

GAO

Report to the Chairman, Subcommittee
on Federal Services, Post Office and
Civil Service, Committee on
Governmental Affairs, U.S. Senate

September 1991

FOREIGN ASSISTANCE

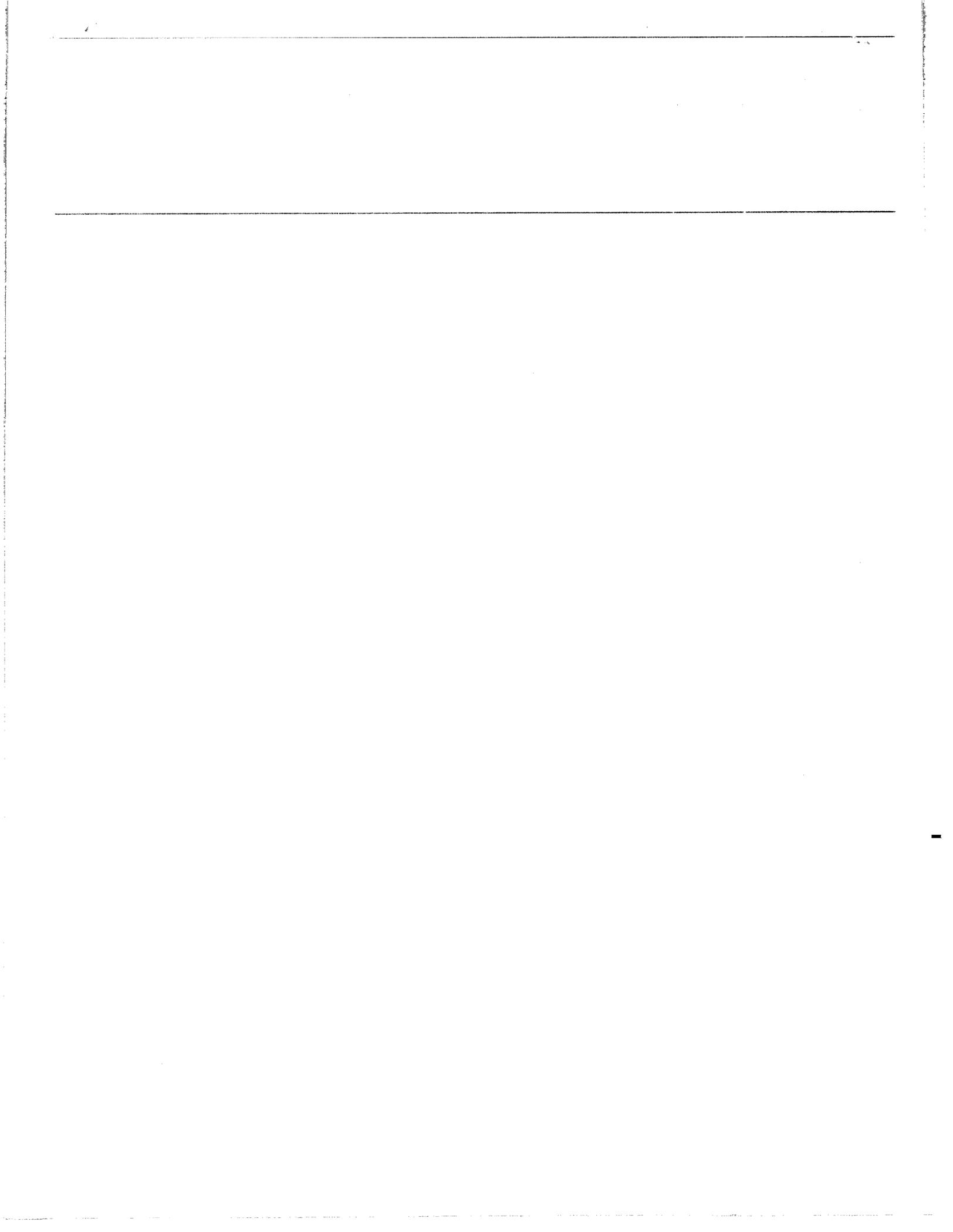
AID's Use of Personal Services Contracts Overseas



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**National Security and
International Affairs Division**

B-244268

September 13, 1991

The Honorable David Pryor
Chairman, Subcommittee on Federal Services,
Post Office and Civil Service
Committee on Governmental Affairs
United States Senate

Dear Mr. Chairman:

This report responds to your request that we examine the Agency for International Development's (AID) use of personal services contractors in carrying out its programs overseas. It contains recommendations to the AID Administrator to improve oversight on the use of these contractors.

Unless you announce its contents earlier, we plan no further distribution of this report until 30 days from the date of this letter. At that time, we will send copies to the Administrator of AID; the Director, Office of Management and Budget; cognizant congressional committees; and other interested parties. We will also furnish copies to others upon request.

Please contact me on (202) 275-5790 if you or your staff have any questions. Other major contributors to this report are listed in appendix II.

Sincerely yours,

Harold J. Johnson
Director, Foreign Economic
Assistance Issues

Executive Summary

Purpose

The Agency for International Development (AID) relies extensively on contracts to carry out U.S. foreign economic assistance programs. These include personal services contracts (PSCs) that are used for some of the day-to-day operations of AID's overseas missions and management of its country and regional programs. In May 1990, the AID Inspector General estimated that the value of all active PSCs was \$243 million.

Concerned that personal services contractors may unduly influence management decision-making, the Chairman of the Subcommittee on Federal Services, Post Office and Civil Service, Senate Committee on Governmental Affairs, requested that GAO review AID's use of PSCs. Specifically, the Chairman requested that GAO determine whether (1) services and functions performed under PSCs are appropriate, (2) AID discloses its use of PSCs in budgetary and consultant services reporting, and (3) AID ensures that personal services contractors do not have conflicts of interest. According to AID, foreign nationals are less likely to perform services related to decision-making. Therefore, GAO limited its review to PSCs awarded to U.S. nationals.

Background

Contracts are personal in nature if agency personnel specify how, when, and where the contractor's work is to be performed and if the agency provides the work space and basic tools and materials to accomplish the work. The Federal Acquisition Regulation defines a PSC as a contract that makes the contractor appear as a government employee by the nature of the relationship that is established. The regulation further states that such contractor personnel should be continuously supervised and controlled by government officials or employees. The supervisory control allows agencies to protect the government's interests by retaining control of and responsibility for that function.

The Federal Acquisition Regulation requires that agencies be specifically authorized by statute to award PSCs. AID is authorized by the Foreign Assistance Act of 1961 to contract with individuals for personal services abroad.

The Federal Acquisition Regulation restricts personal services contractors from performing certain governmental functions. These are broadly defined in the Office of Management and Budget Circulars A-76 and A-120 but are more specifically outlined in AID regulations. The restricted functions include negotiating with foreign entities; entering into any agreement on behalf of the United States; making decisions

involving planning, budgeting, programming, and personnel selection; and supervising AID direct-hire employees who are U.S. citizens.

In conducting its review, GAO examined PSC records and interviewed personal services contractors at AID missions and offices in Guatemala, Honduras, Indonesia, the Ivory Coast, Kenya, and Pakistan.

Results in Brief

AID overseas missions and offices used several hundred U.S. personal services contractors to perform a broad range of mission and project management functions within existing authority and in conformity with AID regulations. These contractors sometimes worked without close or continuous supervision by direct-hire employees and were able to influence AID operations and programs by providing advice and recommendations. GAO's review of PSC files and interviews with contractors and their supervisors disclosed no instances where the contractors performed restricted functions.

