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Report to Sen. Daniel K. Inouye, Chairman, Senate Committee on Appropriations: Foreign Operations Subcommittee; by Elmer B. Staats, Comptroller General.

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The Agency for International Development (AID) obtains consultant and advisory services to carry out foreign assistance programs. Findings/Conclusions: AID's management information system did not readily identify the total dollar value of personal services contracts awarded during fiscal year 1975, but available data indicate that the value of such contracts was about \$1.5 million. Consultants and experts employed on an intermittent basis accounted for another \$1.1 million. AID has special authority to use personal services contracts when technical day-to-day supervision is carried out by the host government's officials or when the host government does not wish to contract directly with a foreign technician. In several instances, the Agency has not observed Civil Service rules with regard to the employment of intermittent consultants and experts. Retired civilian employees serving as experts or consultants are exempted from laws governing the simultaneous receipts of compensation and retirement benefits. Recommendations: The Administrator of AID should: develop procedures so that the limited authority of AID to award personal services contracts is not exceeded; require that, in selecting personal services contractors, more than one potential contractor is interviewed; and in negotiating compensation rates for personal services contracts, the rate is set on the basis of the job requirements rather than on the consultant's earnings history. (RRS)

00573

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1/14/77

REPORT TO THE SUBCOMMITTEE
ON FOREIGN OPERATIONS
COMMITTEE ON APPROPRIATIONS
BY THE COMPTROLLER GENERAL
OF THE UNITED STATES



**Improvements And New Legislation
 Needed In AID's Contracting For
 Consultants And Advisors**

Agency for International Development

The Agency for International Development spends about \$2.7 million a year for personal service contracts and the intermittent employment of consultants and advisors.

GAO's study disclosed several opportunities for improving the administration of the program, including the need to amend the authorizing legislation to eliminate the simultaneous receipt of compensation and retired pay or annuities.



COMPTROLLER GENERAL OF THE UNITED STATES
WASHINGTON, D.C. 20548

B-132961

The Honorable Daniel K. Inouye
Chairman, Subcommittee on Foreign Operations
Committee on Appropriations
United States Senate

Dear Mr. Chairman:

In response to your April 17, 1975, request that we review how the Agency for International Development uses private and voluntary organizations, colleges and universities, and outside consultants and advisors to carry out foreign assistance programs, this report describes the various arrangements the Agency uses to obtain consultant and advisory services. Two reports were issued on May 5, 1976, concerning the other two parts of your request.

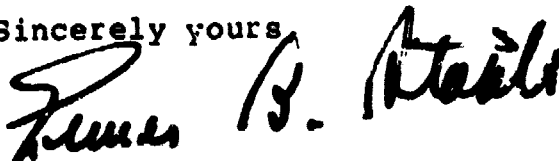
In accordance with your wishes, we have not obtained written comments from the Agency. We did, however, discuss our findings with Agency officials and considered their comments in preparing the report.

During our review we discussed with your Subcommittee the Agency's unnecessary exemption which permits Federal retirees intermittently employed as experts or consultants to simultaneously receive both their fees and retirement annuity without the reduction which would be required if they were intermittently employed by another Federal agency. Our report recommends that to permanently establish comparability between intermittent employees of the Agency and other Federal agencies the Congress should amend section 626(b) of the Foreign Assistance Act of 1961 in order to remove the exemption from the laws governing the simultaneous receipt of compensation and Government retired pay or annuities which is contained therein.

This report contains several recommendations to the Agency Administrator concerning improvements needed in various areas of management. As your office requested, this report will be available for general distribution after it has been received by your Subcommittee. As you know, section 236 of the Legislative Reorganization Act of 1970 requires the head of a Federal agency to submit a written statement on actions taken on our recommendations to the

House and Senate Committees on Government Operations within 60 days and to the House and Senate Committees on Appropriations with the Agency's first request for appropriations made more than 60 days after the date of the report. Release of the report will activate section 236.

Sincerely yours,

A handwritten signature in black ink, appearing to read "James B. Stacks". The signature is written in a cursive, somewhat stylized font.

Comptroller General
of the United States

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Suggested revision to section 626(b)
of the Foreign Assistance Act of 1961

26

ABBREVIATIONS

AID	Agency for International Development
GAO	General Accounting Office
ICA	International Cooperation Administration

D I G E S T

The Foreign Assistance Act states that the Agency for International Development should use the professional and technical services of private enterprises to the extent practicable in carrying out its purposes. For many years the Agency has done so. Especially after 1972, its management philosophy has been to use consultants and advisors even more extensively. (See pp. 1 to 3.)

The Agency's management information system was not designed to provide data on the total number or dollar volume of contracts awarded for consultant or advisory services; however, a new system is being installed which should provide such data for future fiscal years. The best data currently available for fiscal year 1975 indicates the following kinds of expenditures (see p. 5):

(millions)

--Personal services contracts	\$1.6
--Consultants and experts employed on an intermittent basis	1.1

The Agency has special authority to use personal services contracts, but the authority is limited to obtaining assistance for host governments when (1) technical day-to-day supervision is carried out by the host government's officials and (2) the host government does not wish to contract directly with a foreign technician and/or the technician feels more secure with a U.S. Government contract. (See pp. 5 to 7.)

The rules governing the employment of intermittent consultants and experts are clearly stated by the Civil Service Commission, but

the Agency has not observed these rules in several cases. (See pp. 13 to 18.)

