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# ADS Chapter 307

## Commodity Import Programs

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## ADS 307 – Commodity Import Programs

### 307.1 OVERVIEW

To establish administrative requirements for implementing Commodity Import Programs (CIPs) to finance purchases by the public and/or private sector in the cooperating country and to establish the policies and essential procedures applicable to suppliers, importers, and the host country under CIPs. The policies and essential procedures are intended to ensure that funds under CIPs are spent appropriately (i.e., they are not subject to waste, fraud, or abuse, and comply with applicable laws).

### 307.2 PRIMARY RESPONSIBILITIES

#### a. Strategic Objective Team:

(1) The Strategic Objective Team ensures that Commodity Import Programs (CIPs) for which they are responsible are implemented in accordance with the policies and essential procedures in this chapter.

#### b. The Bureau for Management, Office of Procurement, Policy Division (M/OP/P):

(1) M/OP/P develops and interprets policy for procurement under CIPs.

#### c. The Bureau for Management, Office of Procurement, Commodity Division (M/OP/COM):

(1) M/OP/COM implements and administers procurement-related actions which take place in USAID/W, including review and approval of transactions for financing and issuing some Implementation Letters.

#### d. The Procurement Executive:

(1) The Procurement Executive is responsible for authorizing amendments, waivers and deviations to 22 CFR 201, USAID Regulation 1 (See [22 CFR 201](#)).

#### e. The Bureau for Management, Office of the Chief Financial Officer, Cash Management and Payment Division (M/CFO/CMP):

(1) M/CFO/CMP is responsible for issuing disbursing authorizations as requested by the Host Country under Financing Requests (FRs) for CIP transactions.

**f. Assistant Administrators or their designees:**

- (1) Assistant Administrator or their designees are responsible for extending terminal dates applicable to CIPs.

**307.3 POLICY DIRECTIVES AND REQUIRED PROCEDURES**

The statements contained within the .3 section of this ADS chapter are the official Agency policies and corresponding essential procedures.

**307.3.1 Applicability of USAID Regulation 1**

All transactions financed under Commodity Import Programs (CIPs) and all suppliers of commodities or commodity-related services, importers, and the cooperating country entity that implements the CIP agreement are subject to the provisions of 22 CFR 201 (USAID Regulation 1), "Rules and Procedures Applicable to Commodity Transactions Financed by USAID" ([See 22 CFR 201, Rules and Procedures Applicable to Commodity Transactions Financed by USAID](#)).

Provisions of USAID Regulation 1 must be incorporated in the implementing document by reference, and financing of a transaction is contingent upon compliance with these provisions.

**307.3.2 Deviations and Waivers**

Any deviations from particular provisions of USAID Regulation 1 must be authorized by the USAID Procurement Executive under the authority in 22 CFR 201.86 unless the regulation provides otherwise ([See 22 CFR 201.86](#)). Statutory requirements with respect to the following criteria must be waived only to the extent provided in, and in accordance with, the applicable ADS chapters.

- a. U.S. flag cargo preference ([See ADS 315](#));
- b. Marine insurance ([See ADS 322](#));
- c. Pricing standards ([See 22 CFR 201 \(USAID Regulation 1\), Subpart G](#));
- d. Source/origin and nationality ([See ADS 310](#));
- e. Commodity eligibility ([See ADS 312](#)); and
- f. Foreign Assets Control ([See ADS 313](#)).

### 307.3.3 Implementation Letters

USAID must issue Implementation Letters (ILs) to furnish the Borrower/Grantee (B/G) with instructions and guidance pertaining to implementing the agreement with regard to specific USAID conditions and requirements which the B/G must satisfy. In addition, Implementation Letters prescribe essential procedures to be used to accomplish procurement authorized by the agreement.

The Bureau for Management, Office of Procurement (M/OP) or the Mission prepares and issues the initial Implementation Letter and any subsequent Implementation Letters that deal primarily with setting forth detailed procedures applicable to the financing of commodities and commodity-related services.

The Regional Bureau or Mission prepares Implementation Letters dealing with other aspects of grant/loan implementation.

