

## 2 PROCUREMENT CHECKLIST

When planning and implementing a USAID project consider all relevant aspects of undertaking procurement with USAID funds. Before submitting the proposal to USAID, apply this checklist to allow for an eligible, effective and efficient project implementation. The checklist topics are discussed above and below to provide as much information and clarity as possible. The checklist is available as a separate template, US1, below for easy inclusion in the procurement file.

### Checklist for USAID requirements in procurement:

No.	Activities	Yes	No	Section
1	Is the Request for Application / Cooperative Agreement reviewed and qualified?			1.3
2	Is the DCA Procurement Manual being followed?			2.1
3	Is the planned purchase eligible?			2.2
4	Are the commodities and services eligible?			2.2.1
5	Is the item checked against the USAID Commodity Eligibility Listing (CEL)?			2.2.2
6	Are the commodities and services Restricted?			2.2.3
7	Do the source and nationality regulations apply to this purchase?			2.2.4
8	Will the purchase comply with the authorized geographic code?			2.2.5
9	Is the supplier eligible?			2.2.6
10	Will the purchase comply with the ocean transportation regulations?			2.2.7
11	Will the purchase comply with the Fly America Act?			2.2.8
12	Is prior approval required and available?			2.3
13	Is it necessary to get a waiver?			2.4
14	Can the purchase be financed using cost share or program income?			2.5
15	Is it more economical and practical to lease instead of purchase?			2.6
16	Is it practical to invite US Small Businesses?			2.7
17	Is the planned purchase a construction?			2.8
18	Is the purchase subject to Inventory Management			2.9
19	Is the purchase documented and ready for audit?			2.10

## 2.1 IS THE DCA PROCUREMENT MANUAL BEING FOLLOWED?

USAID allows the Recipient of a USAID award to use its own procurement policies and procedures for the procurement of commodities and services necessary for the award, provided they conform to a range of requirements. The DCA Procurement Manual is compliant with the USAID requirements. It is mandatory to apply the DCA Procurement Manual in full including the procurement templates. The DCA Procurement Manual and the Standard Provisions for Non-US Nongovernmental Organisations are applicable to all purchases in a USAID project, irrespective of value.

This means that the DCA Procurement Manual is the starting point for all procurement planning and implementation and shall be the first document consulted. The USAID requirements included in the checklist above, and discussed in the following sections, are in addition to DCA's procurement policies.

It is essential that the procurement principles and anti-corruption policy as laid down in the DCA Procurement Manual are applied to the entire procurement process. This is to avoid conflicts of interest, including bias and unfair competitive advantages. As an example, the Recipient, an employee, officer or agent of the Recipient or any member of an employee's immediate family must not receive a contract or have a financial or other interest in the individual or company selected for a contract. Also, a contractor that develops or drafts specifications, terms of references, invitations for bids, or requests for proposals must be excluded from competing for contracts.

The Recipient must enforce the principle of equal opportunity to ensure that no potential contractor has unequal access to information that may provide that contractor an unfair competitive advantage. For instance, a potential contractor who has received procurement sensitive information, such as other suppliers' prices that are not available to all competitors, must be excluded from the competition.

When an exception to the DCA Procurement Manual is required, the derogation guidelines in the DCA Procurement Manual apply. When an exception to the USAID requirements is necessary, the USAID waiver guidelines are applicable.

### Resources

M5 Procurement Policies (June 2012) in Standard Provisions for Non-US Nongovernmental Organisations:

<https://www.usaid.gov/ads/policy/300/303mab>

The DCA Procurement Manual (password required): <https://www.danchurchaid.org/login>

## 2.2 IS THE PLANNED PURCHASE ELIGIBLE?

Not all items can be freely purchased with USAID funds and this section serves to establish if any of the needed project inputs or suppliers are ineligible or if a written approval or waiver is required. The latter could be because the items are restricted or necessary to source from a non-authorized geographic code. This section is not applicable to commodities or services that are provided with private funds as part of a Cost Sharing requirement, or with Program Income generated under an award. Such commodities or services can be purchased freely.

Guidance on the eligibility of specific commodities and services may be obtained from the Agreements Officer (AO) in the relevant USAID Mission. Before contacting the AO please refer to the rest of this section 2.2. "Procurement Checklist".

If USAID determines that DCA, the Recipient, or DCA implementing partner, the Sub recipient, have procured any commodities or services under this award contrary to the requirements, and has received payment for the same, USAID may require reimbursement for the entire amount of the purchase.

### Resources

M6 USAID Eligibility Rules for Procurement of commodities and services (June 2012) in Standard Provisions for Non-US Nongovernmental Organisations: <https://www.usaid.gov/ads/policy/300/303mab>

ADS Chapter 312 Eligibility of Commodities (November 2015): <https://www.usaid.gov/ads/policy/300/312>

RAA14 For Cost share (June 2012) in Standard Provisions for Non-US Nongovernmental Organisations

- Mandatory Reference for ADS 303: <https://www.usaid.gov/ads/policy/300/303mab>
- RAA15 Program Income (December 2014) in Standard Provisions for Non-US Nongovernmental Organisations
- Mandatory Reference for ADS 303: <https://www.usaid.gov/ads/policy/300/303mab>

### 2.2.1 Are the commodities and services eligible?

The Recipient, must not under any circumstances, procure any of the below ineligible commodities and services under a USAID award. This section is not applicable to commodities or services that are provided with private funds as part of a Cost Sharing requirement, or with Program Income generated under an award. Such commodities or services can be purchased freely. In the planning phase it is important to check all procurements against this list:

- Military equipment
- Surveillance equipment
- Commodities and services for support of police or other law enforcement activities
- Abortion equipment and services
- Luxury goods and gambling equipment, or
- Weather modification equipment

For military equipment, there are no exceptions. If there is doubt about the contents of the list, it is possible to consult the AO. However, before doing so, please consult the resource listed below and the Procurement and Logistics unit in DCA headquarters.

#### Example: Allowable commodity procurement and prior approval

To illustrate procurement of restricted commodities, please consider which of the below examples of items would be considered allowable commodity procurements to be charged to a USAID funded project and which items require prior approval:

##### 1. Hiring of armed security services to provide security?

Answer: Yes, the procurement of security services will be considered allowable according to Cost Principle 2 CFR 200.457 Plant and security costs, which states: *Necessary and reasonable expenses incurred for protection and security of facilities, personnel, and work products are allowable. Such costs include, but are not limited to, wages and uniforms of personnel engaged in security activities; equipment; barriers; protective (non-military) gear, devices, and equipment; **contractual security services**; and consultants. Capital expenditures for plant security purposes are subject to 2 CFR 200.439 Equipment and other capital expenditures.* It does not require prior approval.

##### 2. Uniforms for the prison officers you are working with on a project?

Answer: No, the procurement of prison uniforms are not allowable according to Mandatory Standard Provisions M6 section B (1) (III) which states: *The recipient must not, under any circumstances, procure any of the following under this award: ... (iii) **Commodities and services for support of police or other law enforcement activities**.* However, a t-shirt would be allowable if it does not carry police or law enforcement logos.

##### 3. CCTV camera system to identify visitors to the project office?

Answer: Yes, the procurement of CCTV camera system is allowable if it does not have a surveillance purpose. Please refer to ADS 312.3.4.2 Surveillance Equipment, which states: *All types of surveillance equipment are ineligible for USAID financing. The ineligible items include equipment such as microphones, transmitters, listening devices, and recording devices of microminiature design, and components thereof. **In rare instances, some of these devices will have a non-surveillance use in USAID programs. In such instances, it is the legitimacy of the purpose rather than the specific characteristics of the commodity that determines its eligibility.*** It does not require prior approval, yet it is a good idea to discuss it with the AO.

