



USAID
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ADS Chapter 221

USAID's Procedures for Implementing International Agreements for Tied and Untied Aid

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ADS Chapter 221 – USAID’s Procedures for Implementing International
Agreements for Tied and Untied Aid
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Table of Contents

<u>221.1</u>	<u>OVERVIEW</u>	<u>4</u>
<u>221.2</u>	<u>PRIMARY RESPONSIBILITIES</u>	<u>6</u>
<u>221.3</u>	<u>POLICY DIRECTIVES AND REQUIRED PROCEDURES</u>	<u>9</u>
<u>221.3.1</u>	<u>Summary of the Terms for the DAC Recommendation</u>	<u>10</u>
<u>221.3.1.1</u>	<u>The DAC Recommendation to Untie Aid to the LDCs</u>	<u>10</u>
<u>221.3.1.2</u>	<u>Geographic Scope</u>	<u>11</u>
<u>221.3.1.3</u>	<u>Procurement Actions Covered by the DAC Recommendation</u>	<u>11</u>
<u>221.3.1.4</u>	<u>Applicability of Recommendation to Assistance Actions</u>	<u>11</u>
<u>221.3.1.5</u>	<u>Numerical Threshold</u>	<u>11</u>
<u>221.3.1.6</u>	<u>Covered Activities</u>	<u>11</u>
<u>221.3.1.7</u>	<u>Covered Categories of Procurement Action</u>	<u>12</u>
<u>221.3.1.8</u>	<u>Exclusions From the DAC Recommendation</u>	<u>14</u>
<u>221.3.1.9</u>	<u>Projects or Activities With Multiple Elements</u>	<u>14</u>
<u>221.3.1.10</u>	<u>Ex Ante Notification of the Covered Procurement Action</u>	<u>14</u>
<u>221.3.1.11</u>	<u>Derogation</u>	<u>15</u>
<u>221.3.1.12</u>	<u>Exchange of Information Procedures</u>	<u>16</u>
<u>221.3.1.13</u>	<u>Information on Contract and Grant Awardees Under the DAC</u> <u>Recommendation for Covered Actions</u>	<u>18</u>
<u>221.3.1.14</u>	<u>Reference Indicators Matrix</u>	<u>18</u>
<u>221.3.2</u>	<u>Summary of the Terms for the OECD Arrangement</u>	<u>18</u>
<u>221.3.2.1</u>	<u>OECD Arrangement Requirements</u>	<u>19</u>
<u>221.3.2.2</u>	<u>Description of a Capital Project</u>	<u>19</u>
<u>221.3.2.3</u>	<u>Geographic Scope</u>	<u>20</u>
<u>221.3.2.4</u>	<u>OECD Ex Ante Notifications</u>	<u>20</u>
<u>221.3.2.5</u>	<u>Tied Aid Consultation Procedures for Mixed Credits</u>	<u>21</u>
<u>221.4</u>	<u>MANDATORY REFERENCES</u>	<u>22</u>
<u>221.4.1</u>	<u>External Mandatory References</u>	<u>22</u>
<u>221.4.2</u>	<u>Internal Mandatory References</u>	<u>22</u>

Text highlighted in yellow indicates that the adjacent material is new or substantively revised.

<u>221.5</u>	<u>ADDITIONAL HELP</u>	<u>23</u>
<u>221.6</u>	<u>DEFINITIONS</u>	<u>23</u>

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ADS Chapter 221 – USAID’s Procedures for Implementing International Agreements for Tied and Untied Aid

221.1

OVERVIEW

Effective Date: 07/16/2008

This chapter establishes the policy directives and required procedures for implementing the U.S. Government’s (USG) agreements for tied and untied aid. This chapter includes:

- Country groupings covered under each agreement;
- Acquisition and assistance actions covered by each agreement;
- Numerical thresholds that apply to the covered actions;
- Exclusions from coverage;
- Consultation procedures for capital projects financed with a combination of grants, loans, guarantees, and private sector funds;
- Reporting requirements to international organizations; and
- Responsibilities of USAID/Washington and the Missions.

The United States is a party to two international agreements governing the use of tied and untied aid.

(1) [Development Assistance Committee’s \(DAC\) “Recommendation to Untie Aid to the Least Developed Countries” \(LDCs\)](#) (April 2001). The original DAC Recommendation required donors to permit the award of acquisition instruments, as well as the procurement of specified goods and services, to worldwide sources (source/origin code 935) for covered programs and activities in the LDCs.

Under the DAC Recommendation, USAID should:

- Untie, establish source/origin code 935 for, specified categories of goods and services with a value of 700,000 Special Drawing Rights (SDRs) (currently approximately US\$1,100,000) or more to the LDCs.
- Report these actions, which are called notifications, to the DAC.
- Provide information on aggregate levels of tied and untied aid.

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The following categories of procurement actions are covered by the DAC Recommendation:

- Capital projects,
- Capital equipment,
- Capital-related supplies and services, and
- Discrete physical commodities.

The following categories of procurement actions are excluded from the DAC Recommendation:

- Food aid (Title II and III),
- Transport of food aid by vessel, and
- Technical assistance (other than the covered items).

The DAC Recommendation recently expanded from the LDCs so it also applied to procurement actions for the heavily indebted poor countries (HIPC) under the World Bank HIPC Initiative (See [HIPC List](#)). The USG agreed to this expansion of the DAC Recommendation (see Cable Paris 01060 dated June 4, 2008).

