



USAID | WEST BANK/GAZA

Implementing Partner Notice No. 2024-WBG-05

To: USAID/West Bank and Gaza (WBG) Implementing Partners
From: Deborah Perlman, Acting Supervisory Contracting / Agreement Officer
Office of Contracts Management (OCM), USAID/West Bank and Gaza
Date: July 9, 2024
Subject: Source and Nationality Waiver for Activities in Gaza

Dear Implementing Partners (IPs):

The purpose of this notice is to inform IPs that a source and nationality waiver has been granted for all USAID/WBG activities operating in Gaza, which establishes Geographic Code 935 for the procurement of commodities and services. This waiver does not extend to West Bank programming.

Background:

Per 22 CFR §§ 228.03 and 228.11, and ADS 310, the default Principal Geographic Code for USAID procurement of services and commodities is Code 937 (the United States, the recipient country, and developing countries other than advanced developing countries, but excluding any country that is a prohibited source).

To allow USAID/WBG IPs flexibility and enable the cost- and time-effective delivery of resources, a source and nationality waiver to Code 935 (which includes any country except foreign policy restricted countries) has been authorized under 22 CFR § 228.30(a)(3). This is based on a determination that such a waiver will “promote efficiency in the use of United States foreign assistance resources, including to avoid impairment of foreign assistance objectives.”

Effective Date and Applicability:

This source and nationality waiver is effective immediately and applies to all active awards that include procurements of commodities and services that benefit Gaza and Gaza-based programming. This waiver will also apply to awards that include Gaza programming and are awarded before December 28, 2025. Unless otherwise specified in writing by USAID/WBG, Code 935 will continue to be fully applicable per these conditions and in accordance with the requirements below.

Guidance and Requirements:

This source and nationality waiver is applicable to any commodities and services procured in support of USAID programs and activities in Gaza and makes Code 935 fully applicable for

procurement at both the prime award and subaward levels (including procurements under contracts, grants and cooperative agreements).

This waiver covers unrestricted and restricted commodities and services, including non-U.S.-manufactured non-armored vehicles. However, the following rules apply:

- For pharmaceuticals, this waiver does not waive the additional "restricted commodity" approvals required in ADS 312; as a result, for example, pharmaceuticals must meet the "restricted commodity" requirements for quality in ADS 312.
- For motor vehicles: Motor vehicles are included in the Code 935 waiver above. In addition to 22 CFR Part 228 source and nationality restrictions, Section 636(i) of the Foreign Assistance Act, as amended (FAA), requires that USAID-financed motor vehicles be manufactured in the United States, but states that this requirement can be waived based on the existence of "special circumstances." ADS 312 provides that the special circumstances that merit waiving the requirement include, but are not limited to:
 - (a) The inability of U.S. manufacturers to provide a particular type of needed motor vehicle;
 - (b) The present or projected lack of adequate service facilities and supply of spare parts for U.S.-manufactured motor vehicles in the country or region within a country where the vehicle will be used; or
 - (c) An emergency requirement for motor vehicle(s) that can be met in time only by purchase of non-U.S.-manufactured motor vehicle(s) and for which no non-USAID funds are available.

USAID/WBG has determined that the emergency nature of the situation in Gaza meets the "special circumstances" requirement for non-U.S.-manufactured motor vehicles under ADS 312 and FAA Section 636(i).

IMPORTANT:

This subject blanket waiver approval does not replace Agreement/Contracting Officer authorities beyond the ones addressed above.

IPs must appropriately document each use of the authority under this blanket waiver issued by the USAID/WBG mission. IPs must provide, within 90 days after each procurement, an informational copy of such documentation to the USAID Contracting Officer's Representative/Agreement Officer's Representative (COR or AOR) and the USAID Contracting and Agreement Officer (CO/AO) to be included in the contract or award file.

Specifically, IPs are advised that overall procurement of non-U.S.-produced motor vehicles will be minimized and only when necessary. IPs will be required to document a special circumstance

for each purchase, per ADS 312. Moreover, IPs must provide, within 90 days after each such purchase, an information copy of such documentation to the USAID COR or AOR and the USAID CO/AO to be included in the contract or award file.

We appreciate your attention to these new flexibilities. Should you have any questions or require additional clarification on the above, please contact OCM for further guidance.