Retired civilian employees serving as experts or consultants with the Agency are exempted--a policy instituted under the Marshall Plan--from the laws governing the simultaneous receipt of compensation and retirement benefits, which is commonly referred to as "double dipping." As a result, they receive an advantage they would not enjoy under the same circumstances at another Government agency.

GAO believes that because of changes in the Foreign Assistance Program such exemption is no longer necessary and that the Congress should amend section 626(b) of the Foreign Assistance Act to remove the provision which exempts the Agency from laws governing the simultaneous receipt of compensation and Government retired pay or annuities. (See pp. 19 and 20.) Suggested legislative language is in appendix II.

RECOMMENDATIONS TO THE AGENCY ADMINISTRATOR

GAO previously recommended in its report "Strengthening and Using Universities as a Resource for Developing Countries" (ID-76-57), May 5, 1976, that all potential sources be considered fully before awarding single-source contracts. Projects should be sufficiently planned in advance so that contracting officers would have an opportunity to solicit proposals from other organizations which may be capable of fulfilling the requirement. The Agency Administrator should also:

- Develop procedures so that the limited authority of AID to award personal services contracts is not exceeded.
- Require that, to the extent possible in selecting personal services contractors, more than one potential contractor be

interviewed and that such information be made a part of the contract record.

--Require that in negotiating compensation rates for personal services contracts every effort be made to set the rate on the basis of the job requirements rather than on the consultant's earnings history.

--Insure that reports resulting from personal services contracts which may have broad application be adequately disseminated, including providing a copy to the Agency's Reference Center.

GAO informally discussed the findings with AID officials and considered their comments in preparing this report. They agreed with the substance of the report.

CHAPTER 1

INTRODUCTION

On April 17, 1975, the Chairman, Subcommittee on Foreign Operations, Committee on Appropriations, United States Senate, asked that we review and report on the Agency for International Development's (AID's) use of private consultants and advisors. During subsequent meetings with the Subcommittee, particular interest was shown regarding the dollar volume of contracts with consultants and advisors over a period of years and various other aspects of contracting.

WHY AID USES OUTSIDE CONSULTANTS AND ADVISORS

The Foreign Assistance Act of 1961, as amended, and the implementing administrative regulation state that AID should use contract professional and technical services from private enterprise to the fullest extent practicable. Section 601 of the 1961 act stated, in part:

"ENCOURAGEMENT OF FREE ENTERPRISE AND PRIVATE PARTICIPATION. - (a) The Congress of the United States recognizes the vital role of free enterprise in achieving rising levels of production and standards of living essential to economic progress and development. Accordingly, it is declared to be the policy of the United States * * * to encourage the contribution of United States enterprise toward economic strength of less developed friendly countries, through * * * private participation in programs carried out under this Act (including the use of private trade channels to the maximum extent practicable in carrying out such programs), and exchange of ideas and technical information on the matters covered by this subsection."

In 1962 the Congress provided more explicit guidance with respect to using private organizations to carry out the foreign assistance programs. Section 301(a)(3) of the Foreign Assistance Act of 1962 amended the 1961 Act, directing that to encourage and facilitate participation by private enterprise to the maximum extent practicable in achieving the purposes of the act, the President shall:

"Utilize wherever practicable the services of United States private enterprise (including, but not limited to, the services of experts and consultants in technical fields such as engineering)."

In 1963 the Congress further strengthened the policy regarding the use of private enterprise by adding section 302(a) of the Foreign Assistance Act of 1963 to section 621 of the act of 1961. This additional direction states that:

"* * * In providing technical assistance under this Act, the head of any such agency or such officer shall utilize, to the fullest extent practicable, goods and professional and other services from private enterprise on a contract basis. In such fields as education, health, housing, or agriculture, the facilities and resources of other Federal agencies shall be utilized when such facilities are particularly or uniquely suitable for technical assistance, are not competitive with private enterprise, and can be made available without interfering unduly with domestic programs."

Although AID used the services of private consultants and advisors prior to 1967, the general management philosophy was to use direct-hire personnel to carry out the purposes of the act and to contract for outside technical expertise on a more limited basis. In 1967, AID established a specific policy, which is still in effect, with regard to the use of non-AID resources in the total foreign assistance effort. The policy states that:

"Where other factors are equal, means of obtaining skilled personnel will be used in the following order of preference.

- a. by contract with non-governmental organizations.
- b. by participating agency agreement (or contract) with other federal, state or local government agencies.
- c. by direct hire."

The AID Reform Plan initiated in 1972 reemphasized the philosophy that contractors would be given a greater role in providing the expertise needed to carry out the foreign aid

programs. AID's management plan stated that by 1976 only a few direct-hire technical specialists would remain in its overseas missions, and project implementation and technical assistance would be performed by contract personnel. According to the management plan, direct-hire personnel would perform program planning, contract monitoring, and other such management functions normally performed by Government employees.

MANAGEMENT INFORMATION SYSTEM

AID did not have a management information system to readily identify the total number or dollar volume of the various types of contracts awarded for consultant or advisory services during any given fiscal year. The AID Office of Contract Management prepared various internal status and summary reports which are generally used to manage the contract and grant workload. These reports, however, did not show the number or dollar volume of consultant or advisory contracts awarded during the period. Because AID did not maintain summary statistics data on the types and purposes of contracts awarded during the year, we were unable to ascertain the dollar volume of contracts with consultants and advisors over a period of years.

