



Blanket C-175 Request for USAID to Negotiate and Conclude Certain International Agreements

A Mandatory Reference Document for
ADS Chapter 349

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[USAID ADMINISTRATOR LETTERHEAD]

**ACTION MEMORANDUM
S/ES**

Date stamped
AUG 15 2002

UNCLASSIFIED

TO: The Secretary

FROM: The Administrator /s/ *Andrew S. Natsios*

SUBJECT: Blanket C-175 Request for USAID to Negotiate and Conclude
Certain International Agreements

ISSUE FOR DECISION

- Whether to approve a blanket Circular 175 (C-175) authorization for USAID to negotiate and conclude “framework” and “implementing” international agreements.

USAID currently concludes most of its bilateral international agreements (pursuant to which that agency establishes its missions and provides foreign assistance) under blanket C-175 authorization from the Secretary, dated July 27, 1956, to USAID’s predecessor agency, the International Cooperation Agency. The format, scope, and content of these agreements have changed substantially in recent years (USAID’s current practice is summarized at Tab 1).

Accordingly, I am asking that you update USAID’s blanket C-175 authorization specifically to cover:

- Framework Agreements, which establish the terms and conditions for USAID Missions, along the lines of the draft text agreement (Tab 3). The text of any such proposed agreements will continue to be subject to the concurrence of L, relevant regional offices and other agencies or bureaus as appropriate; and
- Implementing Agreements, pursuant to which assistance valued at more than \$25 million is provided and that are of a routine nature (Agreements for lesser amounts are not treated as international agreements for C-175 purposes). The most common of these are the Model Strategic Objective Grant Agreement and Model Limited Scope Grant Agreement (Tabs 4 and 5,

respectively). Non-routine implementing agreements involving unique political, legal or funding issues will require separate C-175 authorization.

Other standard elements for C-175 authorization are discussed at Tab 1. Tab 2 includes a Memorandum of Law indicating that there are no legal objections to the negotiation and conclusion of USAID framework and implementing agreements.

RECOMMENDATION

1. That you approve a blanket C-175 authorization for USAID to negotiate and conclude bilateral “framework” agreements, subject to the concurrence of L, the relevant regional offices and any other agencies or bureaus.

Approve X CLP Disapprove _____

2. That you approve a blanket C-175 authorization for USAID to negotiate and conclude routine “implementing” agreements for assistance over \$25 million in value, with the understanding that USAID will still have to seek separate C-175 authority where a particular agreement, regardless of the value of the assistance at stake, involves unique political, legal or funding issues.

Approve X CLP Disapprove _____

Attachments:

Tab 1 – Background and Standard C-175 Elements

Tab 2 – Memorandum of Law

Tab 3 – Draft Text of Agreement for Economic and Technical Cooperation

Forms:

[1. Limited Scope Grant Agreement \(LSGA\)](#)

[2. Strategic Objective Grant Agreement \(SOAG\)](#)

Background and Standard C-175 Elements

I. USAID's International Agreements

Currently, USAID enters into a number of "framework" bilateral agreements with other states that –

- establish the USAID Mission as a special mission in the territory of the other party;
- identify the privileges and immunities to be provided to USAID personnel by the other party;
- detail the privileges and exemptions from taxes and duties for USAID-financed supplies and services and USAID contractors and recipients in the territory of the other party; and
- list other general terms and conditions for USAID programs in the territory of the other party.

Negotiation and conclusion of these agreements are authorized (under the 1956 C-175 authorization and hereafter under this C-175 authorization) by the USAID Administrator or his or her designee and are cleared with the Department's Office of the Legal Adviser and other appropriate offices. A sample of a USAID framework agreement is attached at Tab 3 to the accompanying Action Memorandum.

USAID also enters into "implementing" agreements with foreign governments under which specific activities and programs financed with USAID administered foreign assistance funding are implemented. The most common of these are the Strategic Objective Grant Agreement and the Limited Scope Grant Agreement (model texts of each are attached at Tabs 4 and 5 to the accompanying Action Memorandum). Other examples are agreements for programs funding commodity imports (referred to as commodity import grant agreements), cash transfer grant agreements making cash grants for stipulated purposes for which the recipient country can use the cash grant, memoranda of understanding, and guarantees and other credit program agreements. These agreements are of a general type with standard formats and are negotiated and signed by USAID Mission Directors or their designees, including Ambassadors and officials of other agencies on occasion, with USAID legal clearance and other State and USAID clearances, as appropriate.