Although AID provides contract and consultant services data to the Congress through the annual budget reporting process, AID is not required to and does not separately disclose the number and value of PSCs or the types of services they provide in its congressional budget presentations. In addition, AID guidance does not make clear in what circumstances personal services contractors should be considered consultants. As a result, AID's consultant services reporting was inconsistent and not adequately supported.

Federal regulations do not provide specific conflict-of-interest guidance for personal services contractors, but AID regulations subject them to the same requirements that apply to direct-hire employees. AID's contracting officers are responsible for ensuring that personal services contractors meet these standards and do not have conflicts of interest. However, GAO found that AID officials were generally not aware of this requirement and it was not being enforced.

Principal Findings

Contractors Performed Many Activities but Not Restricted Functions

While AID did not know the exact number, it estimated that about one-half of the approximately 1,100 U.S. contractors employed overseas as of September 30, 1990, were personal services contractors. Personal services contractors provided advice on program policy, assisted missions and host government institutions in financial and management operations, designed and implemented development projects, and provided specialized skills in various program sectors. AID requires that personal services contractors be adequately supervised, though this is not defined. The contractors sometimes performed the same or similar duties as direct-hire employees, and they provided short-term and specialized technical skills not readily available within AID. The contractors influenced the planning and implementation of agency projects and programs and were sometimes not closely supervised, but GAO found that they did not appear to perform restricted functions reserved for AID employees or act outside of AID's control.

PSC Reporting Requirements Are Not Well-Defined

AID does not separately identify the cost and number of PSCs in its budget reporting to the Congress. Therefore, GAO could not readily determine the extent to which AID's overseas offices relied on personal services contractors to help carry out agency programs and mission management functions. Office of Management and Budget officials informed GAO that they had experienced similar difficulty with AID's reporting. GAO found at the overseas offices it visited that personal services contractors were frequently used as an integral part of project management staff and were most often financed from AID's program appropriations.

AID provides information on its use of consulting services pursuant to statutory and regulatory requirements. AID guidance does not make clear when personal services contractors should be considered consultants. GAO found that reporting of PSCs by overseas offices was inconsistent and that AID's reporting of consultant services was not adequately supported. A new information system being developed by AID is expected to provide better documentation for future reporting.

Conflict-Of-Interest Rules Not Enforced for Contractors

AID requires that contracting officers ensure that personal services contractors meet the same standards of conduct and conflict-of-interest requirements that pertain to direct-hire employees. At the overseas offices GAO visited, AID officials generally were not aware of this requirement and contracting officers did not require financial and post-employment disclosures of these contractors, relying instead on voluntary disclosures. Because of the duties that certain contractors performed or the circumstances in which PSCs were awarded, the potential existed for conflicts of interest. However, determining whether any actual conflicts existed was beyond the scope of GAO's work.

Recommendations

GAO recommends that the AID Administrator

- provide guidance on the requirements for supervising personal services contractors,
- separately disclose in AID's budget presentations to the Congress its use of personal services contractors in support of overseas mission management and program activities,
- clarify in what circumstances personal services contractors should be considered consultants, and
- require contracting officers to enforce agency regulations designed to ensure that (1) apparent conflicts of interest involving personal services contractors—including any conflicts on active contracts—are identified and resolved and (2) financial and post-employment disclosures are made.

Agency Comments

AID reviewed a draft of this report and said that it had no comments to make on it. AID said it would address the recommendations and actions planned or taken when this report is issued.

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Abbreviations

AID Agency for International Development
GAO General Accounting Office
PSC personal services contract

Introduction

The Agency for International Development (AID), in carrying out the U.S. foreign economic assistance program, depends heavily on direct contracting with individuals, private firms, and nonprofit institutions for some of the day-to-day operations of its overseas missions and management of country and regional programs. AID did not know the exact number but estimated that approximately one-half of the more than 1,100 U.S. contractors employed overseas on September 30, 1990, were individuals who performed project management and mission support functions through personal services contracts (PSCs). AID also estimated that it employed more than 4,000 foreign service nationals under PSCs. In May 1990, the AID Inspector General estimated that the value of all active PSCs was \$243 million.

What Is a PSC?

The Federal Acquisition Regulation defines a PSC as a contract that makes the contractor appear as a government employee by the nature of the relationship that is established. The regulation further states that such employer-employee relationships occur when contractor personnel are continuously supervised and controlled by government officials or employees. The supervisory control allows agencies to protect the government's interests by retaining the control of and responsibility for governmental functions. Agencies are not permitted to award PSCs unless they are specifically authorized by statute. AID is authorized by section 636(a)(3) of the Foreign Assistance Act of 1961, as amended, to contract with individuals for personal services abroad.

AID's PSC Policies

Regulations describing the agency's contracts with U.S. citizens or U.S. resident aliens for personal services abroad are contained in AID Handbook 14, appendix D. The regulations permit PSCs to be used for general continuing services as well as for specifically identifiable tasks, provided that they be used only when adequate supervision is available. The regulations state that PSCs may be

- used for governmental functions, with certain exceptions, (discussed in ch. 2) and
- financed with either program or operating expense funds, depending on the nature of tasks involved (discussed in ch. 3).

The AID regulations assign contracting officers the principal responsibility for administering PSCs. The regulations provide that, in executing a PSC, the contracting officer is responsible for ensuring that

- the scope of work does not require performance of any function normally reserved for direct-hire employees,
- the contractors do not have apparent conflicts of interest (discussed in ch. 4), and
- the selection of contractors is documented and justified.

With regard to contractor selection procedures, PSCs are exempt from competition and documentation requirements under certain conditions. The Federal Property and Administrative Services Act of 1949, as amended, provides that the requirement for full and open competition may be waived when foreign aid programs would be impaired. In January 1987, pursuant to this authority, the AID Procurement Executive determined that the number of contract actions involved in preparing individual exceptions to full and open competition for PSCs represented a significant administrative burden and approved an exception for PSCs. Contracting officers are permitted to enter into PSCs provided that (1) offers are requested from as many potential offerors as practicable and (2) the position is either adequately publicized or at least three candidates are considered from source lists.

Extent of AID's Use of Personal Services Contracting

AID defines its work force as comprising those individuals with whom the agency has an employer-employee relationship, whether through direct hire or by contract. Although AID uses PSCs for program and mission support functions, personal services contractors have not been included in AID's work-force reporting.¹ As a result, AID does not have accurate data on PSCs. AID collects contract and contractor data through various field reports, but overseas missions and offices are not required to submit detailed data on PSCs, such as the value of all active PSCs or the extent to which personal services contractors are used.

