



USAID
FROM THE AMERICAN PEOPLE

February 11, 2009

ACTION MEMO FOR THE CHIEF OPERATING OFFICER

FROM: AID/COO/PAC – Susan Fine /s/

SUBJECT: Sections 607 and 627-630 Determination, U.S. Dept. of Defense (DoD), U.S. Army Corps of Engineers (USACE)

Recommendation

That pursuant to Sections 607 and 627-630 of the Foreign Assistance Act of 1961, as amended, (FAA) you determine that the USACE activities described are consistent with, and in furtherance of, the purposes of Part I of the FAA and that you authorize the DoD to conduct the activity within the limitations of the FAA and the attached guidance.

Approve *Alyson Fine* Disapprove _____
2-18-09

Background

The DoD's USACE requests a renewal of its FAA Sections 607 and 627-630 determination for its international activities for CYs 2009-2010. As further described in its request (Tab 1), the USACE frequently receives requests from foreign governments and international organizations for services related to areas such as: (1) water resources management; (2) dam safety; (3) environmental assessment, restoration, and management; (4) river basin management; (5) flood/drought management and mitigation; (6) ports, waterways and coastal engineering; (7) infrastructure and buildings projects; (8) disaster planning and emergency response; and (9) topographic science and engineering and spatial data technology integration. Services may include technical assistance and training, planning, engineering, construction, contract management, and research and development.

FAA Section 607 authorizes an agency of the USG to furnish services and commodities to foreign governments, international organizations, and registered non-voluntary, non-profit relief agencies on a reimbursable basis. The statute requires a determination that the activity is in furtherance of the purposes of Part I of the FAA, i.e., that it contributes to the economic development or security of the recipient country.

Agencies seeking Section 607 determinations can also use the FAA Sections 627-630 authorities in providing services to foreign governments and international organizations. Sections 627-630 permit non-reimbursable or full or partial reimbursement while Section 607 requires full reimbursement. Agencies can use the authorities of Sections 627-630 in conjunction with Section 607 to determine the most appropriate cost-sharing arrangement. There is always a benefit to the sponsoring agency in providing services in these programs and Sections 627-630 will give them the option to forego full reimbursement of incidental costs if they believe it is in their interest to do so. Agencies are required to consult with GC in the event they intend to forego reimbursement of substantial costs, or in the event of a significant change in their activities. Tab 2 provides a fuller explanation of these authorities.

The USACE is required to obtain approval from the Director of DCHA/OFDA before carrying out any specific activity pursuant to this determination that involves an ongoing or potential international emergency or disaster, including any response to the incident with personnel, commodities or assets, or the provision of technical assistance to those responding to the emergency or disaster. Additionally, with respect to activities that do not relate to an ongoing or potential incident, the DoD USACE is required to inform the OFDA Director within 30 days of providing any goods or services that involve international disasters, emergencies, or humanitarian assistance, including technical assistance.

The USACE is required to ensure environmental soundness by adapting the purpose and intent of its own National Environmental Policy Act impact assessment procedures to its Section 607 authorized activities.

Attachments:

Tab 1 – December 31, 2008, USACE Request

Tab 2 – Guidance on Sections 607 and 627-630 of the FAA



REPLY TO
ATTENTION OF

DEPARTMENT OF THE ARMY
U.S. ARMY CORPS OF ENGINEERS
WASHINGTON, D.C. 20314-1000

Interagency and International
Services Community of Practice

December 31, 2008

Ms. Betty Chung
Office of the General Counsel
U.S. Agency for International Development
Washington, DC 20523

Dear Ms. Chung:

The U.S. Army Corps of Engineers requests a blanket determination under Section 607 of the Foreign Assistance Act, 22 U.S.C. 2357, to permit the Corps to provide certain services in the area of water, environment, and infrastructure to foreign governments and international organizations during calendar years 2009 and 2010.

The Corps receives requests from foreign governments and international organizations for services related to areas such as: (1) water resources management; (2) dam safety; (3) environmental assessment, restoration and management; (4) river basin management; (5) flood/drought management and mitigation; (6) ports, waterways and coastal engineering; (7) infrastructure and building projects; (8) disaster planning and emergency response; and (9) topographic science and engineering and spatial data technology integration. Services may include technical assistance and training, planning, engineering, construction, contract management, and research and development. The Corps believes that providing such services furthers U.S. foreign policy objectives, contributes to the development of the receiving countries, and opens opportunities for U.S. business.

