



FILE: PRC-7


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U. S. AGENCY FOR  
INTERNATIONAL  
DEVELOPMENT

APR 26 2005

## **ACTION MEMORANDUM**

TO: The Administrator

FROM: AA/ANE,  James Kunder

SUBJECT: Worldwide Competition for Tsunami-Related Contractual Activities

### **ISSUE FOR DECISION**

Whether to approve the mandatory opening to worldwide competition of infrastructure contracts competed for Tsunami-related activities.

### **ESSENTIAL FACTORS**

In an Action Memorandum dated February 1, 2005 covering expedited acquisition procedures for Tsunami relief and reconstruction activities (the "Tsunami waiver"), Frederick Schieck, Acting Administrator, approved the recommendation to establish Geographic Code 935 (which includes all countries except foreign policy restricted countries) as the applicable authorized source, origin, and nationality code for any goods and services procured in direct support of infrastructure, including design, construction, or construction-related activities under the USAID Tsunami relief and reconstruction program. The approved recommendation was conditioned by a "preference for the procurement of U.S. source, origin, and nationality to the extent practicable" and that this preference would be "subject to the terms of any promulgated, published policy of USAID effective at the time of the procurement."

The Development Assistance Committee (DAC) of the Organization for Economic Cooperation and Development defines "untied aid" as "Official Development Assistance for which the associated goods and services may be fully and freely procured in substantially all countries."

Along with twenty other donor nations, the United States in May of 2001 signed the DAC Recommendation which committed signatory nations to untie certain forms of aid to the least developed countries and encouraged them to untie aid for other activities receiving official development assistance. This authority to join in the DAC untying initiative is provided to you as Administrator in the Foreign Assistance Act (FAA). Section 604(a)(1)(B)(ii) of the FAA permits you, in a delegation from the President, to determine “on a case-by-case basis, that procurement in such other country is necessary ... (II) to promote efficiency in the use of United States foreign assistance resources, including to avoid impairment of foreign assistance objectives.”

The goals of USAID in providing humanitarian assistance to Tsunami-stricken areas are closely linked with those of the DAC 2001 Recommendation on Untying. Therefore, untying USAID’s development assistance in this circumstance to worldwide competition will help accomplish the following goals:

- (1) Promote greater integration among participating developing countries into the global economy;
- (2) Provide worldwide best value in the delivery of goods and services to host nations;
- (3) Provide more rapid mobilization and delivery of humanitarian relief and quick commencement of reconstruction projects due to the availability of local and regional contractors;
- (4) Build capacity of host nations by domesticating certain aspects of the relief and reconstruction effort by using local supplies, subcontractors, and labor, ensuring that maximum benefits of our efforts reach the people of the affected countries;
- (5) Provide U.S. foreign assistance suppliers with an opportunity to gain additional exports through the reciprocal opening to U.S. participation of other donor countries’ procurements;
- (6) Strengthen the responsibility and ownership of participating countries in the development process;
- (7) Generate cooperative and effective partnerships with host nations, as well as other donor nations;
- (8) Increase the supply of potential sources amongst participating countries eligible to meet the development needs in the area; and
- (9) Maintain the U.S.’s leadership position with regards to untying official development assistance around the world.

Although the Tsunami waiver established Geographic Code 935 as the applicable code for all goods and services (except for motor vehicles and pharmaceuticals) acquired under direct USAID contracts, the remaining “preference for the procurement of U.S. source, origin, and nationality” means that these procurements are not completely untied. Therefore, in order to comply with its international commitments, to fulfill the spirit of the DAC Recommendation, and to provide humanitarian assistance to South and Southeast Asia in the most effective and efficient manner possible, an amendment to the existing Tsunami waiver is necessary to remove the existing U.S. source, origin, and nationality preference for design and construction-related contracts (other than those executed in furtherance of the so-called “Indonesian road project”).

It is to be noted that this decision does not circumscribe the ability of the cognizant contracting officer to limit competition for a particular contract to local sources alone, on a discretionary basis, upon a determination that sufficient local capacity exists to provide needed supplies or services.

### **RECOMMENDATION**

We recommend that (except with regard to design and construction-related contracts for the Indonesian road project) you make the above finding and authorize the full and transparent opening of all USAID direct infrastructure contracts (including any subcontracts competed thereunder, with the exception of motor vehicles and pharmaceuticals, as articulated in the Tsunami waiver) to worldwide competition while removing any preference for the procurement of U.S. source, origin, and nationality.

Approve: Andrew S. Katsios

Disapprove: \_\_\_\_\_

Date: 5 May 2005

CLEARANCES:

AGC/CCM, JMarburg-Goodman	<u>J.M.G.</u>	Date	<u>4/11/05</u>
GC, JGardner	<u>R. Tannen</u>	Date	<u>4/22/05</u>
ANE/SAA, DKennedy-Iraheta	<u>DK</u>	Date	<u>4/18/05</u>
DAA/ANE, MWard	<u>MW</u>	Date	<u>4/16/05</u>
M/OAA/OD, MWalsh	<u>MW</u>	Date	<u>4/19/05</u>
LPA/CL, DRayburn	<u>DR</u>	Date	<u>4/21/05</u>
DAA/PPC, BTurner	<u>BT</u>	Date	<u>4/22/05</u>
ES, Daller	<u>DL</u>	Date	<u>5/2</u>

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