(2) Organization for Economic Cooperation and Development's (OECD) "Arrangement on Guidelines for Officially Supported Export Credits," (1992), also known as the Helsinki Agreement. The OECD Arrangement sets the international rules for government financing of tied (source/origin codes 000 and 941) trade related activities—defined operationally by USAID as capital projects, capital equipment, and capital-related commodity procurements—that are provided to developing countries using grants, loans, and guarantees. A capital project may be a standalone activity or part of a broad-based activity. The USG is a participant in the OECD Arrangement; therefore, USAID is subject to OECD Arrangement rules and procedures.

Under the OECD Arrangement, USAID will provide information to the OECD (called notifications) on planned capital projects of \$2.6 million or more, regardless of the combination of funding sources.

USAID must consult among the originating office or Mission and the Office of Development Partners (ODP), the Chief Operating Officer in the Office of the Administrator (A/AID/COO), the cognizant Contracting Officer, and the Office of General Counsel (GC) in the event that a proposed capital project is financed with any combination of (a) USAID grants, loans, or guarantees, and (b) export credits (for example, Export Import Bank loans) or private sector financing. A consultation is required regardless of the amount of the capital project.

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221.2 PRIMARY RESPONSIBILITIES

Effective Date: 07/16/2008

a. Chief Operating Officer in the Office of the Administrator (A/AID/COO) coordinates Agency-wide development policies. These responsibilities include, but are not limited to

(1) Determining categories of procurement actions covered by the Development Assistance Committee (DAC) Recommendation and the Organization for Economic Cooperation and Development (OECD) Arrangement in consultation with the Office of General Counsel (GC), the Bureau for Management's Office of Acquisition and Assistance (M/OAA), and the Office of Development Partners (ODP).

(2) Determining categories of procurement actions excluded by the DAC Recommendation and the OECD Arrangement, in cooperation with GC, M/OAA, and ODP.

(3) Determining the categories of circumstances, in consultation with GC, when USAID will derogate (that is depart from its requirement by waiving the untied status of a procurement or procurements) from the DAC Recommendation.

(4) Consulting with the U.S. Department of the Treasury (Treasury) on the financial arrangements for individual capital projects that may be financed with either a loan or a combination of a loan and grant.

b. Office of Development Partners (ODP) coordinates and reports to the DAC/OECD on compliance with the provisions of the DAC Recommendation and OECD Arrangement. These responsibilities include, but are not limited to

(1) Revising this Automated Directive System (ADS) chapter based on U.S. Government (USG) negotiated changes in the DAC Recommendation and the OECD Arrangement.

(2) Submitting the data to the DAC required for the "Reference Indicators Matrix in the DAC Recommendation."

(3) Coordinating with M/OAA in the design of the requirements for information systems to collect and compile data for the DAC Recommendation.

(4) Preparing an annual country profile establishing positions for the Reference Indicators Matrix in the DAC Recommendation.

(5) Providing notification of covered procurement actions to the DAC and the OECD.

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- (6) Establishing procedures for requesting additional information on untied aid procurements (offers) by other donors.
- (7) Communicating the required justification to the Secretary-General of the OECD and the DAC Chair for a derogation from the DAC Recommendation.
- (8) Providing annual reports to the DAC on contract awards for procurements covered by the DAC Recommendation for each calendar year.
- (9) Developing an annual summary of tied and untied procurement using source/origin codes by Mission, region, and Bureau.
- (10) Representing USAID during reviews with other USG agencies of USAID's efforts to implement the DAC Recommendation and the OECD Arrangement.
- (11) Communicating with other USG agencies regarding other agencies' efforts to comply with the provisions of the DAC Recommendations and the OECD Arrangement.

c. Office of the General Counsel

GC responsibilities include, but are not limited to

- (1) Ensuring that the DAC Recommendation and any subsequent changes or amendments are consistent with the [Foreign Assistance Act of 1961, as amended](#) (FAA), and other relevant U.S. laws.
- (2) Reviewing existing legal authorities and USAID procurement policies for consistency with the DAC Recommendation and the OECD Arrangement on a continual basis.
- (3) Advising and counseling A/AID/COO, ODP, M/OAA, and the Deputy Administrator on USAID policy changes that may be influenced by the DAC Recommendation and OECD Arrangement, as well as on necessary changes to USAID implementation policies required by changes in foreign assistance and procurement legislation.
- (4) Ensuring that USAID administration of the DAC Recommendation and OECD Arrangement complies with U.S. antibribery and anticorruption laws and regulations.
- (5) Assisting ODP in complying with its annual reporting requirements on the DAC Recommendation, especially changes to legislation, best endeavors, and procurement policies.

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(6) Assisting M/OAA in resolving questions regarding which specific procurement actions are covered by the DAC Recommendation and the OECD Arrangement.

(7) Assisting M/OAA in resolving questions regarding which specific procurement actions are excluded by the DAC Recommendation and the OECD Arrangement.

d. Bureau for Management, Office of Acquisition and Assistance (M/OAA)

M/OAA responsibilities include, but are not limited to

(1) Coordinating with ODP and GC to ensure that acquisition and assistance policy and procedures comply with this chapter.

(2) Developing and revising, in coordination with ODP, internal procedures to obtain procurement information for the DAC and OECD notification systems—including, but not limited to, information on source/origin and nationality of solicitations and awards Agency-wide—and information on upcoming solicitations for actions covered by the DAC Recommendation and OECD Arrangement.

