



Competition and Publicizing, and Class Justification and Approval (J&A) for Limited Competition for PSCs

A Mandatory Reference for ADS Chapter 309

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This Mandatory Reference to ADS 309 contains--

- Revisions to AIDAR Appendices D and J based on class deviation **#M/OAA-DEV-AIDAR-19-02c (Tab 1)**;
- A Class Justification and Approval (J&A) for Other than Full and Open Competition Covering Certain Categories of Personal Services Contracts (PSCs) (**Tab 2**); and
- A summary chart on publicizing and competition for personal services contracts (**Tab 3**).

Required Actions:

Contracting Officers, including warranted EXOs, (COs) must adhere to the publicizing, competition, and requirements for PSCs as specified in the attached AIDAR deviation and Class Justification and Approval (J&A) following the guidance below.

GUIDANCE:

Competition

The solicitation and award of all acquisitions including personal services contracts are subject to full and open competition in accordance with (48 CFR) FAR Part 6. Any exception to competition must be justified in accordance with (48 CFR) FAR 6.303.

[AAPD 18-04 Revision 1](#) contains the text for (48 CFR) AIDAR 705.102, 705.202, and 706.302-70 in effect by class deviation ([#M/OAA-DEV-AIDAR-20-04c.](#)) AIDAR 706.302-70(b)(1) provides the CO an exception from the requirements of full and open competition for PSCs performing services abroad. This exception does not apply to USPSCs based in the United States.

COs using this AIDAR exception must ensure that the following limitations in (48 CFR) [AIDAR 706.302-70\(c\)](#) are met:

- (i) Offers must be requested from as many potential offerors as is practicable under the circumstances, and
- (ii) A justification (J&A) supporting other than full and open competition must be prepared in accordance with FAR 6.303 and approved in accordance with (48 CFR) FAR 6.304.

The Senior Procurement Executive signed a revised class J&A for certain categories of procurements to relieve COs of the administrative burden of preparing individual J&As as required in (48 CFR) FAR 6.303. The class J&A is available as **Tab 2** below. This revised class J&A supersedes the class J&A dated July 10, 1997. The class justification can be used for CCN and TCN personal services contracts subject to the local compensation plan; and Resident Hire USPSCs.

Section II of the class J&A specifies the conditions that must be met when the class J&A is used. When these requirements are not met, the CO must prepare an individual J&A, following the requirements in FAR 6.303 and obtain the necessary approvals as specified in FAR 6.304.

Publicizing

Solicitations for personal services contracts must be publicized through the Governmentwide point of entry (GPE) located at beta.sam.gov (formerly FBO.gov) to meet the requirements of (48 CFR) [FAR Part 5](#). However, in accordance with (48 CFR) [AIDAR 705.102](#), a written determination was made by the Senior Procurement Executive (SPE), based on (48 CFR) FAR 5.102(a)(5)(iii), so COs do not need to publicize solicitations for awards issued under the authority in (48 CFR) AIDAR 706.302-70(b)(1) for the following categories of PSCs serving abroad:

- (i) CCN and TCN PSCs paid under the local compensation plan, and Resident Hire USPSCs. This includes new awards as well as extensions and renewals with the same individual for the same services at the same mission; and
- (ii) USPSCs for services abroad of six months or less. Contracts awarded under this authority must not be extended or renewed. Note that this is an exception to publicizing only and it does not automatically authorize limiting competition. When using this exception to publicizing, the CO must prepare and publicize in the GPE (beta.sam.gov) an individual J&A for other than full and open competition in accordance with (48 CFR) FAR 6.303, and must follow the other requirements in (48 CFR) AIDAR 706.302-70(c).

As described in (48 CFR) [AIDAR 705.202](#), advance notice of proposed contract action is not required for the categories of PSCs in paragraphs (i) and (ii) above, .

