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Acquisition & Assistance Policy Directive (AAPD)

From the Director, Office of Acquisition & Assistance Issued: **December 20, 2022**

AAPD 20-08, **Revision 1**

Leave and Holidays for CCNPSCs and TCNPSCs, including country leave for qualifying posts for eligible TCNPSCs

Subject Category: Personal Services Contracts
Type: POLICY

AAPDs provide information of significance to all agency personnel and partners involved in the Acquisition and Assistance process. Information includes (but is not limited to): advance notification of changes in acquisition or assistance regulations; reminders; procedures; and general information. Also, AAPDs may be used to implement new requirements on short-notice, pending formal amendment of acquisition or assistance regulations.

AAPDs are EFFECTIVE AS OF THE ISSUED DATE unless otherwise noted in the guidance below; the directives remain in effect until this office issues a notice of cancellation.

This AAPD: Is New Replaces Amends **AAPD No: 20-08**

Applicable to:

Existing awards; Modification required

No later than

As noted in guidance below*

All applicable new solicitations issued after Dec. 22, 2020, the effective date of AAPD 20-08.

Other

Precedes change to:

FAR Part(s)

AIDAR Part(s) **Appendix J**

USAID Automated Directives System (ADS) Chapter 309

Other Code of Federal Regulations

Other

No change to regulations

New Provision/Clause Provided Herein: If checked, scheduled update to GLAAS:

/s/

Mark A. Walther

I. PURPOSE:

The purpose of this AAPD is to announce the renewal of the class deviation from AIDAR Appendix J for the Leave and Holidays contract clauses for cooperating country national and third country national personal services contractors (CCN and TCN PSCs), including country leave for qualifying posts for eligible TCNPSCs performing services at specific posts abroad. These changes are pursuant to approved deviation #M/OAA-DEV-AIDAR-23-2c, effective December 20, 2022 through December 19, 2024, or rescission due to final rulemaking, whichever is earlier.

II. REQUIRED ACTION:

Effective as of the issuance date of AAPD 20-08 on Dec. 22, 2020, Contracting Officers, including warranted EXOs (COs), must incorporate in all new solicitations and awards the following revised AIDAR Appendix J, General Provision contract clauses (GPs) titled “Leave and Holidays”:

- #6-1 - for CCNPSCs or TCNPSCs on the local compensation plan (LCP);
- #6-2 - for CCNPSCs or TCNPSCs not subject to the LCP per Appendix J, 4.(c)(2)(ii)(B);
- Add alternate paragraphs (f) and (g) in #6-2 for eligible TCNPSCs at qualifying posts.

The revised clauses are included in the Attachment of this AAPD.

III. BACKGROUND:

In accordance with AIDAR Appendix J, section 4, paragraph (c)(2)(ii), “a local compensation plan [LCP] forms the basis for all compensation payments” to CCN and TCN personal services contractors (CCN and TCN PSCs), unless the Mission Director determines otherwise. This paragraph further indicates, under sub-paragraph (B), that upon a requesting office’s written justification, the Mission Director may approve the classification of a position using specific provisions from AIDAR Appendix D, specifically section 4, paragraphs (c), “Withholdings and Fringe Benefits,” and (e), “Determining Salary for Personal Services Contractors,” among others. Although the regulation applies to both CCN and TCN PSCs, most TCNPSC positions are approved for classification by exception under paragraph (B). In effect, compensation and benefits for such positions are based on the GS-scale, and annual and sick leave (among other benefits) are provided using standards normally reserved for USPSCs under AIDAR Appendix D.

Pursuant to AAPD 06-11, issued September 12, 2006, a TCNPSC position classified under the Appendix J paragraph (B) exception was additionally authorized country leave for qualifying posts (CLQP), to support recruitment for the Agency’s hard-to-fill posts by providing additional paid leave with travel to the contractor’s home. The provision of CLQP was based on Department of State cable STATE 00119416, and was published in AAPD 06-11 as part of a class deviation to update the AIDAR Appendix D clause on Leave and Holidays (L&H) for USPSCs. Thus when a TCNPSC position was classified off the LCP, contracting officers had to use the deviated USPSC L&H clause to provide annual and sick leave for the TCNPSC on the same Appendix D basis, and to include CLQP for eligible TCNPSCs.