(3) Complying with USAID procedures for input to any information system or process necessary to fulfill the reporting requirements of the DAC Recommendation or OECD Arrangement.

e. Bureaus, Offices, and Missions

Bureaus, Offices, and Missions responsibilities include, but are not limited to

(1) Consulting with GC or the responsible Regional Legal Advisor (RLA), as early as possible, on any procurement activity that may be financed with a loan or a combination of a loan and a grant.

(2) Reporting on procurements, as requested by OAA, to assist with providing the notifications under the DAC Recommendation and OECD Arrangement.

(3) Ensuring that the appropriate source/origin and nationality codes are included in every notice for a USAID-funded contract.

(4) Providing to M/OAA and ODP accurate information on the identity of the winning contractor(s) for all untied aid procurements covered by the DAC Recommendation.

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221.3 POLICY DIRECTIVES AND REQUIRED PROCEDURES

Effective Date: 07/16/2008

A summary of the requirements and procedures follows.

- a. Under the DAC Recommendation, USAID is expected to
- Untie (establish source/origin code 935 for) specified categories of goods and services with a value of 700,000 Special Drawing Rights (SDRs) or more to the least developed countries (LDCs). Under the current conversion rate between an SDR and a \$US, the threshold is about \$1,100,000.
 - Report these actions, called notifications, to the Development Assistance Committee (DAC).
 - Provide information on aggregate levels of tied and untied aid.
- b. Under the Organization for Economic Cooperation and Development (OECD) Arrangement, USAID should
- Provide information to the OECD (called notifications) on planned capital projects (source/origin code 000, 935, and 941) of \$2.6 million or more, regardless of the combination of funding sources. These notifications are required for all country groupings.
 - Consult with the U.S. Department of the Treasury (Treasury) in the event that a proposed capital project (tied or untied) may be financed with any combination of (1) USAID grants, loans, or guarantees and (2) export credits (for example, Export Import Bank loans) or private sector financing. A consultation is required regardless of the amount of the capital project.

NOTE: Both the DAC Recommendation and the OECD Arrangement have notification requirements, although the threshold and the coverage differ somewhat.

A proposed procurement action is subject to either of these international commitments whenever the procurement action:

- Is in an LDC or heavily indebted poor countries (HIPC) (See [Listing of Least Developed Countries](#) and [HIPC List](#).) and
- Is a capital project, which may also be in an LDC or HIPC (See **221.3.2**).

Whenever the procurement action is not in an LDC or HIPC or is not a capital project, no further action is necessary under this ADS chapter.

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For background information, see [Untying and Aid Efficiency](#) and [USAID Support for the Recommendation](#).

221.3.1 Summary of the Terms for the DAC Recommendation

Effective Date: 07/16/2008

In the simplest of terms, DAC Members, including USAID, have agreed to procure specified goods and services with a value of 700,000 SDRs (equal to approximately US\$1,100,000) or more from worldwide sources (source/origin code 935).

USAID's implementation of the DAC Recommendation to untie the procurement of specific categories of goods and services depends on the answers to the following questions:

- Is the procurement benefiting, providing resources to, an LDC or HIPC? (See [Listing of the Least Developed Countries](#) and [HIPC List](#).)
- Is the value of the procurement destined for an LDC equal to or greater than \$1,100,000?
- Is the procurement of the commodity or service covered by the DAC Recommendation (operationally defined to include capital projects, capital equipment, and capital-related supplies, as well as other discrete physical commodity procurements)?

If the answer to each of these questions is yes, the procurement action is covered by the DAC Recommendation, meaning that the originating Bureau/Independent Office (B/IO) or Mission must designate it as source/origin code 935, unless there is a need to derogate from the DAC Recommendation. In addition, USAID is required to provide notification to the DAC on covered procurements of \$1,100,000 or more.

The responsibilities are as follows:

- The originating B/IO or Mission should untie the procurement (source/origin code 935), unless there is a derogation (**221.3.1.11**).
- ODP will notify the DAC of the proposed procurement action based on information in the presolicitation notice and additional information, as needed.

A more detailed description of the implementation policies for the DAC Recommendation follows.

221.3.1.1 The DAC Recommendation to Untie Aid to the LDCs

Effective Date: 01/01/2002

USAID, the representative of the United States, has reached a consensus with members of the DAC to untie official development assistance (ODA) to the world's

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LDCs to the greatest extent possible. DAC Members reached a consensus on the untying DAC Recommendation at the April 2001 High Level Meeting of DAC Ministers. This DAC Recommendation was expanded to include ODA to HIPCs in May 2008.

221.3.1.2 Geographic Scope

Effective Date: 01/01/2002

The DAC Recommendation to untie ODA (source/origin code 935) applies to the LDCs in the [Listing of the Least Developed Countries](#) and to countries appearing on the [HIPC list](#).

221.3.1.3 Procurement Actions Covered by the DAC Recommendation

Effective Date: 07/16/2008

When USAID/Washington or a Mission initiates a procurement action to benefit an LDC or HIPC, it must determine whether the items to be procured are covered by the DAC Recommendation and should be untied.

If the proposed procurement action is not covered, it does not have to be untied per the untying DAC Recommendation. If there is foreign policy or other considerations requiring such action, the USAID entity undertaking the procurement may untie the action in accordance with [22 CFR 228](#).