Although AID does not have accurate data on PSCs, some data is available that shows AID's use of PSCs is extensive. AID's contract reporting system showed that as of January 1, 1991, 297 of 900 (33 percent) active contracts awarded overseas for amounts in excess of \$25,000 were for personal services, or PSCs.² In its fiscal year 1992 annual budget submission, AID estimated that of a total work force of about 9,300 persons in fiscal year 1990 with whom it had an "employer-employee" relationship, 570

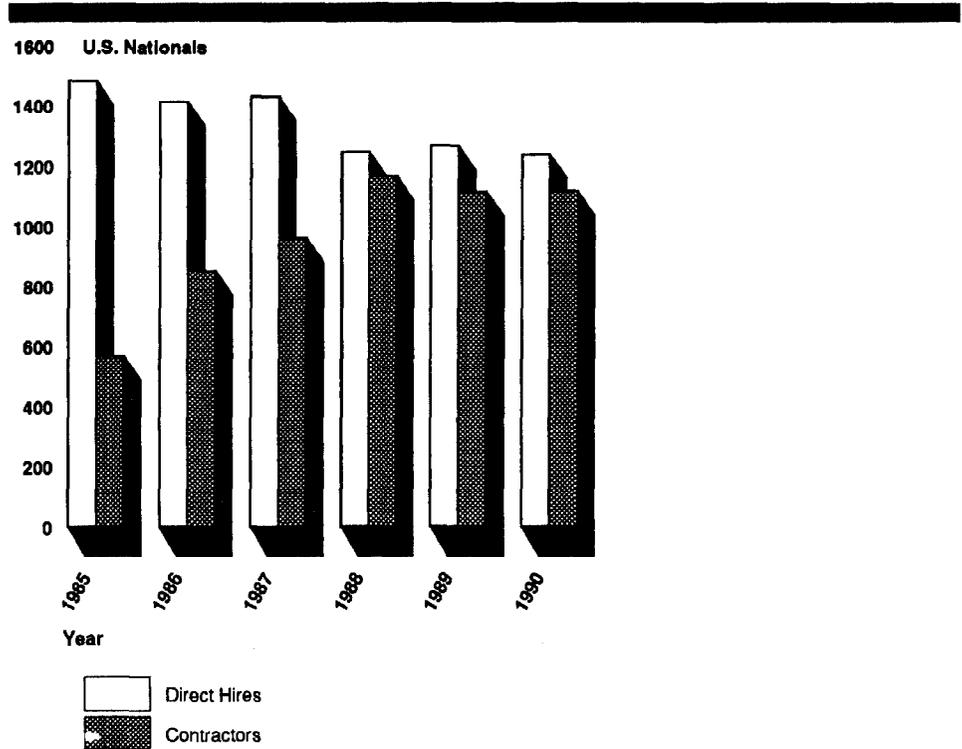
¹An AID work force planning group recommended that personal services contractors be included in AID's personnel and budget reporting requirements (*Workforce Planning in AID*, Feb. 8, 1991).

²AID's contract reporting system does not separately break out PSCs with U.S. and foreign national personal services contractors.

(6 percent) were U.S. personal services contractors and 4,200 (45 percent) were foreign national personal services contractors.

In recent years, AID has relied increasingly on U.S. contractors (personal services and others) to assist in carrying out its programs and mission support functions. AID personnel data shows that the agency employed approximately twice the number of such U.S. contractors overseas at the end of fiscal year 1990 (1,114) than it did at the end of fiscal year 1985 (569). Over the same period, the number of U.S. direct-hire employees reported overseas declined from 1,481 to 1,238, or by 16 percent. (See fig. 1.1.)

Figure 1.1: U.S. Nationals Employed by AID Overseas, 1985-1990



Note: Figures for each year are as of September 30.

The proportion of U.S. contractors (personal services and others) overseas financed out of agency program appropriations versus operating expense appropriations (used for mission support functions) increased dramatically during the same period. According to AID personnel data, the number of program-funded U.S. contractors who were identified

with particular projects nearly quadrupled (from 217 to 849) between fiscal years 1985 and 1990. Those funded from operating expense appropriations declined by about one-third (from 352 to 248). In addition, a relatively small number of contractors were paid with local currency trust funds. (See table 1.1.)

Table 1.1: AID Funding Category Used for U.S. Contractors Overseas

Fiscal year ^a	Number of contractors				Percentage of funding			
	OE ^b	Program	Trust	Total	OE ^b	Program	Trust	Total
1985	352	217	0	569	62	38	0	100
1986	259	583	8	850	30	69	1	100
1987	285	657	18	960	30	68	2	100
1988	250	905	12	1,167	21	78	1	100
1989	268	832	13	1,113	24	75	1	100
1990	248	849	17	1,114	22	76	2	100

^aAs of September 30.

^bOperating expense.

AID's Rationale for Using PSCs

AID's general policy for recruiting personnel to carry out its programs in developing countries (as described in AID Handbook 1B) is to give preference whenever possible to contracting with nongovernmental organizations or persons rather than mobilizing and maintaining a direct-hire staff. However, it recognizes that legal and policy considerations require that certain functions be performed by direct-hire employees.

AID does not have a staffing plan for recruiting personal services contractors for overseas operations. The decision to use PSCs for specific functions is left to the discretion of individual mission directors based on their assessment of resources needed to administer a given assistance program portfolio. AID officials told us that they consider PSCs to be more economical and flexible than contracts with organizations because PSCs do not include profit and overhead, and the contractor's activities are directly supervised by AID staff. Personal services contractors can also be mobilized and terminated more quickly than direct hires or other contractors.

AID's increased reliance on contractors overseas, especially the use of PSCs, appears to be due in part to reductions imposed in the agency's personnel work-year authorizations and operating budgets. The Office

of Management and Budget has limited the number of full-time equivalent work years that AID is permitted to use during a given fiscal year. Over the last 6 years, AID's work-year equivalents declined from 4,691 in fiscal year 1985 to 4,305 in fiscal year 1990.

Personal services contractors (and other contractors) are not counted against the number of full-time equivalent work years—even if they perform similar functions as direct hires. In addition, personal services contractors may be financed with program funds if their services are used in support of specific projects, whereas all direct hires must be paid out of the operating expense appropriation. In addressing how AID accomplishes its work, an in-house personnel task force found a clear and steady trend toward the use of non-direct-hire staff and noted in a June 1989 report that the trend was a “necessary and appropriate response to AID's limitation on ceiling and operating expenses.”³

Related Audits

AID's use of and reporting on personal services contractors have been addressed in previous GAO and agency audits. In 1976, our office pointed out that AID used personal services contracts to help carry out its management functions, that the number and dollar value of such contracts could not be readily identified, and that improved agency contract procedures were needed.⁴ In 1979, we reported that AID's overseas missions did not fully disclose their use of personal services contractors and that they appeared to use PSC arrangements to fill positions subject to direct-hire ceilings. We commented that the AID Auditor General had also reported that overseas direct hires were supplemented by personal services contractors and that direct-hire ceilings would remain ineffective as long as missions have unlimited access to PSCs.⁵

In May 1990, the AID Inspector General reported on personal services contracting at overseas missions.⁶ The report focused on policy compliance issues at missions in Costa Rica, Egypt, the Ivory Coast, and Zaire. It disclosed problems with internal controls used to monitor competitive

³Report of the Task Force on Personnel, AID (June 15, 1989).

⁴Improvements And New Legislation Needed In AID's Contracting For Consultants And Advisors (ID-76-82, Dec. 27, 1976).

⁵Efforts To Improve Management Of U.S. Foreign Aid—Changes Made And Changes Needed (ID-79-14, Mar. 29, 1979).

⁶Audit of Personal Services Contracting at Overseas Missions (Audit Report No. 9-000-90-003, May 23, 1990).

hiring practices and with agency procedures used to establish contractor salaries. The report also noted that the number and dollar value of active PSCs were not available at AID headquarters. However, it estimated that active PSCs amounted to \$243 million.

