



USAID | PHILIPPINES

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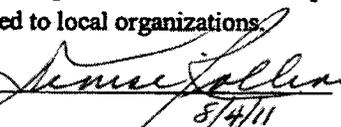
ACTION MEMO FOR THE ASSISTANT ADMINISTRATOR, ASIA BUREAU

FROM : Michael P. Rossman, Supervisory Contracting Officer, USAID/Philippines 

SUBJECT : Justification for Other than Full and Open Competition under AIDAR 706.302-70(b)(3)(i) for Proposed Investment Enabling Environment (INVEST) Project

Recommendation

That you make a determination, as authorized under AIDAR 706.302-70(b)(3)(i) that compliance with full and open competition procedures for the proposed INVEST Project, as described below and in Attachment 1, would impair foreign assistance objectives and be inconsistent with fulfillment of the foreign assistance program of USAID—in this case, the fulfillment of the Administrator's important USAID Forward reform initiatives—and that you therefore waive the requirements for full and open competition and instead approve a competition limited to local organizations.

Approve 

Disapprove _____

8/4/11

Background

Although we are requesting a waiver of full and open competition for the INVEST program, in this case the procurement will still be competitive, but limited to local organizations. As a pilot mission for USAID Forward's procurement reform initiative, USAID/Philippines has been directed to "[S]trengthen local civil society and private sector capacity to improve aid effectiveness and sustainability, by working closely with our implementing partners on capacity building and local grant and contract allocations." To further this objective, the Mission would like to work with a local organization on the INVEST project. We have already awarded a number of grants to local organizations as part of our procurement reform efforts, and we feel it is appropriate in this circumstance to award a contract. We have done extensive market research and have identified more than 30 appropriate organizations. Waiving full competition under these circumstances requires the Assistant Administrator to make a determination that compliance with full and open procedures would impair foreign assistance objectives and would be inconsistent with fulfillment of the foreign assistance program of USAID.

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The INVEST Project is intended to be a two-year pilot with an option to extend for one year, with a life-of-project funding of \$3.5 million. It seeks to address the key constraints underlying the low level of private investment in the Philippines by working with three to five cities outside of the National Capital Region, selected based on a predetermined set of criteria and on the local leadership's commitment to streamlining the process of registering a business, lowering business transaction costs, and improving their cities' investment planning and promotion. The Mission believes that in focusing technical assistance and resources on these target cities, their development will be fast tracked, and if successful, they will be able to serve as platforms to attract development to the surrounding areas.

Given the modest funding amount and the limited implementation period, in addition to the fact that envisioned activities will be implemented at the local government level, the Mission sees in the INVEST Project an ideal opportunity to satisfy multiple objectives of the Mission and of USAID. The technical office's market research indicates there are enough local organizations in-country with the knowledge and expertise to provide the needed technical assistance to the target cities. These organizations have the maturity and the management and financial capabilities to implement the project. To vigorously pursue USAID's procurement reform agenda, the Mission sees itself actively directing the performance of the INVEST Project's implementing organization through a contract, not a grant.

Authority:

USAID, an Executive Agency, is subject to 41 U.S.C. 253(c) which authorizes, under certain conditions, contracting without providing for full and open competition. USAID Acquisition Regulation (AIDAR), Subpart 706.302-70(a)(2), permits other than full and open competition when such competition "[w]ould impair or otherwise have an adverse effect on programs conducted for the purposes of foreign aid, relief, and rehabilitation." 40 U.S.C. 113(e) provides that "[n]othing in this subtitle impairs or affects the authority of...an executive agency, with respect to any program conducted for purposes of...foreign aid, relief, or rehabilitation, but the agency carrying out the program shall, to the maximum extent practicable, consistent with the purposes of the program and the effective, efficient conduct of agency business, coordinate its operations with the requirements of this subtitle and with policies and regulations prescribed under this subtitle."

AIDAR 706.302-70(b)(3)(i) authorizes you, as the Assistant Administrator responsible for the project or program, to make a determination, with supporting findings, that compliance with full and open competition procedures would impair foreign assistance objectives, and would be inconsistent with the fulfillment of the foreign assistance program.

Explanation and Support Justifying Determination and Finding

For the Investment Enabling Environment (INVEST) Project for USAID/Philippines

1. Agency and Contracting Activity:

Agency : The U.S. Agency for International Development
Contracting Activity : USAID/Philippines Investment Enabling Environment (INVEST)
Project Document : Justification for Other than Full and Open Competition

2. Nature and Description of Action Being Approved:

The INVEST Project is a \$3.5 million pilot that will address the key constraints underlying the low level of private investment in the Philippines. It will be widely competed among local organizations pursuant to USAID Forward's Implementation and Procurement Reform Objective no. 2—strengthen local civil society and private sector capacity. A two-year contract is envisioned with a one-year option to extend. A Source/Origin/Nationality waiver will be prepared to expand the authorized geographic code of the proposed contract prior to award. The contract is expected to be awarded by September 30, 2011.