221.3.1.4 Applicability of Recommendation to Assistance Actions

Effective Date: 07/16/2008

As set forth in [ADS 310.5.1](#), the provision of assistance (grants and cooperative agreements) is not limited by geographic code, unless otherwise restricted by statute or regulation from receiving assistance. Procurements under assistance awards must comply with the terms of the award and USAID's source, origin, and nationality policies in [22 CFR 228](#) and ADS chapters [310](#), and [312](#).

221.3.1.5 Numerical Threshold

Effective Date: 07/16/2008

The DAC Recommendation applies to procurements of USAID financed activities with a value of SDR 700,000 or more in a LDC. (Under the current conversion rate between an SDR and a \$US, the threshold is about \$1,100,000.) The current conversion rate can be obtained at the following web site: <http://www.imf.org/external/fin.htm>.

221.3.1.6 Covered Activities

Effective Date: 01/01/2002

The following activities are covered by the DAC Recommendation:

- Balance of payments and structural adjustment support,
- Debt forgiveness,

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- Sector and multisector program assistance,
- Investment project aid,
- Import and commodity support, and
- Commercial services contracts for running or managing a utility or distribution network.

221.3.1.7 Covered Categories of Procurement Action

Effective Date: 07/16/2008

In order to make the coverage section operational for USAID, the following categories of procurement actions will be covered by the DAC Recommendation:

- Capital projects,
- Capital equipment,
- Capital-related supplies and services, and
- Discrete physical commodities.

a. Description of a Capital Project

A capital project is a discrete activity. In OECD methodology, a project includes all the marginal costs of inputs, including the proposed investment, required to produce a discrete marketable output (for example, services from a fully functional water/sewage treatment facility). Thus, a project may cover many individual contracts and may include the following:

- Technical assistance for the bidding process,
- Architectural and engineering design studies,
- Construction of the physical infrastructure, and
- Operations and maintenance of the facility.

In operational terms, the OECD definition means that a capital project must not be split into individual components so as to bypass the tied aid rules. There is well-established case law in the OECD on project-splitting, and considerable efforts have been made to deter this practice.

The sectors in which capital projects are likely to occur include:

- Transport (roads, ports, and rail),
- Power (generation and transmission),
- Telecommunications,
- Environmental technology,
- Agriculture (irrigation),
- Urban environment,
- Water supply,
- Wastewater treatment,
- Information technology, and

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- Construction or reconstruction of physical facilities in any sector under any strategic objective.

b. Capital Equipment

Neither the DAC nor the OECD has an exact description of **capital equipment**. The [Federal Acquisition Regulations](#) provides a starting point:

Capital equipment includes personal property of a capital nature (including equipment, machine tools, test equipment, furniture, vehicles, and accessory and auxiliary items) for use in manufacturing supplies, in performing services, or for any administrative or general plan purpose.

c. Capital-Related Supplies and Services

These items include the supplies or services necessary to install or erect capital equipment and the training of personnel in maintenance, operation, and use of such equipment.

d. Discrete Physical Commodities Covered

Examples of commodities subject to the DAC Recommendation include, but are not limited to

- Machinery,
- Plant and equipment,
- Motor vehicles,
- Locomotives,
- Computers,
- Environmental equipment and technology,
- Medical equipment,
- Pharmaceuticals,
- Office supplies,
- Telecommunications equipment,
- Pesticides, and
- Fertilizers.

e. Special Considerations for Restricted Commodities

The policies in this chapter on untying do not override the existing requirements to seek a case-by-case waiver for procurement of certain classes of commodities, such as motor vehicles and pharmaceuticals. For these restricted commodities, case-by-case waivers are necessary to procure under geographic code 935. Although this chapter encourages the untying of certain restricted categories of commodities, it still is necessary to obtain a waiver before

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undertaking the procurement. Policies on restricted commodities and waiver requirements are in [ADS 312](#). If a waiver to use geographic code 935 to purchase these restricted commodities is not sought or is not granted, USAID may be required to derogate from the DAC recommendations. For this reason, the technical or program office should consult with GC or the responsible RLA.

221.3.1.8 Exclusions From the DAC Recommendation

Effective Date: 01/01/2002

The following procurement actions or commodities do not have to be untied, based on USAID's interpretation of the provisions of the DAC Recommendation.

- Food aid (Title II and III);
- Transport, by vessel, of food aid; and
- Technical assistance (other than commodities, services, and capital projects).

Some broad examples of technical assistance activities that do not have to be untied include training, institution building, consulting services, and intellectual capacity building.

221.3.1.9 Projects or Activities With Multiple Elements

Effective Date: 01/01/2002

There may be situations where activities or projects have several elements. If this occurs, it will be necessary to review each discrete element to determine whether it satisfies the coverage and threshold criteria of the DAC Recommendation. For example, a health activity or project may include a capacity building element along with a physical infrastructure component. Thus, the B/IO or Mission may need to consult with GC or the responsible RLA to determine whether the activities must be notified.

221.3.1.10 Ex Ante Notification of the Covered Procurement Action

Effective Date: 01/01/2002

The notification process requires close coordination between ODP, M/OAA, and the originating office. Ex ante notification in the context of the DAC Recommendation is an advance notice of the planned procurement action.

ODP must provide notification on procurement actions (untied aid offers) to the DAC at least 30 calendar days before the opening of the bidding period. However, this notification date does not correspond to any specific event in the USG's procurement process. To make this operational, USAID will base its notifications to the DAC on the timing requirements for the presolicitation notice in FedBizOpps until the new acquisition and assistance system for USAID becomes fully operational.