The class deviation for the Appendix D L&H clause has been extended and revised three times since 2006 (published in AAPD 15-02 and its two revisions), and always included CLQP for TCNPSCs. The latest such deviation was published in [AAPD 15-02 Revised 2](#), indicating it would expire December 14, 2021, or on the date the final AIDAR rule takes effect in the code of federal regulations..

The final rule to revise AIDAR Appendix D took effect November 16, 2020 ([85 FR 65734](#)), later corrected effective January 6, 2021 ([86 FR 493](#)), replacing the deviation in AAPD 15-02 Rev. 2. As the final rule made permanent only Appendix D provisions applicable to USPSCs, the present deviation is necessary to update the Appendix J L&H clause to address CCN and TCN PSCs, including when taken off the LCP, and when TCNPSC CLQP is applicable.

Accordingly class deviation number **M/OAA-DEV-AIDAR-23-2c** was approved on **December 15, 2022**, taking effect for two years from December 20, 2022, expiring *the earlier of* **December 19, 2024**, or rescission on the effective date of final rulemaking to revise AIDAR Appendix J.

IV. GUIDANCE:

The revised AIDAR Appendix J regulatory text in effect for the duration of class deviation number **M/OAA-DEV-AIDAR-23-2c** is included in the **Attachment** to this AAPD.

V. POINT OF CONTACT:

COs may direct questions regarding this AAPD to the PSC Policy Mailbox at <https://pages.usaid.gov/node/1136>.

ATTACHMENT

Class Deviation M/OAA-DEV-AIDAR-23-2c

Title 48 of the Code of Federal Regulations (CFR) Chapter 7 USAID Acquisition Regulation (AIDAR), Appendix J--Direct USAID Contracts with a Cooperating Country National and with a Third Country National for Personal Services Abroad

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12. General Provisions for a Contract with a Cooperating Country National or with a Third Country National for Personal Services

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6-1. Leave and Holidays (OCT 1987) [Deviation (DEC 2020)]

[For use in contracts with a CCNPSC or TCNPSC paid under the local compensation plan.]

Leave and Holidays (OCT 1987) [Deviation (DEC 2020)]

(a) *Annual leave.* The contractor may accrue, accumulate, use and be paid for annual leave in accordance with the local compensation plan. The contractor will not be eligible to accrue annual leave if the contract is for less than 90 calendar days. The contractor may carry over unused annual leave under an extension or renewal of this contract if it conforms with Mission policy and practice. With the approval of the Mission Director, and if the circumstances warrant, a contractor may be granted advance annual leave in excess of that accrued, but in no case will a contractor be granted advance annual leave in excess of the amount the contractor would accrue during the remainder of the period of performance. The contractor agrees to reimburse USAID for leave used in excess of the amount accrued during the contractor's period of performance under this contract.

(b) *Sick Leave.* The contractor may accrue, accumulate, and use sick leave in accordance with the local compensation plan. The contractor may carry over the unused sick leave under an extension of this contract. The contractor will not be paid for sick leave accrued but unused at the completion of this contract.

(c) *Holidays and Administrative Leave.* The contractor will be entitled to all holidays and administrative leave granted by the Mission to local staff.

(d) *Leave Without Pay (LWOP).* The contractor may be granted LWOP only with the written approval of the contracting officer or Mission Director.

(e) *Compensatory Time.* The contractor may be entitled to compensatory time off in accordance with the local compensation plan and Mission policies for approval of such time off. The contractor may use earned compensatory time off in accordance with the local compensation plan.

[End of clause]

6-2. Leave and Holidays (OCT 1987) [Deviation (DEC 2020)]

[For use in contracts with a CCNPSC or TCNPSC not subject to the local compensation plan.]

Leave and Holidays (OCT 1987) [Deviation (DEC 2022)]

(a) *Annual Leave.* (1) The contractor may accrue annual leave at the rate specified in paragraph (a)(2) of this clause as follows:

(i) If the contract period of performance is ninety (90) calendar days or more, and the contractor's performance is continuous for the contract period of performance, the contractor is entitled to accrue annual leave as of the start date of the contract.

(ii) If the contract period of performance is ninety (90) calendar days or more, and the contractor's performance is not continuous during the contract period of performance, the contractor is entitled to accrue annual leave only for each instance of continuous performance of ninety (90) calendar days or more.

