

§ 228.02

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letter of commitment, etc., issued by USAID which authorizes the use of USAID funds for the procurement of services or commodities and/or commodity related services, and which specifies conditions which apply to such procurement.

(h) *Incidental services* means the installation or erection of USAID-financed equipment, or the training of personnel in the maintenance, operation and use of such equipment.

(i) *Mission* means the USAID Mission or representative in a cooperating country.

(j) *Origin* means the country where a commodity is mined, grown or produced. A commodity is produced when, through manufacturing, processing, or substantial and major assembling of components, a commercially recognized new commodity results that is significantly different in basic characteristics or in purpose of utility from its components.

(k) *Services* means the performance of identifiable tasks, rather than the delivery of an end item of supply.

(l) *Source* means the country from which a commodity is shipped to the cooperating country, or the cooperating country if the commodity is located therein at the time of the purchase. Where, however, a commodity is shipped from a free port or bonded warehouse in the form in which received therein, "source" means the country from which the commodity was shipped to the free port or bonded warehouse.

(m) *State* means the District of Columbia or any State, commonwealth, territory or possession of the United States.

(n) *Supplier* means any person or organization, governmental or otherwise, who furnishes services, commodities and/or commodity related services financed by USAID.

(o) *United States* means the United States of America, any State(s) of the United States, the District of Columbia, and areas of U.S. associated sovereignty, including commonwealths, territories and possessions.

(p) *USAID* means the U.S. Agency for International Development or any successor agency, including when applicable, each USAID Mission abroad.

(q) *USAID Geographic Code* means a code in the USAID Geographic Code Book which designates a country, a group of countries, or an otherwise defined area. The principal USAID geographic codes are described in § 228.03.

(r) *USAID/W* means the USAID in Washington, DC 20523, including any office thereof.

§ 228.02 Scope and application.

This part is applicable to goods and services financed directly with program funds under the Foreign Assistance Act of 1961, as amended, unless otherwise provided by statute or regulation. If different conditions apply to a USAID-financed procurement, by statute or regulation, those conditions shall be incorporated in the implementing document and shall prevail in the event of any conflict with this part 228. The implementing documents will indicate the authorized source of procurement. The terms and conditions applicable to a procurement of goods or services shall be those in effect on the date of the issuance of a contract for goods or services by USAID or by the cooperating country.

§ 228.03 Identification of principal geographic code numbers.

The USAID Geographic Code Book sets forth the official description of all geographic codes used by USAID in authorizing or implementing documents, to designate authorized source countries or areas. The following are summaries of the principal codes:

(a) Code 000—*The United States*: The United States of America, any State(s) of the United States, the District of Columbia, and areas of U.S.-associated sovereignty, including commonwealths, territories and possessions.

(b) Code 899—Any area or country, except the cooperating country itself and the following foreign policy restricted countries: Afghanistan, Libya, Vietnam, Cuba, Cambodia, Laos, Iraq, Iran, North Korea, Syria and People's Republic of China.

(c) Code 935—Any area or country including the cooperating country, but excluding the foreign policy restricted countries.

(d) Code 941—The United States and any independent country (excluding

foreign policy restricted countries), except the cooperating country itself and the following: Albania, Andorra, Angola, Armenia, Austria, Australia, Azerbaijan, Bahamas, Bahrain, Belgium, Bosnia and Herzegovina, Bulgaria, Belarus, Canada, Croatia, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Gabon, Georgia, Germany, Greece, Hong Kong, Hungary, Iceland, Ireland, Italy, Japan, Kazakhstan, Kuwait, Kyrgyzstan, Latvia, Liechtenstein, Lithuania, Luxembourg, Macedonia,* Malta, Moldova, Monaco, Mongolia, Montenegro,* Netherlands, New Zealand, Norway, Poland, Portugal, Qatar, Romania, Russia, San Marino, Saudi Arabia, Serbia,* Singapore, Slovak Republic, Slovenia, South Africa, Spain, Sweden, Switzerland, Taiwan,* Tajikistan, Turkmenistan, Ukraine, United Arab Emirates, United Kingdom, Uzbekistan, and Vatican City.

[61 FR 53616, Oct. 15, 1996; 61 FR 54849, Oct. 22, 1996]

Subpart B—Conditions Governing Source and Nationality of Commodity Procurement Transactions for USAID Financing

§ 228.10 Purpose.

Sections 228.11 through 228.14 set forth the rules governing the eligible source of commodities and nationality of commodity suppliers for USAID financing. These rules may be waived in accordance with the provisions in subpart F of this part.

§ 228.11 Source and origin of commodities.

(a) The source and origin of a commodity as defined in § 228.01 shall be a country or countries authorized in the implementing document by name or by reference to a USAID geographic code.

(b) Any component from a foreign policy restricted country makes the commodity ineligible for USAID financing.

(c) When the commodity being purchased is a kit (e.g., scientific instru-

*Has the status of a "Geopolitical Entity", rather than an independent country.

ments, tools, or medical supplies packaged as a single unit), the kit will be considered a produced commodity.

(d) When spare parts for vehicles or equipment are purchased, each separate shipment will be considered a produced commodity, rather than each individual spare or replacement part. The parts must be packed in and shipped from an eligible country.

(e) *Systems determination.* When a system consisting of more than one produced commodity is procured as a single separately priced item, USAID may determine that the system itself shall be considered a produced commodity. When a determination is made to treat a system as a produced commodity, component commodities which originate from other than an authorized source country may be shipped directly to, and the system assembled in, the cooperating country, unless USAID specifically determines that assembly and shipment take place in an authorized source country. Transportation costs must still meet the requirements in subpart C of this part in order for them to be eligible for USAID financing. USAID, or the importer in the case of a Commodity Import Program, shall inform the supplier of any system determination.

(f) In order to be eligible for USAID financing, when items are considered produced commodities under paragraphs (c), (d), or (e) of this section, the total cost (to the system supplier) of the commodities making up the kit, spare parts, or system which were manufactured in countries not included in the authorized geographic code may not exceed 50 percent of the lowest price (not including ocean transportation and marine insurance) at which the supplier makes the final product available for export sale.

[61 FR 53616, Oct. 15, 1996; 62 FR 314, Jan. 3, 1997, as amended at 63 FR 38751, July 20, 1998]

§ 228.12 Long-term leases.

Any commodity obtained under a long-term lease agreement is subject to the source and origin requirements of this subpart B. For purposes of this subpart B, a long-term lease is defined as a single lease of more than 180 days, or repetitive or intermittent leases under a single activity or program