PART 725—FOREIGN ACQUISITION

Authority: Sec. 621, Pub. L. 87-195, 75 Stat. 445, (22 U.S.C. 2381) as amended; E.O. 12163, Sept. 29, 1979, 44 FR 56673; 3 CFR, 1979 Comp., p. 435.

Source: 49 FR 13248, Apr. 3, 1984, unless otherwise noted.

Subpart 725.1—Buy American Act—Supplies

725.170 Exceptions for Foreign Assistance Act functions.

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Parent topic: SUBCHAPTER D—SOCIOECONOMIC PROGRAMS

Subpart 725.1—Buy American Act—Supplies

725.170 Exceptions for Foreign Assistance Act functions.

(a) In addition to the exception stated in FAR 25.103 for purchases of foreign end products for use outside the United States, Executive Order 11223, dated May 12, 1965, provides an exception for assistance functions performed under the authority of the Foreign Assistance Act.

(b) USAID regulation at 22 CFR part 228 contains generally more prescriptive geographic procurement requirements under the Foreign Assistance Act than those under the Buy American Act. As a general rule, the requirements in 22 CFR part 228 will be used in USAID program-funded awards. For operating expense-funded procurements for supplies for use in the United States, USAID applies the Buy American Act requirements.

Subpart 725.4—Trade Agreements

725.401 Exceptions.

FAR subpart 25.4 establishes procedures for purchases of supplies under the Trade Agreements Act of 1979 (including the World Trade Organization's Government Procurement Agreement) and the

USMCA (United States-Mexico-Canada Agreement, as approved by Congress in the United States-Mexico-Canada Agreement Implementation Act (Government Procurement Agreement applicable only to United States and Mexico) (Pub. L. 116-113) (19 U.S.C. chapter 29 (sections 4501-4732)). Consistent with these agreements, USAID operating expense-funded administrative procurements for supplies for use in the United States are subject to the procedures in FAR part 25, unless otherwise excepted in FAR subpart 25.4. USAID program-funded contracts for the purpose of providing foreign assistance are not subject to the procedures set forth in FAR subpart 25.4

Subpart 725.70—Source and Nationality

Source: 79 FR 74994, Dec. 16, 2014, unless otherwise noted.

725.701 General.

USAID's source and nationality requirements for program-funded contracts and subcontracts are set forth in 22 CFR part 228, Rules on Procurement of Commodities and Services Financed by USAID. 22 CFR part 228 is supplemented by the policies and procedures in ADS Chapters 310 and 312.

725.702 Designation of authorized geographic code.

(a) Unless another geographic code is specified in the Schedule of the contract, in accordance with 22 CFR part 228, the authorized code for all Agency contracts is Geographic Code 937, which is the U.S., the cooperating/recipient country, and developing countries other than advanced developing countries, and excluding prohibited sources.

(b) The list of developing countries is available in ADS Chapter 310.

725.703 Source and Nationality requirements—Contract clause.

Insert the clause at 752.225-70, Source and Nationality Requirements in all USAID program-funded solicitations and contracts for goods or services, unless source and nationality requirements do not apply as set forth at 22 CFR 228.02.

725.704 Geographic Code waivers.

(a) Authority to approve waivers of source, nationality, and transportation services requirements, pursuant to 22 CFR part 228, subpart D, is set forth in ADS Chapters 103 and 310.

(b) If a Geographic Code other than Code 937 is authorized by a waiver, the contracting officer must insert the authorized geographic code approved in the waiver, in the Schedule of the contract as required in 725.702. In addition, the contracting officer must place a copy of the approved geographic code waiver in the official contract file.