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6116-01 M

AGENCY FOR INTERNATIONAL DEVELOPMENT

48 CFR Chapter 7

RIN 0412-AA86

Agency for International Development Acquisition Regulation

(AIDAR) : Leave and Holidays for U.S. Personal Services

Contractors, including Family and Medical Leave

AGENCY: U.S. Agency for International Development.

ACTION: Proposed rule.

SUMMARY: The U.S. Agency for International Development (USAID) proposes to amend the Agency for International Development Acquisition Regulation (AIDAR) to revise the General Provision contract clause (hereafter "clause") 5 entitled "Leave and Holidays (APR 1997)." This proposed rule also makes other editorial and clarifying changes to this clause and the prescription.

DATES: Submit comments on or before [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: Submit comments by any of the following methods:

1. Through the Federal eRulemaking Portal at <http://www.regulations.gov> by following the instructions for submitting comments.

2. By Mail addressed to: U.S. Agency for International Development (USAID), Bureau for Management,

Office of Acquisition & Assistance, Policy Division, Attn:  
Marcelle Wijesinghe, Room 867-J, SA-44, 1300 Pennsylvania  
Ave. NW, Washington, DC 20523-2052.

FOR FURTHER INFORMATION CONTACT: Richard Spencer,  
Telephone: 202-567-4781 or Email: [rspencer@usaid.gov](mailto:rspencer@usaid.gov)

SUPPLEMENTARY INFORMATION:

A. Instructions.

All comments must be in writing and submitted through one of the methods specified in the "Addresses" section above. USAID encourages all commenters to include the title of the action and RIN for this rulemaking. Please include your name, title, organization, postal address, telephone number, and email address in the text of your comment.

Please note that USAID recommends sending all comments to the Federal eRulemaking Portal.

All comments will be made available at <http://www.regulations.gov> for public review without change, including any personal information provided. We recommend that you do not submit information that you consider confidential business information or any information that is otherwise protected from disclosure by statute.

USAID will only address comments that are relevant and within the scope of this proposed rule.

B. Background.

USAID is seeking comments on this proposed rule to revise AIDAR appendix D as described below: Section 4 is revised to make the prescription for annual and sick leave in paragraph (c)(2)(ix) consistent with section 12, General Provision clause 5 entitled "Leave and Holidays." All the revisions to section 12, General Provision clause 5, including annual and sick leave, are as follows:

1) Annual leave.

The title of the clause is changed from "Vacation Leave" to "Annual Leave," to be consistent with section 4, paragraph (c)(2)(ix) of this appendix, as well as USAID's time-keeping system, and the FMLA, which allows for use of "annual" leave.

- The minimum contract period required to accrue leave is clarified to indicate 90 days "in total duration."
- The terms "tour," "tour of duty," and "employee" are changed to "period of performance" and "contractor" to be consistent with contractual terminology.
- Annual leave accrual rates are broadened to include former service as a USAID PSC under any statutory authority, and U.S. Government civilian and/or

honorable active duty uniformed service, using the definition from 5 U.S.C. 2101. The clause also specifies the documents the contracting officer may review as evidence of prior service. This change is intended to expand the market base and attract former U.S. government employees with relevant skills to participate in the competitive process.

- The maximum amount of annual leave that can be carried over from one calendar year to the next during the period of the contract is capped at 240 hours, consistent with the same restriction on U.S. direct hire employees. This change will also eliminate the need for manual entries to be made in the Agency's time-keeping system to reinstate forfeited leave that is automatically cancelled in the time-keeping system at the end of each calendar year.
- The conditions that allow the USPSC to avoid forfeiting annual leave are clarified; Mission Director endorsement is no longer required for the contracting officer to approve those conditions, and a Determinations and Findings (D&F) is now required before a lump-sum payment is authorized.

- Advanced annual leave is revised to require approval by the cognizant Assistant Administrator for USPSCs performing at USAID's headquarters. Also, the maximum amount of advanced leave that may be approved is limited to what the USPSC could earn in a twelve month period or over the life of the contract, whichever is less.

2) Sick Leave.