Also in accordance with (48 CFR) [AIDAR 705.102](#) and the written determination made by the SPE based on FAR 5.102(a)(5)(iii), COs do not need to publicize solicitations for extensions or renewals of USPSCs with the same individual for the continued provision of highly specialized services at the same mission when the authority in AIDAR 706.302-70(b)(5) is used. However, when using this publicizing exception and AIDAR 706.302-70(b)(5), the CO must comply with the limitations in (48 CFR) [AIDAR 706.302-70\(c\)](#), including--

- (i) preparing a J&A in accordance with FAR 6.303, and making the J&A publicly available within 14 days of contract award through the GPE (beta.sam.gov) as required in FAR 6.305;
- (ii) for extensions in excess of one year or over \$250,000, obtaining the approval of the Agency Competition Advocate by submitting the J&A approval request to the M/OAAJ&A mailbox at justificationsanda@usaid.gov; and

- (iii) publicizing the synopsis of proposed contract action through the GPE (beta.sam.gov) in accordance with FAR 5.201.

Resident Hire USPSCs

In Appendix D, the definition of Resident Hire (RH USPSC) is revised for clarity. Also, to replace internal Agency policy guidance previously contained in Contract Information Bulletin (CIB) 99-15, a deviation is required to provide RH USPSCs any additional fringe benefit other than those already enumerated in Appendix D.

Appendix D, section 4., paragraph (d), and General Provision clause #22 are also revised and replaced to continue the Agency policy previously in CIB 99-15 that removed Contracting Officer and Mission Director discretion to provide any additional benefits and allowances to RH USPSCs.

Policy on Deviations from Appendices D or J

In both Appendices D and J, section 4., Policy, paragraph (b) is revised to add subparagraph (5), to replace and amend internal Agency policy previously contained in CIB 99-15. This new paragraph elevates the requirement for M/OAA clearance from the M/OAA Policy Division to the Director of M/OAA prior to approval of any request for deviation from the rules in Appendix D or J.

POINT OF CONTACT:

USAID Contracting Officers may direct their questions to the [PSC Policy Mailbox](#).

TAB 1

REVISIONS TO AIDAR APPENDICES D AND J
IN ACCORDANCE WITH CLASS DEVIATION #M/OAA-DEV-AIDAR-19-02c

APPENDIX D TO CHAPTER 7—DIRECT USAID CONTRACTS WITH A U.S. CITIZEN OR A U.S. RESIDENT ALIEN FOR PERSONAL SERVICES ABROAD

1. General.

...

(Class Deviation #M/OAA-DEV-AIDAR-19-02c)

(b) *Definitions.*

...

(5) Resident Hire U.S. Personal Services Contractor means a U.S. citizen or resident alien who, at the time of contract award, --

(i) resides in the cooperating country for reasons other than U.S. government or non-U.S. government employment, or under any contract or other arrangement, that provides repatriation to the U.S.; or

(ii) is a spouse or dependent of a U.S. citizen or resident alien who resides, or will reside, in the cooperating country for the purpose of U.S. government or non-U.S. government employment, or under any contract or other arrangement, that provides repatriation to the U.S.

...

4. Policy.

...

(b) Limitations on personal services contracts.

...

(5) Deviations. AIDAR 701.470 provides the procedure for requesting a single deviation and a class deviation from the AIDAR. As part of this procedure, for all deviations from Appendix D, prior to submitting the deviation to the approving authority, the contracting officer must obtain Director, M/OAA clearance of the deviation request, in accordance with internal guidance applicable to all Agency staff.

...

(d) Resident Hire U.S. Personal Services Contractors are subject to U.S. Federal Income Tax, and are not eligible for expatriate fringe benefits including differentials and allowances, travel and transportation expenses, repatriation, rest and recuperation travel, or home leave of any kind. Such contractors may be eligible for certain differentials and allowances when in travel status for temporary duty (TDY.) Neither the Contracting Officer nor the Mission Director shall have the discretion to provide any additional benefits and allowances without an approved deviation in accordance with section 4(b)(5) above.

5. Publicizing and Competition of Personal Services Contracts.

(Class Deviation #M/OAA-DEV-AIDAR-19-02c)

(a) *Publicizing.* Solicitations for personal services contracts must be publicized in the GPE located at beta.sam.gov to meet the requirements of (48 CFR) FAR part 5. In addition to publicizing in the GPE, the M/OAA Director, acting as Head of the Agency under the authority of AIDAR 701.601(a)(1), has authorized USAID contracting officers to place paid advertisements and notices in newspapers and periodicals. This specific authorization is found in AIDAR 705.502 and is subject to the requirements and limitations in (48 CFR) FAR subpart 5.1. Any advertisements and notices in addition to the GPE must be approved by the cognizant CO and must not be released prior to publication in the GPE.

