



# Decision

**Matter of:** William Schaeffer

**File:** B-417654

**Date:** September 12, 2019

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William Schaeffer for the protester.  
John B. Alumbaugh, Esq., United States Agency for International Development, for the agency.  
Heather Weiner, Esq., and Jennifer D. Westfall-McGrail, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

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## DIGEST

Protest arguing that the agency's method for establishing salaries for personal services contractors is unreasonable because it is inconsistent with agency regulation is denied where the agency's reasonable interpretation of its own regulation is afforded great deference.

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## DECISION

William Schaeffer challenges the terms of solicitation No. 720MMS19R00001, issued by the U.S. Agency for International Development (USAID), for personal services contractors to serve as overseas executive officers.<sup>1</sup> The protester argues that USAID's method for establishing salaries for personal services contractors is unreasonable and inconsistent with the USAID Acquisition Regulation (AIDAR).

We deny the protest.

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<sup>1</sup> Our Office has jurisdiction over this protest as it concerns a solicitation for the procurement of services. See 31 U.S.C. §§ 3551(1), 3552; Federal Acquisition Regulation (FAR) § 37.104; Joseph W. Beausoleil, B-285643, Aug. 31, 2000, 2001 CPD ¶ 26 at 1 n.1; Mary Jo McDonough, B-270530, B-270530.2, Mar. 13, 1996, 96-1 CPD ¶ 154 at 2 n.2.

## BACKGROUND

On May 1, 2019, USAID issued the solicitation seeking U.S. personal service contractors for multiple executive officer positions. Specifically, USAID is seeking applications from qualified U.S. citizens to work overseas on a temporary, on-call basis, as executive officers for the Rapid Staff Support Services (RS3).<sup>2</sup> Solicitation (Sol.) at 4. The solicitation provides that the personal service contractors will be part of RS3's "firehouse" and that those serving in the firehouse must be prepared to work abroad in USAID missions and embassies, often with little time for preparations. Id. In addition, the solicitation indicates that the period of performance for the intermittent contracts is a base year and four 1-year options. Id. at 3.

The solicitation set forth certain minimum qualifications, including the requirements that the personal services contractor be a U.S. citizen and able to maintain a Secret level security clearance provided by USAID. Id. at 10. The solicitation further informs prospective personal service contractors that their applications will be evaluated under the following five criteria: (1) knowledge, (2) skills and abilities, (3) education and training, (4) cultural and language abilities, and (5) interview. Id. at 10-12. Price is not a factor for consideration in evaluation and selection. Id.

With regard to compensation, the solicitation advises that the market value of the executive officers position has been designated as a general schedule (GS)-15<sup>3</sup> equivalent level (\$408.64 – \$531.20) daily rate, and does not include locality pay. Id. at 3. In addition, the solicitation advises that final compensation will be negotiated within the listed market value, based upon the offeror's qualifications, previous relevant experience, past salary, work history, and educational background. Id. The solicitation also specifies that "[s]alaries over and above the top of the pay range will not be entertained or negotiated." Id.

The closing date for receipt of applications was June 14, 2019. Id. at 1. Prior to this date, on May 27, the protester filed an agency-level protest arguing that the compensation paragraph in the solicitation is unreasonable because the daily rate does not include locality pay, which, according to the protester, violates the AIDAR, 48 C.F.R. Ch. 7, app. D, 4(e)(1)(i). AR, Tab 8, Agency Level Protest, at 1-5. On June 4, USAID denied the protest, concluding that the protested solicitation paragraph complied with all

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<sup>2</sup> RS3 is a staff services support function that provides specialized, surge and crisis staffing to USAID missions throughout the world with a full range of specialized expertise. Sol. at 3, 5.

<sup>3</sup> This GS level is from the federal pay scale, which has 15 grades--GS-1 to GS-15. See General Schedule Overview, available at [opm.gov/policy-data-oversight/pay-leave/pay-systems/general-schedule](https://opm.gov/policy-data-oversight/pay-leave/pay-systems/general-schedule) (last visited Sept. 12, 2019).

applicable regulations.<sup>4</sup> After receiving the agency's decision denying its protest, Mr. Schaeffer filed a protest with our Office.

## DISCUSSION

USAID is specifically authorized by Section 636(a)(3) of the Foreign Assistance Act of 1961, as amended, 22 U.S.C. § 2396(a)(3), to award personal services contracts (PSC) as defined by FAR § 2.101 and § 37.104, to meet its mission. A PSC is a contract that creates an employer-employee relationship between the agency and the contractor.<sup>5</sup> See FAR § 37.101. USAID has issued regulations implementing the acquisition of services, including as relevant here, the manner in which the agency is to determine compensation for personal services contractors. AIDAR, 48 C.F.R. Ch. 7, 4(e)(1)(i).