**Resource**

2 CFR 200.457 Plant and security costs: <https://www.govinfo.gov/content/pkg/CFR-2014-title2-vol1/pdf/CFR-2014-title2-vol1-sec200-457.pdf>

M6 USAID Eligibility Rules for Procurement of commodities and services (June 2012) in Standard Provisions for Non-US Nongovernmental Organisations: <https://www.usaid.gov/ads/policy/300/303mab>  
Section 312.3.4 in ADS Chapter 312 Eligibility of Commodities (November 2015):  
<https://www.usaid.gov/ads/policy/300/312>

**2.2.2 Is the item checked against the USAID Commodity Eligibility Listing (CEL)**

Eligibility of goods and services is available in 2 CFR Subpart E Cost Principles. Should the information not be described here, the USAID Commodity Eligibility Listing (CEL) is USAID's position on the eligibility or ineligibility of commodities for USAID financing. The CEL is available online and all project purchases must be compared against this listing. To illustrate how to work with the document, please refer to the below example "Are t-shirts eligible for purchase?" Information is also available in the section "Organisation and Use of this Document" in the CEL.

A commodity, which is ineligible according to the CEL, may only be financed after it has been approved in writing by USAID. If the project inputs are found to be ineligible and yet are deemed important for the result of the project and it is difficult to find substitutes, it is advisable to discuss with USAID if an approval can be obtained and under which circumstances.

The CEL part II "Eligibility criteria for certain commodities" refers to restricted commodities discussed in the next section. Please note that due to a revision of ADS 312 Eligibility on Commodities, the CEL requirement for agricultural commodities and fertilizer is superseded by ADS 312mac Agricultural Commodity Eligibility and Requirements relating to Quality and Safety. Also, the CEL provisions for pharmaceuticals and medical supplies do not apply to project or program assistance. In general, it is recommended to seek the early guidance of the AO as it may take considerable time to receive a response.

**Example: Are t-shirts eligible for purchase?**

Consider the purchase of cotton t-shirts. Under "List of Commodity Groupings", t-shirts are included in Chapter 52 Cotton. Go to Chapter 52 in Part I "Aid Commodity Eligibility list". T-shirts fall under "Woven fabrics of cotton (excluding luxury-type fabrics)" number 5208.11.2020-5212.25.0000. The "x" in column 1 indicates that the t-shirts are eligible without any special conditions and procurement is eligible.

**Resources**

USAID Commodity Eligibility Listing (May 2014): <https://www.usaid.gov/ads/policy/300/31251m>

Section 312.3.3 "Restricted Commodities" in ADS Chapter 312 Eligibility of Commodities (November 2015):  
<https://www.usaid.gov/ads/policy/300/312>

ADS 312mac Agricultural Commodity Eligibility and Requirements Relating to Quality and Safety (August 2019):  
<https://www.usaid.gov/ads/policy/300/312mac>

**2.2.3 Are the commodities and services restricted?**

A restricted commodity can only be purchased with USAID funds if a prior written approval is obtained before purchase and, if relevant, an applicable waiver has been provided by the AO. Please refer to section 2.4 "Is it necessary to get a waiver?" for more information. Best practice is to request the prior approval in the proposal and ensure that the prior approval is given in the award document. The following commodities are restricted:

- Agricultural commodities
- Motor vehicles
- Pharmaceuticals for humans or animals (essential medicines, vaccines, vitamins, Oral Rehydration Salts, Intravenous (IV) Fluids, Long lasting Insecticidal Nets (LLINs))
- Pesticides
- Used equipment and US Government-owned excess property

- Fertilizer

Under special source rules, there is a requirement for products to originate (mined, grown, produced) or be purchased from the US. Consequently, agricultural commodities, motor vehicles and pharmaceuticals, which are under special source rules, require US manufacture or purchase. This is regardless of the geographical code of the award. For some projects this could mean that there may be a need for both a prior approval to buy the restricted product and a waiver to purchase a restricted product produced outside of the US.

Please note that this section is not applicable to commodities or services that are provided with private funds as part of a Cost Sharing requirement, or with Program Income generated under an award. Such commodities or services can be purchased freely.

#### **Agricultural commodities**

USAID makes an exception to the special source rules when the purpose is emergency humanitarian assistance provided under International Disaster Assistance authority. For eligibility of agricultural commodities please observe that CEL has been replaced by ADS 312mac Agricultural Commodity Eligibility and requirements relating to Quality and Safety.

#### **Motor vehicles**

USAID finances the procurement of passenger vehicles that are necessary for an activity and are not provided by other donors. Vehicles must be manufactured in the US to be eligible for USAID financing, unless a waiver is approved and included in the award. A US brand name does not equate to US manufacture. This requirement applies to vehicles that are purchased or obtained under a long-term lease<sup>1</sup> of more than 180 days. Blanket waivers do exist and please refer to section 2.4 "Is it necessary to get a waiver?" for more information.

The definition of a motor vehicle is a self-propelled vehicle with passenger carriage capacity, such as highway trucks, passenger vehicles and buses, motorcycles, scooters, motorized bicycles, ATVs, and utility vehicles. Important to note is that excluded from this definition are ambulances, snowmobiles, industrial vehicles handling 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 km and above).

An exception to the requirement for a US manufactured vehicle is in connection with transportation and driver services, where the driver or company owns or leases or maintains the vehicle. In such situations, the vehicle can be of any source, but the company or service provider owning or leasing the vehicle must meet the nationality requirement.

**NOTE:** The restrictions apply to the entire item: a vehicle, a motorcycle etc., and purchase of spare parts for the vehicle is not subject to US manufacture.

#### **Example: Allowable motor vehicle procurement and rental**

To illustrate procurement of a restricted commodity under special source rules, please consider if the below example would be an allowable commodity procurement for a project in Samoa financed with USAID funds under geographical code 937:

1. A Japanese made Toyota vehicle leased for three years in Samoa from a company in Samoa.

Answer: No, the procurement is not allowable according to 22 CFR 228.19 (b) which states: *Motor vehicles must be manufactured in the United States to be eligible for USAID financing. **Any vehicle to be financed by USAID under a long-term lease or where the sale is to be guaranteed by USAID must be manufactured in the United States.***

<sup>1</sup> A long-term lease for the purpose of this section is defined at 22 CFR 228.01, as, specifically, "a) a single lease of more than 180 calendar days; or b) repetitive or intermittent leases under a single award within a one-year period, which cumulatively total more than 180 calendar days."

2. A two-year vehicle rental contract with driver with a transport company based in Samoa. The company uses Japanese made vehicles.

Answer: Yes, the procurement is allowable according to 22 CFR 228.19 (b) which states:...*However, financing of transportation or driver services from an individual or commercial entity and not directly financing the purchase or lease of a vehicle, is subject to the requirements at § 228.12.* 22 CFR 228.12 talks about the nationality of the supplier and it meets the requirements as Samoa is part of geographical code 937 both as the Recipient country and as a developing country.

### Pharmaceuticals<sup>2</sup>

If pharmaceuticals are required in the project there is a choice of purchasing with USAID funds and thus follow the USAID guidelines, or procure with private funds under Cost Sharing and thereby through the application of the DCA Procurement Manual. If the latter is possible, the DCA Procurement Manual recommends purchase through a Humanitarian Procurement Centre.

As a restricted commodity, procurement of pharmaceuticals requires prior approval. Furthermore, pharmaceuticals must be procured in the US, unless a waiver is available. A waiver for all USAID financed pharmaceuticals purchased until December 31, 2021 is approved allowing purchase outside of the US. The sample waiver letter is available in ADS 312sae Condoms and Pharmaceuticals. An Additional help document to ADS chapter 312 linked below. This document is an important resource for purchase of pharmaceuticals with USAID funds. The restricted pharmaceutical commodity approval does not apply to contraceptive pharmaceuticals and an additional approval is required for these.

The approval of the pharmaceutical is determined on a case-by-case basis and is in addition to the special source requirement. The purpose of the approval is to attest the quality of the pharmaceuticals. The approval is given on the quality of a pharmaceutical from a specific manufacturer at a specific manufacturing site, or from a specific procurement agent/wholesaler or other source. A change in the manufacturer, the manufacturing site (even from the same manufacturer), or procurement agent/wholesaler or other source requires a new approval.

USAID approved sources for quality pharmaceuticals are:

- a. Manufacturers approved by a Stringent Regulatory Authority (i.e. USFDA, European Medicines Agency, Health Canada, Japanese Ministry of Health, Labour, and Welfare, and stringent regulatory authorities of member states admitted to the European Union prior to 1996)
- b. Manufacturers inspected and approved by the WHO in compliance with the Good Manufacturing Practices (GMP)
- c. Pharmaceuticals approved by WHO Prequalification of Medicines Programme
- d. Pharmaceuticals procured from UNICEF
- e. Pharmaceuticals procured from prequalified procurement agents/wholesalers approved by USAID.