#### 307.3.3.1 Content of Implementation Letters

The content of ILs varies based on the nature of the agreement. The initial IL must include the following, unless a particular section is not applicable:

- a. **Introduction** - Following an opening statement citing the CIP Agreement under which the Implementation Letter is being issued a short summary of the purpose and scope of the loan or grant agreement is set forth.
- b. **Conditions Precedent to Disbursement** - The Implementation Letter must explain in detail what the B/G must do to comply with the conditions precedent to disbursement that are prescribed in the CIP Agreement. Terminal dates for compliance are stipulated in the Implementation Letter. The conditions precedent to be satisfied prior to the authorization of disbursements shall include the following.
  - (1) **Submission of Legal Opinions Concerning Validity of the Agreement** - This is an opinion of either a B/G Ministry, or other counsel satisfactory to USAID, that the agreement is duly authorized or satisfied by and executed on behalf of the B/G, and constitutes a valid and legally binding obligation of the B/G in accordance with the terms of the agreement. Guidelines for drafting this opinion are attached as a Supplementary Reference (**See Legal Opinion Concerning Validity of the Agreement**).
  - (2) **Designation of B/G Authorized Representative and Submission of Specimen Signatures** - The B/G must furnish a written statement with

the legal opinion referenced in the preceding criteria (para. a) that represents and warrants to USAID that the persons signing the documents on its behalf have the authority to act in the capacities specified in connection with the execution and operation of the agreement. **(See Designation of Authorized Representatives).**

**c. Procurement** - The initial or subsequent IL must set forth the principal commodity elements of non-project assistance, providing information on commodity eligibility, source, dollar value, restrictive dates, applicable rules and procedures, and other procurement-related information. Attachments must include:

**(1)** Any applicable Special Provisions, including special provisions having general applicability which must be included to the extent pertinent in the case of Letter of Commitment and special Letter of Credit financing; and

**(2)** List of the commodities, by description and Schedule B numbers, that are eligible for USAID-financing. In the case of Letter of Commitment financing, instructions from the B/G to the U.S. banks must give Schedule B numbers from among those shown in this attachment. The attachment also contains all of the commodity-related special provisions applicable to the Schedule B codes included in the list of eligible commodities. **(See 307.5.6)**

The appropriate agency of the B/G must be required to prepare a procurement plan identifying the commodities to be financed by USAID, the criteria and procedures for determining importer eligibility, the mechanism for publicizing procurement and making awards, the method of financing to be used, and arrangements to ensure arrival and disposition of the commodities.

**d. Ineligible Supplier Lists** - The names of suppliers suspended, debarred, or subject to prior review by USAID/W must be made available to the B/G. The latest list of such ineligible suppliers should be included as an attachment to the Implementation Letter. **(See [Lists of Parties Excluded from Federal Procurement and Nonprocurement Actions](#))**

**e. Shipping Instructions** - List USAID requirements governing responsibilities of the B/G with regard to shipment of USAID-financed commodities and include instructions as to how the B/G may comply with these requirements.

- f. Financing Requests** - A copy of the Form AID 1130-2, Financing Request (FR) and instructions for its completion are attached to the Implementation Letter. The B/G uses the form to request issuance of a specific disbursing authorization to initiate detailed financing arrangements for the procurement of commodities and commodity-related services. **(See Form AID 1130-2)**
- g. Required Reports** - Instructions and suggested formats for preparing the monthly progress reports, as required by the CIP Agreement, are provided as attachments to the Implementation Letter. **(See Monthly Progress Reports)**
- h. Terminal Dates** - Set forth the terminal dates for meeting the conditions precedent to disbursement, for requesting USAID-issuance of disbursing authorizations, for contracting, for shipping, and for disbursement of USAID funds.

### **307.3.3.2 Extensions and Changes to Implementations Letters**

The responsible Assistant Administrators or their designees are authorized to extend terminal dates and they may re-delegate this authority. Extensions of the final date for meeting initial conditions precedent for a cumulative period of more than one year and extensions of the final dates for requesting disbursing authorizations, contracting, shipping, and disbursement of funds for a cumulative period of more than two years for each must be authorized only by the Assistant Administrator or Deputy if so delegated.

