



USAID | WEST BANK/GAZA

FROM THE AMERICAN PEOPLE

March 22, 2012
2012-WBG-03

Notification Letter to USAID/West Bank and Gaza Contractors

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* that 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 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.

In light of the above regulatory and policy changes, I am hereby authorizing you to conduct procurements under the revised regulation retroactively to February 6, 2012, consistent with the clause in Attachment 1 and pending formal modification of any existing award(s) with your organization. We will modify your award(s) at the earliest practicable opportunity to incorporate AIDAR clause 752-225-70 Source and Nationality Requirements and delete AIDAR Clause 752.225-71 Local Procurement. We will also modify 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 modify awards which are due to end within four (4) months from February 6, 2012, unless you specifically request that they be modified.

Please note that we will consider your organization as having accepted this authorization and concur with the proposed modifications(s) if we do not receive any specific written objection to this letter within 30 calendar days of its issuance. The associated modifications may then be

issued unilaterally with an effective date of February 6, 2012. To the greatest extent possible, we will combine these revisions with other regularly planned modifications (e.g., incremental funding as applicable) for administrative efficiency; however, only those revisions in the modification 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, contractors 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 Contracting Officer.

Sincerely,



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

Attachment 1: Acquisition Regulation (AIDAR) Clause 752.225-70

ATTACHMENT 1

752.225-70 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.