At the time of our review AID was in the process of installing an automatic data processing system which, we were informed, will result in more timely and accurate information. AID officials stated that the automated data processing system will provide information on the total value of contracts, grants, and amendments entered into during the fiscal year and will provide data on specific types of contracts, such as those with consulting firms, individuals, universities, cooperatives, and private and voluntary organizations. The new system became operational in January 1976.

SCOPE OF REVIEW

Our review was directed toward evaluating how AID used outside commercial consultants and advisors in carrying out the foreign assistance programs. Although AID obtained extensive consultant and advisory assistance from U.S. universities, and to a lesser extent from private and voluntary organizations, particularly cooperative associations, this report does not include these institutions. AID's involvement with these institutions is discussed in GAO reports "Strengthening and Using Universities as a Resource for Developing Countries" (ID-76-57) and "Channeling Foreign Aid

Through Private and Voluntary Organizations" (ID-76-58), both dated May 5, 1976.

We reviewed (1) the legislative history concerning the various authorities which allow AID to engage outside expertise and (2) AID's policies, procedures, and practices related to the award of contracts to obtain consultant and advisory services. Our review was performed at AID in Washington, D.C., and did not include an examination of contract results in recipient countries.

CHAPTER 2

CONTRACTING WITH INDIVIDUALS

FOR PERSONAL SERVICES

A personal services contract is defined as one which creates what is equivalent to an employer-employee relationship between the Government and the contractor or its employees. The relationship exists when the contractor's employee--or the contractor if an individual--is subject to the supervision of a Federal officer or employee while performing his duties.

The Civil Service Commission and the Comptroller General have concluded that personal services contracts to perform services for the Government are prohibited unless an agency possesses specific exemption from the personnel laws to procure personal services by contract. AID has been given this special authority, provided that the services are rendered directly to host country governments. Our review of AID's use of this authority showed that:

--AID's management information system did not readily identify the total number or dollar volume of the various types of contracts awarded during a fiscal year, but available records indicated that during fiscal year 1975 the Office of Contract Management awarded 126 contracts and 68 amendments valued at \$1.6 million which it categorized as personal services contracts. Additional personal services contracts were awarded by the overseas missions, but the figure for fiscal year 1975 was not available in Washington. According to AID records, the overseas mission awarded 185 personal services contracts and 173 amendments valued at \$2.9 million during fiscal year 1974.

BACKGROUND OF AID'S PERSONAL SERVICES CONTRACTING AUTHORITY

In 1958 the Civil Service Commission reviewed the personnel operations of AID's predecessor agency, the International Cooperation Administration (ICA), and concluded that numerous contracts with individuals were improper. This conclusion was based on GAO rulings and the Commission's position that personal services for the Government should be obtained by direct-hire employment. The Commission rejected ICA's view

that contracts with individuals to furnish assistance to a foreign government were not subject to the prohibition against personal services contracts. The Commission stated that because ICA was established specifically to provide assistance to foreign governments, its activities, including providing technical assistance to host country governments, were in fact services to the U.S. Government.

ICA argued that (1) it had general contracting authority to contract with individuals to furnish technical assistance, (2) in some situations it was necessary for it to sign the contract because of host-government laws or regulations or because the individual refused to sign a contract with a foreign government, and (3) some of the contracts were intended to create an independent contractor relationship and were not for personal services. With regard to the third argument, GAO and the Commission believed that contract terminology requiring supervisory control by the AID missions created an overall employer-employee relationship rather than an independent contractor relationship.

The dispute was resolved when GAO agreed that it would make no formal objection to such contracts if ICA obtained clarifying legislation. In 1960 the Mutual Security Act was amended to give ICA authority for contracting with individuals for personal services abroad, provided that such individuals would not be regarded as employees of the United States Government for the purpose of any law administered by the Civil Service Commission. This authority is contained in section 636(a)(3) of the Foreign Assistance Act of 1961, as amended.

The limitations upon this authority to contract with individuals for personal services was clarified in the House of Representatives' Committee on Foreign Affairs report (No. 1454, Apr. 7, 1960). The report indicated the authority applied to hiring both Americans and foreign nationals, subject to administrative and policy supervision by the overseas missions, but it placed certain restrictions on the use of this authority when hiring Americans. The Committee Report stated, in part:

"The determination whether a contract establishes an employer-employee or independent contractor relationship depends upon the terms of each contract. The contract specifies the degree of ICA supervision of the contractor, whether housing or office space is provided, and whether an end product, such as a report or design, is sought as

opposed to continuing services. No problem arises where the individual and the host government enter into a contract financed by ICA.

"The question arises in those cases where ICA rather than the host government enters into a contract with an individual technician and where the contract provides for ICA direction and supervision of the technician's activities in order to achieve the program objectives. ICA may become a party to the contract where the host government does not wish to enter into a contract with a foreign technician because it is unfamiliar with contracting procedures or where the technician himself may feel more secure with a United States Government contract. * * *"
(Underscoring added.)

The history of AID's legislative authority clearly indicates that AID should use its authority only in those instances in which (1) the host government does not wish to contract with a foreign technician or (2) the technician himself may feel more secure with a United States Government contract.

AID may create an employer-employee relationship between an individual and a host country government by executing a personal services contract between the individual and AID. The key question for determining whether such an employer-employee relationship exists is whether an officer of the host country government rather than of the U.S. Government provides technical supervision to the individual in the performance of his duties. Technical supervision excludes administrative or policy supervision, and refers to the technician's day-to-day supervision in his professional capacity.