(iii) If the contract period of performance is less than ninety (90) calendar days, the contractor is not entitled to accrue annual leave.

(2) The rate at which the contractor will accrue annual leave is based on the contractor's time in service according to the table of this paragraph (a)(2). The accrual rates are based on a full-time, 40-hour workweek, which will be prorated if the contract provides for a shorter workweek:

Time in service	Annual leave (AL) accrual rate
0 to 3 years	4 hours of leave for each 2-week period.
over 3, and up to 15 years	6 hours of AL for each 2-week period (including 10 hours AL for the final pay period of a calendar year).
over 15 years	8 hours of AL for each 2-week period.

(i) USAID will calculate the time in service based on all the previous service performed by the contractor as—

(A) An individual personal services contractor with USAID for any duration covered by Sec. 636(a)(3) of the Foreign Assistance Act of 1961, as amended (FAA) or other statutory authority applicable to USAID; and/or

(B) A former U.S. Government (USG) direct-hire employee; and/or

(C) An honorable active duty member of the uniformed services based on the definition in 5 U.S.C. 2101(3).

(ii) In addition to the information certified by the contractor in their Offeror Information form, the contracting officer may require the contractor to furnish copies of previously

executed contracts, and/or other evidence of previous service (e.g., SF 50, DD Form 214 or 215) to conduct the due diligence necessary to verify creditable previous service.

(3) Annual Leave is provided under this contract primarily for the purposes of providing the contractor necessary rest and recreation during the period of performance. The contractor, in consultation with the Supervisor, must develop an annual leave schedule early in the period of performance, taking into consideration the requirements of the position, the contractor's preference, and other factors. The maximum amount of annual leave that the contractor can carry over from one leave year to the next is limited to 240 hours. The contractor's unused annual leave balance in excess of the 240 hour maximum at the end of the last pay period of each leave year will be forfeited, unless the requirements of the position precluded the contractor from taking such leave. The contractor may be authorized to restore annual leave for exceptional circumstances beyond the control of the contractor. The restoration of annual leave may be approved only by the USAID Administrator, cognizant Assistant Administrator or Head of an Independent Office reporting directly to the USAID Administrator, and cannot be delegated further. Annual leave restored must be scheduled and used no later than the earlier of either--

(i) The end of the leave year two years after the date fixed by the approving official as the termination date of the exceptional circumstances beyond the contractor's control, which resulted in the forfeiture; or

(ii) The end of the contract.

(4) The contractor must use all accrued annual leave during the period of performance. At the end of the contract, the contractor will forfeit any unused annual leave except where the requirements of the position precluded the contractor from taking annual leave. In this case, the contracting officer may authorize the following:

(i) The contractor to take annual leave during the concluding weeks of the contract, not to exceed the period of performance; or

(ii) Payment of a lump-sum for annual leave not taken based on a signed, written determination and findings (D&F) from the contractor's supervisor. The D&F must set out the facts and circumstances that prevented the contractor from taking annual leave, and the contracting officer must verify that the contractor did not cause, or have the ability to control, such facts and circumstances. This lump-sum payment must not exceed the number of days the contractor could have accrued during a twelve (12)-month period based on the contractor's accrual rate.

(5) The contractor may be granted advanced annual leave by the contracting officer when circumstances warrant. Advanced leave must be approved by the Mission Director, cognizant Assistant Administrator, or Head of an Independent Office reporting directly to the Administrator, as appropriate. In no case may the contracting officer grant advanced annual leave in excess of the amount the contractor would accrue during a twelve (12) month period or over the remainder of the period of performance, whichever is less. At the end of the period of performance or at termination, the contractor must reimburse USAID for any outstanding balance of advanced annual leave provided to the contractor under the contract.

(b) Sick Leave. The contractor may use sick leave on the same basis and for the same purposes as USAID direct-hire employees. The contractor will accrue sick leave at a rate not to exceed four (4) hours every two (2) weeks for a maximum of thirteen (13) work-days per year based on a full-time, 40-hour workweek, and the rate of accrual will be prorated if the contract provides for a shorter workweek. The contractor may carry over unused sick leave from year to year under the same contract, and to a new follow-on contract for the same work at the same place of performance. The contractor is not authorized to carry over sick leave to a new contract for a different position or at a different location. The contractor will not be compensated for unused sick leave at the completion of this contract.