ILs must be issued to reflect changes in dates, amounts, method of financing, special provisions, or other information that impacts on the eligibility of transactions. The clearance of the Bureau for Management, Office of the Chief Financial Officer, Cash Management and Payment Division (M/CFO/CMP) is required if the proposed revision affects Financing Requests already transmitted to M/CFO/CMP.

### **307.3.4 Financing Request (FR)**

- a.** Wherever possible, the Financing Request (FR) covering the total dollar amount obligated under the Agreement must be submitted by the B/G to the Mission immediately following compliance with conditions precedent to disbursement.
- b.** FR's are subject to the provisions of individual agreements and ILs and the practical limitations imposed by initial and terminal eligibility, contracting, shipping, or disbursement dates. Subject to the foregoing conditions, FR's or amendments are submitted as needed at any time during the life of the Agreement.
- c.** Methods of financing must be selected when the FR is prepared. FR's must be

used to request issuance of disbursing authorizations and are the means by which USAID reimburses suppliers, other U.S. Government agencies, or the B/G for costs incurred in the procurement of eligible commodities and commodity-related services under the terms of the Agreements.

### **307.3.5 Minimum Size of Transaction**

The minimum value for each USAID-financed transaction under a CIP must be no less than \$5,000. Based upon the size and nature of the program and other relevant circumstances, the Mission is to endeavor to increase the minimum level to \$10,000 or more in any country or program when this is feasible and does not defeat USAID objectives. The minimum size of transaction applies to each import license, foreign exchange allocation, or commercial letter of credit issued under the non-project assistance agreement.

### **307.3.6 Eligibility of Commodities**

The non-project assistance agreement or Implementation Letters must specify the U.S. Department of Commerce Schedule B identification numbers of commodities that are eligible to be financed.

USAID reserves authority to decline to finance such commodities even when they are included in the list of eligible commodities.

**a.** Eligible commodities must be identified by incorporating the USAID Commodity Eligibility Listing (**See [USAID Commodity Eligibility Listing](#)**) in its entirety, or by providing a specific list of eligible commodities with one of the documents identified in 307.3.8, paragraph a. When the Commodity Eligibility Listing is not incorporated in its entirety, the list of eligible commodities must specify that USAID may agree in writing to finance other commodities to permit subsequent addition of commodities not included in the original agreement.

**b.** In order to reserve the authority to decline to finance commodities despite their being listed as eligible the following provision must be included in each non-project assistance agreement:

"USAID reserves the right in exceptional situations to delete commodity categories or items within commodity categories described by Schedule B codes on the positive list. Such right will be exercised at a point in time no later than commodity pre-validation by USAID, or if no commodity pre-validation is required, no later than the date on which an irrevocable Letter of Credit covering U.S.-source procurement of the commodity is confirmed by a U.S. bank in favor of the supplier or, with respect to non-U.S.

procurement, the date on which the credit is opened in favor of the supplier. If no pre-validation is required and payment is not by Letter of Credit, USAID will exercise this right no later than the date on which it expands funds made available to the B/G under this agreement for the financing of the commodity. In any event, however, the B/G will be notified through the USAID Mission in its country of any decision by USAID to exercise this right pursuant to a determination that financing the commodity would adversely affect USAID or foreign policy objectives of the United States or could jeopardize the safety or health of people in the importing country."

- c. This provision may be omitted only on a finding by the appropriate Assistant Administrator and the Director of M/OP that inclusion of the provision would adversely affect the negotiation or implementation of the specific agreement concerned. Control is exercised as indicated in the text of the provision, with prompt notification to the B/G. However, action to decline financing is taken only with the concurrence of M/OP/COM and the Bureau concerned, or on instruction from the Administrator.

### **307.3.7 Applicability of Policy Determination 20**

Policy Determination (PD) 20, U.S. Programs and U.S. Job, applies to CIP transactions when project-like commodity systems and installations such as processing plants and equipment are to be financed, and the U.S. supplier of such commodities and the foreign importer disclose that they currently have, or plan to establish, ownership interest in one another, or a joint venture ([See PD 20](#)).

