



Motor Vehicle Source/Manufacture Waiver Request Guide

Additional Help for ADS Chapter 312

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MOTOR VEHICLE SOURCE/MANUFACTURE WAIVER REQUEST GUIDE

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I. PURPOSE

This document supplements the policies and procedures set forth in [ADS 312 Eligibility of Commodities](#); more importantly, it guides you through the steps necessary to successfully process a waiver request to permit purchase of a non-U.S. manufactured vehicle when properly justified.

This document also contains a guide for contractors and recipients (as well as program officers preparing pre-award waivers) which outlines the necessary analysis and documentation requirements for the submission of requests for authority to purchase non-U.S. vehicles (Attachment A). A separate ADS 312 [Additional Help Document, 312sab, Motor Vehicle Source Manufacture Waiver Request Template](#) provides a recommended template for use by the Bureaus/Missions which should expedite preparation and review of the waiver request for clearances and approval.

II. BACKGROUND

Section 636(i) of the Foreign Assistance Act of 1961, as amended (FAA), requires that motor vehicles purchased with Agency funds be manufactured in the United States, unless *special circumstances* exist.

There is continued potential for significant interest in Congress regarding USAID’s compliance with this requirement, and copies of approved waivers to purchase non-U.S. manufactured vehicles are subject to review at that level.

22 CFR 228.19(b), Special source rules requiring procurement from the United States, implements the FAA requirement above. [ADS 312](#) sets forth “special circumstances” which may justify purchase of a non-U.S. manufactured motor vehicle- **Please note**

that “U.S. manufactured” does not equate to “U.S. Brand,” i.e., Toyota make vehicles produced in their plant in Alabama are “U.S. manufactured”; Ford brand vehicles produced at their plant in Germany are not.

In general, the source of a commodity shall be a country or countries authorized in the implementing document by name or by reference to the authorized Geographic Code 937 the U.S., cooperating country, and developing countries except advanced developing countries) (22 CFR 228.11). In order to permit purchase of a commodity with source outside of the authorized geographic code, the Bureau or Mission must process a waiver request in accordance with the procedures at [22 CFR 228](#), [ADS 310](#) and, if applicable, [ADS 312](#). Motor vehicles are designated as a *restricted commodity* (per the FAA, and as implemented in both [22 CFR 228](#) and [ADS 312](#)). Accordingly, a source/manufacture vehicle waiver must be processed for the purchase of a non-U.S. manufactured vehicle either when the authorized Geographic Code is 937 or 935 (U.S. and any country excluding foreign policy restricted countries) for an implementing instrument, unless existing Expedited Acquisition and Assistance (A&A) Procedures for Specific, High-Profile Activities and Programs, Development Fund for Africa procurement guidance¹, or other country or program waiver specifically permits the purchase of non-U.S. made vehicles.

Local or Within-Code Procurement of a U.S.-made Vehicle

If a U.S.-made vehicle is available on the *local market* in the cooperating country or a developing country within Geographic Code 937, [22 CFR 228](#) and the FAA permit the purchase without the need for a source waiver. Similarly, if a source waiver has been approved for all procurement from Code 935 for an agreement, program, country or region, no separate waiver is necessary to purchase a U.S.-manufactured vehicle from a Code 935 source.

III. DEFINITIONS (22 CFR 228.01)

Source means the country from which a commodity is shipped to the cooperating/recipient country or the cooperating/recipient country itself if the commodity is located therein at the time of the purchase, irrespective of the place of manufacture or production, unless it is a prohibited source country. Where, however, a commodity is shipped from a free port or bonded warehouse

¹ See **Memorandum to Africa Field Posts on Special Procurement Policy Rules Governing the Development Fund for Africa dated Feb. 1, 1993** (<http://www.usaid.gov/policy/ads/300/312mab.pdf>) This guidance permits Africa Missions to conduct surveys as to the availability of service and spare parts for U.S.-made vehicles, and where the survey confirms that they are unavailable to meet the requirements of DA- or CSH-funded activities, non-U.S. made vehicles may be procured without a formal source/manufacture waiver. However, an appropriate justification must be placed in the procurement file (no clearance required).

in the form in which received therein, “source” means the country from which the commodity was shipped to the free port or bonded warehouse.

