

Department of State

§ 228.55

§ 228.52 Suppliers of commodities.

Geographic code changes authorized by waiver with respect to the source of commodities automatically apply to the nationality of their suppliers. A waiver to effect a change in the geographic code only with respect to the nationality of the supplier of commodities, but not in the source of the commodities, may be sought if the situation requires it based on the appropriate criteria in § 228.51.

§ 228.53 Suppliers of services—privately owned commercial suppliers and nonprofit organizations.

Waiver criteria. Any waiver must be based upon one of the criteria listed in this section. Waivers to Geographic Code 899 or Code 935 which are justified under paragraph (b) or (c) of this section may only be authorized on a case-by-case basis. A waiver may be authorized when:

(a) Services required for assistance are of a type that are not available for purchase in the United States; in addition, for waivers to any country or Geographic Code beyond Code 941 and the cooperating country, the services are of a type that are not available for purchase in any country in Code 941 or the cooperating country.

(b) It is necessary to permit procurement in a country not otherwise eligible in order to meet unforeseen circumstances, such as emergency situations.

(c) It is necessary to promote efficiency in the use of United States foreign assistance resources, including to avoid impairment of foreign assistance objectives.

(d) For waivers to authorize procurement from Geographic Code 941 or the cooperating country:

(1) There is an emergency requirement for which non-USAID funds are not available and the requirement can be met in time only from suppliers in a country or area not included in the authorized geographic code.

(2) No suppliers from countries or areas included in the authorized geographic code are able to provide the required services.

(3) Persuasive political considerations.

(4) Procurement of locally available services would best promote the objectives of the foreign assistance program.

(5) Such other circumstances as are determined to be critical to the achievement of project objectives.

[61 FR 53616, Oct. 15, 1996, as amended at 63 FR 38752, July 20, 1998]

§ 228.54 Suppliers of services—foreign government-owned organizations.

A waiver to make foreign government-owned organizations, described in § 228.33, eligible for financing by USAID must be justified on the basis of the following criteria:

(a) The competition for obtaining a contract will be limited to cooperating country firms/organizations meeting the criteria set forth in §§ 228.31 or 228.32.

(b) The competition for obtaining a contract will be open to firms from countries or areas included in the authorized geographic code and eligible under the provisions of §§ 228.31 or 228.32, and it has been demonstrated that no U.S. firm is interested in competing for the contract.

(c) Services are not available from any other source.

(d) Foreign policy interests of the United States outweigh any competitive disadvantage at which United States firms might be placed or any conflict of interest that might arise by permitting a foreign government-owned organization to compete for the contract.

§ 228.55 Delivery services.

(a) Ocean transportation. A waiver to expand the flag eligibility requirements to allow the use of vessels under flag registry of the cooperating country, or Geographic Code 899 or 935 countries may be authorized under the circumstances provided for in this section. Any waiver granted under this section for a particular shipment which is not based on a determination of non-availability does not reduce the pool of cargo from which the applicable percentage required to be shipped on U.S.-flag vessels under the Cargo Preference Act of 1954, Section 901(b)(1) of the Merchant Marine Act of 1936, as amended, 46 U.S.C. 1241(b), is determined. A waiver to expand the flag registry of any

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Code 935 country may be authorized when:

(1) It is necessary to assure adequate competition in the shipping market in order to obtain competitive pricing, particularly in the case of bulk cargoes and large cargoes carried by liners;

(2) Eligible vessels provide liner service, only by transshipment, for commodities that cannot be containerized, and vessels under flag registry of countries to be authorized by the waiver provide liner service without transshipment;

(3) Eligible vessels are not available, and cargo is ready and available for shipment, provided it is reasonably evident that delaying shipment would increase costs or significantly delay receipt of the cargo;

(4) Eligible vessels are found unsuitable for loading, carriage, or unloading methods required, or for the available port handling facilities;

(5) Eligible vessels do not provide liner service from the port of loading stated in the procurement's port of export delivery terms, provided the port is named in a manner consistent with normal trade practices; or

(6) Eligible vessels decline to accept an offered consignment.

(b) Air transportation. The preferences for use of United States flag air carriers or for use of United States, other Geographic Code 941 countries, or cooperating country flag air carriers are not subject to waiver. Other free world air carriers may be used only as provided in § 228.22.

§ 228.56 Authority to approve waivers.

The authority to approve waivers of established policies on source, origin and nationality are delegated authorities within USAID, as set forth in the Automated Directives System Chapter 103 and any redelegations. USAID contractors or recipients of assistance agreements shall request any necessary waivers through the USAID contract or agreement officer.

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