(c) Holidays and Administrative Leave. The contractor will be entitled to all holidays and administrative leave granted by the Mission to local staff.

(d) Leave Without Pay (LWOP). The contractor may be granted LWOP only with the written approval of the contracting officer or Mission Director.

(e) Compensatory Time. The contractor may be entitled to compensatory time off with the written approval of the contracting officer or Mission Director in rare instances when it has been determined absolutely essential and under the policies that apply to local staff at the Mission. The contractor may use earned compensatory time off in accordance with policies that apply to local staff at the Mission.

[End of clause]

Alternate I [Deviation (DEC 2020)]

[Add the following paragraphs to the Leave and Holidays clause, 6-2 as applicable, when the TCN PSC's place of performance is at a qualifying post, as announced by the Department of State or USAID.]

(f) Country Leave for Qualifying Posts.

(1) After the contractor has completed twelve (12) continuous months of service under this contract at a qualifying post or Mission, as announced by the Department of State or USAID, the contractor may be eligible for country leave of ten (10) workdays. The contractor is not required to take this country leave for qualifying posts (CLQP); however, if the contractor is eligible and elects to take this country leave, the contractor must take all ten (10) workdays in one continuous period, and only in the contractor's home country of record. If the contractor is returning to their home country of record and not returning overseas to the same or different USAID post, this CLQP will not apply.

(2) The required twelve (12) continuous months of service at post will include actual days in orientation (excluding any language training authorized in the contract and provided in the contractor's home country of record), travel time by the most direct route, and actual days at post beginning on the date of arrival in the cooperating country. Annual and sick leave taken, excluding any days of such leave taken in the contractor's home country of record, will be counted toward the required twelve (12) month period of service. Any leave without pay

(LWOP) will not be counted toward the period of service. The contractor is not allowed country leave in advance of fulfilling the period of service required by this paragraph (f)(2).

(3) The contractor must agree to return immediately after completing CLQP to continue performance for an additional—

(i) one (1) year, or

(ii) less than one (1) year, if approved in writing by the Mission Director before the contractor departs on CLQP.

(4) (i) The contractor must agree to meet the conditions in paragraph (f)(3) of this clause by returning to the same USAID Mission under this contract or a new contract, or

(ii) The contractor must agree to meet the continued performance conditions of paragraph (f)(3) of this clause by relocating to a different USAID Mission under a new USAID personal services contract immediately following the completion of CLQP. USAID will provide the contractor the ten days of CLQP under this contract, not under the new contract.

(iii) If CLQP eligibility is based on paragraph (f)(4)(ii) of this clause, prior to departure on CLQP, the contractor must submit to the contracting officer at the current Mission, a copy of the new contract with a special award condition in the contract Schedule indicating the contractor's obligation to fulfill the commitment for continued performance in accordance with paragraph (f)(3) of this clause.

(5)(i) Any additional days spent in any other location other than the contractor's home country of record will be charged to annual leave, or if the contractor does not have accrued annual leave to cover such additional days, the contractor will be placed on leave without pay (LWOP).

(ii) Except for reasons beyond the contractor's control as determined by the contracting officer, if the contractor does not complete the continued performance of services after country leave as required by paragraph (f)(3) of this clause, the contractor must reimburse USAID for the salary and benefits costs, travel and transportation, and any other payments related to CLQP.

(iii) Unused CLQP is not reimbursable under this contract.

(g) *Country Leave for Qualifying Posts Travel.*

For the CLQP authorized in paragraph (f) of this clause, USAID will reimburse travel costs and travel allowances for the contractor and accompanying eligible family members as follows:

(1) From the contractor's place of performance to the contractor's permanent place of legal residence in their home country of record (or other location in the contractor's home country of record provided that the cost of such travel does not exceed the cost of travel to the contractor's permanent place of legal residence in their home country of record), and return to the contractor's place of performance, or other USAID post abroad in accordance with paragraph (f) of this clause, as authorized by the contracting officer.

(2) Reimbursement for travel costs, and the contractor's salary payable for the time required for travel, will be limited to travel by the most direct and expeditious route on economy class travel.

(3) Travel allowances and stopovers for travelers will be reimbursed for economy class travel and in accordance with paragraph entitled "International Travel" of the "Travel and Transportation Expenses" clause of this contract.

[End of clause]