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ADS Chapter 310

Source and Nationality Requirements for Procurement of Commodities and Services Financed by USAID

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 ADS 310 – Source and Nationality Requirements for Procurement of Commodities
 and Services Financed by USAID
 POC for ADS 310: John Niemeyer, (202) 712-5053, jniemeyer@usaid.gov

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ADS 310 – Source and Nationality Requirements for Procurement of Commodities and Services Financed by USAID

310.1 OVERVIEW

Effective Date: 02/06/2012

This chapter provides the policy directives and required procedures to ensure that the procurements of commodities and services financed by USAID meet the requirements of the Foreign Assistance Act (FAA) and benefit the economies of the U.S., the recipient country, and developing countries as authorized by Congress, as well as fulfill the needs of the foreign assistance program.

This chapter is applicable to procurement in dollars, local currency, or other foreign exchange of commodities and services financed with USAID program funds (Guidance for Operating Expense (OE) Account-funded procurements is found in [ADS 330, Source Rules for Administrative Procurement](#)). Any commodity obtained under a long-term lease agreement, as defined in USAID's Source and Nationality Regulation, [22 CFR 228](#) (the "Regulation"), is subject to the requirements of this chapter and the Regulation. This chapter does not apply to procurements that are:

- a. Under General Services Administration (GSA) schedules (considered U.S. commodities since GSA applies the requirements of the Buy America Act and FAR Subpart 25.1;
- b. Funded by donations under USAID's gift authority;
- c. Funded by recipient cost share or program income;
- d. Under Title II food aid programs;
- e. Funded with appropriations under authorities other than the FAA (see the Regulation, Section 228.02); or
- f. Are otherwise exempted in accordance with other Agency guidance.

310.2 PRIMARY RESPONSIBILITIES

Effective Date: 02/06/2012

- a. **The Office of the General Counsel (GC)** is responsible for developing and interpreting Agency regulatory policy concerning source and nationality requirements for procurement of commodities and services.
- b. **Contracting and Agreement Officers** are responsible for implementation of Agency regulatory policy concerning source and nationality requirements for procurement of commodities and services under mechanisms Contracting and Agreement Officers execute and administer.
- c. The **Bureau, Mission, or other Agency operating unit** with program responsibility is responsible for ensuring that the appropriate authorized source and nationality for procurement is designated in implementing documents.

d. **Missions** are responsible for ensuring, to the extent possible, that the Agency does not finance identifiable customs duties.

e. **Assistant Administrators (AA) or Directors of USAID/Washington-based operating units** undertaking procurements and Mission Directors (to the extent they are re-delegated the authority under [ADS 103, Delegations of Authority](#)) are responsible for authorizing waivers of source and nationality requirements, in compliance with the Regulation and **ADS 310**.

310.3 POLICY DIRECTIVES AND REQUIRED PROCEDURES

Effective Date: 02/06/2012

The statements contained herein are the official Agency policies and corresponding essential procedures.

310.3.1 Authorized Source and Nationality of Procurement

Effective Date: 02/06/2012

This section sets forth the source and nationality for procurement which are normally authorized for USAID-financed transactions. Each USAID implementation instrument to which this chapter applies shall specify a USAID Principal Geographic Code that defines the eligible source and nationality for foreign exchange procurement. Consult the appropriate ADS chapter, other Agency guidance, or the cognizant GC attorney or Regional Legal Advisor (RLA) for more information about applicability of the Source and Nationality Regulation to particular implementation instruments.

USAID's statutory procurement authority, [Section 604\(a\) of the FAA](#), authorizes procurement "from the United States, recipient country or developing countries." Tracking that statutory authority, the Regulation establishes a presumptive USAID Principal Geographic Code, Code 937, for all USAID federally financed procurement of commodities and services under implementation instruments, unless otherwise specified.