(b) *Exceptions to publicizing.*

(1) In accordance with a determination made by the Senior Procurement Executive in AIDAR 705.102, the contracting officer does not need to publicize in the GPE solicitations for awards issued under the authorities in (48 CFR) AIDAR 706.302-70(b)(1) and AIDAR 706.302-70(b)(5) for the categories of PSCs listed below. This exception must not be used for USPSCs serving in the United States, its territories and possessions, and does not authorize the contracting officer to limit competition unless the required exceptions to competition have been met.

- (i) A Resident Hire U.S. personal services contractor (USPSC), as defined in this Appendix, awarded under the authority in (48 CFR) AIDAR 706.302-70(b)(1);
- (ii) A USPSC for six months or less in duration for services abroad awarded under the authorities in 706.302-70(b)(1).
- (iii) An extension or renewal of a USPSC with the same individual for the same services at the same mission, or operating unit within a Bureau or Independent Office awarded under the authority in (48 CFR) AIDAR 706.302-70(b)(5).

(2) As required in (48 CFR) FAR 5.201, when using the authorities in 706.302-70(b)(5) the contracting officer must publicize the advance notice of proposed contract action in the GPE. However, when the authority at 706.302-70(b)(1) is used, advance notice of proposed contract action is not required in accordance with the Head of Agency determination in (48 CFR) AIDAR 705.202.

(c) *Competition.* Personal services contracts are subject to full and open competition in accordance with (48 CFR) FAR Part 6. Any exception to competition must be authorized, prepared and approved in accordance with (48 CFR) FAR Part 6 and AIDAR part 706.

(d) *Other than Full and Open Competition.*

(1) (48 CFR) AIDAR 706.302-70(b)(1) authorizes, under certain conditions, contracting for personal services abroad without providing for full and open competition.

This authority must not be used for USPSCs serving in the United States, its territories and possessions. When using this exception for USPSCs serving abroad, the contracting officer must ensure the following limitations in (48 CFR) AIDAR 706.302-70(c) are met:

(i) As required in FAR 6.301, offers must be requested from as many potential offerors as is practicable under the circumstances, and

(ii) A J&A supporting other than full and open competition must be prepared in accordance with (48 CFR) FAR 6.303 and approved in accordance with (48 CFR) FAR 6.304.

For Resident Hire USPSCs a class J&A has been approved by the USAID Senior Procurement Executive and is available in the Automated Directive System (ADS) Chapter 309. When using the class J&A, the contracting officer must prepare and sign a written statement that the contract is being awarded pursuant to (48 CFR) AIDAR 706.302-70(b)(1); the conditions for use of the class justification have been met; and the cost of the contract is fair and reasonable. If the appropriate limited competitive procedures and other conditions of the class J&A are not met, the contracting officer must prepare a separate J&A as required under (48 CFR) AIDAR 706.302-70(c). The class J&A must not be used for USPSCs recruited from outside the cooperating country (internationally hired) or for USPSCs serving in the United States.

(2) (48 CFR) AIDAR 706.302-70(b)(5) authorizes awarding an extension or renewal of a USPSC with the same individual for the same services at the same mission, or operating unit within a Bureau or Independent Office without providing full and open competition. When using this exception, the contracting officer must:

(i) Prepare a J&A in accordance with (48 CFR) FAR 6.303; publicize the J&A as required by (48 CFR) FAR 6.305; and meet other requirements in (48 CFR) AIDAR 706.302-70(c);

(ii) For an extension in excess of one year or over \$250,000, obtain the approval of the Agency Competition Advocate, as required in (48 CFR) AIDAR 706.302-70(c); and

(iii) Publicize the synopsis of proposed contract action in accordance with (48 CFR) FAR 5.201, as required in (48 CFR) AIDAR 706.302-70(c).

12. General Provisions

1. Definitions

(Class Deviation #**M/OAA-DEV-AIDAR-19-02c**)

[Insert the following clause in all USPSC contracts]

Definitions (June 1990) [DEVIATION (MAY 2020)]

...
(p) *Resident Hire U.S. Personal Services Contractor (USPSC)* means a U.S. citizen or resident alien who, at the time of contract award, --

(i) resides in the cooperating country for reasons other than U.S. government or non-U.S. government employment, or under any contract or other arrangement, that provides repatriation to the U.S.; or

(ii) is a spouse or dependent of a U.S. citizen or resident alien who resides or will reside, in the cooperating country for the purpose of U.S. government or non-U.S. government employment, or under any contract or other arrangement that provides repatriation to the U.S.

