



Requesting Approval to Negotiate a USPSC above GS-15 and CST

A Mandatory Reference for ADS Chapter 309

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**APPROVAL PROCESS FOR NEGOTIATING A USPSC
COMPENSATION RATE ABOVE THE GS-15 GRADE AND CST**

It is USAID policy to not exceed the General Schedule 15 equivalent level (GS-15) when estimating the market value for any USPSC position. See [ADS 309maq](#)

In exceptional circumstances when, after soliciting for a position at the GS-15-equivalent rate, the CO was not able to finalize negotiations with a qualified offeror within the GS-15 range, the CO may re-solicit after complying with the following:

- a. The Requesting Office in consultation with the CO, must prepare a written market value determination memorandum addressing the following :
 - (1) The results of the previous solicitation and any other market research performed to date that supports a determination that no qualified offeror could be found within the GS-15 value range;
 - (2) Justifying how the best interests of the government are served by exceeding the GS-15, step 10 maximum rate;
 - (3) Proposing a maximum annual rate of compensation above the GS-15 range at which qualified offerors would consider accepting the position;
 - (4) State whether the proposed rate is above or below the USAID Contractor Salary Threshold (CST).
- b. If the Requesting Office's determination supports a rate of compensation above the GS-15-equivalent and below the CST, then the cognizant Mission Director, AA, or Head of an IO (as indicated in **309.2**) has the authority to approve the determination.
- c. If the Requesting Office's determination supports a maximum rate of compensation above the CST, then only the Director, M/OAA has the authority to approve the determination. However before submitting the request to the M/OAA Director, the Requesting Office must obtain clearance of the memorandum from the cognizant Mission Director, AA, or Head of an IO (as indicated in **309.2**.)
- d. After obtaining the appropriate approval as required above, the CO must issue a new solicitation at the GS-15 market value, and explicitly indicate that:
 - (1) Compensation in excess of the GS-15 rate may be negotiated by the CO only if there are no qualified offerors within the market value;
 - (2) If compensation is negotiated above the maximum GS-15 rate, such rate will be capped at that rate for the duration of the contract and the contractor is not eligible for performance-based or annual pay comparability increases that apply to positions within the GS-equivalent scale.
- e. Following the receipt and evaluation of offers under the new solicitation, and the CO's determination of qualified offeror(s), the CO must make an offer within the GS-

15 market rate to the top ranked offeror. If the top ranked offeror rejects the CO's offer within the GS-15 range, then the CO may request that the offeror propose an alternate rate for the CO to consider. The CO must then offer the position within the GS-15 rate to each of the other qualified offerors, in rank order to try to award the contract to a qualified offeror within the GS-15 market value. If none of the qualified offerors accepts a rate within the GS-15 range, the CO must then create a separate ranking of these offerors' based on the proposed alternate rates, from highest to lowest.

- f. As the market value of the position was established at the GS-15 equivalent level, it is USAID policy that the maximum price that the CO may determine is fair and reasonable must not exceed the lowest alternate rate closest to the GS-15 market proposed by a qualified offeror. Therefore, if the CO was unable to negotiate a rate with a qualified offeror within the GS-15 range, the CO may either:
 - (1) Award directly to the offeror whose proposed alternate rate is closest to the GS-15 market value, and who is willing to accept the position at that rate; or
 - (2) Re-initiate negotiations using lowest alternate rate proposed from among the qualified offerors, starting with the top ranked offeror.
- g. The CO must not make a determination that the price is fair and reasonable based solely on the earnings history of the top ranked offeror.
- h. If the final negotiated rate is above the GS-15 maximum, the conditional selection letter and resulting contract must state that the rate is capped at the negotiated amount for the duration of the contract, and the PSC will not receive increases for performance steps or annual pay comparability that are applicable within the GS-equivalent scale. See **309.3.1.12**.
- i. The CO must document the actions required in this section, including all required clearances and approvals, in the contract file.

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