AID officials said they were aware that better contractor data was needed. During mid-1989, AID conducted a preliminary analysis comparing staffing to program allocations and support costs to explore ways of meeting expanding program management requirements with limited staff and an increasingly constrained operating expense budget. Among other things, the analysis highlighted a lack of information on the size, composition, and functions of AID's non-direct-hire work force.

Objectives, Scope, and Methodology

The Chairman of the Subcommittee on Federal Services, Post Office and Civil Service, Senate Committee on Governmental Affairs, was concerned that personal services contractors may unduly influence management decision-making and that AID may be underreporting its use of contract services. Accordingly, he requested that we determine whether (1) services and functions performed under PSCs are appropriate, (2) AID discloses its use of PSCs in budgetary and consultant services reporting, and (3) AID ensures that personal services contractors do not have conflicts of interest. According to AID officials, PSCs awarded to foreign nationals are less likely to require the type of services that may involve them in AID decision-making. Therefore, we limited our review to those awarded to U.S. nationals.

We examined the legislation and its history that authorizes AID to use personal services contractors and AID's implementing instructions. We also examined the applicable rules and regulations that (1) limit the functions personal services contractors may perform and (2) set out the standards of conduct that apply to these contractors. Further, we interviewed AID officials in Washington, D.C., and at certain offices overseas. Our overseas work was performed at five AID missions (Guatemala, Honduras, Indonesia, Kenya, and Pakistan); the Regional Office of Central America Programs (Guatemala); the Regional Economic Development Services Offices for West and Central Africa (Ivory Coast) and East and Southern Africa (Kenya); and the Regional Housing and Urban Development Offices in the Ivory Coast and Kenya.

At the overseas locations, we reviewed all active PSCs with U.S. citizens or U.S. resident aliens in professional and technical positions and other selected contracts. We examined the statements of work and related

requirements provisions of 130 PSCs⁷ and, for comparison purposes, five individual non-personal (technical) services contracts with U.S. nationals. We interviewed 73 of these contractors and 31 of their supervisors to determine how the contractors were used and to assess whether AID ensured that personal services contractors do not have conflicts of interest. Our interviews focused on the contractor's actual responsibilities, past employment, and conduct in carrying out assigned tasks; the contractor and supervisor's working relationship; and the extent of administrative and logistic support provided by AID. In situations where we noted a potential conflict of interest, we made additional inquiries with the contractor and cognizant AID officials. However, within the scope of this review, we did not independently verify the contractor's personal situation to determine whether actual conflicts existed.

We conducted our review from May 1990 through May 1991 in accordance with generally accepted government auditing standards. AID reviewed a draft of this report and stated that it had no comments on it. AID said it would address the recommendations and actions planned or taken when this report is issued (see app. I).

⁷This represented about 20 percent of the estimated number of PSCs with U.S. citizens or resident aliens. Our observations apply only to the missions and offices visited and these particular PSCs.

Personal Services Contractors Perform Diversified Functions Under Broad Authority

AID uses personal services contractors for a wide range of activities in support of overseas operations and programs. The Foreign Assistance Act of 1961, as amended, does not restrict the nature of services that may be performed under PSCs. Nevertheless, AID has adopted regulations that (1) restrict the functions these contractors may perform and (2) require them to be adequately supervised. The restricted functions conform with federal regulations that prohibit agencies from using personal services contractors to perform functions that are government employees' responsibilities. However, AID's regulations do not define what level of supervision is adequate to ensure that PSCs are subject to relatively continuous supervision and control of a government official as required by the Federal Acquisition Regulation.

We found that personal services contractors often performed the same or similar duties as direct-hire employees, provided added skills, and influenced AID operations, but did not perform functions restricted by AID. The contractors were not always closely or continuously supervised, but we found no evidence that they acted outside AID's policy framework. Former AID employees were awarded PSCs, and some served in key positions at AID missions. While data was not available on the extent to which this practice occurred, it is not prohibited by AID or federal regulations. Also, PSCs awarded on the basis of less than full and open competition were sometimes extended for periods of several years through negotiations with the contractor, again a practice not prohibited.

AID Restricts Functions of Personal Services Contractors

AID Handbook 14, appendix D, addresses the use of U.S. personal services contractors. According to the handbook, a contract is personal in nature if agency personnel specify how, when, and where the contractor's work is to be performed, and if the agency provides the work space and basic tools and materials to accomplish the work. It also states that contractors may perform governmental functions when adequate supervision is available, except for certain specific functions usually reserved for direct-hire employees. The guidance spells out the restricted functions of personal services contractors, but does not explain what is meant by "adequate supervision." A personal services contractor may not

- negotiate on behalf of the United States with foreign governments and public international organizations;
- enter into any agreement, such as a loan, grant, or contract, on behalf of the United States;

- make decisions involving governmental functions, such as planning, budgeting, programming, and personnel selection; or
- supervise AID direct-hire employees who are U.S. citizens.

However, personal services contractors are permitted to negotiate on behalf of the United States with private individuals and entities. They may also make recommendations involving governmental functions, as long as the final decision-making authority is reserved for AID direct-hire employees.

The restricted functions, while not statutorily addressed, are in accord with the Federal Acquisition Regulation, which prohibits the award of PSCs for performance of certain governmental functions. Restrictions are broadly defined in policy statements that regulate contract commercial activities and advisory and assistance services (Office of Management and Budget Circulars A-76 and A-120, respectively). Circular A-76 defines governmental functions as those that require either the exercise of discretion in applying government authority or the use of value judgment in making decisions for the government. Circular A-120 does not use the term “governmental function,” but prohibits contracting for work of a policy, decision-making, or managerial nature that is the direct responsibility of agency officials.

Contractors Performed Same or Similar Duties as Direct Hires

Overseas offices often staffed some management and administrative positions—project development officers, project managers, Food for Peace officers, economists, financial advisers, and clerks—with personal services contractors. AID officials at the missions we visited said they hired the contractors to offset the loss of direct-hire employees forced by reductions in authorized staff levels that were not accompanied by a corresponding reduction in program responsibilities.

In Guatemala, for example, a personal services contractor served as the mission’s Food for Peace officer. The Food for Peace program contractor performed the same functions required for direct-hire officer positions, including advising the mission head on matters concerning Food for Peace legislation and helping to determine which programs under the legislation would advance U.S. assistance objectives. According to the contractor, the position is best served by a direct-hire employee because of the program’s close ties to other developmental activities but was filled on a project-funded PSC basis because of a shortage of experienced Food for Peace officers and operating expense funds.

In Honduras, an AID senior financial manager was rehired under a PSC immediately upon his retirement to perform essentially the same duties he had as a direct-hire employee. The substitution of a contractor in that position permitted AID to shift the personnel slot to meet another staffing need with a direct-hire employee.

While a direct-hire employee in either position may have been more desirable or effective, AID regulations do not prohibit the use of personal services contractors in either situation.

Contractors Influenced Agency Operations

Personal services contractors influenced AID operations through their advice and recommendations, but they appeared to do so without performing restricted governmental functions. Various programming and management actions were taken as a result of their efforts. These efforts included aiding in the development of new program strategies and project initiatives, assisting in personnel mobilization and project monitoring, proposing changes in project implementation, holding workshops to address specific issues, and recommending reprogramming of funds.