[End Clause]

...
22. Resident Hire U.S. Personal Services Contractor Benefits
(Class Deviation #**M/OAA-DEV-AIDAR-19-02c**)

[Insert the following clause in all Resident Hire USPSC contracts]

Resident Hire U.S. Personal Services Contractor Benefits (USPSC) (JUN 1990)
[DEVIATION (MAY 2020)]

A contractor meeting the definition of a Resident Hire USPSC contained in section 12, General Provisions, in the clause entitled "Definitions," is subject to U.S. Federal Income Tax, and is not eligible for expatriate fringe benefits including differentials and allowances, travel and transportation expenses, repatriation, rest and recuperation travel, or home leave of any kind. The contractor may be eligible for certain differentials and allowances when in travel status for temporary duty (TDY.)

[END CLAUSE]

APPENDIX J TO CHAPTER 7—DIRECT USAID CONTRACTS WITH A COOPERATING COUNTRY NATIONAL AND WITH A THIRD COUNTRY NATIONAL FOR PERSONAL SERVICES ABROAD

4. Policy.

...

(b) Limitations on personal services contracts.

...

(5) Deviations. AIDAR 701.470 provides the procedure for requesting a single deviation and a class deviation from the AIDAR. As part of this procedure, for all deviations from Appendix J, prior to submitting the deviation to the approving authority, the contracting officer must obtain Director, M/OAA clearance of the deviation request, in accordance with internal guidance applicable to all Agency staff.

...

5. Soliciting for Personal Services Contracts

(Class Deviation #**M/OAA-DEV-AIDAR-19-02c**)

(a) *Publicizing.* As authorized by the M/OAA Director in AIDAR 705.502, the contracting officer may place paid advertisements and notices in newspapers and periodicals, subject to the requirements and limitations in (48 CFR) FAR subpart 5.1. Any advertisements and notices must be approved by the cognizant CO and when applicable, must not be released prior to publication in the GPE.

(b) *Exceptions to publicizing.*

(1) (48 CFR) FAR part 5 requires that solicitations for personal services contracts be publicized in the GPE. However, based on a determination made by the Senior Procurement Executive in AIDAR 705.102, the contracting officer does not need to publicize in the GPE solicitations for new awards, extensions or renewals for CCN and TCN PSCs paid under the local compensation plan issued under the authority in (48 CFR) AIDAR 706.302-70(b)(1). The contracting officer must follow the requirements below when using this exception.

- (i) New contracts for CCN and TCN PSCs paid under the local compensation plan must be publicized consistent with Mission/Embassy practice on announcement of other locally hired CCN positions;
- (ii) Renewals or extensions with the same individual for continuing service at the same mission do not need to be publicized.

(2) In accordance with (48 CFR) AIDAR 705.202, advance notice of proposed contract action is not required when the exception to competition authority at 706.302-70(b)(1) is used.

(c) *Competition.*

Personal services contracts are subject to full and open competition in accordance with (48 CFR) FAR part 6. Any exception to competition must be authorized, prepared and approved in accordance with (48 CFR) FAR part 6 and AIDAR part 706.

(d) *Other than Full and Open Competition.*

(1) (48 CFR) AIDAR 706.302-70(b)(1) authorizes contracting with CCNs and TCNs for personal services abroad without providing for full and open competition when the limitations in (48 CFR) AIDAR 706.302-70(c) listed below are met. This authority must not be used for contracts with TCNs who are not paid under the local compensation plan.

(i) As required in FAR 6.301, offers must be requested from as many potential offerors as is practicable under the circumstances, and

(ii) A J&A supporting other than full and open competition must be prepared in accordance with FAR 6.303.

