



Guidance to Contracting Staff Regarding Business Class Travel for Contractors

An Additional Help for ADS Chapter 302

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Contractor Travel vs. Direct Hire Travel Policy
**GUIDANCE TO CONTRACTING STAFF REGARDING
BUSINESS CLASS TRAVEL FOR CONTRACTORS**

On March 15, 2002, USAID issued a General Policy Notice: “Expanded Business Class Travel Policy” and referenced 6 FAM 147.2-4 Premium-Class Travel Other Than First-Class. This Notice applies ONLY to U.S. direct hire employees (DHs) and personal services contractors (PSCs). At this time it applies only to temporary duty travel (TDY) and NOT to transfer travel (assignment to post) and entitlement travel (rest and recuperation travel, emergency visitation, etc.). Further, the approval authority is at the Mission or Bureau level and is dependent on current funding levels--meaning if the Mission or Bureau doesn't have enough money available for business class, then the Mission can require standard/economy. And, finally, the third paragraph of the New Policy states:

Funds for upgrading to business class accommodations for TDY travel must be accomplished using existing allocations of OE for posts and bureaus. In this regard, consistency and equality must prevail, meaning TDY travel upgrades to business class will not be allowed for some and not others because of funding inadequacies.

How does this new policy for direct hires and PSCs affect contracts?

This new policy does not automatically apply to contracts with commercial organizations (or “institutional contractors”, as we usually refer to them). The purpose of this message is to provide you with advice to help you in managing your dealings with contractors, in the context of the new DH/PSC policy.

As with all issues of interpretation of reasonableness and allowability, the first place we go for guidance is the contract itself. If you are dealing with an existing contract, and the contract contains language in the Schedule (most likely in Section H) that directly addresses the matter of class of airfare travel, then that is what takes precedence--and we hope that whatever it says conforms to the following!

If your contract doesn't have any specific Schedule language, then consider next the contract clauses. The most directly-applicable clause is **AIDAR 752.7002, particularly paragraphs (a) and (b)**:

752.7002 Travel and Transportation (JAN 1990)

- (a) General. The Contractor will be reimbursed for reasonable, allocable and allowable travel and transportation expenses incurred under and for the performance of this contract. **Determination of reasonableness, allocability and allowability will be made by the Contracting Officer based on the applicable cost principles, the Contractor's established policies and procedures, USAID's**

established policies and procedures for USAID direct-hire employees, and the particular needs of the project being implemented by this contract. The following paragraphs provide specific guidance and limitations on particular items of cost.

(b) **International travel.** For travel to and from post of assignment the Contractor shall be reimbursed for travel costs and travel allowances of travelers from place of residence in the United States (or other location provided that the cost of such travel does not exceed the cost of the travel from the employee's residence in the United States) to the post of duty in the Cooperating Country and return to place of residence in the United States (or other location provided that the cost of such travel does not exceed the cost of travel from the post of duty in the Cooperating Country to the employee's residence) upon completion of services by the individual. **Reimbursement for travel will be in accordance with the applicable cost principles and the provisions of this contract, and will be limited to the cost of travel by the most direct and expeditious route.* * *** (emphasis added)

Both paragraphs refer to the “applicable cost principles”. For commercial contractors, these are in FAR 31, and FAR 31.205-46 Travel Costs, is the applicable cost principle (for non-profits and universities, the relevant OMB Circulars referenced in FAR 31 apply AND ARE NOT THE SAME--THE FOLLOWING APPLIES ONLY TO FOR-PROFIT ORGANIZATIONS).

FAR 31.205-46, paragraph (d) states:

"(d) **Airfare costs in excess of the lowest customary standard, coach, or equivalent airfare offered during normal business hours are unallowable except** when such accommodations require circuitous routing, require travel during unreasonable hours, excessively prolong travel, result in increased cost that would offset transportation savings, are not reasonably adequate for the physical or medical needs of the traveler, or are not reasonably available to meet mission requirements. However, in order for airfare costs in excess of the above standard airfare to be allowable, the applicable condition(s) set forth above must be documented and justified."

Following this regulatory trail, we can reasonably conclude that the General Policy Notice on Expanded Business Class Travel for DHs and PSCs does not directly affect the allowability of institutional contractors' air travel.

However, there are some aspects of these regulations (regardless of the new policy) that COs should be considering. First, unless the terms of an existing contract specifically require the CO to approve any contractor travel that exceeds standard economy airfare, then the contractor is responsible for complying with the terms of the contract WITHOUT getting the CO's approval. All the cost principle requires is that the

contractor document and justify the airfare costs in excess of standard rate--nothing in the above paragraph requires the Government's or the contracting officer's approval. Contractors seem to regularly ask COs to provide this approval, which they certainly MAY do but are NOT REQUIRED to do. Maybe auditors have been too zealous in recommending disallowance of these costs, but if the contractor complies with the cost principle's documentation/justification requirement, then the CO can determine--as part of the audit resolution process--that the higher airfare is reasonable. If contractors use business class too often when standard/economy airfare was all that was budgeted, then they are likely to run out of money--a circumstance that will have negative consequences for them in several different ways (potential failure to perform, cost overruns, audit disallowances, unsatisfactory past performance, etc.).

What's more relevant to you now is how you budget and negotiate travel costs for airfare for new contracts or task orders. Contractors are probably already including business class travel up-front in their proposals, or at least asking you if they may/should, and you should be reaching a mutual understanding on how to handle these costs at this pre-award stage that will apply for the life of the contract. Based on the cost principle and its applicability to our contracts, you should negotiate the airfare component of the travel on the basis of standard/economy airfare. IF, as CO, you want to reserve the right to approve any business class travel the contractor may feel is justifiable, include specific language to that effect in the schedule of your contract or task order (we do not intend to include any such language in ProDoc).

However, I personally don't recommend that you do this--it adds to your administrative burden and reduces the contractor's responsibility for and risk in managing the contract. If you agree to a contract/TO budget that reflects a reasonable number of trips and travelers at standard/ economy airfare that is sufficient to meet the requirements of the work needed in the Statement of Work, then why not let it go at that? Allow the contractor to manage the travel funds in accordance with the terms of the contract, including the relevant cost principle. If a situation arises during performance for which the contractor can document and justify using business class and doing so complies with the cost principle--and doesn't result in any increased cost to the contract--then it's their business decision to do so. If you have reason to believe that contractors are not complying with this cost principle, you have the right to question them about it and take steps to have them correct the situation, including disallowing unsupported/unjustified travel costs.

We'll post this to the OP web-site, but we won't be converting it to an AAPD or into the ADS, since there's no new policy here and the regulations that are discussed are already out there. This message is merely guidance to assist the CO in exercising his/her discretion. We'll try to monitor this situation to see if we need to consider other aspects of the situation as it evolves (in other words--let's see what happens). If you have any questions about the above, or if a unique situation arises that you think we should be aware of, please let me know.