- A personal services contractor at the Ivory Coast mission recommended that AID reprogram \$98,000 in project funds to finance construction of an oral rehydration therapy demonstration unit in a hospital in Abidjan. The contractor made the recommendation in an action memo for his supervisor's signature, and the reprogramming was approved.
- A PSC program assistant at the Ivory Coast Regional Housing and Urban Development Office recommended that the income eligibility criterion be relaxed for an AID project designed to sell land plots to low-income people. The director of the office relaxed the income criterion based on the program assistant's detailed analysis.
- A personal services contractor who held a senior program management position in Guatemala had responsibilities that included providing overall management assistance, leadership, and support for seven projects. He assisted in preparing bidding and contract documents, action memoranda, implementation letters, and requests for proposals. He also provided guidance on ways to integrate participating U.S. government agencies into projects and served as a clearinghouse for these agencies.

Mission officials told us that they frequently sought and relied on the contractors' judgments but made the final decisions themselves. We found that some contractors had wide latitude in how they carried out

their functions—working independently at remote locations, receiving logistic support from the host government, and not reporting directly to AID officials. However, all the contractors we interviewed told us that they acted within the parameters set by their supervisors or other AID officials. We found no evidence that the contractors negotiated with foreign governments or entered into agreements on behalf of the United States, made final agency decisions regarding the expenditure of public funds, or supervised U.S. direct-hire staff.

Contractors Provided Specialized Skills

AID's use of PSCs increased its access to specialized skills and expertise not otherwise available. Mission officials told us that personal services contractors usually brought a fresh perspective to agency work because they often had more diversified experience and more recent academic study than direct-hire employees. To hire and retain contractors with exceptional capability, experience, or technical competence, the missions we visited used noncompetitive or limited competition procedures available for this purpose.

For example, in Guatemala, two personal services contractors were hired under limited competition procedures as regional advisers to AID, host government, and international research and development agencies in natural resources and environmental management. One was formerly a U.S. Ambassador and Director of the Peace Corps. The other was a highly regarded forestry and natural resources expert who was serving under successive long-term PSCs. This contractor's supervisor and the contracting officer told us that AID did not have direct-hire employees on its staff with the personal services contractor's technical skills, and the memorandum of negotiation stated that the contractor was "absolutely indispensable."

In Kenya, personal services contractors were hired as advisers in urban development and agricultural policy because the needed skills were not available in AID's direct-hire work force, according to AID mission officials. Contractors also were hired for short periods (26 and 102 work-days) for rural development projects in the Ivory Coast that would not justify the hiring of a direct-hire employee.

Contractors Were Not Always Closely Supervised

Although AID guidance does not define what is meant by “adequate supervision,” the Federal Acquisition Regulation states that personal services contractors should be subject to relatively continuous supervision and control of direct-hire agency employees. Some personal services contractors were not as directly and continuously supervised as the use of this form of contracting suggests.

We found no specific evidence that these contractors acted outside AID’s policy framework. But without adequate agency supervision, the potential exists for personal services contractors to unduly influence AID management decisions and policies. We identified several personal services contractors who (1) worked principally at and were supported by host government ministry offices, (2) were physically far removed from their designated supervisor, and (3) either did not report directly to AID officials or had incidental contact with them.

- PSC advisers on population and the private sector in Indonesia worked independently at host country government offices and under Indonesian officials’ direction. The contractors and their AID supervisors told us that they maintained little or no communication.
- In Pakistan, a PSC adviser on energy issues worked in a Pakistan government ministry office and was primarily responsible to its head. Although the contractor met with his AID supervisor to provide information on ministry activities, the supervisor told us that he had not seen the contractor’s statement of work and did not monitor the contractor’s performance.
- A PSC project liaison for a regional development bank was physically located at the bank and worked daily with the bank’s financial manager in Honduras. Coordination, supervision, and contract administration activity were carried out primarily through phone contact with AID officials in Guatemala.
- A PSC policy adviser to the Honduran government on export and trade matters was a former State Department commercial officer. He was accountable to AID under terms of a project agreement but worked predominantly at Honduran ministry offices and received logistics support from both AID and the Honduran government. He provided independent counsel to both AID and Honduran officials within a broad U.S. policy framework.

Mission officials in Kenya told us that AID’s increased reliance on personal services contractors, who were generally less familiar than direct hires with agency regulations and procedures, had stretched supervisory controls of direct-hire managers to the limit. Other AID officials

acknowledged that the PSC format may have been used in some instances when it was not appropriate in order to facilitate ease of contracting or to provide a contractor with logistic support. Under these circumstances, we question whether direct-hire supervisors were able to effectively supervise and monitor their performance.

Supervisory controls were not defined in some respects. While PSC statements of work described the duties the contractors were to perform and identified the AID position or name of the person to whom the contractors were responsible, they did not specify the restricted contractor functions listed in AID Handbook 14, nor did the contract files indicate that the restrictions had been discussed with the contractors. Limitations on the contractors' signature authority also were not addressed in the contracts, but contractors told us that they submitted all correspondence of a policy or decision-making nature that they prepared to their supervisors for signature. Finally, the PSCs did not provide for expectation levels or measurement of contractor performance, and AID employees were sometimes asked to supervise personal services contractors who were more experienced than themselves.

Former AID Employees Were Used in Key Positions

Data was not available on the extent to which overseas offices used former AID employees as personal services contractors, but we found that in some instances they occupied key and responsible positions within the missions. At the AID mission in Guatemala, for example, 4 of the 14 contractors on board at the time of our visit were former senior AID officials. All were contacted and hired by AID on the basis of other than full and open competition and at the existing maximum allowable salary. As contract hires, they also received retirement pay without being subject to federal dual compensation laws. Their salaries were negotiated on the basis of the position's perceived market value and the individual's salary history.

- A former deputy mission director and senior program adviser served as a program specialist to design projects, guide project managers in their implementation, and develop and execute negotiating strategies for mission projects with the Guatemalan government and local private voluntary organizations.
- A former senior foreign service officer was hired to work under direction of the deputy director to assist mission officers with program planning and project implementation work. According to the request for procurement action, the hiring was justified "because of the tightness of [U.S. direct-hire] ceilings."

- A former AID controller served as a senior financial adviser reporting directly to the mission controller. Using Treasury certifying authority, he also served as the acting controller for over 3 months in 1990 during a transition period caused by the early retirement of the former controller and turnover of other senior staff.
- A former associate mission director served as a program manager for the administration of justice projects, with policy advisory and liaison responsibilities to mission and embassy staff on proposed strategies for working with the Guatemalan judiciary.

Contract Services Were Not Limited in Length

AID Handbook 14, appendix D, does not specifically limit the length of time that PSCs or individuals serving under them may be used to accomplish particular functions. It states only that such contract services may include general continuing services and specifically identifiable tasks and permits program and operating expense funds to be obligated for periods up to 5 and 2 years, respectively. Personal services contractors who served for an extended period of time told us that despite receiving fewer benefits than direct-hire employees, they preferred the control that they had over their work location and the relative freedom they enjoyed from bureaucracy.

We found that the length of PSCs or tenure of incumbent contractors was decided by managers and contracting officials on a case-by-case basis depending on the need for such services and subject to availability of funds. Contracts were frequently awarded on the basis of less than full and open competition and extended without competition for different periods through negotiation with the contractor. The length of the contractors' service varied greatly, most frequently being from 1 to 3 years duration but ranging from as short as several months to as long as more than 10 years. Thus, in some instances, personal services contractors provided institutional memory for the organization.