For contracts with CCNs and TCNs subject to the local compensation plan a class J&A has been approved by the USAID Senior Procurement Executive and is available in the Automated Directive System (ADS) Chapter 309. When using the class J&A, the contracting officer must prepare and sign a written statement that the contract is being awarded pursuant to (48 CFR) AIDAR 706.302-70(b)(1); the conditions for use of the class justification have been met; and the cost of the contract is fair and reasonable. If the appropriate limited competitive procedures and other conditions of the class J&A are not met, the contracting officer must prepare a separate J&A as required under (48 CFR) AIDAR 706.302-70(c).

TAB 2

U.S. AGENCY FOR INTERNATIONAL DEVELOPMENT (USAID) CLASS JUSTIFICATION AND APPROVAL (J&A) FOR OTHER THAN FULL AND OPEN COMPETITION COVERING PERSONAL SERVICES CONTRACTS (PSCs) WITH CCN OR TCN PSCs SUBJECT TO THE LOCAL COMPENSATION PLAN, OR RESIDENT HIRE USPSCs.

This document is a class justification and approval (J&A) for other than full and open competition for certain categories of personal services contracts issued under the authorities of (48 CFR Chapter 7) AIDAR 706.302-70 (b)(1).

This class J&A may be used in accordance with its terms by USAID contracting officers acting within the scope of their delegated authority. When using this class J&A, contracting officers must ensure that each contract action executed pursuant to the authority of this class J&A is within the scope of the class J&A and that the appropriate requirements for competition in Section II, Conditions for Use, of this class J&A are followed. This class justification must not be used if only one source was considered, except for extensions or renewals with CCN and TCN PSCs subject to the Local Compensation Plan, and Resident Hire USPSCs.

SECTION I. FACTS AND RATIONALE **(as required by (48 CFR) FAR 6.303-2)**

(1) Identification of the agency and the contracting activity, and specific identification of the document as a “Justification for Other than Full and Open Competition.”:

This document sets forth the facts and rationale justifying USAID’s use of other than full and open competition, in accordance with AIDAR 706.302-70(b)(1). This document was prepared by M/OAA/P in conjunction with proposed revisions to AIDAR 706.302-70 and AIDAR Appendices D and J.

(2) The nature and/or description of the action being approved:

This class J&A may be used to satisfy the requirements of AIDAR 706.302-70(c)(2) regarding preparation of a Justification and Approval (J&A) pursuant to FAR 6.303. It applies only to the following types of Personal Services Contracts (PSCs) as authorized by 40 U.S.C. 113 and stated in AIDAR 706.302-70(b)(1):

- 1) Resident Hire U.S. Personal Services Contracts (USPSCs), as defined in AIDAR Appendix D; and
- 2) Cooperating Country National (CCN) and Third Country National (TCN) personal services contracts (PSCs), subject to the local compensation plan, as defined in AIDAR Appendix J;

This class J&A may be used only when all of the conditions in Section II of this document are met.

(3) Description of the supplies or services required, including an estimated value:

The Agency contracts for Resident Hire USPSCs to obtain the needed skills not available in the cooperating country, help with workload, cover agency needs for activities of limited duration or respond to natural disasters. In FY 2015, about ten percent of the approximately 400 USPSC awards executed by the Agency for services abroad were Resident Hires.

In FY 2015 the Agency's Cooperating Country National (CCN) ¹workforce consisted of close to 6,000 individuals. The agency obligated over \$200 million to cover salaries, benefits and other expenses associated with the CCN workforce. Historically USAID recruited Foreign Service National (FSN) direct-hire employees to perform vital mission program and support functions at USAID missions worldwide. In the early 1980s, the agency converted from hiring FSN direct-hire employees to executing personal services contracts with cooperating country nationals (CCNs) to continue providing much-needed in-country support and expertise.

(4) An identification of the statutory authority permitting other than full and open competition:

Statutory authority permitting other than full and open competition under this class J&A is 40 U.S.C 113(e)(2), as stated in AIDAR 706.302-70(a).

(5) A demonstration that the proposed contractor's unique qualifications or the nature of the acquisition that requires use of the authority cited:

Under the authorities of 40 U.S.C 113, the Administrator of USAID made a written determination that following the requirements of full and open competition for awards specified in AIDAR 706.302-70 (b)(1) would impair implementation of USAID foreign assistance objectives. Further, to relieve contracting officers of the considerable administrative burden in preparing separate justifications for certain contract actions excluded from full and open competition requirements under the AIDAR 706.302-70 (b)(1) and 706.302-70(b)(2), the Senior Procurement Executive signed a class Justification for other than full and open competition, which was issued in CIB 97-16 on July 10, 1997. This document is a revised class J&A that conforms to the requirements in the FAR Section 6.303-2 and supersedes the class J&A dated July 10, 1997. This class J&A can only be used for certain categories of awards (specified in #2 above) issued under the authorities in AIDAR 706.302-70(b)(1).