Based on a sampling of personal services contracts awarded by AID, we found instances in which AID management appeared to be a primary recipient of the personal services rendered, and/or in which technical supervision was given by AID officials. We did not determine the legality of the contracts because such a determination would require a case-by-case evaluation, including discussions in some instances with the overseas personnel involved. This was beyond the scope of our review.

On the basis of our review of contract language, it appears in some cases that an employer-employee relationship

was created between AID and the individual contractor rather than between the host country government and the contractor. The relationships described are not allowed, according to criteria established by the Civil Service Commission.

CONTRACTOR COMPENSATION RATES

The primary cost in a personal services contract is the individual contractor's salary and related allowances. For example, a 1-year, \$70,000 contract was budgeted as follows:

Salary	\$36,000
Allowances	30,000
International travel	1,700
Other allowable costs	<u>2,300</u>
Total	<u>\$70,000</u>

It is the responsibility of the contracting officer to negotiate the lowest possible cost to the Government, consistent with the requirements of the project. AID has limited the amount of compensation that may be paid to a contractor to the equivalent daily rate of the Foreign Service Class I--currently \$145 per day--unless the responsible Assistant Administrator or Mission Director agrees that a higher level of compensation is needed.

Agency guidelines state that the project and contract personnel should attempt to negotiate lower salaries or propose the use of other individuals where this can be done. The guidelines state that it is not sufficient to merely state that the individual received the requested salary in past cases. Projects have different requirements for expertise, and a salary received on one project should not serve as justification for the same salary level on other AID contracts.

A review of contract files for 24 personal services contracts and discussions with contract negotiators indicated that the compensation levels are generally based on (1) the amount requested by the contractor and (2) the contractor's prior earnings record. We noted that generally the contractor's asking price was reduced only when it exceeded the maximum daily rate of \$145. The reduction was usually made because much paperwork was required for obtaining approval to pay the higher rate, rather than because the job to be performed would not justify it.

In discussing this matter with various AID contracting officials, we were told that a problem which inhibits negotiating a lower salary level is that in many cases the technical office selects only one prospective contractor with whom the contracting officer is to negotiate. Furthermore, the salary level has often already been discussed between the technical officer and the prospective contractor before the contracting officer becomes involved in negotiating a compensation level. In our opinion, prior discussions with a prospective contractor concerning compensation levels adversely affects contract negotiations and may unnecessarily add to program costs.

Personal services contracts establish an employer-employee relationship, and individual contractors perform duties which could be performed by direct-hire personnel if such personnel were available. Office of Personnel and Manpower specialists establish position descriptions and appropriate General Schedule and Foreign Service classifications for positions occupied by a direct-hire employee. We found that in setting compensation rates for personal services contractors, more emphasis has been given to the individual's prior earnings history than to determining the appropriate pay rate for the position to be filled. We believed that to avoid contracting for more expensive talent than is needed to fulfill a requirement, the contracting officer should seek the advice and assistance of personnel specialists in the Office of Personnel and Manpower.

CONTRACTOR SELECTION PROCEDURES

Personal services contracts are negotiated procurements; however, AID's regulations do not require solicitation of proposals from more than one source, except that consideration should be given to as many sources as practicable. AID's current selection procedures for obtaining personal services contractors are very informal. Program or project needs are determined and potential candidates are selected primarily by the project or program officers. AID project officers told us that they are generally aware of individuals who have the necessary skills for the project. Sources generally used to identify individual contractors include:

--Prior AID contractors.

--Other AID contacts, when the individual has performed work in a related area.

- Established relationships with universities and professional organizations.
- Recommendations from other specialists.
- General knowledge.

We found that in most cases AID interviewed only one potentially qualified contractor. Contract documents and discussion with project officials indicated that:

- Specific individuals were requested by missions.
- The individual was selected because of prior work performed for AID.
- The individual had performed similar work while with AID as a direct-hire employee.

Based on our limited sample, we did not observe any situations where AID's informal selection procedures resulted in the employment of an unqualified individual. However, we found that AID's contract and project personnel were not fully using other sources of information which were available for selecting personal services contractors. These other sources include lists maintained by AID's Office of Contract Management of consultants and advisors, urban and regional planners, and others who possess special qualifications.

Prior to June 1975, AID did not have a system to screen in-house for available personnel to perform functions which were carried out by personal services contract. As a result of the terminating Indochina programs, an in-house screening procedure was established so that available direct-hire personnel would be used before a personal services contract was awarded. The screening procedure had been implemented, but its effect on the number of personal services contracts awarded was negligible.

OPPORTUNITIES FOR WIDER DISTRIBUTION OF CONTRACTORS' REPORTS

Under a personal services contract AID is procuring the services of an individual rather than an end product such as a report. Nevertheless, we noted that in addition to purchasing an individual's services for a period of time, the scope of contract work often included report requirements other than daily activity reports.

AID's procedures for non-personal-services contracts--contracts for an end product--require that the resulting reports be distributed to interested individuals and be made a part of AID's permanent record in the Reference Center. We noted that in some cases the personal services contracts required that any resulting reports be provided to the program office in Washington; however, in other instances this was not a contract requirement. We noted instances in which reports prepared by internationally known specialists working under personal services contracts had been provided to the program office, but were not available in AID's Reference Center. In our opinion, such reports may have much broader application than the immediate situation for which the contract was awarded. We believe that AID should take advantage of information developed by a personal services contractor and establish a procedure that, when appropriate, makes the reports fully available to all interested parties in AID and in other development organizations.