3. Description of Supplies or Services to be Procured:

The INVEST Project will focus its technical assistance on streamlining burdensome Philippine government regulations faced by the private sector and foreign investors. Attention will also be given to support services that will make the environment more conducive to private sector activity. Activities will be developed to make regulations less cumbersome for business, lower the cost of compliance, and limit the scope for bureaucratic discretion. Activities will be demand-driven and built on a results-oriented agenda in order to maximize the benefits of economic growth. Because of the relatively short project gestation period and the modest funding amount, a strategic approach is necessary to achieve the objectives in the most cost-efficient manner. Part of the strategy is to work with greater emphasis on synergies between national and local governments and proactive collaboration with the private sector and local business associations.

The project will concentrate on and work directly with three to five cities outside of the National Capital Region, to be selected based on a predetermined set of criteria and on their local leaderships' commitment to streamlining the process of registering a business and lowering business transaction costs, and improving their cities' investment planning and promotion.

The Mission believes that in focusing technical assistance and resources on these target cities, their development will be fast tracked, and if successful, they will be able to serve as platforms to attract development to the surrounding areas.

4. *Statutory Authority Permitting Other than Full and Open Competition:*

USAID Acquisition Regulation (AIDAR), Subpart 706.302-70(a)(2), permits other than full and open competition when such competition “[w]ould impair or otherwise have an adverse effect on programs conducted for the purposes of foreign aid, relief, and rehabilitation.” 40 U.S.C. 113(e) provides that “[n]othing in this subtitle impairs or affects the authority of...an executive agency, with respect to any program conducted for purposes of...foreign aid, relief, or rehabilitation, but the agency carrying out the program shall, to the maximum extent practicable, consistent with the purposes of the program and the effective, efficient conduct of agency business, coordinate its operations with the requirements of this subtitle and with policies and regulations prescribed under this subtitle.”

AIDAR 706.302-70(b)(3)(i) authorizes the Assistant Administrator responsible for the project or program to make a determination, with supporting findings, that compliance with full and open competition procedures would impair foreign assistance objectives, and would be inconsistent with the fulfillment of the foreign assistance program.

AIDAR 706.302-70(c)(2) provides that the contract file must include appropriate explanation and support justifying the award without full and open competition, as provided in FAR 6.303, except that determinations made under 706.302-70(b)(3) will not be subject to the requirement for contracting officer certification or to approvals in accordance with FAR 6.304.

5. *Demonstration that the Nature of the Acquisition Requires Use of the Authority Cited:*

USAID, under Administrator Rajiv Shah, has embarked on a series of historic operational reforms that will create conditions where our work is no longer needed. This major package of procurement reforms, known as “USAID Forward,” aims to cut contract costs, build more internal program capacity, and redouble efforts to support local institutions and build local capacity. President Obama has highlighted the importance of these reforms. Secretary Clinton and the U.S. Congress have likewise expressed their support. In pursuing these reforms, Administrator Shah has identified six objectives that will guide the agency. USAID/Philippines was selected to pilot objective no. 2: “[S]trengthen local civil society and private sector capacity to improve aid effectiveness and sustainability, by working closely with our implementing partners on capacity building and local grant and contract allocations.” To achieve this goal, it is imperative that the Mission focus on strengthening the capacity of local entities and increasing the number of partners and percentage of total dollars conveyed through direct grants and contracts with local organizations. “By 2015, USAID

will increase its direct contracts to local private businesses from 0.83% of its program funds to 4% and will increase the number of partners from 322 to 600.”¹

USAID/Philippines envisions contributing to USAID’s overall procurement reform goals by successfully working with a local organization for the INVEST Project through a contract. To accomplish this, it will be necessary to limit the competition to local organizations. Providing for full and open competition will discourage local organizations from participating in the procurement as many of these firms are already under the impression that only U.S. firms are awarded USAID contracts. Consequently, this lack of participation will impede our efforts at increasing the number of local entities we work with and will deter us from increasing direct contracts to local private businesses. To pursue the USAID reform agenda and to send a strong unequivocal message that we are serious and committed to supporting local firms and building local capacity, it is essential that we limit the competition only to firms duly registered with the Philippine Securities and Exchange Commission and to award one such firm the INVEST Project contract in fulfillment of our foreign assistance program.