Both types of agreements – framework and implementing -- reflect USAID programs developed and implemented in consultation with State bureaus and offices and Ambassadors through the budget process, the USAID Strategic Plan, Mission Performance Plans, and a variety of other inter-agency mechanisms.

II. **Standard C-175 Authorization Elements (11 FAM 722.3)**

Congressional Consultation

Although no congressional consultations are considered necessary with respect to specific framework or implementing agreements, Congress is notified of USAID programs through the Congressional Presentation process and is consulted through hearings, briefings and meetings that deal with every aspect of USAID operations. USAID also makes efforts to ensure the public participates in the development and design of USAID's Strategic Plan and other planning documents.

Assignment of Personnel

Any overseas assignment of personnel under these agreements will be done through the procedures established by National Security Decision Directive (NSDD) 38.

Funding Issues

The Department of State commits no funds or personnel to the implementation of either framework or implementing agreements. Any obligation of funds by USAID under either a framework or implementing agreement is met from existing available funding resources, including appropriated funds, where appropriate.

Environmental Issues

USAID has environmental procedures that assess the environmental impact of its programs in a uniform and comprehensive manner and implement the National Environmental Policy Act, 42 U.S.C. §4321 et seq., and Executive Order 12144 (January 4, 1979). USAID agreements do not generally require the preparation of environmental impact statements or other documentation under NEPA or Executive Order 12144.

Memorandum of Law

SUBJECT: Circular 175: U.S. Agency for International Development (“USAID”) Request for Blanket Authorization to Negotiate and Conclude Certain International Agreements

In accordance with the Circular 175 procedure, 11 FAM 700 et seq., the accompanying action memorandum requests blanket authority for USAID to negotiate and conclude certain classes of international agreements for its foreign assistance and food aid programs, discussed in more detail at Tab 3 to the accompanying Action Memorandum.

USAID is currently operating under a blanket authorization from the Secretary issued on July 27, 1956, to USAID’s predecessor agency, the International Cooperation Agency. The present C-175 request is designed to address the extensive changes to the format, scope and content of USAID agreements and to be more consistent with current USAID operations, for example with respect to privileges and immunities as well as fiscal privileges granted the USAID mission and its personnel.

The agreements subject to the accompanying Circular 175 authority fall into two broad categories: (a) framework agreements that establish the USAID Mission as a special mission in another country, where the other party commits to provide the mission with specific privileges and immunities for USAID, USAID personnel, contractors and recipients, as well as USAID-financed supplies and services; and (b) implementing agreements that govern the provision of foreign assistance, in the form of a particular grant or a program to the other party.

The framework agreement generally involves unilateral non-reciprocal commitments by the other government to the United States. It contains no ongoing USG commitments to provide foreign assistance, in any form (e.g., either by grants or program activities); but rather apply to such assistance as may be given subject to U.S. law. The implementing agreements may apply to grants of amounts stated therein. They are carefully and appropriately caveated that the provision of any assistance generally be subject to U.S. law, including that the provision in specified amounts be subject to the availability of funds to USAID for this purpose. Such assistance funds are appropriated in annual Foreign Operations, Export Financing and Related Programs Appropriations Acts.

Accordingly, the authority to negotiate and conclude such agreements is derived from the President’s Constitutional Powers (Article II), including his authority to

represent the nation in foreign affairs, as delegated to the Secretary of State on a day-to-day basis (22 U.S.C. 2656). Furthermore,

additional authority exists under the Foreign Assistance Act and the Agricultural Trade Development and Assistance Act of 1954—the statutes pursuant to which USAID conducts its foreign assistance and food aid programs, respectively—for the President to enter into agreements concerning the provision of foreign assistance. Specifically, section 635(b)

of the Foreign Assistance Act of 1961, as amended, (“FAA”), 22 U.S.C. § 2151 et seq. provides legal authority for the negotiation and conclusion of executive agreements. Section 635(b) provides:

The President may make loans, advances, and grants to, make and perform agreements and contracts with, or enter into other transactions with, any individual, corporation, or other body of persons, friendly government or government agency, whether within or without the United States, and international organizations in furtherance of the purposes and within the limitations of this Act.