Purchase of pharmaceuticals from sources other than the above require additional information on quality before they can be approved. Such a process is time consuming and not recommended. In an emergency, USAID may on a case-by-case basis provide approval to obtain pharmaceuticals from a supplier in the Recipient country. Please contact the AO in such instances.

<sup>2</sup>22 CFR 228.01 Pharmaceutical means any substance intended for use in the diagnosis, cure, mitigation, treatment, or prevention of diseases in humans or animals; any substances (other than food) intended to affect the structure or any function of the body of humans or animals; and, any substance intended for use as a component in the above. The term includes drugs, vitamins, oral rehydration salts, biologicals, and some in-vitro diagnostic reagents/test kits; but does not include devices or their components, parts, or accessories. Contraceptives, including condoms, are not included in this definition.

For the purpose of requesting the required approval of the restricted pharmaceutical, please refer to the internal USAID template linked below. The following information is required:

- Generic name
- Strength
- Dosage form
- Specific manufacturer and manufacturing site or procurement agent (as applicable)<sup>3</sup>

The capacity of distributors, and other intermediaries satisfactorily manage transportation, storage or distribution of the pharmaceutical must be considered in the procurement process. It is not a part of the restricted pharmaceutical approval.

There is no requirement for a specific procurement procedure and in situations where competition is available, please assign procurement procedures in compliance with the DCA Procurement Manual. Also, the step guide of the DCA Procurement Manual may be helpful, while keeping in mind that USAID requirements to pharmaceuticals supersede the DCA Procurement Manual.

The USAID procurement of pharmaceuticals requires careful planning and please review any USAID material for pharmaceuticals provided in the Request for Application for a given proposal. The documents listed below are good resources and a reading requirement before contacting the AO for further discussions and potential questions.

#### Medical supplies and equipment

Medical supplies and equipment are not a restricted commodity and do not require a prior approval. In the proposal, please include name, quantity and price allowing USAID to determine if the inputs are appropriate for the health intervention. The glossary list includes a definition of medical supplies and equipment.

#### Example: Allowable used commodity procurement and prior approval

To illustrate procurement of a restricted commodity, please consider if the below example would be an allowable commodity procurement to be charged to a USAID funded project and if prior approval is required:

#### Purchase of a used copier valued at USD 3,000

Answer: Yes, the procurement of the used copier is allowable and does not require prior approval. Mandatory Standard Provisions M6 section B (3) states: *The recipient must obtain prior written approval of the Agreement Officer (AO) or comply with required procedures under an applicable waiver, as provided by the AO when procuring any of the following (restricted) commodities: (i) Agricultural commodities, (ii) Motor vehicles, (iii) Pharmaceuticals, (iv) Pesticides, (v) **Used equipment**, (vi) US Government-owned excess property, or (vii) Fertilizer.* However, the used copier is not considered equipment because it is valued below the equipment threshold of USD 5,000 and does not require prior approval.

#### Resources

ADS Chapter 312 Eligibility of Commodities (November 2015): <https://www.usaid.gov/ads/policy/300/312>

ADS 312mac Agricultural Commodity Eligibility and requirements relating to Quality and Safety (August 2019): <https://www.usaid.gov/ads/policy/300/312mac>

22 CFR 228.19 Special Source Rules requiring United States manufacture or procurement:

<https://www.govinfo.gov/content/pkg/CFR-2019-title22-vol1/pdf/CFR-2019-title22-vol1-sec228-19.pdf>

22 CFR 228.12 Nationality of Suppliers of Commodity and Services: <https://www.govinfo.gov/content/pkg/CFR-2019-title22-vol1/pdf/CFR-2019-title22-vol1-sec228-12.pdf>

ADS 312sae Condoms and Pharmaceuticals. An Additional help document to ADS chapter 312 (February 2018): <https://www.usaid.gov/ads/policy/300/312sae>

Frequently Asked Questions (FAQs) on ADS 312: Restricted Commodity Approval (October 2013): [https://www.usaid.gov/sites/default/files/documents/1864/FAQ\\_ADS\\_312\\_3.28.13.pdf](https://www.usaid.gov/sites/default/files/documents/1864/FAQ_ADS_312_3.28.13.pdf)

<sup>3</sup> Information on the specific manufacturer and manufacturing site is not required if the purchase is through an approved procurement agent.

USAID/OFDA Proposal Guidelines – Pharmaceutical Annex A (December 2015):

<https://scms.usaid.gov/sites/default/files/documents/1866/USAID-OFDA%20Pharmaceutical%20Annex%20A%20-%20Definitions.pdf>

USAID/OFDA Prequalified Pharmaceutical Wholesalers Annex G (January 2014):

[https://scms.usaid.gov/sites/default/files/documents/1866/pharm\\_annex.pdf](https://scms.usaid.gov/sites/default/files/documents/1866/pharm_annex.pdf)

Template for Restricted Commodity approval for Pharmaceuticals (February 2018):

<https://www.usaid.gov/documents/1864/template-restricted-commodity-approval-pharmaceuticals-42513>

USAID/OFDA Essential Medicines List (March 2016):

<https://scms.usaid.gov/sites/default/files/documents/1866/USAID-OFDA%20EML%20March%202016.pdf>

#### **2.2.4 Do the source and nationality regulations apply to this purchase?**

Source and nationality requirements apply to procurement by DCA and partners with USAID funds under USAID Grants, Cooperative Agreements and contracts. Other US government agencies may also on occasion include source and nationality matters with specific language in Grants and Cooperative Agreements, and it is important to carefully review award documents for any restrictions.

The source refers to the country from which an item is shipped to the Recipient country. It also refers to the Recipient country itself, if the item is in that country at the time of purchase, irrespective of the place of manufacture or production. Under no circumstances can an item be shipped from a prohibited source<sup>4</sup> country. If an item is shipped from a free port or bonded warehouse in the form in which it was received, source means the country from which the item was shipped to the free port or bonded warehouse. For an illustration of source, please refer below to *Example: Spare parts under Geographic Code 937* under section 2.2.5 “Will the purchase comply with the authorized geographic code?”.

**NOTE:** The source regulations cannot be circumvented by arranging for suppliers in the Recipient country to import goods and services from non-eligible source countries in an attempt to make the source eligible.

The nationality refers to the place of legal organisation, ownership, citizenship, or lawful permanent residence of suppliers of commodities and services. This means that an individual must be a citizen or a permanent resident of an eligible country, and a company must be incorporated in an eligible country with a place of business in such country. Furthermore, a company must employ more than 50% of eligible staff in full time positions and management positions. Foreign government-controlled companies are not eligible and under no circumstances can nationality be from a prohibited source country. For an illustration of nationality, please refer below to *Example: Supplier eligibility* under section 2.2.6 “Is the supplier eligible?”.

Unless other written instructions or approvals are given from the AO, the key to the source and nationality requirements is to procure from countries identified in the award by the authorized geographic code. In addition, it is important to know the exceptions and never to buy from foreign policy restricted countries. The exceptions to the source and nationality requirements are:

- Private funds under Cost Share
- Program Income under the award
- Individual transactions below USD 25,000 (excluding restricted goods and transportation)
- Contractor’s employees or consultants<sup>5</sup> under a service contract
- Commissions paid by suppliers
- Bonds and bank guarantees issued by banks and insurance companies
- Liability insurances under construction contracts
- Export packing and loading
- Commodity inspection services
- Freight forwarder services

<sup>4</sup> Note that “prohibited sources” is a list of countries that for policy reasons are deemed ineligible for procurement and does not have the same meaning as the word “source” in ADS 310 and 22CFR228.

<sup>5</sup> Employees and consultants must not be citizens or residents of a prohibited source country.