In some cases, Congress has augmented the statutory procurement authority established in [Section 604\(a\) of the FAA](#), such as in legislation for the Support for Economic and Democratic Development of the Independent States of the Former Soviet Union, [22 USC Section 2295b](#), and Development Fund for Africa (DFA), [22 USC 2293 et seq.](#) The authorized USAID Principal Geographic Codes for these special procurement authorities shall be Codes 110 and 935, respectively, as specified below.

For purposes of any waivers of the USAID Principal Geographic Code authorized under [22 CFR 228 Subpart D](#), the USAID Principal Geographic Code shall be Code 935.

Inclusion of a country in a particular geographic code does not authorize procurement in violation of any U.S. law or regulation, e.g., OFAC sanctions.

Note: The Agency's award of grants and cooperative agreements is not limited to the authorized USAID Principal Geographic Code(s), which applies only to direct Agency contracts and procurements of commodities and services under contracts and grants/cooperative agreements. Grants/cooperative agreements using program funds may be made/entered into without regard to the nationality of the prime recipient as long as that organization is not otherwise restricted by statute, regulation, Agency policy, or administrative determination (i.e., suspension and debarment) from receiving assistance. Note that award of the grant/cooperative agreement may be subject to competition requirements, as applicable.

310.3.1.1 Authorized USAID Principal Geographic Codes

Effective Date: 02/06/2012

1) Code 937 (the United States, the recipient country, and developing countries other than advanced developing countries, but excluding any country that is a prohibited source) is the authorized USAID Principal Geographic Code for the procurement of commodities and services:

- a.** For direct contracts the Agency enters into using program funds, to all contractors not otherwise restricted by statute, regulation, Agency policy or administrative determination (i.e., suspension and debarment) from receiving USAID funds, and subject to competition requirements;
- b.** Under all grants to partner country governments. See below for grants to countries included in Code 110 (New Independent States) and to those covered by the DFA;
- c.** Under Economic Support Fund loans;
- d.** By USAID missions using program funds;
- e.** By contractors under USAID direct contracts;
- f.** By recipients under grants and cooperative agreements to non-governmental organizations when the award budget contains more than \$250,000 worth of goods and services to be procured by the recipient; and
- g.** By subcontractors and sub-recipients of awards.

2) Code 110 (the United States, the independent states of the former Soviet Union, or a developing country, but excluding any country that is a prohibited source) is the authorized USAID Principal Geographic Code for procurement of commodities and services under grants to any of the New Independent States, or to a contractor under USAID direct contracts or to recipient of a grant or cooperative agreement under an implementing document authorizing procurement in any of the New Independent States.

3) Code 935 (any area or country including the recipient country, but excluding any country that is a prohibited source) is the authorized USAID Principal Geographic Code for procurement of commodities and services:

- a. Using funds that are covered by the statutory exemption for the DFA;
- b. Whenever a waiver is authorized under [Subpart D of 22 CFR Section 228](#) and **ADS 310.3.4**;
- c. For procurements under a grant or cooperative agreement when the total procurement element in the award budget is \$250,000 or less.

310.3.1.2 Eligibility and Determination of Developing Countries

Effective Date: 02/06/2012

Developing countries are eligible under Code 937. A “developing country” means any country categorized by the World Bank as a low or lower middle income country according to its gross national income per capita. A current list of developing countries is attached as [310maa, List of Developing Countries](#). Developing countries also include all countries receiving USAID assistance, either through a bilateral, non-presence or regional program, but only when the procurement is for USAID assistance to that country (i.e., it is the “cooperating” or “recipient” country). Therefore, goods and services with an advanced developing country source or nationality *may only be included in Code 937 when the procurement is for a USAID program in that advanced developing country*.

310.3.1.3 Restriction on Advanced Developing Countries

Effective Date: 02/06/2012

Advanced developing countries are not eligible under Code 937, except for those countries receiving USAID assistance. An “advanced developing country” means any country categorized by the World Bank as an upper middle income country according to its gross national income per capita, except for any such country in which USAID provides assistance when the procurement is for USAID assistance to that country (i.e., it is the “cooperating” or “recipient” country). A current list of advanced developing countries is attached as [310mab, List of Advanced Developing Countries](#). Therefore, goods and services with an advanced developing country source or nationality *may only be included in Code 937 when the procurement is for a USAID program in that advanced developing country*.

