

Department of State

§ 228.31

USAID Geographic Code 935 are ineligible to supply incidental services, except that individuals lawfully admitted for permanent residence in the U.S. are eligible regardless of their citizenship.

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Subpart D—Conditions Governing the Nationality of Suppliers of Services for USAID Financing

§ 228.30 Purpose.

Sections 228.31 through 228.37 set forth the nationality rules governing the eligibility for USAID financing of suppliers of services which are not commodity-related. These rules may be waived in accordance with the provisions in subpart F of this part.

§ 228.31 Individuals and privately owned commercial firms.

(a) In order to be eligible for USAID financing as a supplier of services, whether as a contractor or subcontractor at any tier, an individual must meet the requirements of paragraph (a)(1) of this section (except that individual personal services contractors are not subject to this requirement), and a privately owned commercial firm must meet the requirements in paragraph (a)(2) of this section. In the case of the categories described in paragraphs (a)(2) (i) and (ii) of this section, the certification requirements in paragraph (b) of this section must be met.

(1) An individual must be a citizen of and have a principal place of business in a country or area included in the authorized geographic code, or a non-U.S. citizen lawfully admitted for permanent residence in the United States whose principal place of business is in the United States;

(2) A privately owned commercial (i.e., for profit) corporation or partnership must be incorporated or legally organized under the laws of a country or area included in the authorized geographic code, have its principal place of business in a country or area included in the authorized geographic code, and meet the criteria set forth in either paragraph (a)(2)(i) or (ii) of this section:

(i) The corporation or partnership is more than 50 percent beneficially owned by individuals who are citizens of a country or area included in the authorized geographic code or non-U.S. citizens lawfully admitted for permanent residence in the United States. In the case of corporations, “more than 50 percent beneficially owned” means that more than 50 percent of each class of stock is owned by such individuals; in the case of partnerships, “more than 50 percent beneficially owned” means that more than 50 percent of each category of partnership interest (e.g., general, limited) is owned by such individuals.

(With respect to stock or interest held by companies, funds or institutions, the ultimate beneficial ownership by individuals is controlling.)

(ii) The corporation or partnership:

(A) Has been incorporated or legally organized in the United States for more than 3 years prior to the issuance date of the invitation for bids or requests for proposals,

(B) Has performed within the United States administrative and technical, professional, or construction services, similar in complexity, type and value to the services being contracted (under a contract, or contracts, for services) and derived revenue therefrom in each of the 3 years prior to the date described in paragraph (a)(2)(ii)(A) of this section,

(C) Employs United States citizens and non-U.S. citizens lawfully admitted for permanent residence in the United States in more than half its permanent full-time positions in the United States and more than half of its principal management positions, and

(D) Has the existing technical and financial capability in the United States to perform the contract.

(b) A duly authorized officer of a firm or nonprofit organization shall certify that the participating firm or nonprofit organization meets either the requirements of paragraph (a)(2) (i) or (ii) of this section or § 228.32. In the case of corporations, the certifying officer shall be the corporate secretary. With respect to the requirements of paragraph (a)(2)(i) of this section, the certifying officer may presume citizenship on the basis of the stockholders' record

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address, provided the certifying officer certifies, regarding any stockholder (including any corporate fund or institutional stockholder) whose holdings are material to the corporation's eligibility, that the certifying officer knows of no fact which might rebut that presumption.

§ 228.32 Nonprofit organizations.

(a) Nonprofit organizations, such as educational institutions, foundations, and associations, must meet the criteria listed in this section and the certification requirement in § 228.31(b) to be eligible as suppliers of services, whether as contractors or subcontractors at any tier. Any such institution must:

(1) Be organized under the laws of a country or area included in the authorized geographic code;

(2) Be controlled and managed by a governing body, a majority of whose members are citizens of countries or areas included in the authorized geographic code; and

(3) Have its principal facilities and offices in a country or area included in the authorized geographic code.

(b) International agricultural research centers and such other international research centers as may be, from time to time, formally listed as such by the USAID Assistant Administrator, Global Bureau, are considered to be of U.S. nationality.

§ 228.33 Foreign government-owned organizations.

Firms operated as commercial companies or other organizations (including nonprofit organizations other than public educational institutions) which are wholly or partially owned by foreign governments or agencies thereof are not eligible for financing by USAID as contractors or subcontractors, except if their eligibility has been established by a waiver approved by USAID in accordance with § 228.54. This does not apply to foreign government ministries or agencies.

§ 228.34 Joint ventures.

A joint venture or unincorporated association is eligible only if each of its members is eligible in accordance with §§ 228.31, 228.32, or 228.33.

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§ 228.35 Construction services from foreign-owned local firms.

(a) When the estimated cost of a contract for construction services is \$5 million or less and only local firms will be solicited, a local corporation or partnership which does not meet the test in § 228.31(a)(2)(i) for eligibility based on ownership by citizens of the cooperating country (i.e., it is a foreign-owned local firm) will be eligible if it is determined by USAID to be an integral part of the local economy. However, such a determination is contingent on first ascertaining that no United States construction company with the required capability is currently operating in the cooperating country or, if there is such a company, that it is not interested in bidding for the proposed contract.

(b) A foreign-owned local firm is an integral part of the local economy provided:

(1) It has done business in the cooperating country on a continuing basis for not less than three years prior to the issuance date of invitations for bids or requests for proposals to be financed by USAID;

(2) It has a demonstrated capability to undertake the proposed activity;

(3) All, or substantially all, of its directors of local operations, senior staff and operating personnel are resident in the cooperating country;

(4) Most of its operating equipment and physical plant are in the cooperating country.

§ 228.36 Ineligible suppliers.

Citizens of any country or area not included in Geographic Code 935, and firms and organizations located in, organized under the laws of, or owned in any part by citizens or organizations of any country or area not included in Geographic Code 935 are ineligible for financing by USAID as suppliers of services, or as agents in connection with the supply of services. The limited exceptions to this rule are:

(a) Individuals lawfully admitted for permanent residence in the United States are eligible, as individuals or owners, regardless of their citizenship, and