CONCLUSIONS

AID's management information system did not readily identify the total dollar value of personal services contracts awarded during fiscal year 1975, but available data indicates that the value of such contracts awarded by AID's Office of Contract Management in Washington, D.C., was about \$1.5 million. Additional personal services contracts were awarded by the overseas missions, but the amount for fiscal year 1975 was not available. AID's new management information system noted in chapter 1 of this report should remedy this lack of readily available data; therefore, we are not making a recommendation at this time concerning this matter.

AID's authority to use personal services contracts is limited to obtaining advisory assistance for host country governments whose officials perform technical supervision of the contractor. However, in some instances the contract language indicated that the contractor was to help AID carry out its management functions and/or that the contractor would receive day-to-day technical supervision from an AID official.

The procedures followed by AID for selecting individuals to be awarded personal services contracts were very informal, and generally only one candidate--the one selected by the project office--was interviewed. The project officer often discussed compensation rates with the prospective contractor

prior to negotiations between the contractor and the contracting officer, and the compensation rates were often based on the contractor's record of prior earnings rather than on a determination of specific job requirements.

In some cases personal services contracts resulted in reports which had broader application than the specific situation for which the contract was awarded, but providing a copy to AID's Reference Center was not a contract requirement.

RECOMMENDATIONS

We recommend that the Administrator of AID:

- Develop procedures so that the limited authority of AID to award personal services contracts is not exceeded.
- Require that, to the extent possible in selecting personal services contractors, more than one potential contractor be interviewed and that such information be made a part of the contract record.
- Require that in negotiating compensation rates for personal services contracts every effort be made to set the rate on the basis of the job requirements rather than on the consultant's earnings history.
- Insure that reports resulting from personal services contracts which may have broad application be adequately disseminated, including providing a copy to AID's Reference Center.

CHAPTER 3

INTERMITTENT EMPLOYMENT

OF EXPERTS AND CONSULTANTS

Section 626(a) of the Foreign Assistance Act of 1961, as amended, states that AID may contract with experts and consultants, or organizations thereof, as authorized by section 3109 of title 5 of the United States Code, to perform functions under the act. Section 3109 provides that agencies may, when authorized by an appropriation or other statute, employ experts or consultants, or organizations thereof, temporarily--not in excess of 1 year--or intermittently without regard to civil service classification laws.

The Civil Service Commission has oversight responsibility for agencies' proper use of their authorities to temporarily or intermittently employ experts or consultants. This includes responsibility for determining (1) what duties and responsibilities constitute an expert or a consultant position and (2) that persons employed in those positions have the outstanding knowledges and abilities required of experts and consultants.

Our review of AID's use of intermittent or temporary experts and consultants engaged on a "when-actually-employed" basis showed that:

- During fiscal year 1975 AID had 200 individual consultants and experts on its rolls who worked an equivalent of 9,226 days at a cost of about \$1.1 million.
- Although the rules governing the use of experts and consultants are clearly stated by the Commission, AID did not fully observe the Commission's regulations with respect to several individuals employed as experts or consultants.
- AID had not complied with certain provisions of the Federal Personnel Manual, which requires periodic reviews and management reminders concerning the use of experts and consultants, but action has been taken to correct these problems.
- Contrary to the normal practice in other Government agencies, retired civilian employees serving as experts or consultants with AID are exempted from the

laws governing the simultaneous receipt of compensation and retirement benefits. This exemption may no longer be necessary.

--AID had paid experts and consultants amounts up to the highest rate for a grade GS-15--currently \$145 per day--although section 626(a) of the Foreign Assistance Act of 1961, as amended, specified a maximum rate of \$100 per day. On December 31, 1975, pursuant to a Comptroller General's decision, AID directed that future appointments of experts and consultants limit the maximum pay rate to \$100 per day.

WHAT IS AN INTERMITTENT EXPERT OR CONSULTANT?

The Civil Service Commission had defined a consultant and an expert as follows:

"Consultant means a person who serves as an adviser to an officer or instrumentality of the Government, as distinguished from an officer or employee who carries out the agency's duties and responsibilities. He gives his views or opinions on problems or questions presented him by the agency, but he neither performs nor supervises performance of operating functions. Ordinarily, he is expert in the field in which he advises, but he need not be a specialist. His expertness may consist of a high order of broad administrative, professional, or technical experience indicating that his ability and knowledge make his advice distinctively valuable to the agency.

* * * * *

"Expert means a person with excellent qualifications and a high degree of attainment in a professional, scientific, technical, or other field. His knowledge and mastery of the principles, practices, problems, methods, and techniques of his field of activity, or of a specialized area in the field, are clearly superior to those usually possessed by ordinarily competent persons in that activity. His attainment is such that he usually is regarded as an authority or as a practitioner of unusual competence and skill by other persons in the profession, occupation, or activity."

The Commission has further stated that an expert position requires the services of an expert in a particular field; the duties cannot be performed satisfactorily by someone who is not an expert in that field.

AID POLICY ON INTERMITTENT
EXPERTS AND CONSULTANTS

A Federal agency may employ an expert or consultant only with prior Commission approval, unless the agency's statute exempts it from Commission authority or the Commission and the agency have an agreement permitting employment without prior Commission approval. AID has operated under an agreement with the Commission to employ experts and consultants without prior approval since 1970, and the current agreement, entered into on April 24, 1975, will be in effect until September 1, 1977. The agreement states that AID may use intermittent experts and consultants for the following purposes.

