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This AAPD is archived.

AIDAR subpart 725.7 was revised to incorporate the current Source and Nationality requirements. Corresponding changes were made to the AIDAR clause 752.225-70.



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Acquisition & Assistance Policy Directive (AAPD)

From the Director, Office of Acquisition & Assistance Issued: Feb. 2, 2012

AAPD 12-03

Revision to 22 CFR 228 Source and Nationality Policy

Subject Category: Acquisition Management
Type: POLICY

AAPDs provide information of significance to all agency personnel and partners involved in the Acquisition and Assistance process. Information includes (but is not limited to): advance notification of changes in acquisition or assistance regulations; reminders; procedures; and general information. Also, AAPDs may be used to implement new requirements on short-notice, pending formal amendment of acquisition or assistance regulations.

AAPDs are EFFECTIVE AS OF THE ISSUED DATE unless otherwise noted in the guidance below; the directives remain in effect until this office issues a notice of cancellation.

This AAPD: Is New Replaces/ Amends CIB/AAPD No:

<p>Applicable to:</p> <p><input checked="" type="checkbox"/> Existing awards; <input checked="" type="checkbox"/> Modification required</p> <p><input type="checkbox"/> No later than</p> <p><input checked="" type="checkbox"/> As noted in guidance below*</p> <p><input checked="" type="checkbox"/> RFPs/RFAs issued on or after the effective date of this AAPD; all other Pending Awards, i.e., 8(a), sole source, IQC</p> <p><input type="checkbox"/> Other</p>	<p>Precedes change to:</p> <p><input checked="" type="checkbox"/> AIDAR Part(s) 725.401 AIDAR 725.70 Source, Origin, and Nationality, 752.225-70 Source, Origin and Nationality Requirements, 752.225-71 Local Procurement</p> <p><input type="checkbox"/> USAID Automated Directives System (ADS) Chapter</p> <p><input type="checkbox"/> Code of Federal Regulations</p> <p><input type="checkbox"/> Other</p> <p><input type="checkbox"/> No change to regulations</p>
<p><input checked="" type="checkbox"/> New Provision/Clause Provided Herein: If checked, scheduled update to GLAAS:</p>	

_____/s/_____
Aman S. Djahanbani

PURPOSE: The purpose of this directive is to advise Contracting Officers (COs) of the revised AIDAR regulatory text conforming with the recent revision to 22 CFR 228 Rules on Procurement of Commodities and Services Financed by USAID Federal Program Funds.

Required Action: In accordance with the guidance below, COs must modify solicitations and existing awards to:

- (1) Incorporate the new default Geographic Code of 937 and revised AIDAR clause 752.225-70 Source, Origin and Nationality Requirements (Feb 2012); and
- (2) Remove AIDAR clause 752.225-71 Local Procurement.

This AAPD implements an approved class deviation that affects several sections of the AIDAR and makes the changes described in the guidance below.

BACKGROUND:

As part of the Agency's Implementation and Procurement Reform (IPR) initiative, USAID has completed public rulemaking procedures to revise and simplify the regulation 22 CFR 228 that establishes USAID's source and nationality procurement requirements. The new regulation, which was published on January 10, 2012 in the Federal Register with an effective date of February 6, 2012, greatly simplifies and streamlines USAID's procurements by:

- 1) Authorizing procurements in the recipient and other developing countries along with the United States, as Congress directed in the Foreign Assistance Act, via a new default Geographic Code of 937;
- 2) Eliminating the requirement to determine the "origin" of a commodity -- a difficult task in today's globalized economy -- and simplifying and clarifying source and nationality requirements to restrict procurements from foreign government controlled vendors; and
- 3) Streamlining procedures, including those necessary to obtain a waiver in the event goods or services are needed from any other country or region.

As set forth in 22 CFR 228, Code 937 is defined as the United States, the cooperating/recipient country, and developing countries other than advanced developing countries, and excluding prohibited sources. USAID maintains a list of developing countries, advanced developing countries, and prohibited sources, which will be available in USAID's Automated Directives System (ADS) Chapter 310.

Corresponding changes to affected Automated Directives Chapters 310 and 312 will also be issued prior to February 6, 2012. Most notably, the concept of local procurement is now obsolete, and ADS 311 Local Procurement will be deleted in its entirety. For this reason, AIDAR clause 752.225-71 Local Procurement will be removed from the AIDAR.

Accordingly, I have revised the associated AIDAR policy by approving a class deviation to the AIDAR. This AAPD provides the revised AIDAR regulatory text in Attachment 1 as well as guidance to COs on modifying solicitations and awards.

GUIDANCE:

In order to implement the significant changes in revised 22 CFR 228 in a timely manner to further the goals of IPR:

- a. Solicitations issued prior to March 1, 2012 to which 22 CFR 228 applies and for which either 000 or 941 is the authorized Geographic Code may be amended to:
 - i. reflect the new default Geographic Code of 937;

- ii. include the revised AIDAR clause 752.225-70 Source and Nationality Requirements (Feb 2012); and
- iii. delete AIDAR clause 752.225-71 Local Procurement.

