

The image features a large, light gray watermark of the USAID seal in the background. The seal is circular and contains the text "UNITED STATES AGENCY FOR INTERNATIONAL DEVELOPMENT" around the perimeter. In the center of the seal is a shield with a map of the United States, and the word "USAID" is prominently displayed in a dark gray box across the middle of the seal.

USAID

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**TITLE: CIB 89-4 Impermissible Exclusion of Potential Contractors,
Suppliers, Assistance Recipients, or Other Participants in
A.I.D.-Financed Activities: "De Facto Debarment"**

AGENCY FOR INTERNATIONAL DEVELOPMENT
WASHINGTON, DC 20523

January 19, 1989

MEMORANDUM FOR ALL CONTRACTING OFFICERS AND NEGOTIATORS

TO: Distribution List D-14(LL)

FROM: M/AAA/SER, John F. Owens, Procurement Executive

CONTRACT INFORMATION BULLETIN 89-4

SUBJECT: Impermissible Exclusion of Potential Contractors,
Suppliers, Assistance Recipients, or Other
Participants in A.I.D.-Financed Activities:
"De Facto Debarment"

Attached for your information and reference is a copy of a
self-explanatory A.I.D. General Notice issued by GC on the above
subject.

Attachment: A.I.D. General Notice of December 29, 1988

AGENCY FOR INTERNATIONAL DEVELOPMENT
WASHINGTON, DC 20523

OFFICE OF
THE GENERAL COUNSEL

A.I.D. General Notice
Issue Date: 12-29-88

GC

SUBJECT: Impermissible Exclusion of Potential
Contractors, Suppliers, Assistance
Recipients or Other Participants in A.I.D.-
Financed Activities: "De Facto Debarment"

Agency personnel should not impermissibly exclude potential contractors, suppliers, assistance recipients, or other participants from A.I.D. direct contracts, assistance instruments or A.I.D.-financed activities. Exclusions, whether applied to organizations or individuals, are impermissible when they are imposed for reasons other than present eligibility or responsibility. Such exclusions are sometimes referred to as "de facto debarment", "blacklisting" or "blackballing." They are illegal, improper and contrary to A.I.D. policy.

Organizations or individuals may be suspended or debarred from A.I.D. direct contracts only upon completion of the procedures set forth in FAR Subpart 9.4 (48 CFR Subpart 9.4) and A.I.D. Regulation 8 (22 CFR Part 208). See AIDAR 709.402 (48 CFR 709.402). Participants may be suspended or debarred from A.I.D. assistance instruments and A.I.D.-financed activities such as host country project or Commodity Import Program contracts only upon completion of the procedures set forth in A.I.D. Regulation 8.

Contracting Officers are required to make affirmative determinations of responsibility of prospective contractors prior to awarding a direct contract. FAR 9.103(b). Determinations of responsibility must be made in accordance with the standards stated in FAR 9.104, pursuant to the procedures stated in FAR 9.105. Although the Contracting officer exercises reasonable discretion and judgment, he or she should consider only verifiable, demonstrable factual information in making responsibility determinations. Determinations must be made for each individual award and may not be carried over from prior contracting actions. Prior lapsed suspension or debarment of a prospective contractor, or of an individual associated with it, is not a sufficient ground, by itself, to justify a determination that such contractor is not presently responsible.

Award of assistance instruments requires the determination of the technical and managerial competence and financial responsibility of the prospective grantee. Again, prior lapsed suspension or debarment of a prospective grantee or of an individual associated with it is not a sufficient ground, by itself, to justify a negative determination.

In providing information to Contracting Officers, Grant Officers, or other A.I.D. officials relating to responsibility of an organization or individual, A.I.D. personnel should confine advice to factual information. Such information should be provided in an accurate and straight forward way. If negative information is provided, it should be precise and complete, including any mitigating factors that may apply. Information not relevant to performance or ability to perform should not be addressed.

There is no procedure in place at this time to prescribe blanket ineligibility of contractor employees. Contractor employees proposed for overseas assignments or as key personnel are reviewed for suitability on an individual, case-by-case basis pursuant to Contract Information Bulletin 87-33 (October 1, 1987). Where difficult issues arise in connection with a particular approval, A.I.D./W, GC or the cognizant Legal Advisor may be consulted.

As part of its continuing duties, the Inspector General's office (IG) may initiate investigations of particular transactions, activities, organizations or individuals. Agency personnel are reminded that the initiation or conduct of an investigation is not a sufficient reason by itself to exclude organizations or individuals from A.I.D. contracts, assistance instruments, or A.I.D.-financed activities. Contracting and Grant Officers may consult with the IG for assistance in gathering information relating to responsibility, but they remain solely responsible for the determinations.

When the Agency has information which should be taken into account in determining responsibility, it may issue an Alert Notice. See A.I.D. General Notice (April 1, 1987). Alert Notices outline problems and direct Agency personnel to contact M/SER/PPE/PE before determining responsibility. M/SER/PPE/PE will not instruct cognizant personnel whether or not to proceed with an action, but will merely supply current information. Again, the Contracting or Grant officer remains solely responsible for determining responsibility.

DISTRIBUTION:

AID List H, Position 8
List B-1, Position 8