- To secure specialized expert opinion, unavailable within AID or other Federal agencies, on highly technical subjects.
- To obtain outside points of view on critical issues.
- To obtain specialized advice regarding new developments within certain subject areas.
- To secure consultation with noted experts whose national or international prestige has a significant bearing on the success of the undertaking.

AID's policy statement concerning the purposes for hiring outside experts and consultants generally incorporates the guidelines specified in the agreement with the Civil Service Commission. It is AID's stated policy that:

- Because experts and consultants are used on an intermittent or temporary basis, their appointments are not normally for more than 130 days during a service year.
- When the expert or consultant services of a retired AID employee are needed, he or she may not begin work for a period of 60 days following retirement, unless approved by the Assistant Administrator for Program and Management Services.

--A retired AID employee will not be employed as an expert or consultant if a large part of the proposed duties involves evaluating functions on which he or she worked before retirement.

USE OF INTERMITTENT EXPERTS AND CONSULTANTS

During fiscal year 1975, AID used 200 individual consultants and experts for a total of 9,226 staff-days at a cost of about \$1.1 million. The following information provided by AID shows the extent to which consultants and experts were used by the various bureaus and offices.

	<u>Number employed</u>	<u>Staff-days worked</u>	<u>Cost</u>	<u>Percent of cost</u>
			(000 omitted)	
Bureau for Technical Assistance	83	2,858	\$ 346	32
Office of Personnel and Manpower	30	2,225	256	24
Office of Engineering	14	661	80	7
Bureau of Population and Humanitarian Assistance	12	659	77	7
Office of Financial Management	8	383	45	4
Office of the Administrator	4	279	38	3
Bureau for Near East and South Asia	4	318	31	3
Office of Public Safety	4	241	31	3
All other bureaus and offices	<u>41</u>	<u>1,601</u>	<u>187</u>	<u>17</u>
Total	<u>200</u>	<u>9,226</u>	<u>1,091</u>	<u>100</u>

Selection of experts and consultants

AID's Office of Personnel and Manpower has overall responsibility for recruiting and appointing individuals to satisfy personnel requirements identified by the various AID bureaus and offices, including the selection and appointment of intermittent consultants and experts. In practice, however, the process is a joint effort. Identification and

selection is usually performed by the requesting bureau or office, and appointments are made through the Office of Personnel and Manpower.

Prior to June 1975, AID did not have a formal procedure to screen its own personnel for available individuals to satisfy personnel requirements which were being filled by consultants and experts, participating agency service agreement, or contracts with individuals for personal or non-personal services. In June 1975, as a result of the large number of direct-hire individuals returning from the terminated Indochina programs, the Deputy Administrator directed that AID personnel be considered before authorization would be given to obtain personnel from outside the Agency under the following types of arrangements:

- Intermittent demands for consultants and experts.
- Participating agency service agreements and resources support service agreements with other Government agencies.
- Contracts with individuals for personal and non-personal services under direct AID contracts or AID-financed country contracts.

A procedure was established whereby all requests to obtain individuals under the above arrangements would be channeled through the Office of Personnel and Manpower to be screened against available direct-hire staff. Requests to contract with universities, cooperative associations, or private firms for consultant or evaluative services were not included in the procedure to screen for available direct-hire personnel.

During the period June 5, 1975, through February 13, 1976, the Office of Personnel and Manpower received 381 requests from the bureaus, offices, and overseas missions for individuals to be obtained under the above arrangements. The Office identified 37 in-house candidates to fill these requests, and as of February 13, 1976, 16 requests were pending approval or internal clearances. Of the 37 individuals identified as potential candidates, we found that 7 were ultimately selected. In February 1976 we found that the screening system did not include a procedure to follow up with the requesting office to determine whether the prospective candidate was used to fill the requirement; however, we were subsequently informed that a follow-up procedure had

been instituted. The in-house candidates not used to fill the requirements were generally rejected by the bureaus, offices, or missions because, in their opinion, the individual lacked the specific qualifications or experience desired.

AID officials stated their belief that although this screening system will remain in effect for the present time, it has essentially outlived its usefulness. The Agency, they said, is no longer in the excess personnel position it was in at the time the screening procedure was instituted.

Use of experts and consultants

In reviewing whether AID has properly used the services of experts and consultants, we selected 20 individual positions--14 expert and 6 consultant positions. In most cases we found that the outside consultants and experts were properly used, but in certain instances AID's use of these individuals did not fully conform with Commission criteria and guidelines or could have been avoided through better prior planning. Each of these instances involved the intermittent hiring of a retired AID employee.

We noted that those in 10 of the 20 positions we reviewed--8 experts and 2 consultants--were hired primarily on the basis of their previous employment with AID. Certain of these individuals had other work experience, but documents justifying their hiring did not indicate that they had the credentials which the Commission normally considers necessary for an expert or consultant, such as affiliations with universities, organizations, or professional societies. AID's justifying documents showed that only 1 of the 10 individuals had served as an expert in his field or was "* * * regarded as an authority or as a practitioner of unusual competence and skill by other persons in the profession, occupation, or activity."

An AID internal review of the same 20 consultant and expert positions which we selected showed that 5 individuals--all experts--were being paid from 1 to 3 equivalent General Schedule (GS) grade levels above the level for services being provided. These pay levels were justified by AID on the basis that (1) the individuals possessed unique qualifications and (2) the individuals were needed to help AID accomplish its reduction in force. We were informed by AID that the purpose of AID's internal review was to find and correct such situations.