- This paragraph is amended to clarify that the USPSC may take sick leave based on the same standards that apply to U.S. direct hire employees.
- A clarification is made to the carryover of sick leave to specify that it only applies to a subsequent "follow-on" contract for the same services.

3) Home leave.

Home leave is a benefit a USPSC can earn after performing services abroad, usually after two years. It provides time off that must be used in the U.S., subject to a commitment to continued service by the USPSC. Home leave is intended to ensure that persons living and working abroad undergo reorientation and re-exposure in the U.S., and is provided to USPSCs as a benefit comparable to U.S.

direct hire employees. Detailed proposed changes to the text regarding home leave are as follows:

- Home Leave is currently only provided to USPSCs who agree to return to the same Mission abroad after completing home leave. In July 1998, USAID issued a policy deviation from the rule to authorize a maximum of 20 workdays home leave based on the USPSC's commitment to relocate to a different USAID Mission as a USPSC immediately following home leave for a specific period of time, subject to prior approval by the Mission Director (i.e., the Mission from which the USPSC is departing.)
- The revised clause includes the required verification documents the USPSC must provide to support home leave based on their commitment to continue work under a new contract with a different USAID Mission.
- A clarification is made to the travel requirements to specify that travel time for home leave is not included in the days counted towards home leave, with a cross-reference to the related contract clause titled "Travel and Transportation Expenses."

4) Home leave for qualifying Missions.

The addition of this category of leave is based on a 2006 amendment to the Foreign Service Act of 1980 (Pub. L. 96-465), as amended, which authorized this additional home leave for USPSCs following completion of a 12-month period of performance at qualifying Missions, currently Iraq, Afghanistan and Pakistan,. Home leave for qualifying Missions is provided to USPSCs comparable to what is provided to direct-hire employees in order to attract USPSCs for these hard to fill positions.

5) Holidays. The title and text of this paragraph is revised to add "administrative leave" to apply Agency emergency closures to USPSCs on the same basis as to U.S. direct hires.

6) Military Leave.

- The "U.S." is added to "Armed Forces" to clarify that the clause only applies to U.S. military service.
- The contract filing requirement has been clarified to inform the contractor that such approval will be maintained on file.

7) Leave Without Pay.

- The "LWOP" abbreviation is included to conform to USAID's timekeeping system.

- Reference to use of LWOP for family and medical leave is included to conform to entitlements for this leave under the FMLA (Pub. L. 103-3).

8) Compensatory Time. The term "leave" is removed to characterize this more accurately in line with USAID internal policies.

9) Family and Medical leave.

This clause adds a new section covering family and medical leave for all USAID USPSCs. USAID is extending the eligibility of family and medical leave to USPSCs performing in the U.S. as well as outside the U.S. as a matter of policy. The FMLA (Pub. L. 103-3) was enacted to allow employees to balance work and family life by protecting their employment and benefits status when taking reasonable leave for medical reasons, including child birth, adoption or care, or care for a spouse, parent or oneself in the event of a serious health condition.

Following inquiries from USPSCs, USAID examined the applicability of FMLA to USPSCs working in the U.S. and abroad. USAID found that eligibility under FMLA Title II is limited to U.S. Government direct-hire employees, and does not apply to contracts with individuals. However, USAID determined that USPSCs working in the U.S. are entitled to family and medical leave under Title I of the FMLA, as

administered by the U.S. Department of Labor (DOL) through 29 CFR part 825. The DOL applies the broad definition of "employee" from the Fair Labor Standards Act of 1938, 29 U.S.C. 201.

USAID determined that FMLA does not apply to USPSCs working outside the U.S.; however, in November 2015 the Acting Administrator authorized family and medical leave for USPSCs working abroad as a matter of Agency policy. This decision was made to allow for a consistent leave policy for all USPSCs, irrespective of their place of performance. Based on this approval, in December 2015, USAID processed a two-year class deviation from (48 CFR) AIDAR appendix D, section 12, clause 5, "Leave and Holidays", to authorize family and medical leave for all USPSCs. USAID implemented the deviation on an interim basis pending the finalization of this rule.