This authority was delegated to the Secretary of State in Executive Order 12163, as amended (March 31, 1999). The Secretary specifically delegated to the Administrator of USAID in Delegation of Authority No. 145 the authority to negotiate, sign and terminate international agreements for USAID programs, subject to the Circular 175 procedure.

Similarly, Titles II and III of the Agricultural Trade Development and Assistance Act of 1954, as amended, (“P.L. 480,”), 7 U.S.C. § 1691 et seq. authorize the President in Sections 201 and 202 of Title II, to “establish a program to provide agricultural commodities to foreign countries”; to provide emergency assistance “through governments and public or private agencies, including intergovernmental organizations”; and to provide non-emergency assistance through intergovernmental organizations. 7 U.S.C. §§ 1721 and 1722. To this end, section 301(b) of Title III, 7 U.S.C. § 1727(b) provides that the Administrator of USAID “may negotiate and execute agreements with less developed countries to provide commodities to such countries on a grant basis.”

The authority to implement Titles II and III of P.L. 480 is delegated to the Administrator of USAID by the President in Executive Order 12752 (February 25, 1991).

Only implementing agreements involving specific grants of assistance greater than \$25 million are considered subject to the accompanying Circular 175 request. The Department has taken the position that grant agreements involving less than \$25 million are not considered international agreements and has stated the following in its regulations concerning Circular 175 procedures:

Finally, it should be noted that United States agencies frequently enter into contracts and similar arrangements with other governments that the Department of State does not consider constitute international agreements under the criteria established in the Department's regulations, 22 C.F.R.181.2. These include . . . such arrangements as bilateral agreements extending grants of \$25 million or less by the Agency for International Development to foreign governments and P.L. 480 agreements under which the United States sells food commodities to foreign governments. The Department of State does not publish such arrangements, as it considers them not to be international agreements within the meaning of the Case Act.

60 Fed. Reg. 54320 (Oct. 23, 1995).

At the same time, framework agreements and implementing agreements in excess of \$25 million will generally be considered international agreements, within the meaning established in 22 C.F.R. 181.2. As such, USAID will transmit these agreements to the Department as they are concluded so that they can be reported to Congress consistent with the requirements of the Case Act, 1 U.S.C. 112b. Finally, as noted in the action memorandum, agreements relating to assistance or less than \$25 million may be considered international agreements if they present issues of a non-routine nature (e.g., political), and hence any such non-routine agreements, regardless of the value of the assistance with which they are associated, shall be considered international agreements requiring a separate Circular 175 authorization. The Office of General Counsel at USAID has advised that there are no legal impediments to concluding such agreements.

On the basis of these considerations, I conclude that there are no legal objections to granting USAID blanket authorization to negotiate and conclude the framework and implementing agreements described in the accompanying action memo and its attachments.

Carol Schwab
Assistant Legal Adviser for
Political & Military Affairs

DRAFT TEXT

AGREEMENT FOR ECONOMIC AND TECHNICAL COOPERATION BETWEEN THE GOVERNMENT OF THE UNITED STATES OF AMERICA AND THE GOVERNMENT OF [COUNTRY]

THIS AGREEMENT FOR ECONOMIC AND TECHNICAL COOPERATION

("Agreement") is between the Government of the United States of America ("Government of the United States") and the Government of [Country] ("Government of [Country]") (collectively, the "Parties" or individually, a "Party").

NOW, THEREFORE, in consideration of the rights and responsibilities set forth in this Agreement, the Parties agree as follows:

ARTICLE 1 SCOPE OF AGREEMENT

This Agreement sets forth the general terms and conditions to be applied to economic, technical and related assistance projects or programs undertaken by the Parties in [Country]. Such assistance shall be subject to applicable United States laws and regulations. Such assistance will be made available in accordance with arrangements agreed upon by representatives of the appropriate agency or agencies of the Government of [Country] and representatives of the agency designated by the Government of the United States to administer its responsibilities hereunder ("Competent Authorities"), or other representatives designated by the aforementioned Governments. It may also be made available through other arrangements involving United States Government agencies, non-governmental organizations, individuals, private firms, public international organizations or other entities.

