

TITLE: CIB 97-10 - Revision of Standard Provision - AID Eligibility for Goods and Services

April 2, 1997

MEMORANDUM FOR CONTRACTING OFFICERS AND NEGOTIATORS

TO: Distribution List, FAC

FROM: M/OP/OD, Marcus L. Stevenson, Assistance Executive

Subject: Revision of Standard Provision entitled "AID Eligibility Rules for Goods and Services" for assistance awards with US and Non-US Non-governmental organizations.

CONTRACT INFORMATION BULLETIN 97 - 10

This CIB revises and replaces the Standard Provision governing the procurement of goods and services for US and Non-US non-governmental organizations.

This standard provision is being revised primarily to delete the old references to Handbook 1B, and incorporate the newly issued regulation on source, origin and nationality (22 CFR Part 228). The regulation became effective November 14, 1996.

All new awards should include this new provision. When amending existing grants and cooperative agreements you should incorporate this new standard provision as well. The DGS system will be updated shortly to include the new provision, however, it is not possible to make any changes in the ADS system until later this year, so please retain a copy of this CIB and insert the attached provision into awards until all systems are updated.

Any questions regarding this policy and implementation should be directed to Diana Esposito, M/OP/P, (703) 875-1529.

Attachment:

Standard Provision for U.S. and Non-US organizations entitled "USAID ELIGIBILITY RULES FOR GOODS AND SERVICES (MARCH 1997)."

USAID ELIGIBILITY RULES FOR GOODS AND SERVICES (MARCH 1997)

(This provision is applicable when the costs for goods or services will be paid for with USAID funds. This provision is not applicable if the recipient is providing for the goods or services with private funds as part of a cost-sharing requirement, or with Program Income generated under the award.)

(a) Ineligible and Restricted Goods and Services: If USAID determines that the recipient has procured any of the restricted or ineligible goods and services specified below, or has procured goods and services from unauthorized sources, and has received reimbursement for such purpose without the prior written authorization of the Agreement Officer, the recipient agrees to refund to USAID the entire amount of the reimbursement. USAID's policy on ineligible and restricted goods and services is contained in ADS Chapter 312.

(1) Ineligible Goods and Services. Under no circumstances shall the recipient procure any of the following under this award:

- (i) Military equipment,
- (ii) Surveillance equipment,
- (iii) Commodities and services for support of police or other law enforcement activities,
- (iv) Abortion equipment and services,
- (v) Luxury goods and gambling equipment, or
- (vi) Weather modification equipment.

(2) Ineligible Suppliers. Funds provided under this award shall not be used to procure any goods or services furnished by any firms or individuals whose name appears on the "Lists of Parties Excluded from Federal Procurement and Nonprocurement Programs." USAID will provide the grantee with a copy of these Lists upon request.

(3) Restricted Goods. The recipient shall not procure any of the following goods and services without the prior budget approval of the Agreement Officer:

- (i) Agricultural commodities,
- (ii) Motor vehicles,
- (iii) Pharmaceuticals,
- (iv) Pesticides,
- (v) Rubber compounding chemicals & plasticizers,
- (vi) Used equipment,
- (vii) U.S. Government-owned excess property, or
- (viii) Fertilizer.

Prior budget approval will be deemed to have been met when:

(i) the item has been identified and incorporated in the program description or schedule of the award (initial or revisions), or amendments to the award; and

(ii) the costs related to the item are incorporated in the approved budget of the award.

Where the item has not been incorporated into the award as described above, a separate written authorization from the Agreement Officer must be provided before the item is procured.

(b) Source and Nationality: The eligibility rules for goods and services based on Source and nationality are divided into two categories. One applies when the total Procurement element during the life of the award is over \$250,000, and the other applies when the total procurement element during the life of the award is not over \$250,000, or the award is funded under the Development Fund for Africa (DFA) regardless of the amount. The total procurement element includes procurement of all goods (e.g., equipment, materials, supplies) and services. Guidance on the eligibility of specific goods or services may be obtained from the Agreement Officer. USAID policies and definitions on source, origin and nationality are contained in 22 CFR Part 228, Rules on Source, Origin and Nationality for Commodities and Services Financed by the Agency for International Development, which is incorporated into this Award in its entirety.

(1) For DFA funded awards or when the total procurement element during the life of this award is valued at \$250,000 or less, the following rules apply:

(i) The authorized source for procurement of all goods and services to be reimbursed under the award is USAID Geographic Code 935, "Special Free World," and such goods and services must meet the source, origin and nationality requirements set forth in 22 CFR Part 228 in accordance with the following order of preference:

- (A) The United States (USAID Geographic Code 000),
- (B) The Cooperating Country,
- (C) "Selected Free World" countries (USAID Geographic Code 941), and
- (D) "Special Free World" countries (USAID Geographic Code 935).

(ii) Application of order of preference: When the recipient procures goods and services from other than U.S. sources, under the order of preference in paragraph (b)(1)(i) above, the recipient shall document its files to justify each such instance. The documentation shall set forth the circumstances surrounding the procurement and shall be based on one or more of the following reasons, which will be set forth in the grantee's documentation:

- (A) The procurement was of an emergency nature, which would not allow for the delay attendant to soliciting U.S. sources,
- (B) The price differential for procurement from U.S. sources exceeded by 50% or more the delivered price from the non-U.S. source,
- (C) Compelling local political considerations precluded consideration of U.S. sources,
- (D) The goods or services were not available from U.S. sources, or
- (E) Procurement of locally available goods and services, as opposed to procurement of U.S. goods and services, would best promote the objectives of the Foreign Assistance program under the award.

(2) When the total procurement element exceeds \$250,000 (unless funded by DFA), the following applies: Except as may be specifically approved or directed in advance by the Agreement Officer, all goods and services financed with U.S. dollars, which will be reimbursed under this award must meet the source, origin and nationality requirements set forth in 22 CFR Part 228 for the authorized geographic code specified in the schedule of this award. If none is specified, the authorized source is Code 000, the United States.

(c) Marine Insurance: The eligibility of marine insurance is determined by the country in which it is placed. Insurance is placed in a country if payment of the Insurance premium is made to, and the insurance policy is issued by an insurance company located in that country. Eligible countries for placement are governed by the authorized geographic code, except that if Code 941 is authorized, the Cooperating Country is also eligible. Section 604(d) of the Foreign Assistance Act requires that if a recipient country discriminates by statute, decree, rule, or practice with respect to USAID-financed procurement against any marine insurance company authorized to do business in the U. S., then any USAID-financed commodity shipped to that country shall be insured against marine risk and the insurance shall be placed in the U. S. with a company or companies authorized to do marine insurance business in the U. S.

(d) Ocean and air transportation shall be in accordance with the applicable provisions contained within this award and the provisions of 22 CFR Part 228, Subpart C.

(e) Printed or Audio-Visual Teaching Materials: If the effective use of printed or audio-visual teaching materials depends upon their being in the local language and if such materials are intended for technical assistance projects or activities financed by USAID in whole or in part and if other funds including U.S.-owned or U.S.-controlled local currencies are not readily available to finance the procurement of such materials, local language versions may be procured from the following sources, in order of preference:

- (1) The United States (USAID Geographic Code 000),
- (2) The Cooperating Country,
- (3) "Selected Free World" countries (USAID Geographic Code 941), and
- (4) "Special Free World" countries (USAID Geographic Code 899).

(f) This provision will be included in all subagreements which include procurement of goods or services over \$5,000.

(END OF STANDARD PROVISION)