As the responsible Assistant Administrator, you are authorized by AIDAR 706.302-70(b)(3)(i) to determine that allowing for full and open competition procedures for the INVEST Project would impair USAID’s foreign policy objective of creating true partnerships with local organizations that create conditions where USAID’s ultimate goal of making aid no longer necessary, will be fulfilled. AIDAR 706.302-70(b)(3)(i) was selected as it represents the lowest level of appropriate executive approval authority amongst all the options presented in the FAR and AIDAR.

6. *Description of Efforts made to Ensure that Offers are Solicited from as Many Potential Sources as Practicable*

The technical office conducted market research and identified at least thirty (30) local firms with the capacity to implement economic reform, governance, and investment enabling programs, and willing and able to work under a USAID contract mechanism.

To further ensure that offers are solicited from as many potential sources as is practicable, a Request for Proposal (RFP) will be posted on the Government Point of Entry (GPE), FedBizOps. The RFP will state that offerors will be limited to Philippine organizations. Once the RFP is posted, advertisements will be posted in at least two local newspapers of wide circulation to call attention to the posting in FedBizOps. Electronic notices will also be sent to local professional and business associations.

¹ USAID Executive Message on “USAID Forward: Strengthening, Optimizing, Streamlining” dated 08/04/2010

7. Fair and Reasonable Cost to the Government:

The Contracting Officer will determine that the acquisition cost is fair and reasonable before issuing a contract for this requirement. The work will be adequately competed and Philippine organizations provide a cost advantage to the USG in performing this work.

8. Market Survey:

The technical office's market survey identified at least thirty (30) local firms with the capacity to carry out the objectives of the INVEST Project. Attached is the document that details the results of the survey. The technical office believes these firms have the capability to implement the INVEST Project and may be willing to work with USAID.

9. Barriers to Competition (a statement of the actions, if any, the agency may take to remove or overcome any barriers to competition before any subsequent acquisition for the supplies or services required)

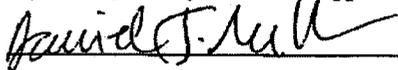
The Mission will exert every effort to ensure the RFP is widely broadcast, initially through the FedBizOps posting, and subsequently through advertisements in two local newspapers of wide circulation and electronic notices sent to local professional and business associations.

10. Technical Officer Certification:

FAR 6.303-2(b) specifies that technical and requirements personnel are responsible for providing and certifying as accurate and complete necessary data to support their recommendation for other than full and open competition. Pursuant to FAR 6.303-2(b), as the Chief of the Office of Economic Development and Governance (OEDG), I

(i) Hereby acknowledge that I and the members of the OEDG team have provided the data in this justification in support of our recommendations that an award be made for the services described in this justification without providing for full and open competition, and

(ii) Hereby certify that such supporting data is accurate and complete.


_____ Date July 12, 2011

Daniel J. Miller, Acting Chief – OEDG, USAID/Philippines

11. Contracting Officer's Certification:

In accordance with AIDAR 706.302-70(c)(2), determinations made under 706.302-70(b)(3) are not subject to the requirement for Contracting Officer certification.

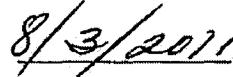
12. Prior Consultation with the Agency Competition Advocate:

As provided in AIDAR 706-302-70(c)(3), prior consultation with the Agency Competition Advocate is required before executing the written determination and finding.

The undersigned Agency Competition Advocate certifies that prior consultation took place and all comments have been included.



Jean Horton, Agency Competition Advocate



Date

Attachment:

Attachment 1 – Market Survey Details

Attachment:

I. Explanation and Support Justifying Determination and Finding

CLEARANCE PAGE FOR THE ACTION MEMORANDUM requesting Determination under AIDAR 706.302-70(b)(3)(i) for the proposed INVEST Project

Clearances:

USAID/Philippines

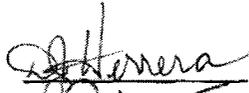
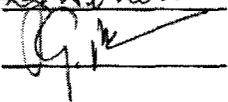
OEDG	MRendon	(in draft)	Date <u>5/24/11</u>
RLA	RTariyal	(in draft; via email)	Date <u>5/26/11</u>
OD	GSteele	(in draft)	Date <u>6/3/11</u>

USAID/Washington

Asia/Philippine Desk DHerrera

DAA

GBeck

	Date <u>8/4/11</u>
	Date <u>8/4/11</u>



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Attachment 1

Market Survey Details

Investment Enabling Environment (INVEST) Project

Justification for Other than Full and Open Competition – Local Procurement

USAID Forward – Objective 2 (Implementation and Procurement)

Research was conducted to identify local Philippine firms (i) with the capability to implement economic reform, governance, and investment enabling programs and (ii) willing to work under a contract mechanism. From this market survey, 30 firms, including universities, possess both the capability and experience to implement the INVEST Project. See list on the last page. A summary of select firms that fit the criteria for INVEST follows below.

