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AGENCY FOR INTERNATIONAL DEVELOPMENT
WASHINGTON, D.C. 20523

AMENDMENT NO. 4
to the
PROJECT MEMORANDUM

NEW INDEPENDENT STATES:
HOUSING SECTOR REFORM PROJECT
110-0008

Approved: July 25, 1994



U.S. AGENCY FOR
INTERNATIONAL
DEVELOPMENT

JUL 25 1994

ACTION MEMORANDUM TO THE DEPUTY ASSISTANT ADMINISTRATOR, ENI

FROM: ENI, Nancy Tumavick ~~NT~~

SUBJECT: Amendment No. 4 to the Housing Sector Reform Project
(110-0008), modifying Authorization Amendment No. 1

Problem: Your approval is requested to amend the Project Authorization of the Housing Sector Reform Project (HSRP) to formally invoke the use of the statutory "notwithstanding" authority to waive requirements as deemed necessary to increase the level of effort of the PADCO contract to obtain services in support of the USAID-World Bank Housing Construction and Reform Project.

Discussion: On June 25, 1993, the Director of the NIS Task Force approved a Project Authorization Amendment (Amendment No. 1 to the HSRP) invoking the "notwithstanding" provision for the construction of housing units and training under the Russian Officer Settlement Initiative. That effort and the World Bank Housing Construction and Reform Project are two initiatives under the HSRP. The request that "notwithstanding" authority be invoked to waive competition requirements with respect to the Russian Officer Resettlement Initiative should have covered the World Bank Initiative as well. The justification for the waiver, in fact, was the same and should have been applied to both initiatives. In the case of both initiatives, time was of the essence and political exigencies imposed tight deadlines for the provision of critical technical and advisory services.

In both cases, because of the accelerated time-table for the activities, it was not possible to obtain the needed services on a timely basis through competitive procurement. The entity actually selected without competition to carry out both of these important efforts was the same. The contractor, PADCO, was already mobilized and deeply engaged in our housing reform project in Russia and had a special capacity to respond to the urgent needs of both new activities in a coordinated way.

In November 1993, the Office of Housing, with ENI Bureau

clearance, prepared and forwarded to the contracts office (OP/CC/N) a PIO/T which increased on a noncompetitive basis the level of effort of the PADCO contract by an estimated cost of \$3.2 million. This increase was for technical and advisory services for both the Russian Officer Resettlement Initiative and for the USAID-World Bank Housing Construction and Reform Project. (The estimated budgets for these activities were \$1.2 million and \$2 million, respectively.) The PIO/T also amended the scope of work to specify that PADCO would provide services for both the Officer Resettlement Initiative and the USAID-World Bank Project. In accord with this PIO/T, OP negotiated and signed an amendment to the PADCO contract. The Office of Housing, OP, and the ENI Bureau (PAC) had mistakenly understood that in the Project Authorization Amendment No. 1, dated June 25, 1993, for the HSRP, the Director of the NIS Task Force invoked "notwithstanding" to waive statutory and regulatory requirements for full and open competition to permit an amendment of the PADCO contract increasing its level of effort by \$2 million for services to the USAID-World Bank Project. As noted above, that Project Authorization Amendment did not contain such language with respect to the World Bank Project, although it did for the 450 housing units under the Russian Officer Resettlement Initiative.

As a matter of law, the "notwithstanding" provision applies to all Bureau activities financed with NIS funds. However, as you know, standard Bureau practice is to follow all applicable laws and regulations for NIS activities and requires that the use of "notwithstanding" authority to waive a law or regulation be "invoked" in writing by the Assistant Administrator, or those who have "alter ego" authority. These procedures are designed to ensure that each use is recorded and justified, as a matter of general Bureau policy in the context of the framework provided under the law. Therefore, we request your action correcting and omission in the authorization package submitted previously.

Authority: As DAA/ENI, you have authority to take approval and implementation actions on projects under the Alter Ego Delegation of Authority delegated to you by the AA/ENI, Thomas Dine on March 1, 1994.

Recommendation: That in order to formally invoke the use of the "notwithstanding" authority as to the World Bank Project by your signature you modify paragraph 4 on page 6 of the subject "Project Authorization Amendment No. 1" to read as follows:

"4. exercise statutory "notwithstanding" authority to waive the requirements related to full and open competition in the FAR and AIDAR and waive such other requirements of the FAR and AIDAR related to contracting services as the USAID contracting officers deem necessary to permit contracting for the construction of 450 housing units, and for up to \$2 million for services in support of the World Bank Housing Construction Reform Project."

Approve: 

Disapprove: _____

Date: 7/26/97

Clearances:

GC/ENI, KFickenscher (draft)	Date: <u>6/15/94</u>
ENI/EEUD/UDH, DTSitsos (draft)	Date: <u>7/13/94</u>
ENI/PAC, PMatheson (draft)	Date: <u>4/13/94</u>
OP/CC/N, AMcNerney (e-mail)	Date: <u>6/6/94</u>
G/ENV/UP, MLippe <i>MLippe</i>	Date: <u>7/18/94</u>

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