¹ For the purpose of this class J&A, the term CCNs also includes TCNs subject to the local compensation plan.

This class J&A must not be used when only one source is considered, except for extensions or renewals with CCNs and TCNs subject to the Local Compensation Plan, and Resident Hire USPSCs.

(6) A description of efforts made to ensure that offers are solicited from as many potential sources as is practicable, including whether a notice was or will be publicized as required by FAR subpart 5.2 and, if not, which exception under FAR 5.202 or AIDAR 705.202 applies:

Under (48 CFR) AIDAR 705.202(b), the head of the U.S. Agency for International Development has determined after consultation with the Administrator for the Office of Federal Procurement Policy and the Administrator of the Small Business Administration, that advance notice of contract action is not appropriate or reasonable for contract actions described in 706.302–70(b)(1) through (b)(3). Accordingly, awards meeting these descriptions need not be synopsisized. Additionally, the Senior Procurement Executive has made a written determination in accordance with FAR 5.102(a)(5)(iii) that contracting officers do not need to publicize in the GPE (beta.sam.gov) solicitations for the categories of awards covered by this class justification.

To ensure that procurements falling under the scope of this class J&A are solicited from as many potential sources as is practicable, Section II, Conditions for Use, establishes minimum solicitation requirements that must be met for contracts awarded using this class J&A. For PSCs specifically, solicitations must be publicized locally consistent with Mission/Embassy practice. For Resident hire USPSCs, if the position is not publicized locally, the contracting officer must contact at least three (3) individuals, including any person who may have expressed an interest in the position.

This class J&A will not be used when only one source is considered, except in the case of follow-on extensions or renewals with CCN and TCN PSCs subject to the Local Compensation Plan, or Resident Hire USPSCs.

Additionally, this class J&A will be posted on GPE to comply with the requirement in (48 CFR) FAR 6.305 to make publicly available justifications for other than full and open competition.

(7) A determination by the contracting officer that the anticipated cost to the Government will be fair and reasonable:

A determination that the cost to the government is fair and reasonable will be made by the contracting officer and documented in the file prior to award of individual contracts executed using this class J&A. See Section II of this document for the conditions of use for this class J&A.

(8) Description of the market research conducted, and the results or a statement of the reasons market research was not conducted:

Market research was not conducted when preparing this class J&A, given the variety of services and supplies that will be procured under the authorities specified in this justification. Market research will be conducted and documented in the award file by the contracting officer for each procurement awarded using this class J&A. See section II of this document for the conditions of use for this class J&A.

(9) Other facts supporting the use of other than full and open competition:

No other factors are necessary or available to support the use of other than full and open competition, as this class J&A is based on the authorities in AIDAR 706.302-70(b) on Impairment of Foreign Aid Programs and 40 USC 113(e)(2).

(10) Sources, if any, that expressed an interest, in writing, in the acquisition:

As individual purchases made under this class J&A have not been synopsisized, no source list is available. However, as required in AIDAR 706.302-70(c), the contracting officer must ensure that offers have been solicited from as many potential offerors as is practicable under the circumstances. In the event that any potential applicant/offeror expresses an interest in an acquisition in writing, the contracting officer must take this information into consideration in the source selection process and document the file accordingly.

(11) The actions the Agency may take to remove or overcome any barriers to competition before any subsequent acquisition for the supplies or services required:

USAID will comply with full and open competition procedures to the extent possible provided doing so will not impair the foreign assistance programs, as authorized in AIDAR 706.302-70. However, the use of this class J&A is not mandated for all applicable awards. Contracting officers, at their discretion, may fully compete a personal services contract, renewal or extension, when in the contracting officer's judgment, the needs of the Agency would be best served by full and open competition.

Additionally, when awards are made using this class J&A, competition is limited to local sources as the requirements are for local personnel, where competition in the U.S. is not practical. The Agency promotes advertising locally to obtain as many applications/offers as practicable.