ARTICLE 2 RESPONSIBILITIES OF THE GOVERNMENT OF [COUNTRY]

The Government of [Country] shall:

1. Contribute its share of the costs of any projects, programs or operations provided under this Agreement, whether by financial or in-kind contribution as may be mutually agreed upon by the Competent Authorities;

2. Facilitate the proper implementation of this Agreement and effectively use any assistance provided hereunder;
3. Cooperate with the Government of the United States to assure that procurement will be at reasonable prices and on reasonable terms;
4. Inform the Government of the United States of any laws or regulations that will affect this Agreement or any specific project or program arrangements hereunder;
5. Permit, without restriction, continuous observation and review by the United States' representatives of programs and operations covered by this Agreement and records pertaining thereto, including the right during the period of any program or transaction and for three years thereafter to:
 - (a) examine property procured through financing by the Government of the United States for purposes of this Agreement, and;
 - (b) inspect and audit any records and accounts with respect to funds provided, and to any properties or contract services procured through financing by the Government of the United States for purposes of this Agreement; and
6. Bear, with respect to cooperative technical assistance programs under this Agreement, a fair share of the costs thereof and, to the maximum extent possible, seek full coordination and integration of technical cooperation programs being carried on in [Country] and also cooperate with other nations participating in such programs in the mutual exchange of technical knowledge and skills.

ARTICLE 3 THE SPECIAL MISSION

1. The Government of [Country] shall receive a special mission ("Special Mission") from the Government of the United States. This Special Mission will implement and discharge the functions of the assistance activities provided for under this Agreement.
2. The Special Mission will enjoy the same privileges and immunities as are extended to the premises and property of the diplomatic mission of the United States, including for example, inviolability of premises, property, and archives and the privilege of free communication.

ARTICLE 4 IMMUNITIES

1. The Government of the United States and the Government of [Country] agree that

[OPTION A for use where only AID professional staff will be posted abroad]

the USG officials (and their family members forming part of their household) who are present in [Country] to perform work in connection with this Agreement shall enjoy privileges and immunities equivalent to those granted to a diplomatic agent under the Vienna Convention on Diplomatic Relations of 1961;

[OPTION B - for use where AID professional and also administrative, technical an/or clerical staff will be posted abroad]

the USG officials and employees (and their family members forming part of their household) who are present in [Country] to perform work in connection with this Agreement shall enjoy privileges and immunities equivalent to those accorded to embassy personnel of comparable rank under the Vienna Convention on Diplomatic Relations of 1961.

[Comment: Under the comparable rank formulation, it is expected that USAID professional staff and their families will enjoy privileges and immunities granted to a diplomatic agent under the Vienna Convention, while administrative, technical and/or clerical staff will enjoy privileges and immunities granted to administrative and technical staff under the Vienna Convention.]

2. The immunities provided under paragraph 1 are not applicable to citizens or permanent residents of [Country].
3. Without prejudice to the immunities provided under paragraph 1, it is understood that the personnel covered by that paragraph are obliged to respect the laws of [Country].

ARTICLE 5 PRIVILEGES AND EXEMPTIONS

In order to assure the maximum benefits to the people of [Country] from the assistance to be furnished hereunder:

1. Any supplies, materials, equipment, property, services or funds introduced into or acquired in [Country] by the Government of the United States, or by any contractor or other organization financed by the Government of the United States, for purposes of any program or project conducted as part of, or in

conjunction with, the assistance provided hereunder, are exempt from any taxes on ownership or use of property and any other taxes, investment or deposit requirements, and currency controls in [Country] . The import, export, purchase, use or disposition of any such supplies, materials, equipment, property, services or funds in connection with such a program or project are exempt from any tariffs, customs duties, import and export taxes, taxes on purchase, rental or disposition of property, value-added taxes and other taxes or similar charges in [Country]. No tax (whether in the nature of an income, profits, business, rent, value-added or other tax, duty, or fee of whatever nature) shall be imposed by the Government of [Country] in connection with work performed under this Agreement upon any contractor or other organization financed by the Government of the United States under the assistance furnished hereunder.