The notification process for procurements covered by the DAC Recommendation is as follows:

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- The cognizant Contracting Officer (CO), as part of the procurement process, will send a presolicitation notice of the planned procurement as required by the [FAR](#) and/or Agency policy.
- The Agency Tied Aid Coordinator (TAC) will use the information in the notice to prepare the notification required by the DAC Recommendation.
- The notification must include all of the information listed in the [DAC Ex Ante Notification Requirements](#). Sometimes the TAC will need additional information that is not included in the notice. The TAC will, as appropriate, contact the CO or other responsible USAID official to complete the notification.
- The TAC must prepare the notification and transmit it to the DAC no later than five working days from the initial posting of the notice.

Special Contracting Circumstances

Whenever a covered action is not required to be advertised (e.g., a fixed amount reimbursement instrument, a grant to a PVO for an infrastructure activity, or contract action for which other than full and open competition has been authorized), the Contracting Officer or responsible official is still responsible for transmitting the information in the reference titled, [DAC Ex Ante Notification Requirements](#), to the TAC (e-mail address “Tied Aid Coordinator”) before issuance or publication of the solicitation document, or when the justification for non-competition is approved – whichever occurs first. This must occur at least five working days before the issuance of the solicitation document or approval of the non-competitive justification.

This notification requirement also applies to all USAID-financed covered activities funded under host country procurement mechanisms. Missions that utilize contractors to manage the host country programs will need to ensure that the contractors are aware of and comply with the notification requirement. This means that—if they are not creating pre-solicitation notices—they must send the information in the reference titled, [DAC Ex Ante Notification Requirements](#), to the TAC (e-mail address “Tied Aid Coordinator”) at least five working days before the time that bidding commences.

221.3.1.11 Derogation Effective Date: 07/16/2008

USAID may, in exceptional circumstances, take measures inconsistent with the terms of the DAC Recommendation in situations involving overriding non-trade related development interests. The decision to derogate means that USAID has determined that it is in the national interest of the United States to tie (procure goods and services in the U.S. (source/origin codes 000 and 941)) rather than follow the terms of the DAC Recommendation.

a. Derogation Considerations

If the exports of goods and services (subject to the DAC Recommendation) are for immediate humanitarian and emergency relief situations and speed is of the essence, there may be grounds for derogation.

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Overriding nontrade related interests may include, but are not limited to, situations where

- **FAA** legislation requires procurement from specified sources;
- It is in the foreign or international economic policy interests of the United States to do so; or
- There are emergency or special circumstances.

b. Derogation Procedures

Whenever a B/IO or Mission recommends that it is in the overriding national interest to derogate, the following procedures will apply:

- The CO or the responsible official will inform the TAC (e-mail address “Tied Aid Coordinator”), as early as possible, but before the publication of any presolicitation notice in FedBizOpps or before the approval of any justification for non-competitive procedures, that USAID is likely to derogate from the terms of the DAC Recommendation. The e-mail must contain the reason(s) for the derogation and the activities or commodities covered by the derogation.
- ODP will prepare the letter of derogation for the signature of the Deputy Administrator (DA/AID), in consultation with GC, A/AID/COO, and M/OAA, and the requesting B/IO.
- ODP will transmit a letter from the DA/AID to the Secretary – General of the OECD and to the DAC Chair with the reasons for the derogation. This letter should be sent before the solicitation is issued, but no later than five working days after it is issued.

221.3.1.12 Exchange of Information Procedures

Effective Date: 01/01/2002

The DAC Recommendation allows DAC Members to question other Members about specific aspects of their untied aid notifications concerning feasibility studies or architectural and engineering studies for capital projects. The DAC calls these activities investment related technical cooperation. This information can be obtained through an exchange of information procedure.

a. USAID Inquiries on Other DAC Member Notifications

USAID keeps track of DAC Member notifications and queries when appropriate. The inquiry procedures are as follows:

- The TAC must check the DAC untied aid Web site on a weekly basis, if not more frequently, to determine the most recent notifications.

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- USAID, in cooperation with Treasury, the U.S. Department of Commerce (Commerce), and other USG agencies, will develop a priority list of sectors (and possibly other criteria) to determine which notifications should be the subject of an inquiry on a regular basis.
- The TAC—acting on behalf of other USG agencies, such as Treasury, Commerce, or the Export-Import Bank (EXIM)—may send an inquiry to another DAC Member once an activity is notified officially.
- The inquiry will contain questions related to the design elements of the proposed capital project as well as questions on the tying status of the feasibility study.
- The questions include, but are not limited to
 - Was investment related technical cooperation (IRTC) associated with the notification in the form of a feasibility study or architectural and engineering study?
 - When was the original solicitation or RFP issued?
 - When was the contract or grant awarded?
 - Who was it awarded to?
 - What are the affiliated companies, either in the donor country or foreign countries that are co-winners?
 - Is a copy of the final feasibility study available and where can it be obtained?
- The TAC will post the letter of inquiry on the DAC public untied web site.
- Upon receipt of the information, the TAC will forward it to the appropriate USG agency(s) and also post it on the DAC public untied aid web site.

b. Responses to Other DAC Member Inquiries

USAID may receive an inquiry from another DAC member on an untied aid offer. The TAC will be the contact point for all inquiries, and this will be noted in the untied aid notification. Upon receipt of an inquiry, the TAC will work with the originating office in preparing an appropriate response. The TAC will respond to the DAC Member initiating the inquiry within 14 calendar days of receipt, as required by the DAC Recommendation. To the extent that any other employee of USAID receives an inquiry, those should be directed to the TAC via the Outlook e-mail address—“Tied Aid Coordinator.”