Goods and services of an advanced developing country source or nationality may be purchased for a program in a country other than that advanced developing country if:

- a. A waiver is approved under [Subpart D of 22 CFR Section 228](#) and **ADS 310.3.4.**, below; or
- b. A good or service is available for purchase on the local market so long as such good or service is of cooperating country "source" or "nationality" as defined in [22 CFR Part 228](#) (i.e., there is no "origin" restriction).

310.3.1.4 Countries Which Are Prohibited Sources

Effective Date: 02/06/2012

No services may be procured from suppliers with a nationality from countries designated by USAID as "prohibited sources." Additionally, no goods may be procured from source countries that are designated as prohibited sources. Note that the definition of "source" in **ADS 310** and [22 CFR Part 228](#) does not have the same meaning as the word is defined in the term "prohibited sources;" the latter term denotes a list of countries that for policy reasons are deemed ineligible for procurement. The list of countries designated as prohibited sources is attached as [310mac, List of Prohibited Source Countries](#). Countries may be added to or removed from this list by the Administrator and upon receiving foreign policy guidance from the Department of State, as appropriate.

Notwithstanding the foregoing, goods and services may be procured from a country identified as a "prohibited source" in the Mandatory Reference on a case-by-case basis (e.g., on a by grant or by program basis) with the approval of the cognizant Assistant Administrator or Deputy Assistant Administrator or Independent Office head or deputy head. This authority may not be re-delegated.

310.3.1.5 Construction and Engineering Contracts

Effective Date: 02/06/2012

USAID funds must not be used for procurement of construction or engineering services from advanced developing countries (see **ADS 310.3.1.3**), "which have attained a competitive capability in international markets for construction services or engineering services," unless a waiver is approved under [Subpart D of 22 CFR Section 228](#) and **ADS 310.3.4.**, below.

Generally, advanced developing countries are not eligible countries for USAID financed procurements because Code 937 specifically excludes advanced developing countries (except for those receiving USAID assistance, see the definition of "advanced developing countries" in Section 228.01 of the Regulation).

Included in [310mab, List of Advanced Developing Countries](#), i.e., countries from which procurement is not authorized under default authorized USAID Principal Geographic Code 937 without an approved waiver, are those excluded by [22 CFR Section 228.17](#).

310.3.1.6 Non-Presence and Regional Program Procurement

Effective Date: 02/06/2012

Non-presence and regional programs include countries where USAID is funding a project or activity even if no USAID employees are working in that country. Procurement in a non-presence country or a country included as a recipient of regional programs, projects or activities is considered to be procurement from “recipient” countries within USAID Principal Geographic Code 937.

310.3.1.7 Customs Duties

Effective Date: 02/06/2012

To the extent practicable, USAID does not finance customs duties associated with procurement in the recipient country of imported items. Missions must determine the means used to assure that, to the extent practicable, USAID does not finance identifiable customs duties, either by avoiding payment entirely, or by being reimbursed for the amount attributable to customs duties.

310.3.2 Restricted Commodities

Effective Date: 02/06/2012

Commodities subject to source and nationality restrictions are discussed in [ADS 312, Eligibility of Commodities](#).

310.3.3 Procurements with Non-Appropriated Funds or Funds not Appropriated Under the FAA

Effective Date: 02/06/2012

In accordance with the Regulation, this chapter does not apply to procurements with non-appropriated funds or procurements funded from any congressional appropriation authorized by any statute other than the FAA.

310.3.4 Waivers

Effective Date: 02/06/2012

USAID operating units may change the authorized USAID Principal Geographic Codes 937 or 110, to authorize procurement from Code 935 by processing a waiver. Waiver criteria are set forth in [Subpart D of 22 CFR 228](#).

All waivers must be in writing. The operating unit must include a copy in the appropriate project file and forward a copy to the CO/AO for inclusion in the implementing document (contract, grant, etc.) file.