- Incidental services in connection with equipment e.g. installation, erection, maintenance, upgrading and training of employees by contractors and individuals providing technical or professional services to recipients
- Short-term single or repetitive leases of a combined 180 calendar days or less

### Resources

22 CFR 228 Subpart B – Conditions Governing Source and Nationality of Commodity and Service Procurement Transactions for USAID Financing: <https://www.gpo.gov/fdsys/pkg/CFR-2012-title22-vol1/pdf/CFR-2012-title22-vol1-part228.pdf>

ADS 310mac List of Prohibited Source Countries (February 2012): <https://www.usaid.gov/ads/policy/300/310mac>

### 2.2.5 Will the purchase comply with the authorized geographic code?

If the source and nationality requirements apply, the next question to ask concerns the geographic code. It is important to understand the fundamentals of the geographic code and how to apply it. For procurement planning purposes, it is necessary to know the geographic code early on. This is to ensure the eligibility of the goods and services planned when the award is approved.

The geographic code identifies the countries from which goods can be sourced and the eligible nationality of the suppliers. Consequently, the geographic code identifies how we can fulfil the source and nationality requirements. Sometimes the code is included in the RFA or award.

#### The USAID Principal Geographic codes:

Code	Conditions
937	<ul style="list-style-type: none"> <li>• Default code or</li> <li>• If no geographic code is specified in the award or</li> <li>• If the procurement element<sup>6</sup> is &gt; USD 250,000</li> </ul>
935	<ul style="list-style-type: none"> <li>• If a waiver is approved or</li> <li>• If the procurement element is ≤ USD 250,000</li> </ul>
110	<ul style="list-style-type: none"> <li>• Procurement under the Support for Economic and Democratic Development of the Independent States of the former Soviet Union</li> </ul>

There are three Principal Geographic Codes: 937, 935 and 110. Their conditions are summarized in the table above. Code 937 is the default code unless otherwise instructed in the award or a waiver is approved. Please note that code 937 does not include any European or industrialized countries, except for the United States, nor does it include any advanced developing countries. However, it is possible to purchase goods and services from an advanced developing country under code 937 when:

- The procurement is for a USAID program in that advanced developing country
- The goods and services are available for purchase on the local market so long as such goods or services are of recipient country source or nationality. It is not allowed to circumvent this rule by arranging for suppliers in an authorized country to import goods and services from a country outside of the authorized geographic code.
- A waiver is approved

When procuring for a total of less than USD 250,000 or when a waiver is approved, code 935 is applicable. Code 935 is the least restrictive code called “Special Free World” and applies for Development Fund for Africa as well. It includes all countries except for prohibited source countries and U.S Foreign Policy Restricted countries.

#### Countries eligible under a Geographic code:

Countries	937	935
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<sup>6</sup> The “procurement element” includes all goods (e.g. equipment, materials and supplies) and services. It is calculated at the time of signature

United States	Yes	Yes
Recipient Country	Yes	Yes
Developing Countries	Yes	Yes
Advanced Developing Countries	No	Yes
OECD/DAC members (EU, Australia, Canada, Iceland, Japan, New Zealand, Norway, South Korea and Switzerland)	No	Yes
Prohibited Source Countries and US Foreign Policy restricted countries	No	No

**NOTE:** Inclusion of a country in a geographic code does not authorize procurement in violation of any US law or regulation, such as OFAC sanctions included in section 2.2.6 “Is the supplier eligible?” below.

#### Establishing the Geographic code

For Procurement Officers new to working with USAID it might be useful to refer to the below list of steps in establishing the Geographic Code at time of planning:

Step	Activities
1	Estimate the total procurement element of all goods e.g. equipment, materials, supplies and services
2	If the procurement element is above USD 250,000 proceed to plan with code 937 If the procurement element is below USD 250,000, proceed to plan with code 935
3	Identify and print list of eligible countries under the authorized code. They are available from the links below
4	Check that the planned project inputs can be sourced from those countries
5	Check that the suppliers are available with registered nationality in those countries
6	If the required project inputs or suppliers are not available from the authorized geographic code, find alternatives or proceed to apply for a waiver
7	Upon receipt of the award, validate the geographic code and calculate and document the total procurement element during the life of the award

#### Example: Spare parts under Geographic code 937

As an example, consider a USAID funded project taking place in Malawi. The total procurement element of the project is more than USD 250,000, thus the applicable geographic code is 937. The Recipient plans to use its own fleet of Toyota vehicles in the project and is budgeting for spare parts for vehicle maintenance. The market survey establishes that the spare parts are produced in Japan (an ineligible country as per above table) and are available on the market from suppliers in Malawi as well as neighbouring countries.

As per USAID guidelines, spare parts are a non-restricted item and can freely be purchased without prior approval. Under geographic code 937, the Recipient country and the neighbouring development countries are eligible. Consequently, the spare parts can be sourced (shipped, delivered) from Malawi and the neighbouring developing countries from suppliers that are registered in those countries.

The fact that the spare parts are produced in Japan has no bearing on the source and nationality as the origin requirement has been eliminated. However, had the spare parts not been available in the Malawian

market, it would not be allowed to instruct the Malawian company to import the spare parts directly from Japan, as Japan is an ineligible source under code 937. This would be considered circumvention of the rule.

## Resources

M6 USAID Eligibility Rules for Procurement of commodities and services (June 2012) in Standard Provisions for Non-US Nongovernmental Organisations: <https://www.usaid.gov/ads/policy/300/303mab>

22 CFR 228 Subpart B – Conditions Governing Source and Nationality of Commodity and Service Procurement Transactions for USAID Financing: <https://www.govinfo.gov/content/pkg/CFR-2012-title22-vol1/pdf/CFR-2012-title22-vol1-part228.pdf>

ADS 310 Source and Nationality Requirements for Procurement of Commodities and Services Financed by USAID (February 2012): <https://www.usaid.gov/ads/policy/300/310>

ADS 260 Geographic Codes (November 2018): <https://www.usaid.gov/ads/policy/200/260>

ADS 310mac List of Prohibited Source Countries (February 2012): <https://www.usaid.gov/ads/policy/300/310mac>

ADS 310maa List of Developing countries (February 2012): <https://www.usaid.gov/ads/policy/300/310maa>

ADS 310mab List of Advanced Developing Countries (February 2012): <https://2012->

[2012-usaid.gov/sites/default/files/documents/1876/310mab.pdf](https://2012-usaid.gov/sites/default/files/documents/1876/310mab.pdf)

US Department of the Treasury Sanctions Programs and Country Information: <https://www.treasury.gov/resource-center/sanctions/Programs/Pages/Programs.aspx>

### 2.2.6 Is the supplier eligible?

The supplier must be eligible according to the geographic code in the Award, please refer to example below. In addition, the Recipient and Sub recipient are prohibited from doing business with ineligible suppliers identified in the System for Award Management (SAM), unless prior approval is received from the AO. Therefore, it is relevant to establish if the suppliers under the award are eligible and not suspended or debarred by the US Government. Furthermore, the Recipient and Sub recipient must not have transactions with or provide resources or support to individuals and organisations associated with terrorism, including those appearing on the Specially Designated Nationals and Blocked Persons List maintained by the US Treasury or the United Nations Security designation list.

To ensure compliance under simple and negotiated procedure it is important to avoid the invitation of ineligible suppliers and the check must take place early so as to avoid that. To ensure compliance under local and international open tender please check the suppliers as part of the administrative requirements. Eligibility is established by searching the below databases and documenting the findings.

- System for Award Management (SAM)
- Master list of Specially Designated Nationals and Blocked Persons maintained by the US Treasury's Office of Foreign Assets Control (OFAC)
- United Nations Security Council (UNSC) sanctions committee established under UNSC Resolution 1267

**NOTE:** Supplier eligibility according to the DCA Counter Terrorism Compliance Policy also applies.

Commercial companies including non-profit organisations with a foreign government controlling interest are not eligible as suppliers, unless they have been approved through a waiver. Please refer to section 2.4 "Is it necessary to get a waiver?". Organisations not formed for commercial or business purposes are eligible to provide goods and services e.g. ministries, health offices, etc.

#### Example: Supplier eligibility

To illustrate please consider which of these suppliers would be eligible to supply goods and services to a USAID funded project in Kenya with geographical code 937:

1. A company in Kenya that has headquarters in China?

Answer: Yes, procurement from a supplier incorporated in Kenya is allowable according to 22 CFR 228.12 (b) (1) which states: *If an organization, be incorporated or legally organized under the laws of a country in Code 937 (or other principal geographic procurement code designated in an implementing instrument);* Kenya is a developing country as per ADS 310maa and part of code 937. The headquarters incorporation in an advanced country (China) outside of code 937, has no bearing on this procurement.