(12) Contracting officer certification that the justification is accurate and complete to the best of the contracting officer's knowledge and belief.

Contracting officers must ensure compliance with all conditions in Section II below, including appropriate file documentation and contracting officer certification, as specified in Section II(3) below.

SECTION II. CONDITIONS FOR USE

For each procurement awarded under this class J&A, the contracting officer must ensure that the conditions specified below are met.

(1) Soliciting Limited Sources:

In accordance with AIDAR 706.302-70(c), the contracting officer must ensure that for each award, offers have been solicited from as many potential offerors as is practicable under the circumstances.

A. Resident Hire USPSCs.

For new awards, to satisfy the requirement of soliciting from as many potential offerors as is practicable, COs must:

- Publicize the solicitation locally consistent with Mission/Embassy practice on the announcement of locally hired U.S. citizen positions; or
- When publicizing locally is not practicable, consider at least three (3) individuals by consulting source lists (e.g., applications or resumes on hand) or conducting other informal solicitation. Consideration must be given to individuals who have previously expressed an interest in the position.

With the exception of extensions or renewals, this class justification must not be used if only one source was considered.

In accordance with FAR 5.102 (a)(5)(iii), the Senior Procurement Executive made a written determination that solicitations for renewals or extensions of a Resident Hire USPSC with the same individual for continuing service at the same mission do not need to be publicized. Additionally, AIDAR section 705.202 provides contracting officers an exception to publicizing the advance notice of proposed contract action for awards covered by this class J&A. However, the contracting officers, at their discretion, may re-compete a personal services contract, when in the contracting officer's judgment, the needs of the Agency would be best served by competition.

B. Contracts with Cooperating Country National or Third Country National PSCs Subject to the Local Compensation Plan.

To satisfy the requirement of soliciting from as many potential offerors as is practicable, COs must publicize the solicitation for a new award locally consistent with Mission/Embassy practice on the announcement of locally hired CCN positions. With the exception of extensions or renewals, this class J&A must not be used if only one source was considered.

In accordance with FAR 5.102 (a)(5)(iii), the Senior Procurement Executive made a written determination that solicitations for renewals or extensions with the same individual for the same service at the same mission do not need to be publicized. Furthermore, following the Department of State practice, USAID considers CCN PSCs to be of a continuing nature and expects one individual to provide continuous services under a series of sequential contracts. Thus, any extensions or renewals of a CCN or TCN contract subject to a local compensation plan may be awarded on a sole source basis. However, the contracting officer, at their discretion, may re-compete a personal services contract when in the contracting officer's judgment, the needs of the Agency would be best served by competition.

(2) Market Research.

Following the requirements in FAR Part 10, market research must be conducted for each award executed under the authorities of this class J&A. For new PSCs, the market research will determine availability of suitable candidates for a selected category of PSCs. For extensions or renewals, the market research will help the contracting officers determine if the needs of the Agency are best served by limited competition or a sole source award.

The contracting officer must document the results of the market research in the contract file, or, if market research was not performed, explain the reasons why market research was not performed.

(3) Certification Statement and File Documentation.

Contracting officers must include in the contract file a copy of this class J&A as well as a written statement, signed by the Contracting officer, certifying all of the following:

- (i) the contract is being awarded pursuant to AIDAR 706.302-70(b)(1);
- (ii) the conditions in Section II of this class J&A have been met and the file has been appropriately documented; and
- (iii) the cost of the contract is fair and reasonable.

The Contracting officer must document the award file with any other facts supporting other than full and open competition not included in this class J&A.