As relevant here and noted above, the solicitation provides that the market value of the executive officer position has been designated as a GS-15 equivalent level daily rate, without locality pay, and that salaries above the top of the designated pay range will not be negotiated. Sol. at 3. The protester challenges this compensation range.

According to the protester, USAID should calculate the market value for the overseas executive officer position using the GS pay scale with locality pay. The agency responds that using the GS pay scale without locality pay is consistent with USAID's regulation and within the discretion granted to the contracting officer, and therefore, reasonable. For the reasons discussed below, we find the agency's interpretation of its regulation is reasonable, and therefore, find nothing improper regarding the solicitation's compensation provision.<sup>6</sup>

The protester does not dispute that the GS-15 level scale is the appropriate scale for the solicited executive officer position; rather, the protester argues that it is inconsistent

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<sup>4</sup> Prior to this, on August 13, 2018, the protester filed an appeal with the U.S. Civilian Board of Contract Appeals. Agency Report (AR), Tab 4, at 2. The appeal alleged that the USAID used the incorrect base rate to establish the salary for an overseas executive officer position, in violation of the AIDAR, and therefore, the protester sought additional compensation. Id. The Board denied the appeal, finding that the regulation recognizes that salaries may be negotiated and that the negotiations "apparently led to the establishment of a realistic and reasonable market value for the job." Id. at 3.

<sup>5</sup> Under a USAID PSC for services abroad, the agency pays a portion of the contractor's health and life insurance, pays lodging and living allowances under specified circumstances, and grants sick and annual leave, which is accrued on the same basis as government employees. The contractor is also eligible to receive benefits from injury, disability or death under the Federal Employees' Compensation Act administered by the Department of Labor. See AIDAR, 48 C.F.R. Ch. 7, app. D.

<sup>6</sup> Although we do not address every argument raised by the protester, we have reviewed them all and find that none provides a basis to sustain the protest.

with USAID regulation for the agency to calculate the market value for the overseas executive officer position based on a GS scale that does not include locality pay.

In support of its position, the protester points to AIDAR, 48 C.F.R. Ch. 7, 4(e)(1)(i), which addresses how the agency is to determine compensation for personal services contractors as follows:

Salaries for Personal Services Contractors shall be established based on the market value in the United States of the position being recruited for. This requires the Contracting Officer in coordination with the Technical Officer to determine the correct market value (a salary range) of the position to be filled. . . . The market value of the position then becomes the basis along with the applicants' certified salary history . . . for salary negotiations by the Contracting Officer. . . . The crucial point is the establishment of a realistic and reasonable market value for a job. The final determination regarding the reasonableness of a salary level rests with the Contracting Officer.

The protester interprets the phrase "based on the market value in the United States" to mean that compensation for U.S. personal service contract employees must "match" their positions' market value in the United States. Protest at 1. The protester maintains that there is no location in the United States where the GS base rate without locality pay constitutes the applicable market value. Comments at 5. Accordingly, the protester asserts that USAID's inclusion of the GS base rate without locality pay in the solicitation violates the AIDAR provision.

The agency's position is that the provision requires only that the salary be "based on" (that is "derived from and grounded in") the market value of the solicited position. AR at 6-7. The agency further explains, in this regard, that the AIDAR "does not require any specific ratio or correlation to the market value, such as a one-to-one ratio with any GS scale" or require it to be "keyed to any specific level on the GS scale in a particular city or any locale." Id. In addition, the agency explains that "[t]here is no locality adjustment on the GS scale for outside of the United States" and that "OPM [Office of Personnel Management] makes clear that GS employees in foreign areas are not eligible for locality pay." AR at 8. Accordingly, the agency maintains that it has reasonably applied the GS base scale without locality pay. Id. In addition, the agency notes that its interpretation is consistent with internal agency guidance, which provides that when the contracting officer is determining the market value for a position located abroad "the CO must establish the market value based on the GS-equivalent base pay table without locality pay." USAID Automated Directive System (ADS) 309.3.2.1.

We are required to give deference to an agency's reasonable interpretation of its regulations, Singleton Enters.-GMT Mech., A Joint Venture, B-310552, Jan. 10, 2008, 2008 CPD ¶16 at 3, and based on our review, we find nothing unreasonable regarding the agency's interpretation here.

As the agency points out, the AIDAR does not require that salaries “match” the positions’ market value in the United States; further, there is no locality adjustment on the GS scale for outside of the United States and GS employees in foreign areas are not eligible for locality pay. AR at 8. In addition, the AIDAR makes clear that “[t]he crucial point is the establishment of a realistic and reasonable market value for a job” and that “[t]he final determination regarding the reasonableness of a salary level rests with the Contracting Officer.” Id. Given the foregoing language, we find no basis to question the reasonableness of the compensation range established by the contracting officer or agency here.

The protest is denied.

Thomas H. Armstrong  
General Counsel