USAID has determined that Cooperating Country National Personal Services Contractors (CCNPSCs) or Third-Country National PSCs (TCNPSCs) will not be entitled to the family and medical leave provided under this rule, even if other specific benefits are approved by the Mission Director based on an exception under (48 CFR) AIDAR appendix J. Key provisions of the rule regarding family and medical leave are as follows:

- The eligibility criteria are included in the clause in accordance with 29 CFR 825.110, with detailed requirements regarding establishing eligibility in USAID internal policy.
  - The reasons when family and medical leave may be taken are specified in accordance with 29 CFR 825.112.
  - The provisions for the substitution of LWOP with paid leave, as allowed under 29 CFR part 825.207, is consistent with what USAID provides to U.S. direct hires.
  - Family and medical leave may not be authorized beyond the completion date of the contract.
  - This section provides procedures the contractor must follow to establish eligibility for family and medical leave.
  - The clause references the U.S. Department of Labor Wage and Hour division publication for more information about family and medical leave and procedures to report violations of the underlying law.
- 10) Leave Records. Use of "shall" is changed to "must."

C. Impact assessment.

1) Regulatory Planning and Review. Under E.O. 12866, OIRA has designated the proposed rule "significant" and therefore subject to the requirements of the E.O. and subject to review by the Office of Management and Budget (OMB). OIRA has determined that this Rule is not an "economically significant regulatory action" under Section 3(f)(1) of E.O. 12866. This proposed rule is not a major rule under 5 U.S.C. 804.

The costs and benefit of the revisions described above are as follows, by each type of leave affected:

- Annual Leave – Under the existing rule, USPSCs can only accrue annual leave per pay period at increasingly higher hourly rates based on prior PSC service under the authority of "Sec. 636(a)(3) of the FAA [Foreign Affairs Act of 1961, as amended]". The default contractor accrual rate is four hours per pay period; however the contractor may accrue at a rate of six hours per pay period as a prior PSC under the FAA exceeding three years, or eight hours per period for prior PSC services under the FAA exceeding 15 years. The proposed rule broadens this to allow USPSCs to include prior service as a USAID PSC under other statutory authorities, as well as prior civilian or uniformed service. USAID estimated the cost of

progressively adding four hours for three years and two hours for two years for 26 pay periods each year of a five year contract to reach the maximum eight hour accrual rate per pay period. USAID's historical data indicates only approximately 50% of a given USPSC population will have prior experience to make them eligible for the maximum accrual rate. Based on an average annual salary for a GS-13, 14, and 15 step 10 of \$146,000 (base with DC locality) equal to \$70/hour, USAID estimates 270 U.S.-based USPSCs (i.e. 50% of 540 total) would cost of approximately \$1.575 million per year in higher accrual rates. The equivalent calculation for 275 USPSCs serving abroad (i.e. 50% of 550 total) with an average salary of \$117,000 (base with no locality) equal to \$56/hour comes to \$1.283 million per year. Therefore the total estimated cost of additional annual leave compensation based on the expanded prior service eligibility is estimated at \$2.859 million per year.

The benefit of this provision is to provide this leave for USPSCs on a similar basis as is provided to U.S. direct hires in order to attract a wider pool of offerors with greater opportunities for higher accrual rates.

- Home Leave - The proposed rule will codify USAID's current policy in place by deviation from the existing AIDAR to add home leave eligibility for USPSCs who relocate to a different Mission under a new USPSC contract immediately following home leave every two years. Assuming about half of USAID's 550, or 275, USPSCs abroad fulfil their continued service commitments at a different Mission, the maximum additional cost at an average GS-13, 14, and 15 step 10 annual salary of \$117,000 (base with no locality) equal to \$450/day for 20 days is \$2.476 million every two years, or \$1.238 million for each year.
- Home Leave for Qualifying Missions - The proposed rule increases home leave by providing 10 days of leave for USPSCs after every 12 months abroad when performing at certain "qualifying" Missions, currently Iraq, Afghanistan, Pakistan and South Sudan. Together these Missions have approximately 70 USPSCs abroad, so again using the average GS-13, 14, 15 step 10 annual salary of \$117,000 per year (base with no locality) equal to \$450/day for 10 days, the total additional annual cost of this leave is approximately \$315,000 each year.  
The cost of this additional leave is justified to increase the USAID's ability to field USPSCs for hard-

to-fill positions at dangerous and high attrition Missions.