- The *Asian Institute of Management (AIM)* was established in 1968 in partnership with Harvard Business School, The Ford Foundation, and the Asian academic and business communities. AIM is the pioneer of management education in Asia. Through its research and advocacy programs (at its academic centers), AIM has active partnerships with the World Bank, The Asian Development Bank, International Labor Organization, Konrad Adenauer Stiftung, and Kiel Institute for the World Economy, among many others. Two current staff members have worked as consultants (e.g. competitiveness specialist) for USAID.
- The *Center for Research and Communication Foundation (CRCF)* conducts public policy research that concerns public interest and the common good. In 2009, CRCF published a report for USAID under the Local Implementation of National Competitiveness – Economic Growth (LINC-EG) Project entitled: “The Global Recession and the Philippines Economy: Impact and Policy Responses.” Besides its regular staff, the Foundation employs faculty members from University of the Asia and Pacific (Manila) as volunteer researchers. CRCF’s programs currently focus on education and training, environment, research, special advocacies and institution building.
- Housed at the prestigious De La Salle University, the *La Salle Institute of Governance (LSIG)* is a research and training institution that aims to produce new knowledge, tools, and strategies that promote transparent, accountable, participatory, and effective governance.

LSIG conducts analytical and technical studies to identify problems and establish baselines, benchmarks, and best practices in various aspects of governance. It coordinates training seminars, policy dialogues, consultation workshops, and learning exchanges in four program areas:

1. Transparency and accountability,
2. Local governance and innovation,
3. Democracy, rights, and citizenship, and
4. Peace, gender, and environment

LSIG offers customized courses to build governance capacity and improve development outcomes. It creates partnerships and knowledge-sharing mechanisms to foster awareness, generate consensus, and build support for policy and institutional reforms. It seeks to find information age solutions to age-old governance problems.

- A non-profit organization, the *Institute for Solidarity in Asia (ISA)* provides advocacy to promote governance, economic and organizational reform through public-private partnership. ISA's partners include: local government units such as the Province of Isabela, the Cities of Iloilo and San Fernando Pampanga and the Municipality of Bani; national public institutions such as the Department of Education, National Electrification Administration, and the Philippine Military Academy; and sectoral associations such as the Accounting and Nursing Professions. Its core programs are Performance Governance System and Public Governance Forum.
- The *National College of Public Administration and Governance (NCPAG)* at the University of the Philippines undertakes instruction, research, and extension service – all in the areas of governmental management, the broader concerns of governance, and the roles of the private sector and civil society. NCPAG functions through its Centers and Offices: Center for Public Administration and Governance Education; Center for Policy and Executive Development; and Center for Leadership, Citizenship, and Democracy.
- The *Ateneo School of Government (ASG)* at the Ateneo de Manila University follows a 'mosaic' approach by
 - working with local government units;
 - linking islands of good governance;
 - stimulating public demand for reform;
 - encouraging the emergence of new national leaders by training and giving support to promising executives from local governments; and
 - working with national institutions and organizations to promote governance innovations at the national level that can have a direct impact on enabling local governments to create wealth and deliver basic services.
- The *Philippine Business for Social Progress (PBSP)* commits to poverty reduction by promoting business sector leadership in, and commitment to programs that lead to self-reliance. Since the early 2000s, PBSP incorporated workforce development as a core strategy, asserted its role in Mindanao (specifically basic services such as health and education), and spearheaded the business sectors' support of the United Nations Millennium Development Goals.