USE OF RETIRED FEDERAL EMPLOYEES

During fiscal year 1975 AID used 200 intermittent consultants and experts, 133 of which were retired Federal employees--94 retired AID employees and 30 retired from other Federal agencies.

Retired civilian employees of the Federal Government serving in the capacity of an expert or consultant to Federal agencies are generally subject to having their fees reduced by an amount equal to the annuity allocable to the period of actual employment. Retired Foreign Service Officers are subject to having their annuity rather than their fees reduced. However, retired civilian employees of the Government serving in the capacity of an expert or consultant to AID have been exempted from these provisions. As a result, civilian retirees employed by AID as consultants or experts received an advantage they would not enjoy under the same circumstances at another Government agency.

For example, an AID employee who prior to retirement on December 31, 1974, earned the daily equivalent of \$138 was engaged by AID on January 2, 1975, as an expert at a daily rate of \$135. In addition to the \$135 fee the individual also received the daily equivalent of \$69 in retirement annuity payments, for a total of \$204 per day. If this individual had been engaged in an identical capacity at another Federal agency, he would have received the daily equivalent of his annuity payment--\$69--plus the difference between his expert fee and the daily equivalent of his annuity payment--\$66 for a total of \$135 per day.

The exemption granted to AID from having the expert's or consultant's fees or annuities reduced is contained in section 626(b) of the Foreign Assistance Act of 1961, as amended, which states:

"Service of an individual as an expert or consultant under subsection (a) of this section shall not be considered as employment or holding office or position bringing such individual within the provisions of sections 3323(a) and 8344 of title 5 of the United States Code, section 872 of the Foreign Service Act of 1946, as amended, or any other law limiting the reemployment of retired officers or employees or governing the simultaneous receipt of compensation and retired pay or annuities, subject to section 5532 of title 5 of the United States Code."

The legislative history of section 626(b) indicates that the origin of the exemption from the dual compensation laws is somewhat obscure. A report on Job Evaluation and Ranking in the Federal Government by the House Committee on Post Office and Civil Service (H.R. 91-28, February 27, 1969) stated that the exemption from dual compensation laws was part of the original legislative package cited as essential to the success of the Marshall Plan. It was designed to permit quick access to experts in the private sector, to retired civilian specialists, and to retired military personnel.

According to a report of the Committee on Foreign Affairs on the Mutual Security Act of 1961--enacted as the Foreign Assistance Act of 1961--(H.R. 851, August 4, 1961) subsection "b" was drawn from the Mutual Security Act of 1954 and continues to exempt experts and consultants from certain conflicts-of-interest laws governing reemployment of retired officers or employees of the Government and the simultaneous receipt of compensation and retired pay or annuities.

There have been dramatic changes in the United States foreign assistance program since the Marshall Plan. In addition to the obvious change from assisting in the reconstruction of already developed countries to providing economic assistance to developing countries, the level of expertise available, both within the Government and from outside sources, has also changed considerably. While AID may still require quick access to experts in various fields of foreign assistance, the personnel resources available have expanded considerably. We believe that the need no longer exists for AID to be exempted from the laws concerning the simultaneous receipt of compensation and retirement benefits.

PAY RATES FOR EXPERTS AND CONSULTANTS

Section 626(a) of the Foreign Assistance Act of 1961, as amended, which authorizes AID to intermittently employ experts and consultants, states that individuals so employed may be compensated at rates not in excess of \$100 per day. Despite this language, AID had interpreted section 3109 of title 5 of the United States Code as authority to pay experts and consultants up to the maximum of \$145 per day.

A Comptroller General's Decision (B-90867) dated December 12, 1975, ruled that the \$100-per-day limitation stated

in section 626(a) of the Act was still applicable. Accordingly, on December 31, 1975, AID issued a general notice to all employees that until clarification could be obtained regarding the effective date of the decision, pay for consultants and experts would not exceed \$100 per day for services performed after December 12, 1975.

AID has held that the provisions of section 626(a) were intended to permit payments at a higher rate than that permitted by the general, Government-wide authority of title 5 of the United States Code (which was linked to the highest rate payable under the General Schedule). AID had, therefore, requested that GAO reconsider its December 12, 1975, ruling.

AID said that the GAO ruling had placed it at a competitive disadvantage with respect to both private entities and other Federal agencies. AID requested, therefore, that section 626(a) of the Foreign Assistance Act of 1961 be amended so that in the future AID could pay experts and consultants the highest rate that may be paid an employee under the General Schedule established by section 5332 of title 5 of the United States Code. On June 30, 1976, P.L. No. 94-329, 90 Stat. 729, was enacted. Section 603 of this act amended section 626(a) of the Foreign Assistance Act to eliminate the \$100-per-day limitation and substitute instead the daily equivalent of the highest rate under the General Schedule prescribed by 5 U.S.C. 5332 (1970).

The legislative history indicates that AID cited our decision as necessitating such action. (See S.R. No. 94-876, 94th Congress, 2nd Sess. 62-64 (1976)). In view of this and the congressional action amending the law to permit AID to pay its experts and consultants in excess of the former \$100 limit, we held by decision B-90867, September 16, 1976, that it was not necessary to reconsider our prior decision cited above.