- Holidays and Administrative Leave – The proposed rule adds emergency dismissals and closures to acknowledge when USAID/Washington headquarters or Missions abroad are closed for inclement weather, civil unrest or other logistical complications. This will not have a cost impact since previously USPSCs were not able to work during USAID facilities closures, and so were given the same administrative leave as direct hires as a practical matter. Additionally, telework ready USPSCs will continue to perform as do direct-hires.
- Family and Medical Leave – The addition of family and medical leave will only have a marginal cost impact, if any, since this entitlement does not provide additional leave. USPSCs must use leave without pay, annual, or sick leave during family and medical leave status. The benefit that family and medical leave provides is that it entitles the individual to use their leave once they are determined eligible and are not subject to the ordinary leave approval process. Provision of this benefit to USPSCs performing in the U.S. is required by statute; therefore, the only expansion beyond what the law requires is the Agency's

discretion to apply it equally to USPSCs based abroad.

This decision was made to provide this entitlement equally to all USPSCs and not disadvantage those performing abroad.

As a regulatory matter, the cost of the rule making process to incorporate these revisions into the regulation is also justified. The AIDAR appendices include all the compensation and benefits available under personal services contracts. Therefore, the Agency needs these revisions in order to keep the regulation consistent, complete and transparent to industry, other government agencies and the general public.

2) Regulatory Flexibility Act. The Director, Bureau for Management, Office of Acquisition and Assistance, acting as the Head of the Agency for purposes of the Federal Acquisition Regulation, certifies that this rule will not impact a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, et seq. Therefore, an Initial Regulatory Flexibility Analysis has not been performed.

3) Paperwork Reduction Act. The proposed rule does not establish or modify a collection of information that requires the approval of the Office of Management and

Budget under the Paperwork Reduction Act (44 U.S.C. Chapter 35).

List of Subjects in 48 CFR Chapter 7, Appendix D  
Government Procurement.

For the reasons discussed in the preamble, USAID proposes to amend 48 CFR chapter 7 as follows:

CHAPTER 7— AGENCY FOR INTERNATIONAL DEVELOPMENT

1. Amend Appendix D to Chapter 7 by:

- a. In section 4, revising the second sentence of paragraph (c) (2) (ix);
- b. In section 12:
  - i. Revising the section heading;
  - ii. Revising clause 5;
  - iii. In clauses 6 and 16, removing the word "vacation" each time it appears and adding in its place the word "annual".
- c. By adding a parenthetical authority citation at the end of the appendix.

The revisions and addition read as follows:

Appendix D to Chapter 7—Direct USAID Contracts with a U.S. Citizen or a U.S. Resident Alien for Personal Services Abroad

\* \* \* \* \*

#### 4. Policy

\* \* \* \* \*

(c) \* \* \*

(2) \* \* \*

(ix) \* \* \* However, PSCs with previous service are eligible to earn annual leave in accordance with the "Leave and Holidays" General Provision contract clause in section 12 of this appendix.

\* \* \* \* \*

12. General Provisions for a Contract With a U.S. Citizen or a U.S. Resident Alien for Personal Services Abroad

\* \* \* \* \*

#### 5. Leave and Holidays

[For use in all U.S. personal services contracts.]

##### Leave and Holidays (Date)

(a) *Annual Leave.* (1) The contractor is not entitled to annual leave if the period of this contract is ninety (90) days or less in continuous duration. If the contract period is more than ninety (90) days, the contractor will accrue annual leave as of the start date of the contract period of performance as specified in paragraph (a) (2) of this clause.

(2) The contractor will accrue annual leave 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 may be prorated for a shorter work-week:

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 FAA or other statutory authority applicable to USAID; and/or

(B) A former U.S. Government (USG) direct-hire civilian employee; and/or 3) 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 at the end of the last pay period of each calendar year will be forfeited, unless the requirements of the position precluded the employee 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 either the end of the leave year two years after either

(i) The date fixed by the approving official as the termination date of the exigency of the public business or other reason beyond the contractor's control, which resulted in the forfeiture; or

(ii) The end of the contract, whichever is earlier.