[ADS 103](#), sets forth delegated authority to approve source and nationality waivers; each waiver must cite the appropriate [ADS 103](#) delegation provision and obtain RLA or GC clearance.

Additional requirements for specific waivers:

- a. Waivers of Special Rules for Construction and Engineering Services

Per 22 CFR 228.17, operating units may request waivers to authorize procurement of construction and engineering services from advanced developing countries which have attained a competitive capacity in international markets. Such waivers must document consultation with that operating unit's cognizant Assistant Administrator.

- b. Waivers to Make Government-Owned Organizations Eligible

Waivers to make government-owned organizations eligible for financing as discussed at 22 CFR 228.13 must

- i) Identify the specific U.S. foreign policy interest which justifies such a waiver; and
- ii) Document consultation with that operating unit's cognizant Assistant Administrator.

310.4 MANDATORY REFERENCES

310.4.1 External Mandatory References

Effective Date: 02/06/2012

- a. [22 CFR 228](#)
- b. [22 CFR 228.17](#)
- c. [22 CFR 228.30](#)
- d. [22 USC Section 2293 \(Development Fund for Africa\)](#)
- e. [22 USC Section 2295 \(Support for Economic and Democratic Development of the Independent States of the Former Soviet Union\)](#)
- f. [Section 498B\(h\) of the FAA](#)
- g. [Section 636\(i\) of the FAA](#)
- h. [Sections 604\(a\), 604\(c\), 604\(d\), 604\(e\), and 604\(g\) of the Foreign Assistance Act of 1961, as amended \(FAA\)](#)

310.4.2 Internal Mandatory References

Effective Date: 02/06/2012

- a. [ADS 103, Delegations of Authority](#)
- b. [ADS 310maa, List of Developing Countries](#)
- c. [ADS 310mab, List of Advanced Developing Countries](#)
- d. [ADS 310mac, List of Prohibited Source Countries](#)
- e. [ADS 312, Eligibility of Commodities](#)
- f. [ADS 320, Branding and Marking](#)
- g. [ADS 330, Source Rules for Administrative Procurement](#)

310.5 ADDITIONAL HELP

Effective Date: 02/06/2012

There are no Additional Help documents for this chapter. However, additional information and answers to frequently asked questions can be located at **Source & Nationality Resource Page** (internal Agency access only).

310.6 DEFINITIONS

Effective Date: 02/06/2012

The terms and definitions listed below have been incorporated into the ADS Glossary. See the [ADS Glossary](#) for all ADS terms and definitions.

commodity

Any material, article, supply, goods, or equipment. (Chapters [221](#), 310, [312](#))

implementation instrument

A binding relationship established between USAID and an outside party or parties to carry out USAID programs, by authorizing the use of USAID funds and/or nonfinancial resources for 1) the acquisition of services or commodities or 2) assistance that provides support or stimulation to accomplish a public purpose. Examples of such instruments include contracts, grants and cooperating agreements under ADS Chapter 303, and interagency agreements. (Chapters [304](#), 310)

nationality

For purposes of USAID's procurement rules, nationality refers to the place of incorporation, ownership, citizenship, residence, etc. of suppliers of goods and services. ([Series 300](#))

non-presence country

A country where USAID does not have a Mission or Representative Office.
(Chapters [253](#), 310)

services

The performance of identifiable tasks, rather than the delivery of an end item of supply.
(Chapter 310)

Provision of administrative assistance or something of benefit to the public.
(Chapters 310, [528](#))

source

The country from which a commodity is shipped to the cooperating country (or the cooperating country itself if the commodity is located therein at the time of the purchase). In the case of a commodity shipped from a free port or bonded warehouse in the same form it was received therein, "source" is the country from which the commodity was shipped to the free port or bonded warehouse. (Chapter 310)

USAID Principal Geographic Code

A three-digit code in the USAID Geographic Code Book which designates a country, a group of countries, or an otherwise defined area. (Chapter 310)

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