We request that the U.S. Agency for International Development make a determination under Section 607 of the Foreign Assistance Act to allow the Corps to provide to various countries and international organizations certain services in furtherance of U.S. policy.

Thank you for your assistance in this endeavor.

Sincerely,

A handwritten signature in black ink that reads "Donald R. Kisicki".

Donald R. Kisicki
Deputy Chief, Interagency and
International Services Community of Practice

GUIDANCE ON SECTIONS 607 AND 627-630 OF THE FAA

1. Section 607 of the Foreign Assistance Act of 1961, as amended, (FAA) permits the "selling" of services and commodities by any U.S. Government agency to foreign governments, international organizations and registered PVOs on a reimbursable basis.

Section 607 requires a determination that the activity is consistent with and in furtherance of the purposes of Part I of the FAA, i.e., that it contributes to the economic development or security of the recipient country. Because the services and commodities are provided on a fully reimbursable basis, section 607 activities are not considered assistance and the restrictions in the FAA and other statutes on providing assistance do not apply.

To ensure that activities under this Section 607 approval are consistent with and in furtherance of the purposes of Part I of the Foreign Assistance Act, as amended, including Sections 117 through 119, the U.S. government agency receiving this determination is required to ensure environmental soundness to any activities undertaken within the scope of this determination by adapting the purpose and intent of its own National Environmental Policy Act (NEPA) environmental impact assessment procedures to its section 607 activities in a manner that is comparable in quality and scope to its activities in the U.S. Please direct any questions or requests for advice regarding how USAID meets this requirement to USAID's Environmental Coordinator, James Hester, at 202-712-5176 or jhester@usaid.gov.

2. Sections 627 –630 of the FAA authorize any agency to assign, detail or otherwise make available its employees to a foreign government or international organization, e.g., the United Nations. Unlike section 607, PVOs are not included.

A determination that the detail or assignment is consistent with and in furtherance of the purposes of the FAA is required, i.e., that it contributes to the economic development or security of the recipient country.

Such details or assignments can be on a fully reimbursable basis, as in section 607, a partially reimbursable basis, or without any reimbursement. Agencies can use the authorities of section 627-630 in conjunction with section 607 to determine the most appropriate cost-sharing arrangement.

As in the case of section 607, when there is full reimbursement, it is not considered assistance. Where there is less than full reimbursement, the detail or assignment is considered assistance. Since the funds involved are the furnishing agency's appropriated funds, most of the restrictions on assistance in the FAA and related foreign assistance acts would not apply. Two exceptions are the prohibitions on assistance in section 620 of the FAA on countries that do not have diplomatic relations or which have expropriated property of U.S. citizens.

Agencies must consult with the USAID Office of General Counsel's Legislation and Policy division (GC/LP) if they intend to forego reimbursement of a substantial portion of the costs of a particular activity. The GC/LP point of contact is Betty Chung and can be reached at 202-712-4791 or bchung@usaid.gov.

3. Authority. The Administrator of USAID has delegated to the Chief Operating Officer the authority to make section 607, 627 and 628 determinations for the activities of other agencies.

TEXT OF SELECTED PORTIONS OF SECTIONS 607, 627-630 (22 USC 2357, 2387-2390)

Section 607. Furnishing of Services and Commodities.--(a) Whenever the President determines it to be consistent with and in furtherance of the purposes of part I and within the limitations of this Act, any agency of the United States Government is authorized to furnish services and commodities on an advance-of-funds or reimbursement basis to friendly countries, international organizations, the American Red Cross, and voluntary nonprofit relief agencies registered with and approved by the Agency for International Development (including foreign voluntary nonprofit relief agencies so registered and approved when no United States voluntary nonprofit relief agency is available). Such advances or reimbursements may be credited to the currently applicable appropriation, account, or fund of the agency concerned and shall be available for the purposes for which such appropriation, account, or fund is authorized to be used, under the following circumstances:

(1) Advances or reimbursements which are received under this section within one hundred and eighty days after the close of the fiscal year in which such services and commodities are delivered.