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221.3.1.13 Information on Contract and Grant Awardees Under the DAC Recommendation for Covered Actions

Effective Date: 01/01/2002

USAID is required to provide the DAC Secretariat with information on contract and grant awards related to the individual ex ante notifications under the DAC Recommendation for covered actions.

The TAC (using information provided by M/OAA) will prepare a list of contract and grant awardees under the DAC Recommendation for each calendar year. This list will be compiled in the first quarter of the subsequent calendar year and sent to the DAC by April 1st of that year.

NOTE: The list of awardees also includes Host Country awardees and those covered by special contracting circumstances in this ADS chapter.

The list must include the name, address, and country of incorporation of the firm awarded the contract (or the prime contractor, if a syndicate of firms is concerned).

As noted in **221.3.1.14** of this ADS chapter, the TAC must develop a database of contract and grant awardees for the untied aid notifications.

221.3.1.14 Reference Indicators Matrix

Effective Date: 01/01/2002

ODP, in coordination with M/OAA, must develop an appropriate database of procurement actions to generate a reference indicators matrix (RIM). The RIM allows the DAC members and the Secretariat to track the untying efforts of each member and compare it to the performance profiles of other members.

The key data elements of RIM include the volume of ODA that is tied and untied.

In order to generate the data for RIM, ODP must annually compile the source/origin codes associated with each USAID procurement action. This will be used to determine USAID's overall tying and untying ODA percentages, which subsequently will be reported to the DAC.

221.3.2 Summary of the Terms for the OECD Arrangement

Effective Date: 07/16/2008

The USG is a participant in the OECD Arrangement, and USAID is, therefore, subject to its rules and procedures as are virtually all USG agencies that have international financing programs. This section summarizes the OECD Arrangement's Tied Aid rules for trade-related activities.

Text highlighted in yellow indicates that the adjacent material is new or substantively revised.

Once it is determined that the procurement action is trade-related (that is, operationally defined as a capital project), the next set of considerations concern notification and consultation.

- Whenever the originating B/IO or Mission is in the process of initiating a procurement for a capital project of \$2.6 million or more, ODP must provide a notification describing this action to the OECD. This notification requirement applies to capital projects with source/origin codes 000, 935, and 941. (See the [Geographic Code Book](#))
- ODP should use the information in the FedBizOpps presolicitation notice, supplemented with information from the originating B/IO or Mission, as appropriate.
- Whenever the originating B/IO or Mission is in the process of planning any capital project that may involve any combination of a grant, loan, or guarantee, and EXIM credit, private sector financing, or additional financing to complete, the originating B/IO or Mission must consult with GC or the responsible RLA and also must contact the “Tied Aid Coordinator” Outlook mailbox. ODP, in consultation with Agency lawyers and the appropriate B/IO, must review the proposed financial package for compliance with the OECD Arrangement.

A more detailed description of the implementation policies for the OECD Arrangement follows.

221.3.2.1 OECD Arrangement Requirements

Effective Date: 01/01/2002

The OECD Arrangement sets the rules for government financing and reporting requirements of trade-related activities (defined operationally by USAID as capital projects, capital equipment, and capital-related commodity procedures). As noted in **221.6**, all such trade-related activities collectively are referred to as capital projects.

Some examples of trade-related activities that would be covered by the tied aid rules are those associated with manufacturing and industrial processes, power generation and distribution, telecommunications, water supply, wastewater treatment, transportation, construction and maintenance, and supplies of equipment.

221.3.2.2 Description of a Capital Project

Effective Date: 01/01/2002

A capital project, see **221.3.1.7**, can be a standalone activity or part of a broad-based activity.

In some cases, capital projects may be a component of a much larger initiative. Some examples are:

Text highlighted in yellow indicates that the adjacent material is new or substantively revised.

- An education activity involving the purchase of capital equipment, such as computers;
- A health project requiring the purchase of medical equipment, such as diagnostic medical equipment; and
- The construction of a health facility. The capital component is a trade-related activity under the OECD rules and must be notified (see **221.3.2.4**).

221.3.2.3 Geographic Scope

Effective Date: 01/01/2002

The rules of the OECD Arrangement apply to all countries to which USAID provides assistance.

221.3.2.4 OECD Ex Ante Notifications

Effective Date: 01/01/2002

USAID should provide ex ante (that is, before the solicitation is issued) notification to the OECD on all of USAID's capital projects (for all source/origin codes 000, 935, and 941).

ODP is responsible for providing the necessary information to the EXIM, who will then formally notify the OECD. The information that ODP needs for that notification is described in [OECD Ex Ante Notification Requirements](#). ODP will use information supplied by the B/IO or Mission in the presolicitation notice, together with supplemental information solicited from the originating B/IO or Mission, to prepare the notification.

Special Contracting Circumstances

In the event that USAID finances a capital project that is not required to be advertised in (e.g., a fixed amount reimbursement instrument, a grant to a PVO for an infrastructure activity, or contract action for which other than full and open competition has been authorized), the Contracting Officer or responsible official is still responsible for transmitting the information in the reference titled, [OECD Ex Ante Notification Requirements](#), to the TAC (e-mail address "Tied Aid Coordinator") before issuance or publication of the solicitation document, or when the justification for non-competition is approved – whichever occurs first. This must occur at least five working days before the issuance of the solicitation document or approval of the non-competitive justification.

