

April 9, 2018

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Ms. Lyudmila Bond  
Bureau for Management  
Office of Acquisition and Assistance, Policy  
Division (M/OAA/P), Room 867, SA-44  
Washington, DC 20523-2052

Re: A Response to USAID's Action in the Federal Register, titled, "*Notice of Public Information Collections*," dated, Tuesday, February 6, 2018, and having a Regulation Identification Number (RIN) of: XXX.

Dear Ms. Bond,

Vedder Price P.C. respectfully submits the following comments concerning USAID's "Notice of Request for Extension Without Change of the Currently Approved Information Collections," published in the Federal Register on February 6, 2018. *See*, 83 Fed. Reg. 25 (Feb. 6, 2018) at 5235 ("the Notice"). They respond to USAID's invitation for public comment concerning the agency's request to extend the approval of the information collections under OMB No. 0412-0520 for an additional three (3) years, using the Contractor Employee Biographical Data sheet (Agency Form No.: AID 1420-17) ("biodata form"). We are submitting the comments on behalf of certain individuals and contractor organizations ("Clients") that frequently perform on and compete for USAID contract awards. Each of the questions that USAID posed in the Notice is addressed below.

- a. Is the collection of information contemplated by the form necessary for the proper performance of the functions of the agency, and does it have practical utility?

Response: The current biodata form is burdensome, costly, and time-consuming to complete. Moreover, reliance on the form can be detrimental, because it can: (i) impede contractors from paying fair salaries based on market rates; (ii) prevent rewarding employees (especially new hires) with appropriate pay increases based on merit; and (iii) may inadvertently perpetuate salary inequality among various demographic groups.

Reliance on salary history, which is what the form is intended to foster, potentially impacts compliance with several federal laws, including the Equal Pay Act of 1963 and Title VII of the Civil Rights Act of 1964), and could most prominently affect those who are already at a salary disadvantage due to gender, ethnicity, race and nationality. Further, continued use of the form may conflict with other existing and newly anticipated labor laws of individual states and municipalities. For example, several states (including California, Delaware, Massachusetts, New Jersey, New York and Oregon) have banned employers from requesting salary history on applications and/or using salary history to determine salary, while individual municipalities, such as New Or-

leans and Pittsburgh, have their own versions of these laws. It is widely anticipated that many other states will also begin to legislate prohibitions against asking for applicants' specific salary history. Because numerous alternatives for determining the reasonableness of salaries exists, the biodata form is not "necessary" for the proper performance of agency functions. And, has limited, if any, practical utility. USAID should consider eliminating use of the form.

b. The Accuracy of Burden Estimates

Response: The biodata form requires significant time, effort, and cost expenditures from both the contractors and the job applicants filling out the form. For example, the information requested by the form requires job applicants to collect copies of their diplomas or seek certifications from educational institutions, obtain salary verification documentation from previous employers, sometimes take English or other language tests, and even incur translation costs if jobs or degrees are in another language. Obtaining all of the requested information often becomes an iterative process, as documentation from literally all over the world is collected. After that, the contractor is then required to spend significant additional time to verify that the information provided by the job applicant on the biodata form – which must be certified – is accurate and reliable.

As discussed below, based on one contractor's records, the time and expense that USAID has estimated to be necessary to collect information for completing biodata forms appears to be underestimated. This company alone reports processing an average of 7,595 biodata forms in 2016 and 2017. Thus, USAID's estimate that all contractors submit only a total of 36,467 biodata forms per year seems low. Further the company reports that, based on its experience, the time associated with processing a single biodata form can vary significantly, with most taking between 3 to 16 hours to verify and process. It is unclear how USAID determined its estimates, but USAID's calculation of approximately 1.35 hours per submission seems very low. Similarly, the cost of \$86 per form is consistent with this company's experience.

It is true that some of the contractor's expense related to the biodata process may be recovered directly. However, similar costs allocated to indirect costs pools may not be fully recovered and, even if absorbed, could increase indirect rates and reduce competitiveness. Moreover, the considerable time a job applicant may need to spend in connection with the process may not be reimbursed at all. This time would need to be considered in order to fairly assess burden on the public.

c. Ways to Enhance Quality, Utility, and Clarity of Information Collection

Response: The contractor proposes the following ways to enhance quality and clarity of Information Collection:

**Eliminate the biodata form as a form of data collection.** Contractors (and USAID) would benefit from more flexibility in proposing information necessary to support proposed candidates and associated salaries. This would include the most relevant candidate

biographical information, such as citizenship, education and employment history and market-based data supporting rates. But, it would eliminate collection of salary history, which is less relevant to candidates' value.

d. Ways to Minimize the Burden of Collection of Information on Respondents

Response: The contractor proposes the following ways to minimize the burden of collection:

1. **Allow contractors to rely on market data and other information instead of salary history to support salaries offered to candidates.**
2. **Utilize an electronic submission and approval form that allows all contractors to quickly prepare and submit salary approval requests to USAID.** Whether USAID chooses to continue using the biodata form, or an alternative form, an electronic request/submission portal managed by USAID could both minimize paper use and lessen the time spent on biodata forms (or equivalent). We envision such a form as asking only for the most relevant information necessary for USAID to approve personnel (education, proposed salary, employment history). Contractors would still continue to verify biographical information in good faith using their own application and verification process prior to submission, and the implementer would determine salaries based on market data.

In conclusion, selecting appropriate personnel to manage USAID development work requires submission of information that ensures accuracy, consistency and fairness for all stakeholders. The current biodata form by its nature requires significant time to complete, and sometimes may turn out to be counterproductive in terms of assuring that staff are properly compensated for their work. Respectfully, our Clients represented here believe that a more flexible process that does not rely heavily on past compensation should be considered.

Once again, we thank you for the opportunity to provide this feedback.

Very truly yours,



Eric J. Marcotte