2. A company in Malaysia?

Answer: No, procurement from a supplier incorporated in Malaysia is not allowable according to 22 CFR 228.12 (b) (1) above because the country of Malaysia is considered an advanced developing country as per ADS 310mab and is outside of code 937. Purchase from Malaysia will require a waiver.

### Resources

System for Award Management (SAM): <https://www.sam.gov>

Master list of Specially Designated Nationals and Blocked Persons maintained by the US Treasury's Office of Foreign Assets Control (OFAC): <https://www.treasury.gov/resource-center/sanctions/SDN-List/Pages/default.aspx>

United Nations Security Council (UNSC) sanctions committee established under UNSC Resolution 1267 (1999) (the "1267 Committee"): <https://scsanctions.un.org/search/>

M12 Debarment and Suspension (June 2012) in Standard Provisions for Non-US Nongovernmental Organisations: <https://www.usaid.gov/ads/policy/300/303mab>

M14 Preventing Terrorist Financing in Standard Provisions for Non-US Nongovernmental Organisations (August 2013): <https://www.usaid.gov/ads/policy/300/303mab>

22 CFR 228.12 Nationality of Suppliers of Commodity and Services: <https://www.govinfo.gov/content/pkg/CFR-2019-title22-vol1/pdf/CFR-2019-title22-vol1-sec228-12.pdf>

ADS 310maa List of Developing countries (February 2012): <https://www.usaid.gov/ads/policy/300/310maa>

ADS 310mab List of Advanced Developing Countries (February 2012): <https://2012-2017.usaid.gov/sites/default/files/documents/1876/310mab.pdf>

### 2.2.7 Will the purchase comply with the ocean transportation regulations?

The USAID ocean transportation regulations are applicable when DCA or partners ship goods purchased or financed with USAID funds. Consequently, this question is relevant if the procurement plan includes goods that will require transport by sea to the Recipient country. This applies to all project shipments by sea including shipments between non-US destinations. Shipment of goods purchased or financed by USAID requires the use of a vessel sailing under a US flag unless a foreign-flag vessel is approved through a waiver.

Consequently, if the market survey has identified that there is a need for ocean shipment of any of the items in the procurement plan, it is required to contact the USAID office below before any agreement is made with the shipping company. The purpose of the contact is to determine the flag and class of the vessel to be used for the shipment.

US Agency for International Development,  
Bureau for Management  
Office of Acquisition and Assistance, Transportation Division  
1300 Pennsylvania Avenue, NW  
Washington, DC 20523-7900  
Email: [oceantransportation@usaid.gov](mailto:oceantransportation@usaid.gov)

As the time to obtain a waiver can vary from 2 weeks to 6 months it is advisable that the need for a waiver is identified in the planning phase and the request is submitted as early as possible and preferably included in the proposal.

Before approaching USAID with a request for a waiver, please ensure that the request is based on one of the below conditions, which the AO will consider the request against. They are described in full in 22 CFR 228.56.

- a. Non-availability of a US flag

- b. The use of a US flag increases costs unreasonably
- c. The use of a US flag will result in a significant delay

**Resources:**

RAA9 Ocean Shipment of Goods (December 2014) in Standard Provisions for Non-US Nongovernmental Organisations: <https://www.usaid.gov/ads/policy/300/303mab>  
 22 CFR 228.55 Delivery services (4-1-11 edition): <https://www.gpo.gov/fdsys/pkg/CFR-2011-title22-vol1/pdf/CFR-2011-title22-vol1-sec228-55.pdf>  
 ADS 314 Eligibility of Delivery Services (August 2012): <https://www.usaid.gov/ads/policy/300/314>

**2.2.8 Will the purchase comply with the Fly America Act restrictions?**

This provision is applicable if the procurement plan includes any items requiring air shipment and the items are not funded with Cost Share or Program Income. The purchase is eligible for USAID funding if the international air transportation of the cargo meets the requirements of the Fly America Act. This means that for all international air transportation including those between the US and a non-US destination and between two destinations outside of the US, the cargo must be transported on a US flag air carrier<sup>7</sup> or use the code-share arrangement that the US flag carrier has with the non-US flag carrier. This is the case except when applying one of the below listed reasons or other exceptions under the Fly America Act. Please refer below for an example.

Consequently, a written waiver and prior approval are not required and DCA and partners can move forward with foreign-flag carriers while documenting the use of one of the below exceptions. For easy documentation, please refer to the template US2 – Justification for non-US Flag Air Carrier below.

1. The transportation is with a non-US flag carrier from a country that has signed one of the four Open Skies agreements. For example, with an airline from a country in the European Union (EU), operating from an EU country, which has signed the US-EU Open Skies agreement.
2. Travel to or from one of the following countries on an airline of that country when no city pair fare<sup>8</sup>, is in effect for that leg:
  - Australia on an Australian airline,
  - Switzerland on a Swiss airline or
  - Japan on a Japanese airline
3. No US flag air carrier provides service on a particular leg of the route
4. For a trip of 3 hours or less, the use of a US flag air carrier at least doubles the travel time
5. If the US flag air carrier offers direct service, use of the US flag air carrier would increase the travel time by more than 24 hours; or
6. If the US flag air carrier does not offer direct service,
  - Use of the US flag air carrier increases the number of aircraft changes by 2 or more
  - Use of the US flag air carrier extends travel time by 6 hours or more, or
  - Use of the US flag air carrier requires a layover at an overseas interchange of 4 hours or more

**NOTE:** The exception to the use of a US flag carrier is not based on the cost of the ticket.

<sup>7</sup> ) "US Flag Air Carrier" means an air carrier on the list issued by the US Department of Transportation at <https://www.transportation.gov/policy/aviation-policy/certificated-air-carriers-list>. US Flag Air Carrier service also includes service provided under a code share agreement with another air carrier when the ticket, or documentation for an electronic ticket, identifies the US flag air carrier's designator code and flight number.

<sup>8</sup> The City Pair Program (CPP) offers fares considerably lower than comparable commercial fares. Airline City Pairs are found by using the CPP Search Tool: <http://cpsearch.fas.gsa.gov/>. (Note: If the link does not work in Chrome, try it in Internet Explorer)

The documentation of the exceptions does not pertain to why the option is used, but instead which option is utilized. Consequently, if exception #1 above is used, the file will include the air waybill (AWB) or the ticket, which documents the airline number/name of the US-EU Open Skies agreement and that the project has chosen exception #1. See also template US2 – Justification for non-US Flag Air Carrier below.

Exception #1 means that using an air carrier of a country that is signatory to the EU Open Skies agreement on a leg allowed by the Open Skies agreement is equally compliant with the Fly America Act as using a US flag carrier, whether or not a US flag carrier flies the same leg. Consequently, the EU Open Skies agreement expands the options for Fly America-compliant carriers to include flag carriers of signatory countries, whenever they are available

To ease the management of the Fly America Act, it could be useful for DCA and implementing partners to include the requirement for US air carriers in the framework agreement with travel agents. One way of securing this expertise is by shortlisting US travel agencies.

**Example: air transportation**

Example 1: a person traveling from Dublin, Ireland to Addis Ababa, Ethiopia on board a Lufthansa airline via Frankfurt. This travel is eligible through exception #1 under the Fly America Act since Lufthansa is an EU airline signatory to the US-EU open skies agreement.

EU Open Skies airlines are treated the same as a US airline. This covers flights to and from the US, including between two destinations outside the US and to and from the US from EU or any other non-US point.

Example 2: an airlift of goods from Billund, Denmark to Bujumbura, Burundi with Ethiopian Airlines. This airfreight is eligible through exception #3, as our freight forwarder has documented that there is no US air carrier available and the selected option meets the cost principles.

Please note that the USAID regulations state that it is not enough to comply, and any time a valid exception is used it must be documented with the flight information, lack of service, etc.