This notification requirement also applies to all USAID-financed covered activities funded under host country procurement mechanisms. Missions that utilize contractors to manage the host country programs will need to ensure that the contractors are aware of and comply with the notification requirement. This means that -- if they are not creating pre-solicitation notices -- they must send the information in the reference titled, [OECD Ex Ante Notification Requirements](#), to the TAC (e-mail address "Tied Aid Coordinator") at least five working days before the time that bidding commences.

Even if financing part of a project using a grant is contemplated, with the recipient being responsible for arranging financing for the remainder of the project, all financing sources

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(including financing by recipient) must be reported to ensure compliance with the OECD rules.

221.3.2.5 Tied Aid Consultation Procedures for Mixed Credits

Effective Date: 01/01/2002

a. Mixed Credits

Under the OECD Arrangement, there are some situations when USAID cannot provide tied aid (for example, grants and loans are mixed in ways that undermine competition). The design of a capital project may involve, in one form or another, USAID grants, loans, or guarantees, and export credits or private sector financing. There is no simple way to determine beforehand whether the overall financial package is consistent with the OECD rules. Such a determination may have to be addressed on a case-by-case basis. Consequently, operating units should be sensitive to tied aid rules when designing capital projects and must consult with GC or the responsible RLA when in doubt to ensure that USAID complies with tied aid rules. This consultation must occur well before any presolicitation notice so that advanced designs are not put on hold or shelved due to tied aid policy issues.

When USAID funding of a project is mixed (ex ante or ex post) with credit assistance from, for example, another USG agency such as EXIM, a mixed credit package is created and tied aid concerns arise. It has been long-standing USG policy not to initiate this type of mixed credit financing. The OECD Arrangement looks at USG grant and credit assistance as a whole. The effect of mixing, say, USAID 100% concessional grant assistance with a market-based loan or other credit from another USG agency in the same capital project, may turn all USG assistance into concessional (mixed credit) financing barred by the OECD Arrangement. The OECD Arrangement ensures that officially (government) supported competition among OECD exporters is based on price and quality, not on concessional financing from government sponsors.

b. Consultation Requirements

During the design phase of any capital project financed by a B/IO or Mission with grant assistance that could be linked or associated with credit assistance, B/IO and Missions must consult with GC or the responsible RLA and ODP as early as possible to vet any tied aid concerns. This action is essential, especially if

- Grants and loans/guarantees are combined,
- A USAID grant finances only a portion of a capital project, and
- Export credit agencies may be a possible source for the remaining financing.

As necessary, GC and ODP will consult with A/AID/COO, M/OAA, the appropriate B/IO, and Treasury to resolve issues that might arise. B/IO and Missions must understand that the rules governing tied aid under the OECD Arrangement, which are only briefly summarized in this chapter, are complex. Hence, to ensure compliance with the OECD

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Arrangement, consultation ordinarily will be needed in the situations involving credit assistance.

ODP will provide the originating B/IO or Mission with the feedback from the USAID/W-Treasury review. The originating office must then incorporate the USAID/W-Treasury input into the design of the financial package for the capital project.

221.4 MANDATORY REFERENCES

221.4.1 External Mandatory References

Effective Date: 07/16/2008

- a. [22 CFR 228, Rules on Source, Origin, and Nationality for Commodities and Services Financed by USAID](#)
- b. [DAC Recommendation on Untying Official Development Assistance to the Least Developed Countries DCD/DAC \(2001\)12/REV1](#)
- c. [Federal Acquisition Regulations](#)
- d. [Foreign Assistance Act of 1961, as amended, Section 604\(a\) \(1\) \(A\)](#)

221.4.2 Internal Mandatory References

Effective Date: 07/16/2008

- a. [ADS 221maa, Listing of the Least Developed Countries](#)
- b. [ADS 221mab, DAC Ex Ante Notification Requirements](#)
- c. [ADS 221mac, OECD Ex Ante Notification Requirements](#)
- d. [ADS 310, Source and Nationality Requirements for Procurement of Commodities and Services Financed by USAID](#)
- e. [ADS 312, Eligibility of Commodities](#)
- f. Action Memorandum of June 14, 2001
- g. Action Memorandum of April 24, 2001
- h. Action Memorandum of April 13, 2001
- i. Action Memorandum of February 14, 1998
- j. [Geographic Code Book](#)
- k. [HIPC List](#)

Text highlighted in yellow indicates that the adjacent material is new or substantively revised.

- I. **Legal Memorandum of February 8, 2001**
- m. **U.S. State Department, Cable Paris 01060**

221.5 ADDITIONAL HELP
Effective Date: 01/01/2002

- a. [ADS 221saa, Untying and Aid Efficiency](#)
- b. [ADS 221sab, USAID Support for the Recommendation](#)

221.6 DEFINITIONS
Effective Date: 07/16/2008

The terms and definitions listed below have been incorporated into the ADS Glossary. See the [ADS Glossary](#) for all ADS terms and definitions.

balance of payments support

Resource flows in Development Assistance Committee statistics are measured, as a rule, on a cash basis. (Chapter 221)

capital projects

Capital projects include the architectural and engineering design study, construction of physical infrastructure, and operations and maintenance of the facility. In general, capital projects include the following types of activities: transport (roads, ports, and rail), power (generation and transmission), telecommunications, environmental technology, agriculture (irrigation and infrastructure), urban environment, water supply, wastewater treatment, information technology, and construction or reconstruction of physical facilities in any sector under any strategic objective. (Chapter 221)

commercial services contracts

Contracts let on a commercial basis for the running or management of a utility or distribution network. (Chapter 221)

commodity

Any material, article, supply, goods, or equipment. (Chapters 221, [310](#), [312](#))

commodity-related services

Delivery services and/or incidental services. (Chapter 221)

contract actions

The steps necessary to conduct the procurement of goods and services covered by the Development Assistance Committee Recommendation. (Chapter 221)

debt forgiveness

Text highlighted in yellow indicates that the adjacent material is new or substantively revised.

