



USAID | WEST BANK/GAZA

FROM THE AMERICAN PEOPLE

March 22, 2012
2012-WBG-04

Notification Letter to USAID/West Bank and Gaza Grantees and Recipients

Subject: USAID Regulatory and Policy Changes in Source/Nationality Procurement Requirements

Dear Implementing Partners,

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, *Procurement of Commodities and Services Financed by USAID Federal Program Funds*. This regulation establishes USAID's source and nationality procurement requirements. The revised 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 (but not advanced 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, Geographic 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 that is available in USAID's Automated Directives System (ADS) Chapter 310. The concept of local procurement is now obsolete, and ADS 311 Local Procurement has been deleted in its entirety. USAID also revised ADS Chapter 303 and the Standard Provisions referenced in the chapter that refer to 22 CFR 228.

In light of these regulatory and policy changes, I am hereby authorizing you to conduct procurements under the revised regulation retroactively to February 6, 2012, consistent with the provision(s) in Attachment 1 and pending formal amendment of any existing award(s) with your organization. We will amend your award(s) at the earliest practicable opportunity to incorporate the attached revised Standard Provision "USAID Eligibility Rules for Goods and Services (Feb 2012)" and delete the Standard Provision "Local Procurement (April 1998)." If cost share (matching) is applicable to your awards, the amendment will include the attached revised Standard Provision "Cost Share (Matching) (Feb 2012)." We will also amend the Schedule of any awards that currently designate the geographic code of 000 or 941 to reflect the new default code of 937. I will not amend awards ending within four (4) months from February 6, 2012, unless you specifically request that they be amended.

Please note that we will consider your organization as having accepted this authorization and concur with the proposed amendment(s) if we do not receive any specific written objection to this letter within 30 calendar days of its issuance. We will then issue the associated amendments unilaterally with an effective date of February 6, 2012. To the greatest extent possible, we will combine this revision with other regularly planned amendments (e.g., incremental funding as applicable) for administrative efficiency; however, only those revisions in the amendment consistent with the regulatory and policy changes above will be made effective February 6, 2012.

Please note that restrictions on ineligible items and special requirements for restricted commodities and services set forth in 22 CFR 228 and ADS 312 (e.g., motor vehicles, pharmaceuticals, and agricultural commodities, as well as construction or engineering services from an advanced developing country, etc.) still require approval. Acquisition of commodities and services of a source or nationality beyond the authorized geographic code will still require the prior written approval of USAID in accordance with 22 CFR 228.

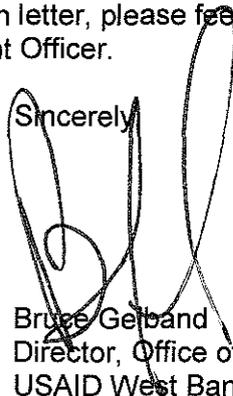
Frequently Asked Questions (FAQs) will be posted to the Agency website at <http://www.usaid.gov/business/ombudsman.html>.

In addition, USAID WBG would like to inform you of an important clarification of source rules under 22CFR 228.

USAID Office of General Council has confirmed that the phrase "located therein at the time of purchase" in the definition of "Source" was intended to have the same meaning as "available for purchase" as defined in 22 CFR 228.01. A commodity is "available for purchase" if it is offered for sale in the cooperating country at the time of purchase. It is our determination that an item regularly sold in the local market by a local vendor from its catalog is "available for purchase" and consequently its "Source" is the cooperating country. You are not required to look past the catalog vendor's inventory management system to ascertain whether or not the product is subsequently imported to fulfill the order. We note, however, that goods produced in prohibited source countries would remain subject to restrictions. In order to document compliance with Source Nationality rules, partners should retain a copy of the vendor catalog documenting that the items are available for purchase.

Should you have any further questions regarding the above clarification to the definition of source please contact Stephen Valdes, the Regional Legal Advisor at svaldes@usaid.gov. If you have any questions regarding this notification letter, please feel free to contact your Acquisition and Assistance Specialist or Agreement Officer.