**Resources**

Fly America Act and the Open Skies Agreements: <http://www.gsa.gov/portal/content/103191>

List of Certified US Air Carriers (February 2020): <https://www.transportation.gov/policy/aviation-policy/certificated-air-carriers-list>

41 CFR 301-10.135 – When must I travel using US flag air carrier service:

<https://www.law.cornell.edu/cfr/text/41/301-10.135> or [http://www.ecfr.gov/cgi-bin/text-idx?SID=df294381bca60544522113a95982084d&mc=true&node=pt41.4.301\\_610&rgn=div5%20-%20se41.4.301\\_610\\_1135#se41.4.301\\_610\\_1135](http://www.ecfr.gov/cgi-bin/text-idx?SID=df294381bca60544522113a95982084d&mc=true&node=pt41.4.301_610&rgn=div5%20-%20se41.4.301_610_1135#se41.4.301_610_1135)

More information on allowable fares under Fly America Act: <http://lostinregulation.blogspot.ch/2014/09/fly-america-act-and-allowable-airfares.html>

M2 Accounting, Audit and Records (October 2017) and

RAA8 Travel and International Air Transportation (December 2014) in Standard Provisions for Non-US

Nongovernmental Organisations: <https://www.usaid.gov/ads/policy/300/303mab>

City pair fare: <http://www.gsa.gov/portal/content/104512>

## 2.3 IS PRIOR APPROVAL REQUIRED AND AVAILABLE?

The Recipient must ensure that costs are eligible (reasonable, allocable and allowable) in compliance with the applicable cost principles, resulting in costs being reimbursable by USAID. To determine if items are allowable it may be necessary to read and interpret entire sections and multiple selected items of costs in the Cost Principles 2 CFR 200. To avoid disallowance of costs, prior approval is required for the procurement of items that USAID designates as requiring prior approval, please refer to the list in 2 CFR 200.407. Please request prior approval as

a part of the proposal. Prior approval is provided when the item is in an approved budget and the award specifically states prior approval is provided as part of the terms and conditions of the award.

Among others, prior approval is required for all restricted items and for equipment. Equipment means *a tangible personal property (including information technology systems) financed by USAID with a useful life of one year or more, and a purchase cost greater than USD 5,000 per unit or greater than the Recipient's equipment threshold, if lower than USD 5,000*. For supplies, no prior approval is required unless it is a restricted item.

Prior approval is of interest to procurement because an item defined as restricted or equipment such as a vehicle or generator with a unit price above USD 5,000 could be a part of the planned project inputs.

#### **Example: Prior approval for equipment**

An organisation is implementing a project in Country A. The project budget includes a generator (\$8,000). The award document includes a section stating: "Prior approval is hereby provided for the purchase of one generator". As part of her orientation when she joined the organisation, the newly hired procurement officer, has been given a manual of the USAID regulations. Unsure about the approval process the procurement officer asks the project director to explain the prior approval process. The project director explains, "we do not need to get prior approval just go ahead with the procurement". The procurement officer proceeds to buy the generator using a competitive process.

Six months later, the project expands to another province in the same country. The expansion requires the purchase of an additional generator. The procurement officer, who is still not officially trained, remembers the conversation she had with the project director specifically, that she had been told "we do not need to get prior approval", and proceeds to purchase the generator without obtaining prior approvals from USAID.

The annual audit report had a finding, "Unauthorized procurement of equipment. No prior approval obtained. Costs disallowed."

When the project director told the procurement officer that she did not need to get prior approval for the purchase, what the Director meant was that the prior approval was available as part of the award, and they did not need to go through the process of obtaining prior approval. The procurement officer misunderstood and thought that prior approval was not needed at all for the procurement of such items as generators.

In summary, for all procurements we must ask: (1) do we need prior approval and (2) do we have the prior approval if it is needed?

#### **Example: Prior approval for a restricted item**

The request for prior approval for a restricted item is similar to that for an equipment item. However, with the restricted item the project might also be requesting a waiver from the special source rules. That is a separate issue, and the process might mean that two separate approvals must be requested.

For example, take the purchase of a vehicle. Vehicles are equipment and restricted items at the same time. The restriction on motor vehicles is that they require prior approval and they must be US manufactured. To request prior approval, include a request in the proposal stating why the project needs the item, its intended use, and estimated cost. This relates only to the authorization to purchase.

If the project has decided against the purchase of a US manufactured vehicle and instead have decided that they want to purchase a Toyota, the project would need to obtain a waiver. Please include the request for the waiver in the proposal or go through the AO. The request would include justification for requesting the waiver based on the three options allowed in 22 CFR 228.30, please refer below.

The project can either submit two separate requests for the approval and waiver or combine the two requests into one document and preferably include it in the proposal. If it is a combined request, please remember to specifically ask for the two items to be provided in USAID's response, i.e. their response/the award must specifically state that (1) prior approval is being provided for procurement and (2) that a waiver is being provided.

**Resources**

M7 Title to and Use of Property (December 2014): <https://www.usaid.gov/ads/policy/300/303mab>

M1 Allowable costs (December 2014) in Standard Provisions for Non-US Nongovernmental Organisations: <https://www.usaid.gov/ads/policy/300/303mab>

2 CFR 200.313 Equipment (December 2014): <http://www.ecfr.gov/cgi-bin/text-idx?node=2:1.1.2.2.1.5&rgn=div6>

2 CFR 200.407 Prior approvals Subpart E - Cost Principles. Only Subpart E is mandatory to Non-US organisations (December 2014): <http://www.ecfr.gov/cgi-bin/text-idx?node=2:1.1.2.2.1.5&rgn=div6>

## 2.4 IS IT NECESSARY TO GET A WAIVER?

When an exception to the USAID rules is required, the waiver guidelines in this Guide are applicable. When an exception to the DCA Procurement Manual is required, the derogation guidelines in the DCA Procurement Manual apply.

To accomplish project objectives, USAID may under certain conditions waive the rules contained in the Standard Provisions. In such an instance and to secure a smooth, efficient and compliant process, please request a waiver in advance of a purchase and as part of the planning phase to be included with the application. This will allow for the inclusion of the applicable waiver in the award and save the potential substantial processing time. The waiver may be requested and approved in writing from the appropriate USAID Agreement Officer (AO) or Contracting Officer (CO).

Waivers are not required for the exceptions to the source and nationality requirements listed under section 2.2.4 "Do the source and nationality regulations apply to this purchase?" above. However, if the procurement transaction is less than USD 25,000 and is for a restricted item, a waiver is still required if the restricted item is outside of the US and if the item is of non-US manufacture.

For any waivers approved, the principal geographic code is 935 except for prohibited sources and restricted commodities under special rule (Agricultural items, motor vehicles and pharmaceuticals). Waivers of special rule for restricted goods are discussed below. A waiver of source is also a waiver of nationality. Waiver criteria are outlined in 22 CFR 228 Subpart D, which specifies that all waivers must be in writing and decisions made on the below basis.

**Waiver of geographic code**

Geographic code waivers allowing procurement outside of code 937 and 110 must be based on a case by case determination that:

1. The project requires commodities and services of the type that are not produced in or available for purchase in code 937 or 110. The decision may be based on:
  - a. Unavailability of sufficient, reasonable and available quantities or sufficient and reasonable quality that is fit for the intended purpose
  - b. For an identical or substantially similar commodity or service, it is possible to request a blanket waiver based on an item, a type or a category and receive an approval on a regional, country or program basis.
2. It is important to allow procurement outside of code 937 or 110 to meet unforeseen circumstances such as an emergency
3. To meet and / or promote efficiency in the use of USAID resources



A restricted goods waiver to authorize procurement from outside the United States of agricultural commodities, motor vehicles and pharmaceuticals under special rule must meet the requirements of 22 CFR 228.19 and the procedures in ADS 312 Eligibility of Commodities. Please refer below for more information.

#### **Waiver of special rule for an agricultural commodity**

Certain agricultural items must be procured in the US if the domestic price is below the parity price. USAID may approve non-US procurement if the commodity could not reasonably be purchased in the US in fulfillment of the objectives of the assistance program. USAID establishes if there is a parity price and if the project needs a waiver. If the project requires agricultural items, it is always recommended to discuss the requirement with the AO.