(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 find 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 can accrue in a twelve (12) month period or over the life of the contract, 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 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. 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) *Home Leave.* (1) The contractor may be granted home leave to be taken only in the U.S., its commonwealth, possessions or territories, in one continuous period, under the following conditions:

(i) The contractor must complete twenty-four (24) continuous months of service abroad under this contract, and must not have taken more than thirty (30) workdays leave (annual, sick or LWOP) in the U.S., its commonwealths, possessions or territories. The required service abroad will include the actual days in orientation in the U.S. (excluding any language training), travel time by the most direct route, and actual days abroad beginning on the date of arrival in the cooperating country. Any annual and sick leave taken abroad, excluding leave without pay (LWOP), will count toward the period of service abroad. Any days of annual and sick leave taken in the U.S., its commonwealths, possessions or territories will not be counted toward the required twenty-four (24) months of service abroad.

(ii) The contractor must agree to return immediately after completing home leave to continue performance for an additional-

- (A) Two (2) years, or
- (B) Not less than one (1) year, if approved in writing by the Mission Director before the contractor departs on home leave.
  - (iii) If the contractor agrees to meet the conditions in paragraph (c)(1)(ii) of this clause above by returning to the same USAID Mission under this contract or a new contract, the contractor may be granted thirty (30) workdays of home leave.
  - (iv) If the contractor agrees to meet the continued performance conditions of paragraph (c)(1)(ii) of this clause and will be relocating to a different USAID Mission under a new USAID personal services contract immediately following the completion of home leave, the contractor may be granted twenty (20) workdays of home leave. USAID will reimburse the contractor for these twenty days of home leave under this contract, not under the new contract.
  - (v) If home leave eligibility is based on paragraph (c)(1)(iv) of this clause, prior to departure on home leave, 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 (c)(1)(ii) of this clause.

(2) *Advanced Home Leave.* Notwithstanding the requirements in paragraph (c)(1) of this clause, the contractor may be granted advanced home leave subject to all of the following conditions:

- (i) Granting of advanced home leave would serve in each case to advance the attainment of the objectives of this contract; and
- (ii) The contractor has served at least eighteen (18) months abroad, as defined in paragraph (c)(4) of this clause, at the same USAID Mission under this contract, and has not taken more than 30 work days leave (annual, sick or LWOP) in the U.S.; and
- (iii) The contractor agrees to return immediately after completing home leave to the same Mission to serve out the remaining time necessary to meet two (2) years of continued performance under this contract, plus an additional—
  - (A) Two (2) years, or
  - (B) Not less than one (1) year, if approved by the Mission Director, under the current contract, or under a new contract for the same or similar services at the same Mission, before the contractor departs on home leave.

(3) (i) Home leave must be taken only in the U.S., its commonwealths, possessions or territories. Any days spent in any other location will be charged to annual leave, or if the contractor does not have accrued annual leave to cover these days, the contractor will be placed on LWOP.

(ii) Travel time by the most direct route is authorized in addition to the home leave authorized under this "Leave and Holidays" clause. Salary during travel to and from the U.S. for home leave will be limited to the time required for travel by the most direct and expeditious route. Additional home leave travel requirements are included in the "Travel and Transportation Expenses" clause of this contract.

(iii) Except for reasons beyond the contractor's control as determined by the contracting officer, the contractor must return abroad immediately after home leave to fulfill the additional required continued performance of services for any home leave provided under this contract, or else the contractor must reimburse USAID for the salary and benefits costs of home leave, travel and transportation and any other payments related to home leave.

(iv) Unused home leave is not reimbursable under this contract.

(4) The contracting officer may authorize the contractor to spend no more than five (5) days in work status for consultation at USAID/Washington while on home leave in the U.S., before returning abroad. Consultation in excess of five (5) days or at locations other than USAID/Washington must be approved in advance by the Mission Director or the contracting officer.

(d) *Home Leave for Qualifying Missions.* (1) If the contractor ordinarily qualifies for home leave and has completed a 12-month period at one of the USAID qualifying Missions, as announced by the Department of State or USAID, the contractor is entitled to ten (10) workdays of home leave in addition to the home leave the contractor is normally entitled to in accordance with paragraph (c) of this "Leave and Holidays" clause.