Approved: _____

Mark Walther, Senior Procurement Executive
United States Agency for International Development (USAID)

Date: _____

TAB 3

**PUBLICIZING AND COMPETITION FOR PERSONAL SERVICES CONTRACTS
NEW AWARDS**

| Required CO actions | USPSC | | | | CCN/TCN paid under the local compensation plan |
|---|--|--|---|--|--|
| | Washington-based | Off shore | Up to 6 Month of services abroad | Resident Hire | |
| Must publicize solicitations in GPE? | Yes, unless an action was not synopsized based on FAR 5.202, or an exception at FAR 5.102 applies | Yes, unless an action was not synopsized based on FAR 5.202 or AIDAR 705.202, or an exception at FAR 5.102 applies | No, based on SPE’s determination per FAR 5.102(a)(5)(iii) (originally issued in CIB 97-19). However, COs must prepare and publicize an individual J&A per FAR 6.3 and meet requirements in 706.302-70(c), including soliciting from as many potential offerors as is practicable (e.g. consider at least 3 individuals by reviewing applications or resumes on hand or conducting other informal solicitation). <u>Extensions and renewals of such awards are not authorized.</u> | No, if relying on the class J&A, but must publicize locally consistent with Mission practice (SPE determination in the class J&A per FAR 5.102(a)(5)(iii)) | No, if relying on the class J&A, but must publicize locally consistent with Mission practice (SPE determination in the class J&A per FAR 5.102(a)(5)(iii)) |
| Can use class J&A for limited competition? | No, competition must be full and open unless an individual J&A is processed. | No, competition must be full and open unless an individual J&A is processed. | No, competition must be full and open unless an individual J&A is processed. | Yes, if all conditions are met: 1) Publicize locally consistent with Mission practice; 2) Market research; 3) CO certification and file documentation. | Yes, if all conditions are met: 1) Publicize locally consistent with Mission practice; 2) Market research; 3) CO certification and file documentation. |
| Can use class J&A for sole source award? | No | No | No | No | No |
| May process individual J&A using exception at AIDAR 706.302-70(b)(1)? | No | Yes, COs must: 1) Request proposals from as many potential offerors as is practicable; 2) Prepare, obtain approvals and publicize a J&A (FAR 6.3). No need to publicize notice of proposed contract action per FAR 5.201 and AIDAR 705.202. | | | |
| May process individual J&A using exceptions in FAR part 6? | Yes. When using exceptions in FAR subpart 6.3, COs must : 1) Request proposals from as many potential offerors as is practicable (FAR 6.301) ; 2) Prepare a J&A (FAR 6.303), obtain required approvals (FAR 6.304) and publicize the J&A (FAR 6.305); and 3) publicize notice of proposed contract action (FAR 5.201) unless an exception applies (FAR 5.202). | | | | |

**FOLLOW ON AWARDS, EXTENSIONS AND RENEWALS
with the Same Individual for Continuous Services at the Same Mission/Office**

| Required CO actions | USPSC | | Resident Hire | CCN/TCN paid under the local compensation plan |
|--|--|-----------|--|--|
| | Washington-based | Off shore | | |
| Must publicize solicitations in GPE? | No, if the authority in 706.302-70(b)(5) is used. (See Tab 1 - 705.102, Availability of solicitations and FAR 5.102(a)(5)(iii)). <u>However, the proposed contract action must be publicized</u> | | No, if exception at AIDAR 706.302-70(b)(1) is used (See Tab 1 - 705.102, Availability of solicitations and FAR 5.102(a)(5)(iii)) | |
| What AIDAR exception can be used when only one individual is considered? | 706.302-70(b)(5) | | 706.302-70(b)(1) | |
| When using the exception above for a follow-on action, the CO must: | 1) Prepare, obtain approvals and publicize J&A (FAR 6.3); 2) Publicize synopsis of proposed contract action (FAR 5.201); 3) for extensions and renewals of more than one year or \$250,000 obtain approval of Agency Competition Advocate (AIDAR 706.302-70) by submitting the J&A to the M/OAA J&A mailbox at justificationsanda@usaid.gov . | | 1)Meet the following requirements in class J&A: a) Market research; b) CO certification and file documentation (note that the requirement for soliciting to limited sources does not apply to follow on extensions and renewals); OR 2)Prepare, obtain approvals and publicize individual J&A (FAR 6.3) | |
| May use exceptions in the FAR part 6? | Yes. When using exceptions in FAR subpart 6.3, COs, must: 1) Request proposals from as many potential offerors as is practicable (FAR 6.301); 2) Prepare a J&A (FAR 6.303), obtain required approvals (FAR 6.304) and publicize the J&A (FAR 6.305); 3) publicize notice of proposed contract action (FAR 5.201). | | | |
| Must the award always be made to the same individual as described in this table? | No COs can conduct full and open competition for any follow on or extension at their discretion | | | |

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