For example, we found that two personal services contractors served in Guatemala under successive contracts covering periods of 13 and 6 years, respectively. The first of these contractors was awarded two contracts collectively valued at \$1.6 million. The other contractor, a local U.S. resident not entitled to certain benefits accorded to contractors hired in the United States, had his annual salary raised from \$46,000 to \$68,000 at the time of contract renewal in 1985 following an initiative by the regional director.

Conclusions

AID used personal services contractors for a broad range of functions to supplement its direct hires in carrying out overseas operations and programs. AID's authorizing legislation does not restrict the nature of services that these contractors may perform, but AID has developed guidance based on the Federal Acquisition Regulation that prohibits them from performing certain governmental functions. AID also requires that they be adequately supervised, although it has not defined what is meant by adequate supervision.

AID's personal services contractors often performed the same or similar duties as direct-hire employees and, in some instances, were used interchangeably. Sometimes personal services contractors were used because they possessed skills not readily available within AID. They also frequently influenced or were in a position to influence AID operations and policy decisions. Although we found no evidence that personal services contractors acted outside AID's policy framework, some personal services contractors were not as directly and continuously supervised as the use of this form of contracting suggests. In addition, sometimes PSCs were awarded to former AID employees on the basis of the contracting authority waiver for less than full and open competition or were extended without competition for periods of several years; however, we found nothing in AID's regulations that prohibited these practices.

Recommendation

To help ensure that personal services contractors do not perform prohibited activities and are subject to adequate supervision and control of direct-hire employees, we recommend that the AID Administrator provide guidance on the requirements for supervising personal services contractors.

AID Reporting Requirements for Personal Services Contractors Are Not Well-Defined

AID provides contract services data to the Congress through the annual budget reporting process but is not required to and does not separately report the cost and number of personal services contractors. PSC costs are combined with other contract services and included in either the operating expense or, in most cases, program appropriation accounts that make up AID's budget requests. Contract costs, including PSCs, are not distinguishable from other costs. Therefore, from the cost data presented, the extent that personal services contractors are used in support of overseas mission management or program activities cannot be determined. In addition, AID's reporting of PSCs as consulting services has been inconsistent and has lacked supporting documentation.

Basis for AID's Funding of Direct Hires and Contractors

Congress established AID's operating expense appropriation account in 1976 to segregate the agency's "cost of doing business" from program assistance. It did so as a means of providing better accountability and oversight over the funds needed to administer program activities but did not specify in detail the costs that should be charged to operating expenses. In 1979, the Senate Committee on Appropriations addressed this matter further by stating that congressional requirements dictated the following be charged to operating expenses:

- activities that primarily served the needs of the agency,
- all costs not specifically related to identified projects, and
- all personnel and related travel and transportation of non-reimbursable full-time employees in permanent positions.¹

The Committee did not specifically address whether, or under what circumstances, the cost of furnishing services by other than full-time direct-hire personnel, such as personal services contractors, should be financed from the agency's operating expenses or program appropriations.

In the absence of specific congressional funding guidance for non-direct hires, AID finances personal services contractors performing project-related functions from program appropriations. Applying the Senate Appropriations Committee's criteria, AID's General Counsel has concluded that funding of personal services contractors may be subject to a different standard than direct hires and that the primary service benefit to AID should determine the type of funding. According to the AID General Counsel, this is permissible even if the contractors and direct-hire

¹S. Rept. 96-358, p. 101 (Oct. 4, 1979).

employees perform similar functions related specifically and directly to particular projects.

AID Handbook 19, chapter 11, states that operating expenses shall be used for all direct-hire personnel regardless of the functions performed and for the costs of contractor personnel who are engaged primarily in agency management and support functions. However, the costs of contractor personnel engaged in project or program implementation—including feasibility studies, project design, and evaluation—constitute project costs and should be funded from program appropriations. Thus, salary and travel costs of technical specialists who are assigned to specific projects and whose primary function is project implementation would be required to be financed out of operating expenses if they are direct-hire employees, but may be financed out of program funds if they are contractors.

In March 1989, AID's Regional Inspector General in Honduras advised AID's General Counsel that AID was vulnerable to criticism that it supplemented its operating expense appropriation when it used program funds to pay personal services contractors whose scope of work was determined unilaterally by AID and who reported to AID supervisors, worked in AID offices, and performed duties similar to those of direct-hire employees. The General Counsel acknowledged that because of the complexity of AID's programs overseas and the variety of contexts in which personal services contractors operate, the prevailing funding practice for PSCs could benefit from clearer guidance. However, he concluded that existing AID guidance was consistent with applicable legislation.

PSCs Are Mostly Financed With Program Funds

At the AID overseas offices we visited, program funds were used to finance most PSCs. For example, in Indonesia and Pakistan, we found that 47 of 60 (78 percent) PSCs were financed with program funds. In Guatemala and Honduras, 27 of 45 (60 percent) PSCs were paid with program funds. AID officials in the Ivory Coast and Kenya reported a combined \$1.7 million annual cost of program-funded PSCs, which was three times the amount for PSCs funded as operating expenses. Our review of PSC files showed that program funds were used to finance personal services contractors performing operational or broad managerial functions.

- In Indonesia, operating expense funds were used to finance contractors who primarily benefited the AID mission; however, several contractors who provided overall economic, contracting, and project management assistance to the mission were financed with program funds.

- In Pakistan, program funds for project design and implementation were used to augment the mission's operating expense budget by providing financing for contractors performing operational functions in support of more than one project. PSC positions financed out of this fund included a contracting adviser, commodities procurement adviser, and assistant program manager.
- In Honduras, personal services contractors who worked on multiple projects were financed with program funds. They included a senior agricultural economist and a project development specialist who provided general support on various projects. The contractors told us that they performed essentially the same duties as AID employees in similar positions and they viewed themselves as technicians who were augmenting the mission's direct-hire staff.

In addition, AID officials in the Ivory Coast told us that they converted some operating-expense-funded positions to program-funded PSCs because adequate operating funds were not available. Personal services contractors were hired to perform the work associated with the direct-hire positions. In Pakistan, several direct-hire positions were converted to PSC positions because of insufficient direct-hire staffing levels, and a program-funded personal services contractor was hired to manage a complex commodity import program because of restrictive direct-hire personnel ceilings.

AID officials stated that the overseas missions cannot fully discharge their responsibilities within the existing direct-hire position ceilings. Consequently, because contractors do not count against personnel ceilings, the officials acknowledged also using program-funded personal services contractors to fill some permanent personnel needs when it was not possible to obtain an increase in the number of direct-hire positions to meet new workload demands. Mission officials told us that they viewed personal services contractors as an indispensable part of their management teams.

Consultant Services Reporting Lacks Support and Consistency

AID is required by the Money and Finance Act of 1982 (31 U.S.C. 1114) to include funding information on consulting services in its annual budget justifications to congressional appropriations committees. The law also requires that the AID Inspector General or a comparable agency official submit an annual evaluation of the agency's reporting controls regarding these services.

Office of Management and Budget Circular A-120 establishes guidance for executive branch agencies to report contract advisory and assistance services (formerly termed “consulting services”). A January 1988 revision to this circular, implemented in Federal Acquisition Regulation 37.2, expanded the definition of consulting services to include such services as management and technical support, special studies, analyses, and evaluations.

Contracts for personal services are subject to these reporting requirements. Under Circular A-120, PSCs should be reported as advisory and assistance services if they support or improve agency policy development, decision-making, management, and administration, or the operation of management systems. Further, such contracts are to be reported if the contract services directly benefit the agency or a third party—such as a host country institution—when the services are acquired to accomplish the program objectives of the agency.