#### **Waiver of special rule for motor vehicles**

The requirement to purchase or lease only US-manufactured motor vehicles may be waived on a case by case basis when special circumstances exist, and those special circumstances are supported by market research and adequate documentation. Special circumstances that merit waiving the requirement include, but are not limited to:

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

Please refer to resources below for a Motor Vehicle Source/Manufacture Waiver Request Template. Please note that unavailability of a US manufactured motor vehicle for purchase in country, higher costs associated with procuring a US manufactured motor vehicle, the preference for a non-US manufactured motor vehicle, and delays in receipt associated with shipping a US-manufactured motor vehicle to a recipient country are not special circumstances. In the event of shipping delays, DCA and partner may use short-term leases of motor vehicles or contract other transportation until receipt of the US-manufactured motor vehicle.

USAID has a blanket waiver in place, and it applies as follows:

- RHD motor vehicles. Market research and experience indicate that the only US-manufactured RHD motor vehicles currently available are the Jeep Cherokee and Jeep Wrangler. When program activities require a RHD motor vehicle, only US-manufactured Jeep Cherokees or Jeep Wranglers are eligible for purchase or lease, unless the implementer or Mission determines that the Jeeps are not adequate for project demands. For example, a program activity may require a RHD motor vehicle with greater cargo space and/or passenger capability (that is, a cargo or passenger van), or may require a smaller sedan vehicle with greater fuel efficiency. Also, the waiver applies where there is a lack of adequate service facilities and/or spare parts for the US-manufactured Jeeps in the country or region within a country where the motor vehicle will be used; and
- Lightweight and medium weight (below 600 cubic centimetres (cc)) two-wheel and three-wheel motor vehicles. Currently, US-based Rokon is the only known manufacturer of lightweight/medium weight motorcycles in the United States. When program activities require a lightweight/medium weight motorcycle, only US-manufactured Rokon models are eligible for purchase or lease, unless they determine that they are not suitable or adequate for project demands. Rokons are all-terrain motorcycles built for rugged terrain, which may be suitable for some applications in the field. However, in other cases such as more urban use, Rokon motorcycles are not well-suited to project demands. Additionally, the waiver applies where there is a lack of adequate service facilities and/or spare parts for Rokon motorcycles in the country or region within a country where the vehicle will be used.

#### **Waiver of special rule for pharmaceuticals**

For pharmaceuticals, a source-nationality waiver for all USAID financed pharmaceuticals purchased from October 1 2016 until December 31, 2021 is approved. The sample waiver letter is available in ADS 312sae Condoms and Pharmaceuticals. An Additional help document to ADS chapter 312 linked below. Therefore, an additional source-

nationality waiver is not required. Accordingly, the Geographic Code 935 is the authorized code and includes all countries except foreign policy restricted countries.

#### **Waiver of special rule for Construction and Engineering Services**

There are special rules on procurement under construction contracts with non-US owned local firms for construction contracts for USD 10 million or less. A local firm will be eligible if USAID determines it to be an integral part of the local economy. Please consult regulation 22 CFR 228.14 and 228.17. It is possible to obtain a waiver to authorize procurement of construction and engineering services from advanced developing countries which have attained a competitive capacity in international markets.

#### **Waiver to make Government-owned Organisations eligible**

Commercial companies including non-profit organisations with a foreign government controlling interest are not eligible as suppliers unless they have been approved through a waiver. Waivers to make government-owned organisations eligible for financing as discussed in 22 CFR 228.13 must comply with the waiver requirement at the beginning of section 2.3 "Is prior approval required and available?".

#### **Resources**

22 CFR 228 Subpart B (January 2012) – Conditions Governing Source and Nationality of Commodity and Service Procurement Transactions for USAID Financing: <https://www.gpo.gov/fdsys/pkg/CFR-2012-title22-vol1/pdf/CFR-2012-title22-vol1-part228.pdf>

ADS 312sac Motor Vehicle Source/Manufacture Waiver Request Guide Additional Help for ADS Chapter 312 (June 2012): <https://www.usaid.gov/sites/default/files/documents/1876/312sac.pdf>

ADS 312sab Motor Vehicle Source/Manufacture Waiver Request Template: Additional Help Document (June 2012): <https://www.usaid.gov/sites/default/files/documents/1876/312sab.pdf>

ADS 312sae Condoms and Pharmaceuticals. An Additional help document to ADS chapter 312 (June 2018): <https://www.usaid.gov/ads/policy/300/312sae>

ADS 310 Source and Nationality Requirements for Procurement of Commodities and Services Financed by USAID (June 2012): <https://www.usaid.gov/ads/policy/300/310>

Section 3.4 in ADS Chapter 312 Eligibility of Commodities (November 2015): <https://www.usaid.gov/sites/default/files/documents/1876/312.pdf>

ADS 310mac List of Prohibited Source Countries (June 2012): <https://www.usaid.gov/ads/policy/300/310mac>

ADS 310maa List of Developing Countries (June 2012): <https://www.usaid.gov/ads/policy/300/310maa>

ADS 310mab List of Advanced Developing Countries (June 2012): <https://2012-2017.usaid.gov/sites/default/files/documents/1876/310mab.pdf>

## **2.5 CAN THE PURCHASE BE FINANCED USING COST SHARE OR PROGRAM INCOME?**

Cost Share, or co-financing in DCA terminology, is cash and in-kind contributions from non-US Government sources. This includes project costs incurred by the Recipient from its own funds or project costs financed with cash, services, or property contributed or donated to the Recipient from other non-US Government sources, including Sub recipients.

The information on Cost Share is included in this Guide to draw attention to the degree of flexibility this provision provides regarding the eligibility rules for procurement. The flexibility derives from the condition that source, nationality and restricted goods requirements as described in this Guide do not apply to Cost Share expenditures.

Consequently, should a situation arise where it is not possible to meet the USAID requirements of source, nationality and restricted goods and it is not possible to obtain a required waiver from USAID for a purchase, the Cost Share provision presents an option to proceed with the planned items funded with the Cost Share part of the award.

**Example: Cost share**

To illustrate, please imagine that the project plans to purchase maize, which is an agricultural product and thus a restricted goods. It therefore must be purchased from a US source unless a waiver is obtained. For various reasons it is not possible to obtain a waiver to allow for the purchase of maize in the Recipient country. In such an instance, this provision for Cost Share makes it possible to proceed with the purchase of maize while using non-US funds to finance the purchase.

It is a last resort because it likely means that DCA will need to fund this element of the project, unless the project includes a non-US government donor.

Furthermore, in the rare event of any disallowance of expenditures from USAID award funds, the Recipient may substitute expenditures made with funds provided from non-US funds, provided they are eligible in accordance with the list of criteria in Standard Provisions RAA14.

**Resource**

RAA14 Cost Share (June 2012) in Standard Provisions for Non-US Nongovernmental Organisations:

<https://www.usaid.gov/ads/policy/300/303mab>

## 2.6 IS IT MORE ECONOMICAL AND PRACTICAL TO LEASE OR PURCHASE?

USAID instructs that wherever appropriate; the Recipient must determine the most economical and practical means by which to accomplish program objectives. The purpose is to maximize the use of the available funds and to ensure the best value is obtained. This includes the necessity of the commodities or services, lease or purchase options, and if the costs are reasonable. To help with the analysis of lease and purchase alternatives, please refer to the explanations and flow chart in Annex US3 – Leasing vs. Purchase below.

**Resource**

M5 Procurement Policies (June 2012) in Standard Provisions for Non-US Nongovernmental Organisations:

<https://www.usaid.gov/ads/policy/300/303mab>

## 2.7 IS IT PRACTICAL TO INVITE US SMALL BUSINESSES?

USAID instructs that the Recipient must conduct procurement to exhibit fair and unbiased competition, and this includes among other things the encouragement to use US Small Businesses whenever practical.

To make this possible, steps must be taken to include the US Small Business on the List of suppliers and candidates (General Template 13), to create sub lots to permit the highest degree of participation and to establish delivery schedules that encourages these types of businesses to participate.