- The ***Pimentel Center for Local Governance (PCLG)*** is a unit of the College of Governance and Public Policy at the University of Makati. Recently established in 2010, PCLG hopes to conduct research on areas of politics, governance, and public policy. Current efforts include documentation of the City Government of Makati’s best practices.
- The ***Jaime V. Ongpin Foundation*** works in partnership with local and foreign donors, business, government agencies, other NGOs, and people’s organizations in pursuing development programs in its target communities. Its ongoing projects include: enterprise development and microfinance; ecological enhancement; environmental conservation; and capacity building activities.
- One of the oldest foundations in the Philippines, the ***Gerry Roxas Foundation (GRF)*** – in partnership with community leaders – creates opportunities for leadership, catalyzes communities for change, generates innovations in development. Through its Center for Local Governance, GRF provides customized training programs, coaching and mentoring services for local government units, and other private and non-government institutions for Change Management to improve service delivery and citizen participation in governance.
- The ***Management Association of the Philippines*** promotes its members’ involvement in community affairs and works with the government toward good governance and brighter conditions to encourage greater levels of business growth.
- The ***Philippine Chamber of Commerce and Industry (PCCI)*** advocates for its business community to improve the Philippine business and investment climate. PCCI produces position papers and offers a variety of services to promote the ease of doing business.
- The ***School of Urban and Regional Planning, University of the Philippines*** acts as a center for learning and research in the development of innovative theories, tools, and sustainable practices in urban, rural and regional planning adapted to developing countries.
- The ***Center for Corporate Social Responsibility (CSR)*** is the social extension arm of the University of Asia and the Pacific, which takes the lead in the institutionalization of the People Development Hallmark Program of UA&P. CSR is part of the University of Asia and the Pacific’s mandate to strengthen and broaden the avenues for cooperation so that it can effectively contribute to social development. As an extension arm of the University, the Center’s aims are to maximize the synergy of the faculty, students, and partner institutions in uplifting the social and economic conditions of marginalized groups in society.
- In its almost two decades of existence, the ***Galing Pook Foundation (GPF)*** has become a leading resource institution continuously promoting innovation and excellence in local governance. GPF proactively searches and recognizes best local government practices and facilitates their adoption in more communities in the country.

- The ***Local Government Development Foundation (LOGODEF)*** provides professional services to local governments in support of central government efforts to promote the continuing development of Philippine local authorities. LOGODEF is one of the major institutional partners of the Konrad Adenauer Foundation in strengthening local political institutions in the Philippines. The organization is also an advocate of interlocal cooperation.
- Founded by a former Prime Minister of the Philippines, ***Cesar Virata and Associates*** has experience working with USAID (Economic Modernization through Efficient Reforms and Governance Enhancement, EMERGE) and produced a project report in 2007 entitled: “Streamlining Technical Regulations on the Department of Agriculture’s SPS Administration: Completion Report, Policy Statement on DA Technical Regulations, & Interim Organizing Arrangements.”
- The ***Development Academy of the Philippines (DAP)*** is government owned and controlled but is operated as a commercial organization¹. It is mandated to:
 - 1) generate pioneering, value-adding, synergistic ideas, concepts, principles, techniques and technologies addressing development problems of local, national and international significance;
 - 2) capacitating individuals and development stakeholder organizations in government, the private sector, civil society, academe, and international organizations to perform their respective roles and mandates in development more efficiently and effectively; and
 - 3) promote partnerships and facilitate the integration of policies, plans, programs, and systems towards a holistic perspective, through the conduct of training, education, policy/action-oriented researches, consulting/technical assistance, and publications in good governance and productivity improvement.

DAP houses four academic centers, including the Center for Quality and Competitiveness. DAP’s current work with government agencies include: anti-corruption programs; ISO certification, internal efficiency practices, performance management, quality control and procurement reform.

¹A waiver will be sought to work with parastatals.

List of Philippine Firms with Capability and Experience to Implement INVEST Project

1. Asian Institute of Management
2. Center for Research and Communication Foundation
3. La Salle Institute of Governance
4. Institute for Solidarity in Asia (ISA)
5. UP National College of Public Administration and Governance Center for Local Governance
6. Ateneo School of Government
7. Philippine Business for Social Progress (PBSP)
8. Pimentel Center for Local Governance, University of Makati
9. Center for Leadership, Citizenship and Democracy
10. Caucus of Development NGO Networks (CODE - NGO)
11. Foundation for Development Alternatives, Inc.
12. Foundation for Economic Freedom
13. Jaime V Ongpin Foundation Inc.
14. Gerry Roxas Foundation
15. Ayala Foundation
16. Philippine Center for Civic Education and Democracy
17. Management Association of the Philippines
18. Makati Business Club
19. Philippine Chamber of Commerce and Industry
20. Philippine Rural Reconstruction Movement (PRRM)
21. UP School of Urban and Regional Planning
22. UA&P Center for Social Responsibility
23. Galing Pook Foundation
24. Local Government Development Foundation (LOGODEF)
25. Evelio Javier Foundation
26. Philippine Partnership for the Development of Human Resource (PHILDHRRA)
27. Cesar Virata and Associates
28. Partnership of Philippine Support Service Agencies, Inc. (PHILSSA)
29. Research, Education and Institutional Development (REID) Foundation
30. Development Academy of the Philippines