

October 19, 2000

MEMORANDUM FOR ALL CONTRACTING OFFICERS, NEGOTIATORS
AND EXECUTIVE OFFICERS

FROM: M/OP, Mark S. Ward, Director

SUBJECT: Revision of Competitive Process - Personal
Services Contracts ("PSCs") with U.S. Citizens

CONTRACT INFORMATION BULLETIN No. 00 - 08

This CIB revises the process for advertising and competing for PSCs with U.S. citizens in Washington and overseas, whether resident or non-resident, short or long-term during the period December 22, 2000 through October 3, 2003. The revision is a result of a settlement agreement stemming from a class action suit against USAID.

Individuals who were members of the class in the suit and who are interested in the opportunity for early consideration as described below shall complete appropriate forms to be furnished to them by M/OP/P. On those forms they will describe their credentials such as education, experience and language capability. Upon timely completion and return of the forms, such individuals will be placed on a list, to be known as the "PSC Availability List," established and maintained in M/OP/P. The list will indicate the names of interested individuals along with their self-described credentials. The list, along with such credentials, will be distributed to all Missions and Bureaus, both in Washington and overseas, having PSC authority.

Under the terms of the settlement agreement, the USAID Office of General Counsel will, by November 2, 2000, notify all class members of their opportunity to be considered under the PSC provisions. Accompanying the notification will be an informational format for their response. By

December 2, 2000, any interested class members must return the forms to M/OP/P to be placed on the "PSC Availability List". M/OP/P must furnish all such information to Mission and Bureau Contracting Officers and others by December 22, 2000.

Beginning on December 22, 2000 and until close of business on October 3, 2003, the following procedures shall apply:

When a requirement for a USPSC arises, Contracting Officers and Negotiators shall ensure that the requiring office in the Mission or Bureau reviews the PSC Availability List and accompanying credentials. Class members will be considered for PSC opportunities in accordance with the following procedure: Before publishing or advertising particular PSC solicitations, (or extending or renewing an incumbent), the Missions and Bureaus are required to review information provided by the interested class members and determine, on the basis of the Agency's needs, which class members, if any, will be further considered. Such class member(s) will be given direct advice of the possible PSC opportunity, accompanied by a full solicitation package (consisting of the procurement specific scope-of-work and other related documents such as standard terms and conditions and statement of PSC benefits). Missions and Bureaus also may contact and otherwise follow-up with such interested class member(s). If, in the Mission's or Bureau's discretionary judgment, a class member would meet Agency needs and would be available at reasonable cost, non-competitive procurement would be approved. The class justification in Attachment 1 must be placed in the contract file by the Contracting Officer. The Agency's needs will be determined, according to the Agency's discretionary judgment, not only on the basis of basic education, training, experience and skills required for the position but also by other relevant factors such as (for illustrative purposes only and not by way of limitation) language ability, incumbency, timing of availability and level of security clearance. Class members will not be limited in obtaining PSC employment through the process set forth in the agreement by the designation of any particular skill code.

If, after reviewing the PSC Availability List and accompanying credentials, the requiring office in the Mission or Bureau determines, in its discretionary

judgment, that none of the candidates meets the Agency's needs as to the particular position, then the Contracting Officer or Negotiator shall request advertisement in accordance with standard USAID policy and regulations. In such latter case, the Contracting Officer or Negotiator shall indicate, as part of the negotiating memorandum, that the PSC Availability List was reviewed by the requiring office and that no candidate was determined to meet Agency needs for the position. In all cases, the requiring office shall complete the form Attachment 2 and forward it to the Contracting Officer or Negotiator.

(PSC positions shall continue to be classified, offered and negotiated within the market value of the position. M/HR approval will continue to be required whenever an internationally recruited USPSC is to be funded from the Operating Expense account. The Contracting Officer or Negotiator shall notify M/OP/P, in writing, each time that someone from the PSC Availability List fills a PSC position. Negotiation Memoranda shall be readily available in the event that further information is necessary.)

Questions regarding this CIB may be sent to M/OP/P. The contact point for that office is:

M/OP/P, Thomas Henson
RRB 7.08-106
Tel: (202) 712-5448
Fax: (202) 216-3136.

Thank you for your cooperation as the Agency implements this new policy.