A situation where this could be relevant is the purchase of restricted goods, which requires US source and the purchase of Travel Agency services, which requires the management of the Fly America Act. Whether it is practical must be established in each project. To invite US Small Businesses it is necessary to make information about the business opportunity available to these entities. This can be done by using General Template 8 – Advertisement of Business Opportunity and submit it to:

**Office of Small and Disadvantaged Business Utilization (OSDBU/MRC)**

Agency for International Development

Mauricio Vera, Director, OSDBU

Ronald Reagan Building, USAID/OSDBU/MRC

1300 Pennsylvania Avenue, NW, Room S.8C

Washington, DC 20523-5800

Email: [mvera@usaid.gov](mailto:mvera@usaid.gov)

### Resources

M5 Procurement Policies (June 2012) in Standard Provisions for Non-US Nongovernmental Organisations:

<https://www.usaid.gov/ads/policy/300/303mab>

2 CFR 200.321: Contracting with small and minority businesses, women's business enterprises and labour surplus area firms: [http://www.ecfr.gov/cgi-bin/text-idx?SID=5e85ebf96c4dbc4262b55190c3b55bea&mc=true&node=pt2.1.200&rgn=div5%23se2.1.200\\_10#se2.1.200\\_1321](http://www.ecfr.gov/cgi-bin/text-idx?SID=5e85ebf96c4dbc4262b55190c3b55bea&mc=true&node=pt2.1.200&rgn=div5%23se2.1.200_10#se2.1.200_1321)

[http://www.ecfr.gov/cgi-bin/text-idx?SID=5e85ebf96c4dbc4262b55190c3b55bea&mc=true&node=pt2.1.200&rgn=div5%23se2.1.200\\_10#se2.1.200\\_1321](http://www.ecfr.gov/cgi-bin/text-idx?SID=5e85ebf96c4dbc4262b55190c3b55bea&mc=true&node=pt2.1.200&rgn=div5%23se2.1.200_10#se2.1.200_1321)

The DCA Procurement Manual (password required): <https://www.danchurchaid.org/login>

## 2.8 IS THE PLANNED PURCHASE A CONSTRUCTION?

For projects planning the implementation of Works contracts there are two aspects to be aware of as outlined below.

### Construction procurement valued at more than USD 100,000

For Works contracts valued at more than USD 100,000 it is mandatory to consider the use of a relevant bonding requirement. Bonding is an insurance agreement guaranteeing repayment for financial loss caused to the Recipient by the act or failure to act by the contractor. The bonding options used by DCA are included in the DCA Procurement Manual section 9.3 "Prepayment, Tender and Performance Guarantees".

### Construction procurement with foreign-owned local firms

For Works contracts of USD 10 million or less, foreign-owned local firms are eligible if USAID determines the company to be an integral part of the local economy. However, first USAID will determine, if no US construction company with the required capability is currently operating in the Recipient country or, if there is such a company, that it is not interested in bidding for the proposed contract. Consequently, whenever there is planned procurement of Works contracts below USD 10 million, please ensure that US construction companies from the Recipient country are invited to solicit a bid. For waiver options, please refer to section 2.4 "Is it necessary to get a waiver?" in this Guide.

### Resources

M5 Procurement Policies (June 2012) in Standard Provisions for Non-US Nongovernmental Organisations:

<https://www.usaid.gov/ads/policy/300/303mab>

Section 9.3 "Prepayment, Tender and Performance Guarantees" in the DCA Procurement Manual:

<https://www.danchurchaid.org/login>

22 CFR 228.14 (4-1-14 edition) – Construction procurement with foreign-owned local firms:

<https://www.gpo.gov/fdsys/pkg/CFR-2012-title22-vol1/pdf/CFR-2012-title22-vol1-part228.pdf>

## 2.9 IS THE PURCHASE SUBJECT TO INVENTORY MANAGEMENT?

Property purchased with USAID funds are subject to Inventory Management requirements laid out below. Property means equipment, supplies, real property, and intangible property, each defined individually below.

- **Equipment** means a tangible personal property (including information technology systems) financed by USAID with a useful life of one year or more, and a purchase cost greater than USD 5,000 per unit or greater than the Recipient's equipment threshold, if lower than USD 5,000.
- **Supplies** means items excluding equipment. A computing device is a supply if the purchasing cost is less than USD 5,000 per unit.

- **Real Property** means land, including land improvements, structures and appurtenances<sup>9</sup>, including permanent fixtures.
- **Intangible Property** includes, but is not limited to, intellectual property, such as trademarks, copyrights, patents and patent applications, and debt instruments, such as bonds, mortgages, leases or other agreements between a lender and a borrower.

DCA, the Recipient and DCA implementing partner, the Sub recipient are required to maintain the Property in good condition, have management procedures to protect the Property and maintain an accurate inventory of all Property. Maintenance procedures must include the following:

- a. Accurate description of the Property, including serial number, model number, or other identifying number, purchasing date and cost, location and condition, and data on the disposition of any Property (date of disposition, sales price, method used to determine current fair market value, etc.), as applicable.
- b. A physical inventory of Property that must be taken, and the results reconciled with the equipment records, at least once every two years during the period of the award.
- c. A control system must be in effect to maintain the Property and ensure adequate safeguards to prevent loss, damage, or theft of the Property. DCA and implementing partner must maintain appropriate insurance equivalent to insurances they maintain for their own property. Any loss, damage, or theft must be investigated and fully documented, and DCA and implementing partner must promptly notify the AO. Please note that DCA and implementing partner may be liable where insurance is not sufficient to cover losses or damage.

For practical guidance and templates, please refer to the DCA Logistics Manual chapter 1 Asset and Inventory Management, chapter 2 Warehouse and Stock Management and chapter 6 Equipment.

### Resources

M7 Title to and Use of Property (December 2014): <https://www.usaid.gov/ads/policy/300/303mab>

DCA Logistics Manual (password required): <https://www.danchurchaid.org/login>

2 CFR 200.313 Equipment: <http://www.ecfr.gov/cgi-bin/text-idx?SID=3b9818823a7185ff3b78c440ea784156&mc=true&node=pt2.1.200&rqn=div5>

## 2.10 IS THE PURCHASE DOCUMENTED AND READY FOR AUDIT?

All donor projects are subject to audits at any given time, and it is important to keep the procurement files up to date and ready. From an auditor's perspective, unless it is documented, it did not happen. Consequently, it is important to document all decisions and steps in the procurement process. The procurement documentation must comply with the requirements in the DCA Procurement Manual and this Guide.

DCA decides the format of the records and 2 CFR 200 allows for electronic records to be kept without any further approval. Procurement records must be retained for a period of 3 years from the date of submission of the final expenditure report or if equipment disposition is required, from the time of final disposition. If the legal retention requirement of the Recipient country is longer, the records must be kept to meet that requirement. It is recommended to note the retention period in General Template 18 – Procurement Documentation Tool. To minimize the risk consider destroying the files at the end of the retention period, as USAID auditors will have access to the records for as long as they exist.

The DCA standard terms and conditions for Supply, Services and Works provide for the Contracting Authority's right to check and audit all documents related to the Contract and give the same right to the funding agency. If this

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<sup>9</sup> Any building on a piece of real estate other than the main building. For example, a house may have a detached apartment on the same piece of property.

requirement needs emphasizing, it is possible to add this access by auditors as a condition in the Purchase Order/Contract under Special Conditions.

DCA is audited as a non-US NGO based on the USAID requirements including the DCA Procurement manual. DCA's implementing partners are audited based on their status as non-US or US organisation. Consequently, if DCA's implementing partner is a US organisation, they will be audited on USAID requirements to US organisations.

Procurement of auditors must take place from the list of USAID approved auditors. Please contact the AO for a current list.

**Resources**

Chapter 5 "Documentation and Monitoring" in the DCA Procurement Manual: <https://www.danchurchaid.org/login>  
M2 Accounting, Audit and Records (October 2017) and M5 Procurement Policies (June 2012) in Mandatory Standard Provisions for Non-US Nongovernmental Organisations: <https://www.usaid.gov/ads/policy/300/303mab>  
2 CFR 200.318(i) minimum procurement records; 2 CFR 200.333 retention requirements for records; 2 CFR 200.335 Methods for collection, transmission and storage of information; 2 CFR 200.336 Access to records  
[http://www.ecfr.gov/cgi-bin/text-idx?SID=5e85ebf96c4dbc4262b55190c3b55bea&mc=true&node=pt2.1.200&rgn=div5%23se2.1.200\\_1334](http://www.ecfr.gov/cgi-bin/text-idx?SID=5e85ebf96c4dbc4262b55190c3b55bea&mc=true&node=pt2.1.200&rgn=div5%23se2.1.200_1334)