Sincerely,



Bruce Gelband
Director, Office of Contracts Management
USAID West Bank and Gaza

Attachment: Source Nationality Standard Provisions (ADS 303)

Source Nationality Standard Provisions (ADS 303)

USAID ELIGIBILITY RULES FOR GOODS AND SERVICES (FEBRUARY 2012)

(This provision is not applicable to goods or services which the recipient provides with private funds as part of a cost-sharing requirement, or with Program Income generated under the award.)

Guidance on the eligibility of specific goods or services may be obtained from the Agreement Officer. USAID policies and definitions on source and nationality are contained in 22 CFR Part 228, Rules on Procurement of Commodities and Services Financed by USAID Federal Program Funds which is incorporated into this Award in its entirety. 22 CFR 228 is supplemented by the policies and procedures in ADS Chapters 310 and 312.

a. Ineligible and Restricted Goods and Services:

(1) Ineligible Goods and Services. The recipient must not, under any circumstances, procure any of the following under this award:

- (i) Military equipment,
- (ii) Surveillance equipment,
- (iii) Commodities and services for support of police or other law enforcement activities,
- (iv) Abortion equipment and services,
- (v) Luxury goods and gambling equipment, or
- (vi) Weather modification equipment.

(2) Ineligible Suppliers. Funds provided under this award must not be used to procure any goods or services furnished by any firms or individuals whose name appears on the "Lists of Parties Excluded from Federal Procurement and Nonprocurement Programs" (See <https://www.epls.gov/>). USAID will provide the recipient with a copy of these lists upon request.

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

- (i) Agricultural commodities,
- (ii) Motor vehicles,
- (iii) Pharmaceuticals,
- (iv) Pesticides,

- (v) Used equipment,
- (vi) U.S. Government-owned excess property, or
- (vii) Fertilizer.

b. Source and Nationality:

The eligibility rules for goods and services based on source and nationality are divided into two categories: One applies when the total procurement element during the life of the award is \$250,000 or less, and the other applies when the total procurement element during the life of the award is over \$250,000. The total procurement element includes procurement of all goods (for example, equipment, materials, supplies) and services. Guidance on the eligibility of specific goods or services may be obtained from the Agreement Officer.

1) When the total procurement element during the life of this award is valued at \$250,000 or less, the authorized source for procurement of all goods and services to be reimbursed under the award is USAID Geographic Code 935, "Special Free World." Such goods and services must meet the source and nationality requirements set forth in 22 CFR 228.

2) When the total procurement element exceeds \$250,000, the following applies: Except as may be specifically approved or directed in advance by the Agreement Officer, all goods and services financed with U.S. dollars which will be reimbursed under this award must meet the source and nationality requirements set forth in 22 CFR 228 for the authorized geographic code specified in the schedule of this award. If none is specified, the authorized source is Code 937.

c. If USAID determines that the recipient has procured any of these goods or services under this award contrary to the requirements of this provision, and has received payment for such purposes, the Agreement Officer may require the recipient to refund the entire amount of the purchase.

This provision must be included in all subagreements which include procurement of goods or services.

[END OF PROVISION]

COST SHARING (MATCHING) (FEBRUARY 2012)

APPLICABILITY: *This provision, along with 22 CFR 226, is applicable when the recipient has agreed or is required to cost share or provide a matching share.*

COST SHARING (MATCHING) (February 2012)

- a. If at the end of any funding period, the recipient has expended an amount of non-Federal funds less than the agreed upon amount or percentage of total

expenditures, the Agreement Officer may apply the difference to reduce the amount of USAID incremental funding in the following funding period. If the award has expired or has been terminated, the Agreement Officer may require the recipient to refund the difference to USAID.

- b. The source and nationality requirements and the restricted goods provision established in the Standard Provision entitled "USAID Eligibility Rules for Goods and Services" do not apply to cost sharing (matching) expenditures.

[END OF PROVISION]