AID amended its guidance for consulting/advisory and assistance services in November 1990 to bring it into conformity with the current Federal Acquisition Regulation and Circular A-120. The new AID guidance continues to make the contracting officer responsible for determining whether requested contract services are the type that would be subject to the regulatory requirements. However, the guidance does not address the circumstances under which personal services contractors should be reported.

AID Reporting of Consulting Services

In its fiscal year 1991 budget request to the Congress, AID provided information on the use of consulting services for fiscal years 1989 through 1991. Consulting services were reported as widely used for both agency management and program components. The cost of these services reported in this request for fiscal years 1989 and 1990 (\$43.2 million and \$45 million, respectively) represented about a 10-fold increase over the prior year’s estimate for these same years. The increase was attributed to the revised and expanded definition of consulting services.

In March 1990, the AID Inspector General reported to the Chairmen of the House and Senate Appropriation Committees that because of problems in applying the new definition of consulting services, AID had understated its use of these services. The Inspector General stated that AID’s fiscal year 1991 estimate of \$46.8 million and prior estimates were not supported by detailed documentation. He noted that improved documentation was necessary to support the budget justification information

submitted to the Congress and that better management controls were needed over the evaluation and reporting of AID's use of consulting services. Also noting that AID's guidance was outdated and that many contracting officers in the field were incorrectly classifying and reporting contracts, he said that a new information system was being developed that should enable future reporting to the Congress to be fully supported.

At the overseas offices we visited, few PSCs were being reported as consultant services. Most personal services contractors provided services benefiting the host country that AID did not consider to be consulting services until the revision of the Circular A-120 definition. We also found inconsistencies among missions. For instance, AID missions in Indonesia and Pakistan reported that 4 of the 36 contractors we interviewed were consultants, but personal service contractors serving as financial officers were reported differently. The Indonesia mission reported that its officer was a consultant, whereas Pakistan did not.

Contracting officers we interviewed in Guatemala and Honduras told us that none of the PSCs they had signed were reported as consulting services. However, we found that some older but active PSCs were designated as consultant services contracts. In addition, some of the personal services contractors we interviewed told us that they acted in the capacity as independent consultants, albeit under a broad AID policy framework.

Office of Management and Budget officials told us that they had experienced difficulty obtaining information from AID on the cost and the extent of its use of contractors, including those who were performing personal or consultant services. They acknowledged that some definitional problems had added to the confusion in current budget reporting, but they expressed the need for clearer and more detailed presentations of AID's use of contractor services, including PSCs.

Conclusions

The cost and number of PSCs that are charged to projects or to operating expenses are not separately identified in AID's budget submissions. In view of AID's increased use of personal services contractors and the influential role they have in supporting the agency's overseas management and program operations, more detailed reporting of this element would facilitate congressional oversight of their use.

AID guidance does not make clear in what circumstances personal services contractors should be considered consultants. As a result, mission reporting of PSCs as consultant services was inconsistent, and AID's congressional reporting of consulting services was not adequately supported.

Recommendations

We recommend that the AID Administrator

- separately disclose in AID's budget presentations to the Congress its use of personal services contractors in support of overseas mission management and program activities and
- clarify in what circumstances personal services contractors should be considered consultants.

Conflict-Of-Interest Rules Were Not Enforced for Personal Services Contractors

Federal conflict-of-interest laws and policies do not specifically provide guidance for personal services contractors. Persons who are employed under contract and perform their work under the supervision and control of government employees, such as personal services contractors, are subject to many of the laws and regulations that relate to federal officers and employees. AID requires that its personal services contractors be subject to the same conflict-of-interest requirements that apply to its direct-hire employees.

However, the overseas offices we visited did not have a formal system for identifying and resolving potential PSC conflicts of interest. Further, contracting officers did not enforce AID's requirement that personal services contractors file financial and post-employment disclosure forms before and during their term of employment, and policy instructions on avoiding conflict-of-interest situations were often not provided to personal services contractors. We identified several situations where these contractors either performed duties or were awarded contracts in circumstances that involved potential conflicts of interest. In these situations, we made additional inquiries with the contractor and cognizant AID officials. However, within the scope of this review, we did not independently verify the contractor's personal situation to determine whether actual conflicts existed.

Guidance for Conduct of Personal Services Contractors

AID guidance provides that personal services contractors shall be considered "employees" with regard to their responsibilities and conduct. AID Handbook 14, appendix D, requires incorporation of certain general provisions for PSCs, one of which addresses code of conduct. This provision states that such contractors shall be considered employees for the purpose of, and shall be subject to, agency regulations regarding employee responsibilities and conduct. Key provisions of the regulations require standards of ethical conduct and, depending on the nature and level of responsibility, submission of statements of post-employment activity and financial interests.

The AID handbook assigns contracting officers responsibility for identifying and resolving contractors' conflicts of interest. The handbook states that, in executing PSCs, contracting officers are responsible for ensuring that

- no apparent conflict of interest is involved (if contracting officers believe that a conflict of interest exists, they are advised to refer the question to the cognizant legal counsel),

- agency conflict-of-interest requirements for financial disclosure and post-employment activities are met by the contractor prior to reporting for duty, and
- the contractor receives and understands policy instructions on employee responsibilities and conduct.

Conflict-of-interest guidance on spousal employment, applicable to personal services contractors as well as employees, is addressed in a June 30, 1989, memorandum by AID's designated ethics officer. The guidance prohibits an AID employee from (1) directly supervising his or her spouse and (2) participating in matters affecting the project employing his or her spouse. The memorandum also stresses the importance of documenting the AID employee's disclosure and resolution of the conflict.

No Formal System Used to Identify and Resolve Conflicts of Interest

The overseas offices we visited did not have formal disclosure or evaluation procedures for identifying and addressing potential conflicts of interest involving PSCs. As a result, contracting officers could not ensure that they identified and resolved apparent conflicts of interest as required by AID Handbook 14, appendix D. The contracting officers whom we interviewed said that they informed personal services contractors of AID conflict-of-interest policy but that they relied on contractors' voluntary disclosure and on supervisors to inform them of any apparent conflicts of interest that may exist. Upon such disclosure, they would first attempt to mediate any minor problems directly with the contractor or, if necessary, seek the AID General Counsel's advice. AID General Counsel officials told us that they had not been presented with any significant conflict-of-interest issues involving PSCs.

We identified some situations where personal services contractors either performed duties or were awarded contracts in circumstances that involved potential conflicts of interest. For example:

- In Indonesia, a personal services contractor provided technical advice to the Minister of Science and Technology in identifying opportunities for U.S. business investments in Indonesian technological and industrial plans, including arranging meetings between the Minister and representatives of U.S. businesses. Though in performing this work the contractor may have been able to favor companies in which he had an interest, AID did not require the contractor to submit data on his financial interests or other business relationships and did not review such data to ensure that

they would not influence his performance. A direct-hire employee would be required to disclose this type of information.

- Personal services contractors in Indonesia and Honduras provided advice and assistance to government and private sector financial institutions regarding credit and investment programs, including small business formation. AID had not reviewed the individuals' financial holdings to ensure that they did not have conflicts of interest.
- A contractor developing a data base for Pakistan's Ministry of Health made recommendations for computer equipment procurement. AID had not reviewed the contractor's investment holdings to ensure they did not bias the recommended procurement plans.