Such amendments will be at the CO's discretion; specifically, COs should consider on a case-by-case basis any solicitations with significant potential for sub-awards for goods and services, as well as requests from interested bidders for such an amendment. When issuing amendments, COs must allow adequate time for all potential or interested offerors to revise their proposals accordingly.

All awards resulting from such solicitations not amended during the pre-award phase must reflect the new default Geographic Code of 937 and include the revised AIDAR clause 752.225-70 Source and Nationality Requirements (Feb 2012),

- b. Solicitations issued on/after March 1, 2012 to which 22 CFR 228 applies must:
 - i. reflect the new default Geographic Code of 937 (unless another geographic code is authorized per 22 CFR 228; and
 - ii. include the revised AIDAR clause 752.225-70 Source and Nationality Requirements (Feb 2012)
- c. COs must modify all existing awards to which 22 CFR 228 applies, for which either 000 or 941 is the authorized Geographic Code, and with a remaining period of performance which exceeds four months to:
 - i. reflect the new default Geographic Code of 937;
 - ii. include the revised AIDAR clause 752.225-70 Source and Nationality Requirements (Feb 2012); and
 - iii. delete AIDAR clause 752.225-71 Local Procurement.
no later than March 31, 2012.

For those awards with a remaining period of performance of 4 months or less as of February 6, 2012, COs must notify the Contractor of the applicability of the new regulation no later than February 21, 2012, and, upon request by the implementer, modify the award as set forth above.

POINT OF CONTACT:

Name: Carol Ketrick
Phone: 202-567-4676
Email: cketrick@usaid.gov

ATTACHMENTS:

- 1 - Acquisition Regulation (AIDAR) Revisions

Attachment 1
U.S. Agency for International Development
Acquisition Regulation (AIDAR) Revisions
Pursuant to Class Deviation OAA-DEV-12-01c

725.70 – Source and Nationality
(Class Deviation OAA-DEV-12-01c)

725.701 General.

USAID's source and nationality requirements for program-funded contracts and subcontracts are set forth in 22 CFR 228 Rules on Procurement of Commodities and Services Financed by USAID Federal Program Funds. 22 CFR 228 is supplemented by the policies and procedures in ADS Chapters 310 and 312.

725.702 Designation of authorized geographic code.

(a) The authorized geographic code or codes for a contract shall be specified in the Schedule of each contract and shown on its cover page. Unless another geographic code is specified in the Schedule in accordance with 22 CFR Part 228, the authorized code for all Agency contracts is Geographic Code 937, which is the U.S, the cooperating/recipient country, and developing countries other than advanced developing countries, and excluding prohibited sources.

(b) The list of developing countries is available in ADS 310.

725.703 Source and nationality requirements - Contract clause.

Insert the clause at **752.225-70** Source and Nationality Requirements in all USAID program-funded solicitations and contracts under which the contractor may procure goods or services, unless source and nationality requirements do not apply as set forth at 22 CFR 228.02.

725.704 Geographic Code waivers.

(a) Authority to approve waivers of source, nationality, and transportation services requirements, pursuant to 22 CFR 228 Subpart D, is set forth in Chapters 103 and 310 of the ADS.

(b) The contracting officer shall insert the authorized geographic code based on an approved waiver in the Schedule of the contract as provided for in 725.702. In addition, the contracting officer shall place a copy of any approved geographic code waiver in the official contract file.

752.225-70 Source and Nationality Requirements

As prescribed in 725.704, insert the following clause:

Source and Nationality Requirements (FEB 2012)

(Class Deviation No. OAA-DEV-12-01c)

(a) Except as may be specifically approved by the Contracting Officer, the Contractor must procure all commodities (e.g., equipment, materials, vehicles, supplies) and services (including commodity transportation services) in accordance with the requirements at 22 CFR Part 228 "Rules on Procurement of Commodities and Services Financed by USAID Federal Program Funds." The authorized source for procurement is Geographic Code 937 unless otherwise specified in the schedule of this contract. Guidance on eligibility of specific goods or services may be obtained from the Contracting Officer.

(b) Ineligible goods and services. The Contractor must not procure any of the following goods or services under this contract:

- (1) Military equipment
- (2) Surveillance equipment
- (3) Commodities and services for support of police and other law enforcement activities
- (4) Abortion equipment and services
- (5) Luxury goods and gambling equipment, or
- (6) Weather modification equipment.

(c) Restricted goods. The Contractor must obtain prior written approval of the Contracting Officer or comply with required procedures under an applicable waiver as provided by the Contracting Officer when procuring any of the following goods or services:

- (1) Agricultural commodities,
- (2) Motor vehicles,
- (3) Pharmaceuticals and contraceptive items
- (4) Pesticides,
- (5) Fertilizer,
- (6) Used equipment, or
- (7) U.S. government-owned excess property.

If USAID determines that the Contractor has procured any of these specific restricted goods under this contract without the prior written authorization of the Contracting Officer or fails to comply with required procedures under an applicable waiver as provided by the Contracting Officer, and has received payment for such purposes, the Contracting Officer may require the contractor to refund the entire amount of the purchase.