

Agency for International Development

726.7101

726.7005 Exceptions.

The notification requirement in 705.207 and the subcontracting requirement in 726.7007 are based on statutory requirement and may not be deviated from under the provisions of subpart 701.4. By statute, the Administrator or designee may determine that these requirements do not apply to a particular contract or category of contracts. The M/OP Director has been designated to make such determinations. One such determination concerning subcontracting is set out in 726.7007.

[58 FR 8702, Feb. 17, 1993. Redesignated at 61 FR 39093, July 26, 1996, as amended at 62 FR 40468, July 29, 1997; 64 FR 42040, Aug. 3, 1999]

726.7006 Determination of status as a disadvantaged enterprise.

(a) To be eligible for an award under AIDAR 706.302-71 providing for other than full and open competition, the contractor must qualify, as of both the date of submission of its offer and the date of contract award, as a small disadvantaged business (as defined in 726.7002), an historically black college or university, a college or university in which more than 40 percent of the students are Hispanic Americans, or a private voluntary organization controlled by individuals who are socially and economically disadvantaged. The contracting officer shall insert the provision at 752.226-1 in any solicitation or contract to be awarded under the provisions of 706.302-71.

(b) The contracting officer shall accept an offeror's representations and certifications under the provisions referenced above that it is a small disadvantaged business unless he or she determines otherwise based on information contained in a challenge of the offeror's status by the Small Business Administration or another offeror, or otherwise available to the contracting officer.

[55 FR 8470, Mar. 8, 1990, as amended at 56 FR 27209, June 13, 1991. Redesignated at 61 FR 39093, July 26, 1996, as amended at 62 FR 40468, July 29, 1997]

726.7007 Requirement for subcontracting with disadvantaged enterprises.

(a) In addition to the requirements in FAR subpart 19.7, any new contract or

modification which constitutes new procurement (except for a contract or modification with a disadvantaged enterprise as defined in 726.7002) with respect to which more than \$500,000 is to be funded with amounts made available for development assistance or from the appropriations cited in section 706.302-71(a)(1) shall contain a provision requiring that not less than ten percent of the dollar value of the contract must be subcontracted to disadvantaged enterprises, including disadvantaged enterprises which are not small.

(b) This requirement does not apply when the contracting officer, with the concurrence of the Director of OSDBU, certifies there is no realistic expectation of U.S. subcontracting opportunities and so documents the file. If the contracting officer and the Director of OSDBU do not agree, the determination will be made by the head of the contracting activity. See 726.7005 for guidance on other potential exceptions.

(c) The contracting officer shall insert the clause in 752.226-2 in any solicitation or contract as provided in paragraph (a) of this section, unless exempted in accordance with the provisions of paragraph (b) of this section.

[55 FR 8470, Mar. 8, 1990, as amended at 56 FR 27209, June 13, 1991; 56 FR 52213, Oct. 18, 1991; 58 FR 42255, Aug. 9, 1993. Redesignated at 61 FR 39093, July 26, 1996, as amended at 62 FR 40468, July 29, 1997; 62 FR 47532, Sept. 9, 1997]

726.7008 Limitations on subcontracting.

The contracting officer shall insert the clause at 752.226-3, Limitations on Subcontracting, in any solicitation and contract for technical assistance services which is to be awarded under the authority of 706.302-71.

[58 FR 42255, Aug. 9, 1993. Redesignated at 61 FR 51235, Oct. 1, 1996]

Subpart 726.71—Relocation of U.S. Businesses, Assistance to Export Processing Zones, Internationally Recognized Workers' Rights

726.7101 Policy.

USAID Policy Determination (PD) 20, "Guidelines to Assure USAID Programs do not Result in the Loss of Jobs

726.7102

in the U.S.” implemented statutory prohibitions on expenditure of appropriated funds. The PD contains a standard provision for inclusion in USAID-funded grants and inter-agency agreements and indicates that when the PD applies to a contract, appropriate provisions covering the subject matter are to be included. When the provisions of PD 20 do apply to a contract, the cognizant technical office shall provide to the contracting officer appropriate language tailored to the specific circumstances for the contract statement of work, or if applicable to the circumstances, the provision included in the PD (see 726.7102) may be used as a clause in the contract. The provision is not required in sub-contracts.

[61 FR 39093, July 26, 1996]

48 CFR Ch. 7 (10-1-02 Edition)

726.7102 PD 20 provision.

RELOCATION OF U.S. BUSINESSES, ASSISTANCE TO EXPORT PROCESSING ZONES, INTERNATIONALLY RECOGNIZED WORKERS' RIGHTS (JAN 1994)

No funds or other support provided hereunder may be used in an activity reasonably likely to involve the relocation or expansion outside of the United States of an enterprise located in the United States if non-U.S. production in such relocation or expansion replaces some or all of the production of, and reduces the number of employees at, said enterprise in the United States.

No funds or other support provided hereunder may be used in an activity the purpose of which is the establishment or development in a foreign country of any export processing zone or designated area where the labor, environmental, tax, tariff, and safety laws of the country would not apply, without the prior approval of USAID.

No funds or other support provided hereunder may be used in an activity which contributes to the violation of internationally recognized rights of workers in the recipient country, including those in any designated zone or area in that country.

[61 FR 39093, July 26, 1996]