logistical support.

D. Activity Stages and Contractor Involvement

In the long-term technical assistance activities as described above, there are four discrete but sometimes overlapping decision stages which take place -- with the contractor usually involved in the last three.

1. Problem Analysis and Activity Identification

After the host government has indicated a desire for U.S. collaboration on a particular problem and the USAID mission has determined that the proposed activity is consistent with its program goals and priorities, considerable effort is usually necessary to refine further the activity purpose and type of assistance required and provide a basis for contractor selection. This is a crucial step and is focused on results sought -- on what the prospective contractor is expected to produce in relation to resources to be used and to activity purpose. It should result in a clear understanding of what the host country wants, and an overall

plan which includes agreement on specific objectives or outputs, acceptable types of activities and inputs and an initial budget -- resulting in activity documentation.

Normally, there will need to be some mutual interaction between the overall planning stage outlined here and the detailed planning and design work which follows in the next phase. There will usually be some overlap, with preliminary decisions in this stage providing a basis for selection of implementing agents which in turn proceeds through some preliminary planning to guide completion of the design as a basis for long-term contracting.

2. Strategic Objective Definition

At this stage, having selected the implementing agent, the U.S. and host country organizations which will be collaborating in SOAG implementation are encouraged to work out, to their mutual satisfaction, the particulars of what to do and how to do it (i.e., detailed activity design) within the context of host country leadership and responsibility and general agreements and budget reached in the planning stage. The emphasis here is on the technical approach to be utilized and the scheduling and management of activity inputs. This may involve a short-term reconnaissance and/or an extensive period of detailed joint planning and feeling out of what is feasible during a preliminary operating phase of the activity, possibly lasting as much as a year or more. This stage recognizes the importance, for the problem solving or ground-breaking types of technical assistance, of involving the U.S. and host country organizations together as soon as the detailed design work begins. USAID's role here is to facilitate, not direct, the joint planning, assure consistency with prior agreement or concur in changes, affirm that the implementing parties have agreed on a reasonable activity design, and prepare or cause to be prepared the documentation required for activity implementation, including any amendments that might be required to the activity documentation. If and when a decision is made by the host government and USAID to proceed into the operating phase with the same contractor, the contractor should be treated as a cooperating partner in the negotiation of the subsequent long-term agreement(s) with the host government.

3. Implementation

The result of the approach outlined in the stage above should include, in addition to a better understanding and more meaningful commitment by all parties, the following specific products:

- a. A jointly developed, life-of-activity design which reflects the commitment of all parties and includes clear statements of purpose, principal outputs, eligible types of activity and expenditure limits, critical assumptions and major progress indicators;
- b. A workplan and input schedule for the first two years or at least as long as the expenditure period for the next obligation of activity funds;
- c. Provisions for any administrative support, special services or other inputs by host country, contractor, and/or USAID; and

- d. A plan for periodic joint evaluation and review of progress and subsequent workplans, normally annually, with the participation of all parties.

4. Monitoring, Joint Evaluation and Replanning

With increased flexibility and responsibility for implementation placed with the technical assistance contractor, the host government and/or institutional collaborator, improved and timely progress reporting and periodic, joint, and structured reviews of results and evolving plans are imperative as a basis for monitoring and evaluating contractor performance, revalidating or adjusting activity design, and for determining future funding levels and commitments.

Both the contractor's annual report and the joint review should be structured within the framework of purpose, outputs, performance indicators, etc., originally established in the activity identification phase as modified by detailed activity design and reflected in the SOAG and other pertinent documentation. The field review will normally serve as the occasion for discussing changes in, or additions to, previously agreed-to workplans as well as proposing changes in purpose, types of activities authorized and budgets which require contract amendment. Obviously, the appropriate host government, USAID, and contractor officials should be thoroughly involved in the process, which will have to be adapted to the conditions within specific activities and countries.

E. Contracting Implications

The principal elements of the collaborative assistance relationship, are earlier selection and involvement of the prime contractor, contracting by major stages of activity design and operations, minimizing the need for pre-contract negotiations and contract amendments and USAID approvals, and providing technical assistance contractors with the authority and responsibility needed to manage implementation within the approved program bounds.

1. Selection

The early involvement of the contractor in the definition stage of a long term technical assistance activity, after activity identification, does not alter the Contracting Agency's responsibility to select its contractors carefully and in full compliance with appropriate contracting regulations and selection procedures. What is required here is that contractor selection be carried out at an earlier stage and in anticipation that the contractor, assuming adequate performance, will participate in all subsequent phases until final completion.

2. Contracting Stages

In contracting, the initial design stage should be separated from the longer term implementation stage with the expectation (but without any commitment) to undertake the latter stage when the Contracting Agency has exercised its independent judgment based on the product of the first plus any outside expert appraisal it may want to use.

The long-term implementation stage itself may be further sub-divided into contract periods which permit time between pre-determined events for analysis, determination of new activity requirements, and evaluation of performance prior to initiating the next phase by contract amendment/extension. If, for any reason, such an examination does not appear to warrant activity continuation, then termination of the activity and/or contract would be the next step.