2. All personnel (and their families), except citizens and permanent residents of [Country], who the Government of the United States, or any agency thereof, employs (whether by direct hire, contract or other arrangement) or finances (whether by contract, grant or otherwise with any public or private organization) and who are present in [Country] to perform work in connection with this Agreement are exempt from:
 - (a) income and social security taxes levied under the laws of [Country] with respect to income derived from assistance programs;
 - (b) taxes (including but not limited to, sales or value-added taxes) on residential leases and the purchase, ownership, use, or disposition of personal movable property (including automobiles) intended for their own use; and
 - (c) customs, import and export duties on all personal effects, equipment, and supplies imported into [Country] for their own use, and from all other duties and fees of whatever nature.
3. The Government of [Country] will issue expeditiously any import licenses required for supplies, materials, equipment, or property imported under this Agreement, and will assist, where appropriate, in expediting their movement through port and transportation facilities and their clearance through customs.
4. The Government of [Country] will issue expeditiously any other documentation necessary to facilitate the implementation of programs, projects or activities funded under any assistance being provided in connection with this Agreement, including, but not limited to, visas required for individual employees and their families, work permits, and the registration, under [Country] law, of non-governmental organizations.

5. The provisions of this Article 5 will apply also to those programs, projects or activities, funded by the Government of the United States of America, intended to assist regional organizations which include [Country].

ARTICLE 6 INFORMATION AND PUBLICITY

1. The Government of [Country] will communicate to the Government of the United States in a form and at intervals to be mutually agreed upon, including communicating about:
 - (a) projects, programs, and operations carried on under this Agreement (including a statement of the use of funds, materials, equipment and services provided thereunder); and
 - (b) technical assistance which has been or is being requested of other countries or international organizations.
2. Not less frequently than once a year, the Parties will, in mutual consultation, make public in their respective countries periodic reports of the programs carried on pursuant to this Agreement. Such reports shall include information as to the use of funds, materials, equipment and services.

ARTICLE 7 FUNDS

1. Funds introduced into [Country] for purposes of furnishing assistance hereunder shall be convertible into the currency of [Country] at the legal rate of exchange most favorable to the Government of the United States at the time of conversion.
2. Both Parties will establish a procedure whereby funds allocated to or derived from any program or project assistance hereunder shall not be subject to any form of legal process, including but not limited to, attachment or seizure by any person or juridical entity, when the Government of [Country] is advised by the Government of the United States that such legal process would interfere with the attainment of the objectives of any program or project assistance hereunder.

ARTICLE 8 SUSPENSION AND TERMINATION

1. All or any part of any assistance program or project provided hereunder may be terminated or suspended by either of the Competent Authorities, upon written notice to the other Competent Authority. Termination of such assistance under

this paragraph may include the termination of deliveries of any commodities hereunder not yet delivered; provided, however, that termination or suspension of such assistance hereunder shall not affect irrevocable commitments to third parties.

- 2. This Agreement may be terminated 120 days after the receipt by either Party of a written termination notice from the other Party. Notwithstanding such termination, the provisions hereof shall remain in full force and effect with respect to assistance provided before the termination.

**ARTICLE 9
SETTLEMENT OF DISPUTES**

The two Parties shall strive to resolve amicably, under mutually agreed upon procedures, any differences relating to or arising out of the interpretation and execution of this Agreement or any specific program or project arrangement hereunder.

**ARTICLE 10
ENTRY INTO FORCE**

This Agreement shall enter into force upon signature by authorized representatives of both Parties and shall remain in force until terminated by either Party in accordance with Article 8, paragraph 2.

IN WITNESS WHEREOF, the duly authorized representatives have signed this Agreement at [] in duplicate, this [] day of [], 200_, in the English language.

FOR THE GOVERNMENT OF THE
UNITED STATES OF AMERICA:

FOR THE GOVERNMENT OF THE
[COUNTRY]:

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