(2) Advances or reimbursements received pursuant to agreements executed under this section in which reimbursement will not be completed within one hundred and eighty days after the close of the fiscal year in which such services and commodities are delivered: Provided, That such agreements require the payment of interest at the current rate established pursuant to section 2(b)(1)(B) of the Export-Import Bank Act of 1945 (59 Stat. 526), and repayment of such principal and interest does not exceed a period of three years from the date of signing of the agreement to provide the service: Provided further, That funds available for this paragraph in any fiscal year shall not exceed \$1,000,000 of the total funds authorized for use in such fiscal year by chapter 1 of part I of this Act, and shall be available only to the extent provided in appropriation Acts. Interest shall accrue as of the date of disbursement to the agency or organization providing such services.

(b) When any agency of the United States Government provides services on an advance-of-funds or reimbursable basis under this section, such agency may contract with individuals for personal service abroad or in the United States to perform such services or to replace officers or employees of the United States Government who are assigned by the agency to provide such services. Such individuals shall not be regarded as employees of the United States Government for the purpose of any law administered by the Civil Service Commission.

Section 627. Detail of Personnel to Foreign Governments.--Whenever the President determines it to be in furtherance of the purposes of this Act, the head of any agency of the United States Government is authorized to detail or assign any officer or employee of his agency to any office or position with any foreign government or foreign government agency, where acceptance of such office or position does not involve the taking of an

oath of allegiance to another government or the acceptance of compensation or other benefits from any foreign country by such officer or employee.

Section 628. Detail of Personnel to International Organizations.--Whenever the President determines it to be consistent with and in furtherance of the purposes of this Act, the head of any agency of the United States Government is authorized to detail, assign, or otherwise make available to any international organization any officer or employee of his agency to serve with, or as a member of, the international staff of such organization, or to render any technical, scientific, or professional advice or service to, or in cooperation with, such organization.

Section 629. Status of Personnel Detailed.--(a) Any officer or employee, while assigned or detailed under section 627 or 628 of this Act, shall be considered, for the purpose of preserving his allowances, privileges, rights, seniority, and other benefits as such, an officer or employee of the United States Government and of the agency of the United States Government from which detailed or assigned, and he shall continue to receive compensation, allowances, and benefits from funds appropriated to that agency or made available to that agency under this Act.

(b) Any officer or employee assigned, detailed, or appointed under section 627, 628, 631, or 624(d) of this Act is authorized to receive under such regulations as the President may prescribe, representation allowances similar to those allowed under section 905 of the Foreign Service Act of 1980. The authorization of such allowances and other benefits and the payment thereof out of any appropriations available therefor shall be considered as meeting all the requirements of section 5536 of title 5 of the United States Code.

Section 630. Terms of Detail or Assignment.--Details or assignments may be made under section 627 or 628 of this Act or section 408 of the Mutual Security Act of 1954, as amended--

- (1) without reimbursement to the United States Government by the foreign government or international organization;
- (2) upon agreement by the foreign government or international organization, to reimburse the United States Government for compensation, travel expenses, benefits, and allowances, or any part thereof, payable to the officer or employee concerned during the period of assignment or detail; and such reimbursements (including foreign currencies) shall be credited to the appropriation, fund, or account utilized for paying such compensation, travel expenses, benefits, or allowances, or to the appropriation, fund, or account currently available for such purposes;
- (3) upon an advance of funds, property, or services by the foreign government or international organization to the United States Government accepted with the approval of the President for specified uses in furtherance of the purposes of this Act; and funds so advanced may be established as a separate fund in the Treasury of the United States Government, to be available for the specified uses, and to be used for reimbursement of appropriations or direct expenditure subject

to the provisions of this Act, any unexpended balance of such account to be returned to the foreign government or international organization; or
(4) subject to the receipt by the United States Government of a credit to be applied against the payment by the United States Government of its share of the expenses of the international organization to which the officer or employee is detailed or assigned, such credit to be based upon the compensations, travel expenses, benefits and allowances, or any part thereof, payable to such officer or employee during the period of detail or assignment in accordance with section 629.