3. Flexible Implementation Authority

While good activity design will eliminate or diminish many operational problems the very nature of long-term technical assistance requires flexible implementation within agreed purposes, ultimate outputs, types of activity and available financing. With these key variables established, contracts should be written so as to minimize the need for amendments and prior approval of changes in input particulars. This can be facilitated, for the mission, host country, and the contractor, by:

a. Retention of Operational Plan in Contract and Removal of Workplan

The contract narrative will contain the life-of-the -activity Operational Plan, consistent with the activity design and reflected in the activity design and reflected in the activity documentation (and subsequent amendments thereto). The Operational Plan includes a statement of the purpose to be achieved, the outputs to be produced by the contractor and the types of activities to be undertaken, the more significant indicators of progress, a general description of the type of inputs that are authorized and intended to be provided during the life of the activity, and the overall budget. In order to allow adjustments at the implementation level without going through the contract amendment process, the detailed but short-term workplan containing specific descriptions and scheduling of all inputs such as numbers and types of staff, participants, commodities, etc., and specific activities, will not be a part of the contract. It is a working document to be modified when the situation demands. The latest version will be made available as a supporting document to justify proposed new obligation levels. Normally, the workplan and derived budget will cover a rolling two year period, i.e., each year another yearly increment is added after review and approval.

b. Budget Flexibility

To support this implementation flexibility, contract budget or fiscal controls will be shifted from fixed line items for each input category to program categories, permitting the contractor to adjust amounts and timing to achieve previously approved activity purpose and outputs -- as long as it remains within the total contract amount and approved types of activity. This same type of flexibility should apply to local currency supplied for activity operations and/or contractor staff support.

c. Negotiation of Advance Understandings

To permit contractors to manage their activities in accordance with their own policies and procedures and thereby sharpen their management responsibility while achieving substantial savings in time and reduced documentation, USAID has negotiated advance understandings with many educational institutions, international research centers, and cooperative development organizations in cost and administrative procedures that are included by reference in USAID direct contracts. The Contracting Agency is encouraged to also incorporate these advance understandings in host country contracts.

d. The purpose of the practices listed above is not only to give a qualified contractor the authority to adjust the composition and timing of inputs but to assign it the clear responsibility of managing such resources, as the evolving circumstances require, to achieve the agreed upon outputs on a cost efficient basis. It should also reduce the delay and paperwork involved in frequent but minor contract amendments and approvals.

1.2 Definitions

1.2.1 "Collaborative Assistance" includes any activity for which it has been determined that: (a) a continuing collaborative relationship between the host country, the contractor, and USAID is required from activity design through implementation to completion of the activity; (b) host country, contractor, and USAID participation in a continuing review and evaluation of the activity is essential for its proper execution; and (c) the activity requires the services of an educational institution, international research center, or cooperative development organization.

1.2.2 "Cooperative Development Organization" is an organization formally recognized and listed as such by the Assistant Administrator, Bureau for Private and Voluntary Cooperation, USAID

1.2.3 "Educational Institution" or "University" is any non-profit corporation, foundation, trust, or state or local governmental entity operated primarily as an institution of higher learning offering a course of general studies leading to the granting of academic degrees. Consortia whose membership consists exclusively of educational institutions, as defined above are considered to be educational institutions.

1.2.4 "International Research Center" is an organization formally recognized and listed as such by the Senior Assistant Administrator, Bureau for Science and Technology, USAID.

2.0

2.1 Use of Annex B Selection Procedures

The selection procedures set forth in Section 3.1 of this Annex B may only be used when the Contracting Agency has determined in writing that the required skills or institutional relationships are available only from educational institutions, international research centers, or cooperative development organizations under a collaborative assistance relationship. This determination must be concurred in by the USAID official who will approve the contract.

2.2 Competition

2.2.1 Rule

A sufficient number of sources must be considered at the outset of the design phase of an project to insure that competition is obtained to the maximum practical extent. This requirement shall be deemed satisfied when a contractor is selected pursuant to the procedures in Section 3 of this Annex B. All potential contractors must be informed that the design phase contractor will also perform the implementation phase of the activity, if the activity is implemented and if the Contracting Agency is satisfied with the contractor's performance of the design phase.

2.2.2 Implementation Phase of Collaborative Assistance Efforts

When the Contracting Agency enters into a contract for the implementation phase of a collaborative assistance effort, the same contractor that performed the design phase, under either an USAID direct contract or country contract, may be utilized and consideration of other sources is not required unless the Contracting Agency wishes to do so.

3.0 Guidance

3.1 Procedure for Collaborative Assistance

When it has been determined that an activity is in fact a collaborative assistance activity and requires the services of an educational institution, international research center, or cooperative development organization in accordance with the Rule in 2.1, the Contracting Agency follows the procedures below in selecting a contractor.

3.1.1 Establishment of Source List

The Contracting Agency:

- a. Determines the qualifications necessary of the contractor in performing the contract and prepares a list of criteria upon which to rate potential contractors;
- b. Prepares an initial source list including all potential sources known to the Contracting Agency to have capabilities and expertise in the areas required by the proposed activity. The USAID Mission should be consulted concerning the institutions available for the source list and suggest any additional potential sources. (The Mission may, in turn, contact the USAID/W BIFAD Staff or technical offices).
- c. Compares the list of potential sources against the qualifications determined in a. above in order to determine the source or sources considered most capable of performing the activity.
- d. Prepares a written record listing the qualification factors, the institutions considered, the recommended source list (one or more potential contractors) and the rationale therefor.

3.1.2 Solicitation

A request for expressions of interest, containing sufficient information to permit an institution to determine its interest in the activity, is issued by the Contracting Agency to the institution(s) on

the source list. The request for expressions of interest includes a concise statement of the purpose of the activity, any special conditions or qualifications considered important, a brief description of the selection procedure and evaluation criteria which will be used (if expressions of interest are being requested from more than one institution), the proposed contract format, and any other information considered appropriate.

3.1.3 Evaluation and Selection

- a. Based on the additional information resulting from the request for expressions of interest, the Contracting Agency again reviews the qualifications of the potential contractors against the criteria established in 3.1.1.a above. On-site evaluations may be conducted.
- b. The results of the evaluation are recorded, including a recommendation that negotiations be conducted with the named institution ranked first as a result of the evaluation.
- c. A cost proposal is obtained from the selection institution and negotiations are conducted in accordance with Section 3.5 of Chapter 1.