Motor vehicles means self-propelled vehicles with passenger carriage capacity, such as highway trucks, passenger cars and buses, motorcycles, scooters, motorized bicycles, All Terrain Vehicles (ATVs), and utility vehicles. Excluded from this definition are ambulances, snowmobiles, industrial vehicles for materials handling and earthmoving, such as lift trucks, tractors, graders, scrapers, off-the-highway trucks (such as off-road dump trucks), boats, and other vehicles that are not designed for travel at normal road speeds (40 kilometers per hour and above). (22 CFR 228.01)

ATVs are also considered to be motor vehicles; ambulances, snowmobiles, and motorboats are not.

➤ Note that USAID is prohibited from financing luxury items, including luxury vehicles.

IV. WAIVER REQUEST FORMAT

Instructions for Using the Waiver Request Template

The [ADS 312 Additional Help document “Motor Vehicle Source/Manufacture Waiver Request Template”](#) should be used when requesting authorization to purchase a non-U.S. manufactured vehicle either from an authorized Geographic Code (e.g., 937) source or from a Code 935 source. To purchase a non-U.S. manufactured vehicle from a source within the authorized Geographic Code, a “manufacture” waiver must be approved. To purchase a non-U.S. manufactured vehicle from a source outside the authorized Geographic Code (e.g., 935), a “manufacture and source” waiver must be approved. It is designed as an interactive form which will allow you to tab through the document, guiding you to insert specific text or select pre-set options for the required information.

Content of Waiver Requests

a. Required Information:

Requests for source/manufacture waivers to permit the purchase of non-U.S. made vehicles from Geographic Code 935 must include:

- 1) Instrument number under which the vehicles proposed for purchase will be financed, i.e. contract/grant/cooperative agreement/task order.
- 2) Name of the purchaser, i.e. contractor/grantee or subcontractor/subgrantee.
- 3) Program/project title (if appropriate) and recipient country/countries.
- 4) Number, type, make and model of the vehicles proposed for purchase and the cost of the vehicles.
- 5) Manufacture location of the vehicles proposed for purchase.
- 6) Source of the vehicles proposed for purchase.
- 7) Appropriate delegation of authority cite from ADS 103 for approval of source/manufacture waivers.
- 8) The special circumstances justifying the purchase and supporting documentation from the contractor/recipient ([ADS 312](#)).
- 9) Clearances as required by [ADS 310](#) and **ADS 312.5.3b.1**, (and as required by the requesting office, bureau or mission protocols, i.e., GC/RLA).

b. Guidance:

1. Special circumstances that may warrant waiving the U.S. manufacture requirement for purchases or long-term leases of vehicles include:

- a) The inability of U.S. manufacturers to provide a particular type of needed vehicle;
- b) The present or projected lack of adequate service facilities and supply of spare parts for U.S.-manufactured vehicles in the country or region within a country where the vehicle will be used; or
- c) An emergency requirement for vehicles that can be met in time only by purchase of non-U.S. manufactured vehicles and for which no non-USAID funds are available.

The waiver request must identify the special circumstances that are the basis for the request. Waivers based on special circumstances other than the ones listed above require clearance by the Office of General Counsel (GC) or the cognizant Regional Legal Advisor (RLA).

The following are NOT special circumstances warranting a waiver of the U.S. manufacture requirement – do not discuss these in the waiver request:

- 1) The widespread capability in-country to service a particular non-U.S. made vehicle.
- 2) The unavailability of U.S. vehicles for “purchase” in country.
- 3) The preference for a vehicle with a performance record or comparison of performance between two brands of vehicles that has no basis in performance specifications.
- 4) Lower price.
- 5) Other non-specific, intangible preferences, i.e. “suitability.”

2. Supporting rationale: Waiver requests must include sufficient justification submitted by the recipient/contractor in their request to purchase non-U.S. made vehicles:

- a) Briefly describe the activity or program need and intended use for the vehicle and identify the type of vehicle that will fulfill that need and that is appropriate for the intended use, i.e., passenger vehicles; utility vehicles; right-hand drive vehicles; four-wheel drive vehicles; pickup trucks and payload requirements for moving or delivering equipment/supplies to field locations; off-road vehicles or lightweight motorcycles for passenger use in remote, mountainous areas or other areas largely inaccessible by other types of vehicles; etc. If appropriate, include specifications, i.e., diesel, heavy duty, etc.
- b) Justification. Provide supporting information for the particular special circumstances.
 - i) *The inability of U.S. manufacturers to provide a particular type of needed vehicle.*

Detail efforts made by the contractor/recipient to determine whether the type of needed vehicle is produced in the U.S. in an appropriate export model² that the manufacturer will supply to the recipient country from the U.S.