MANAGEMENT CONTROLS ON THE USE OF INTERMITTENT EMPLOYEES

The Civil Service Commission Federal Personnel Manual establishes various regulations on the use of agencies' authority to intermittently employ consultants and experts. For example, the regulation requires that agencies perform a quarterly review of each consultant and expert working more than 10 days during the quarter to determine whether the duties being performed are proper, documentation is current,

and that time limits are observed. The regulations also require that the agency annually remind managers of the applicable regulatory provisions.

We found that quarterly reviews had not been conducted prior to February 1975. We were told this was because other work of the Office of Personnel and Manpower had a higher priority. In February 1975, 1 month after the Commission had suspended the State Department's authority to hire consultants and experts for improperly using its authority, AID initiated a review of 143 consultant and expert positions.

We noted that AID had been slow in annually reminding its managers about the applicable regulatory provisions. We were informed, however, that such a reminder was recently issued.

CONCLUSIONS

AID has numerous individuals listed on its rolls as intermittently employed consultants and experts. Civil Service Commission rules are clearly stated concerning how such consultants and experts are to be used, and in most cases, AID's use of them complied with the Commission regulations.

Many of the intermittent consultants and experts on AID's rolls were Federal retirees. Generally, Federal retirees serving as experts or consultants to Federal agencies are subject to having their fees or annuity reduced so that the amount received in fees plus annuity does not exceed the daily equivalent of the stated consultant or expert rate. Federal retirees serving in such a capacity with AID, however, are exempted from this reduction. This exemption from the dual compensation laws was initially included in the foreign aid legislation as an element essential to the success of the Marshall Plan. In our opinion, however, the need no longer exists for this exemption, and it results in an advantage to Federal retirees employed by AID which is not available to Federal retirees employed in the same capacity by other Federal agencies.

Prior to a December 12, 1975, Comptroller General's Decision, AID had paid intermittent consultants and experts up to \$145 per day despite the \$100 per day limit established in the Foreign Assistance Act. Subsequently however, the Foreign Assistance Act has been amended to permit AID to pay the same rates as are generally authorized to be paid by other Federal agencies.

EXCERPT FROM SENATE HEARINGS, BEFORE A SUBCOMMITTEE
OF THE COMMITTEE ON APPROPRIATIONS, ON
FOREIGN ASSISTANCE AND RELATED PROGRAMS'
APPROPRIATIONS, FISCAL YEAR 1976

APRIL 17, 1975

Senator Inouye. As you know, Mr. Fasick, this subcommittee has oversight responsibilities on a full range of activities involved in foreign assistance and some of these activities are being carried out by so-called voluntary or private organizations and nongovernmental [sic].

Frankly, we don't have the detailed information about the operations which I feel is necessary if this committee is to carry out in proper fashion this oversight responsibility.

So I would like to take this opportunity to officially ask you to make timely reviews on three separate topics. One is AID financed university contracts. There are many throughout the land.

Second, AID's use of private consultants and advisers.

And, third, AID's relationship to and practices of private and voluntary organizations. I realize this a broad one.

I have given the staff, our committee staff, instructions as to the nature of these reviews and I will ask them to meet with appropriate officials on your staff to work out the specific areas to be covered and the timing of the report.

Mr. Fasick. We can do that, and I think all three areas are significant and warrant studies.

Senator Inouye. I think it is very important because here again it doesn't help when one receives a nameless letter or rumors suggesting that certain universities have a contract because of pressure and that university wasn't really qualified or had an inadequate staff to carry out the project. We would like to know what the truth is.

Mr. Fasick. All right, thank you.

AID had been slow in performing certain management requirements of the Civil Service Commission such as making timely reviews of consultant and expert positions and reminding management officials about the applicable regulatory provisions. AID has acted to correct these problems.

AID has acted to (1) periodically review the position of each consultant and expert working more than 10 days during the quarter for compliance with Commission regulations and (2) regularly remind managers about the regulations concerning the use of consultants and experts. In view of this, we are not recommending any specific actions at this time.

RECOMMENDATION TO THE CONGRESS

In order to establish comparability between intermittent employees of AID and all other Federal agencies, we recommend that the Congress amend section 626(b) of the Foreign Assistance Act of 1961 to remove AID's exemption from the laws governing the simultaneous receipt of compensation and Government retired pay or annuities.

This is consistent with the recommendation made in House Conference Report No. 94-1642 to accompany H.R. 14260.

Suggested language for amending the act to implement the recommendation is in appendix II.

Senator Inouye. There is a personal side to that request. As chairman of a subcommittee, I suppose there are some who may feel that I may use that position to enhance the position of Hawaiian enterprises and the University of Hawaii I know has a couple of contracts with AID. I would like you to look specifically into those to determine whether these contracts are good and whether the University of Hawaii is carrying out its part and giving the taxpayers their money's worth.

Mr. Fasick. Very good, sir. (Underscoring added.)

SUGGESTED REVISION TO SECTION 626(b) OF THE
FOREIGN ASSISTANCE ACT OF 1961

Section 626(b) of the Foreign Assistance Act of 1961, as amended, Public Law 87-195, 75 Stat. 424 (22 U.S.C. 2386(b)) should be amended by deleting the phrase

"sections 3323(a) and 8344 of title 5 of the United States Code, section 872 of the Foreign Service Act of 1946, as amended, or any other law limiting the reemployment of retired officers or employees or governing the simultaneous receipt of compensation and retired pay or annuities, subject to section 5532 of title 5 of the United States Code."

and inserting in lieu thereof:

"section 3323(a) of title 5 of the United States Code."