Financial and Post-Employment Disclosures Were Not Made

We found no evidence that contracting officers determined that personal services contractors met agency conflict-of-interest requirements for financial disclosure and post-employment activity before contractors reported for duty or during their term of employment, as required by AID Handbook 14, appendix D. The handbook also requires contractors to submit confidential statements of employment and financial interests at least 10 days prior to entrance on duty and annually thereafter. None of the personal services contractors we interviewed had been required to do so. We did not identify any specific adverse effects resulting from a lack of such data, but the requirements nonetheless help to ensure honesty and integrity in carrying out government business.

Officials at overseas offices told us that they were unaware that the requirement for filing financial disclosure forms applied to personal services contractors as well as to employees. They said that they thought AID's Office of General Counsel, not the overseas offices, was responsible for administering disclosure requirements, as it does for all U.S. direct-hire employees. AID officials were divided as to whether financial disclosure data was needed and useful for identifying possible conflicts of interest involving contractors, but most of the contractors we interviewed were not opposed to submitting statements similar to those required for direct hires.

Policy Instructions Were Often Not Provided to Contractors

Personal services contractors often were not provided AID policy instructions regarding conflicts of interest. With the exception of Pakistan, contracting officers at the missions we visited did not incorporate a copy of the provisions dealing with employee responsibilities and conduct in the PSCs as required by AID regulations. Contracting officers told us that they provided contractors with applicable employee conduct rules and

regulations and relied on the integrity and professionalism of the personal services contractors to report conflicts. However, we found that contracting officers had not consistently supplied copies of these regulations to the personal services contractors. Only 7 of the 14 (50 percent) contractors we interviewed in Indonesia and 9 of the 22 (42 percent) contractors interviewed in Pakistan said they had received copies of the AID Handbook 14 guidance outlining employee responsibility and conduct rules.

Conclusions

AID requires that personal services contractors adhere to agency regulations that govern employee responsibilities and conduct. AID makes contracting officers primarily responsible for ensuring that personal services contractors do not have conflicts of interest or, if conflicts are found, that they are properly resolved.

Because of the duties that certain personal services contractors performed or the circumstances in which PSCs were awarded, instances of potential conflict of interest existed. However, contracting officers at AID overseas offices did not ensure that such circumstances were identified and resolved or that financial and post-employment disclosures had been made, as required. Generally, contracting officers relied on the contractors to make voluntary disclosures and on supervisors to bring potential conflicts of interest to their attention.

Recommendation

We recommend that the AID Administrator require contracting officers to enforce agency regulations designed to ensure that (1) apparent conflicts of interest involving personal services contractors—including any conflicts on active contracts—are identified and resolved and (2) financial and post-employment disclosures are made.

Comments From the Agency for International Development

Agency for International Development
Washington, D.C. 20523

NOV 8 1991

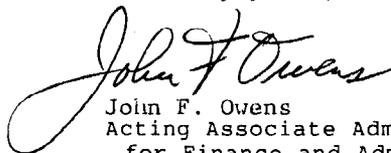
Mr. Frank C. Conahan
Assistant Comptroller General
United States General Accounting Office
441 G Street, N.W., Room 5055
Washington, D.C. 20548

Dear Mr. Conahan:

Thank you for permitting us to review the draft report "Foreign Assistance: A.I.D.'s Use of Personal Services Contractors Overseas" (Code 472218). We have no comments to make on the draft. Our response to the final report will address the three recommendations and the proposed actions we have planned or taken.

We appreciate the time and effort expended by your staff in preparing the draft report.

Sincerely yours,



John F. Owens
Acting Associate Administrator
for Finance and Administration

Major Contributors to This Report

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International Affairs
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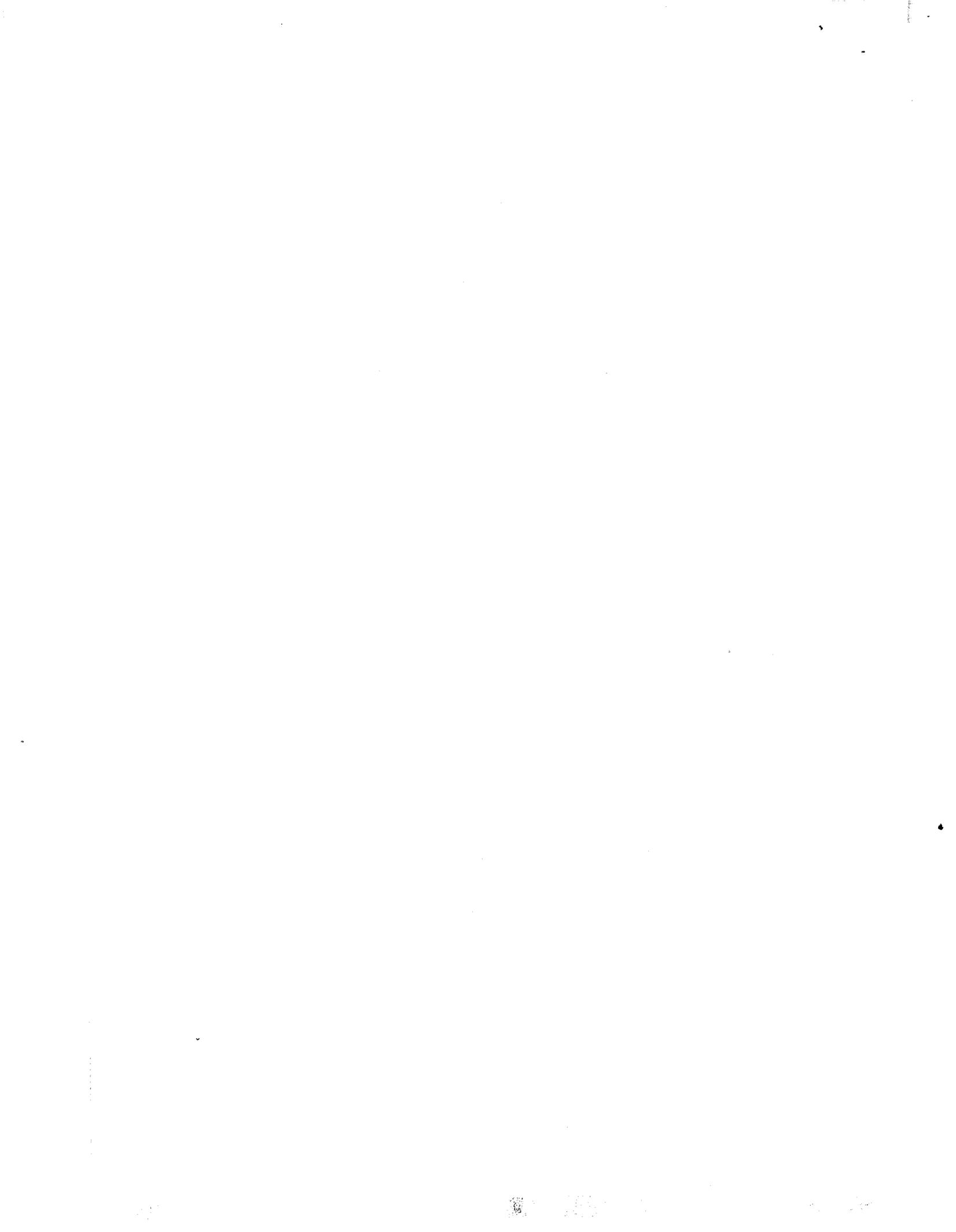
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