Attachments:

1. Class Justification
2. PSC Availability List Review Form

Attachment 1

CLASS JUSTIFICATION FOR USE OF OTHER THAN FULL
AND OPEN COMPETITION FOR PERSONAL SERVICES CONTRACTS**I. General**

This document is a class justification for other than full and open competition as authorized by Section 6.303-1(c) of the Federal Acquisition Regulation ("FAR").

This class justification may be used in accordance with its terms by any USAID Contracting Officer acting within the scope of his/her delegated authority, during the period December 22, 2000 through October 3, 2003.

This class justification is applicable to personal service contracts ("PSCs") for performance abroad and in the United States, by U.S. citizens, (whether short or long-term, resident or non-resident) provided the appropriate requirements in Section II of this class justification are followed.

In 1996, a number of Foreign Services employees who had been subject to a Reduction-in-Force ("RIF") of that year, brought a class action suit in the United States District Court for the District of Columbia, alleging age discrimination in the conduct of the RIF. The class ("the Evans class") included about 96 members. After three years of discovery, depositions, and trial, the parties, on January 28, 2000, entered into a Settlement Agreement which involved, among other provisions, an agreement by the Agency to allow early consideration and selection of interested class members for personal services contract opportunities, without full and open competition.

Pursuant to AID Acquisition Regulation ("AIDAR") Section 706.302-70(b), for contracts to be performed overseas and also for those to be performed in the United States, the Administrator has determined that full and open competition need not be obtained in order to select an interested member of the class for

a personal services contract, pursuant to the procedures set forth in the Settlement Agreement. (With respect to certain programs involving PSCs in Washington and overseas, "notwithstanding" authorities also provide a basis for such selection.)

The Settlement Agreement has been approved by the United States District Court for the District of Columbia as required under the Federal Rules of Civil Procedure. As required under the agreement, the procedure which the Agency is required to follow with respect to PSCs is as follows: (1) Class members seeking PSC consideration will furnish the Office of Procurement in Washington relevant information such as education, experience, and language ability; (2) that information will be forwarded to all Missions and Bureaus having PSC contracting authority; (3) during the period, December 22, 2000 through October 3, 2003 before publishing or advertising particular PSC solicitations, or extending or renewing an incumbent, the Missions and Bureaus will review information provided by the interested class members to determine, on the basis of the Agency's needs, which class members, if any, will be further considered; (4) such member(s) will be given direct advice of the possible PSC opportunity, accompanied by a full solicitation package, and Missions and Bureaus also may contact and otherwise follow-up with such interested class member(s), and; (5) whenever, in the Mission's or Bureau's discretionary judgment, a class member would meet Agency needs and would be available at reasonable cost, non-competitive procurement would be approved. It is understood that the Agency's needs will be determined, in the Agency's discretionary judgment, not only by basic education, training, experience and skills required for the position, but also by other relevant factors such as (by way of example only and not by limitation) language ability, incumbency, timing of availability, and level of security clearance.

This class justification may be used to satisfy the provisions of AIDAR Section 706.302-70(c)(2) which requires that justifications pursuant to FAR 6.303 be prepared. It applies only to the procurements specified above.

II. Conditions for Use

- A. Where, in accordance with step (5) above, a Mission or Bureau with authority to enter into a PSC has decided, in its discretionary judgment, to select a member of the Evans class, it shall use this class justification to do so.
- B. When, in its discretion, a Mission or Bureau decides to select a member of the Evans class using this procedure, this class justification must be included in the contract file, together with a written statement, signed by the Contracting Officer, that the contract is being awarded pursuant to AIDAR 706.302-70(b)(1); that the conditions in Section II of this class justification have been met; and that the cost of the contract is reasonable.

III. Effective Date

This class justification is effective for the period December 22, 2000 through October 3, 2003.

Date

Procurement Executive

ATTACHMENT 2

PSC AVAILABILITY LIST REVIEW

By signature below, I affirm that the office of _____ has reviewed the PSC Availability List to determine, on the basis of Agency needs, which class members, if any, should be considered for a personal services contract for services _____. On that basis, we request (either) that you:

- 1) Contact the following class member(s) to explore their interest in the opportunity, giving them direct advice of the possible PSC opportunity, accompanied by full solicitation packages and otherwise follow-up with such member(s)
- 2) Proceed to advertise the position in accordance with usual practices.

SIGNATURE

NAME (PRINTED)

TITLE

DATE