All actions relating to debt (forgiveness, swaps, buy-backs, rescheduling, and refinancing). (Chapter 221)

Development Assistance Committee (DAC)

The committee of the Organization for Economic Cooperation and Development that deals with development cooperation matters. (Chapter 221)

ex ante notification

The provision to the Development Assistance Committee (DAC) of information in the Mandatory Reference titled, DAC Ex Ante Notification Requirements, on the untied aid offers covered by the DAC Recommendation. A parallel definition applies to the Organization for Economic Cooperation and Development Ex Ante Notification. (Chapter 221)

FedBizOpps notice

This is the required notice replacing the Commerce Business Daily presolicitation notices. The format for that notice is part of the same FedBizOpps site where the notice is created and posted by authorized users. (Chapter 221)

import and commodity support

Import and commodity support includes contributions for general development purposes without sector allocation, with or without restrictions on the specific use of the funds (and irrespective of any control by the donor of the use of counterpart funds). Funds are supplied on the general condition that they be used for capital projects at the recipient's choice, but not subject to agreement by the donor. (Chapter 221)

investment project aid

Investment project aid comprises (1) schemes to increase and/or improve the recipient's stock of physical capital and (2) financing the supply of goods and services in support of such schemes. The contribution of planners, engineers, technicians, etc. to the design and implementation of projects (that is, investment-related technical cooperation) should be included as part of the capital project concerned. The category also covers integrated development programs (for example, rural or urban development) that contain large investment components. (Chapter 221)

least developed countries

Those listed in the annual reports of the U.N. Conference on Trade and Development Secretariat and of the Chairman of the Development Assistance Committee of the Organization for Economic Cooperation and Development. (Chapters 221, [310](#))

multisector-program assistance

Multisector-program assistance includes support for projects that straddle several sectors and covers only those actions that cannot be identified with a specific sector. (Chapter 221)

Official Development Assistance (ODA)

Text highlighted in yellow indicates that the adjacent material is new or substantively revised.

Grants or loans to countries and territories on Part I of the Development Assistance Committee List of Aid Recipients (developing countries) that are undertaken by the official sector, with the promotion of economic development and welfare as the main objective, and at concessional financial terms (if a loan has a grant element of at least 25 percent). (Chapter 221)

procurement action

This means the use of USAID direct contracts, USAID funded host country contracts, and contracts awarded by non-governmental organizations that receive grants from USAID (but not the grant awards themselves) to purchase goods and services above the threshold covered by the Development Assistance Committee (DAC)

Recommendation. The procurement action, in this case, covers only the prime contractor. An activity covered by the (DAC) Recommendation, such as a capital project, requires that each distinct procurement above the threshold be untied and notified. (Chapter 221)

projects

According to OECD methodology, projects include all the marginal costs of inputs (including the proposed investment) technically required to produce a discrete marketable output (for example, services from a fully functional water/sewage treatment facility). Thus, a project may cover many individual contracts and would normally include the following:

- Technical assistance for the bidding process,
- Architectural and engineering design studies,
- Construction of the physical infrastructure, and
- Operations and maintenance of the facility. (Chapter 221)

sector program assistance

Contributions to carry out wide-ranging development plans in a defined sector such as agriculture, education, transportation, etc. Assistance is made available in cash or in kind, with or without restrictions on the specific use of the funds, but on the condition that the recipient executes a development plan in favor of the sector concerned. (Chapter 221)

solicitation

This is the term used by the U.S. Government to refer to the assorted means by which offers or proposals are sought for government requirements and programs. Requests for Proposals, Invitations for Bids, Tenders, Requests for Applications, Annual Program Statements, and Requests for Quotes are all examples of types of government solicitations. (Chapter 221)

Special Drawing Rights (SDRs)

An artificial currency unit of the International Monetary Fund defined as a basket of national currencies (Euro, Japanese yen, Pound sterling, and the U.S. dollar). The value of the SDR is posted on the IMF's web site,

http://www.imf.org/external/np/fin/data/rms_sdrv.aspx. (Chapter 221)

Text highlighted in yellow indicates that the adjacent material is new or substantively revised.

structural adjustment support

Any sector program aid that is financed in association with or related to the structural adjustment programs of the World Bank and the International Monetary Fund. (Chapter 221)

tied aid

Refers to procurement actions that, as an operational matter, have been assigned a source/origin code of 000, 899, or 941 and are loans or grants which are either in effect, tied to procurement of goods and services from the donor country, or are subject to procurement modalities implying limited geographic procurement eligibility. (Chapter 221)

trade-related activities

Capital goods, capital equipment, and capital-related commodity procurements and services inherent in the operation of a capital project. All such trade-related activities collectively are referred to as capital projects. (Chapter 221)

untied aid

Refers to procurement actions that, as an operational matter, have been assigned a source/origin code of 935 and are loans or grants that are freely and fully available to finance procurement from substantially all developing countries and from the Organization for Economic Cooperation and Development countries. (Chapter 221)

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