(2) There is no requirement that an eligible contractor take this additional home leave for qualifying Missions; it is for use at the contractor's option. If the contractor is eligible and elects to take such home leave, the contractor must take all ten (10) workdays at one time in the U.S. under the conditions described in paragraphs (c) (5) and (c) (6) of this clause. If the contractor is returning to the U.S. and not returning abroad to the same or different USAID Mission, the contractor is not eligible

for home leave for qualifying Missions, and this paragraph (d) will not apply.

(e) *Holidays and Administrative Leave.* The contractor is entitled to all holidays and administrative leave, including weather and safety leave, granted by USAID to U.S. employees as announced by the Agency or Mission.

(f) *Military Leave.* Military leave of not more than fifteen (15) calendar days in any calendar year may be granted to the contractor who is a reservist of the U.S. Armed Forces, provided that the military leave has been approved, in advance, by the contracting officer or the Mission Director. A copy of contractor's official orders and the contracting officer or Mission Director approval will be part of the contract file.

(g) *Leave Without Pay (LWOP).* The contractor may be granted LWOP only with the written approval of the contracting officer or Mission Director, unless a such leave is requested for family and medical leave purposes under paragraph (i) of this clause.

(h) *Compensatory Time.* USAID may grant compensatory time off only with the written approval of the contracting officer or Mission Director in rare instances when it has been determined absolutely essential and under the

guidelines which apply to USAID direct-hire employees for its use.

(i) *Family and Medical Leave.* (1) USAID provides family and medical leave for eligible USPSCs working within the U.S., or any territories or possession of the U.S., in accordance with Title I of the Family and Medical Leave Act of 1993, as amended (FMLA), and as administered by the Department of Labor under 29 CFR 825. USAID also provides family and medical leave to eligible USPSCs working outside the U.S., or any territories or possession of the U.S., in accordance with this paragraph (i) outside the provisions of Title I of the FMLA as a matter of policy discretion.

(2) Family and medical leave only applies to USPSCs, not any other type of PSC.

(3) In accordance with 29 CFR 825.110, to be eligible for family and medical leave, the contractor must have performed services for --

(i) At least twelve (12) months with USAID; and  
(ii) At least 1,250 hours with USAID during the previous 12-month period.

(4) In accordance with 29 CFR 825.200(a) and USAID policy in ADS 309, an eligible contractor may take up to twelve (12) workweeks of leave under FMLA, Title I, in any

12-month period for the reasons specified in 29 CFR 825.112.

(5) In accordance with 29 CFR part 825.207, the contractor may take LWOP for family and medical leave purposes. However, the contractor may choose to substitute LWOP with accrued annual or sick leave earned under the terms of this contract. If the contractor does not choose to substitute accrued paid leave, the contracting officer, in consultation with the contractor's supervisor, may require the contractor to substitute accrued paid leave for LWOP. The CO must obtain the required certifications for approval of family medical leave in accordance with USAID policy. The contractor must notify the contractor's Supervisor of the intent to substitute paid leave for LWOP prior to the date such paid leave commences. After having invoked the entitlement to family and medical leave and taking LWOP for that purpose, the contractor cannot retroactively substitute paid leave for the LWOP already taken under family and medical leave.

(6) Family medical leave is not authorized for any period beyond the completion date of this contract.

(7) When requesting family medical leave, the contractor must submit the relevant leave request in writing, including certifications and other supporting

documents required by 29 CFR 825 and USAID policy in ADS 309.

(8) The U.S. Department of Labor's (DOL's) Wage and Hour Division (WHD) Publication 1420 explains the FMLA's provisions and provides information concerning procedures for filing complaints for violations of the Act.

(j) *Leave Records.* The contractor must maintain their current leave records and make them available as requested by the Mission Director or the contracting officer.

\* \* \* \* \*

(Authority: Sec. 621, Pub. L. 87-195, 75 Stat. 445, (22 U.S.C. 2381), as amended; E.O. 12163, Sept. 29, 1979, 44 FR 56673; and 3 CFR, 1979 Comp., p. 435.)

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Mark A. Walther

Acting Chief Acquisition Officer

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