² “Type of needed vehicle” also means that it is an export or exportable model, i.e., a vehicle meeting needed specifications for overseas use. Specifications often included are for the vehicle to operate on leaded gas or diesel fuel, and to not be equipped with all the emission equipment required in the U.S., etc.

- ii) The present or projected lack of adequate service facilities and supply of spare parts for U.S.-manufactured vehicles in the country or region within a country where the vehicle will be used.*

Discuss efforts made by the contractor/recipient to identify the availability of service and spare parts for an appropriate U.S. made export model. If the contractor/grantee has done a market survey and/or thorough market research and determined that there is no ability to service the required type U.S.-produced vehicles in country, this can be explained and there is no need to go any further. If they have determined that very limited service is available in country, please describe. Note: If vehicle use is intended almost exclusively for remote field locations, and only one service facility can be found for U.S. made vehicles and that facility is in the capital, this satisfies the criteria of “inadequacy” but the explanation and supporting details must be provided.

Do not include any statements such as the “need for regular and easy service” or the “familiarity of local mechanics with the foreign vehicles that a contractor or grantee wants to purchase.”

- iii) An emergency requirement for vehicles that can be met in time only by purchasing non-U.S. manufactured vehicles and for which no non-USAID funds are available.*

Provide the description of the urgent circumstances which support this as an emergency requirement and the contractor’s/recipient’s efforts made to obtain a U.S.-manufactured vehicle.

COMMON ERRORS which result in NON-clearance of waivers

The most common flaws in action memorandums for source/manufacture waivers for vehicles include:

- Discussion of how well the selected non-U.S. vehicles will perform or how much cheaper they are.
- No specific references to performance requirements; basically, a lack of any stated performance specifications supporting the type of vehicle needed for the project or program activity, and the intended use of that vehicle.

V. Frequently Asked Questions (FAQ)

1. May used or re-conditioned vehicles be purchased?

Yes, as long as the contractor/recipient indicates that it has complied with the special conditions in [ADS 312.5.3](#) that must be fulfilled when USAID considers approving the purchase of used or reconditioned equipment with Agency funds. Purchases of used equipment -- in this case a used vehicle -- can be approved by appropriate officials in USAID/Washington or the field. The ADS only requires that special authority for the procurement of used equipment must be obtained prior to purchase in the form of USAID written approval. Clearance or consultation with the cognizant attorney (GC/RLA) is only required when the head of the operating unit wants to waive one or both of the two special conditions required for purchase of used equipment specified in [ADS 312](#).

Most purchasers have no difficulty complying with the first special condition and provide all required information and assurances in writing. However, some purchasers have difficulty arranging for an inspection or appraisal of the equipment and request a waiver of that special condition. As long as the purchaser takes reasonable measures to meet the *intent* of the special conditions (at a level commensurate with the complexity, intended use, and general purpose of the specific used equipment), then the requirement for inspection reports and appraisals from a *USAID-approved* inspection company may be waived after consultation with the cognizant attorney (GC/RLA). In those instances where the circumstances are compelling and the head of the operating unit agrees that it wants to finance the used equipment even though it hasn't been inspected or appraised *in some manner*, it can waive the requirement after consultation with the cognizant attorney (GC/RLA).

ATTACHMENT A

GUIDE FOR PREPARING CONTRACTOR/GRANTEE REQUESTS TO PURCHASE A NON-U.S. MADE VEHICLE

The following is a step-by-step process (*to be followed in this order*) of the analysis and necessary documentation to be provided in requests to purchase a non-U.S. manufactured vehicle.

1. Describe the activity or program need and intended use for the vehicle and identify the type of vehicle that will fulfill that need and that is appropriate for the intended use, i.e. passenger vehicles; utility vehicles; right hand drive or all wheel drive vehicles; pickup trucks and payload requirements for moving or delivering equipment/supplies to field locations; off road vehicles or lightweight motorcycles for passenger use in remote, mountainous areas or other areas largely inaccessible by other types of vehicles; etc. If appropriate, include specifications.
2. Detail efforts made to determine if the type of needed vehicle is produced in the U.S.
3. If the type of needed vehicle is produced in the U.S., is it produced in an appropriate export model that the manufacturer will supply to the recipient country from the U.S.?
4. Is a U.S.-made vehicle available on the local market in country or from another country in Geographic Code 937? If so, no waiver is required.
5. If the type of vehicle needed is made in the U.S. and can be delivered from the U.S., is the availability of service and spare parts for that vehicle adequate in country?
6. Document the above information and efforts to support one of the special circumstances or waiver criteria in ADS 312.

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