The Mission must comply with the requirements of PD 20 with regard to any such transactions before USAID agrees to finance them. The Mission must review and determine whether the transaction is eligible for USAID financing. Whenever possible this must take place before issuance of a letter of credit or letter of commitment to the supplier. When a project-like commodity system or installation is proposed, the Mission shall require the supplier and importer to certify whether or not they have, or plan to establish, ownership interest in one another, or a joint venture.

If the Mission decides to finance a transaction which, while not obviously prohibited under PD 20, might raise some concerns, the Mission must require the supplier to sign the certification addressing the export of U.S. jobs from Appendix C of PD 20 ([See PD 20, Appendix C](#)).

### **307.3.8 Rules and Procedures Applicable to Commodity Transactions**

Transactions which USAID finances under Commodity Import Programs must conform with the rules and procedures of USAID Regulation 1 (22 CFR 201)([See 22 CFR 201](#)).

### **307.3.9 Responsibility for Procurement**

Cooperating country entities that are allocated funds under Commodity Import Programs must undertake their own procurement, except that when a complex variety of commodities is to be procured for a specific activity, the entity must have the option of having a non-governmental procurement agent.

When the services of a non-governmental procurement agent are used, the entity must negotiate and sign a contract with the agent for the services. If USAID is to finance such services, authorization for financing must be specified in the program document or approved by an official authorized to sign the program document. (See [Use of a Procurement Agent](#))

### **307.3.10 Public Sector Procurement**

Public sector organizations must procure commodities in accordance with section 201.22 of USAID Regulation 1 (See [22 CFR 201.22](#)). The approval requirements for procurement of equipment and materials, which are set forth in, Chapter 305 for Host Country Contracting for equipment and materials also apply to public sector procurements under CIPs. Supplementary Reference "Country Contracting," Chapter 3, "Procurement of Equipment and Materials" provides information in sections 3.0 - 3.11 for use in implementing public sector procurements (See [Country Contracting, Chapter 3](#)). In addition, the importer must obtain approval from USAID for each proposed contract in excess of \$100,000, or equivalent (exclusive of ocean and air transportation costs), prior to finalization with the supplier.

Commodity specifications must be stated in a non-restrictive manner and in sufficient detail to permit maximum response from prospective suppliers. The metric system of measurements must be used for specifications unless USAID determines in writing that such use is impractical or is likely to cause significant inefficiencies or the loss of markets to U.S. firms. (See [ADS 323](#))

### **307.3.11 Private Sector Procurement**

Private sector entities must use good commercial practice and procure commodities in accordance with the requirements of Section 201.23 of USAID Regulation 1 (See [22 CFR 201.23](#)).

### **307.3.12 Price Eligibility**

For both public and private sector procurements, the procurement price must meet USAID's price requirements as set forth in USAID Regulation 1, Subpart G (See

**Mandatory Reference, [22 CFR 201, Subpart G](#)).**

A contract award made under a formal competitive bid procedure normally satisfies the commodity price requirements if USAID determines that the formal bid procedure attracted a sufficient number of independent, responsive bids to ensure that competition was achieved.

**307.4 MANDATORY REFERENCES****307.4.1 External Mandatory References**

- a. [22 CFR 201, Rules and Procedures Applicable to Commodity Transactions Financed by USAID](#)
- b. [22 CFR 201.22, Procurement under public sector procedures](#)
- c. [22 CFR 201.23, Procurement under private sector procedures](#)
- d. [22 CFR 201.86, Waiver and amendment authority](#)
- e. [22 CFR 201 Subpart G, Price Provisions](#)
- f. [Foreign Assistance Act of 1961, as amended, Section 635](#)
- g. [Lists of Parties Excluded from Federal Procurement and Nonprocurement Actions](#)

**307.4.2 Internal Mandatory References**

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- a. [ADS 300, Agency Acquisition and Assistance \(A&A\) Planning](#)
- b. [ADS 310, Source, Origin, and Nationality](#)
- c. [ADS 312, Eligibility of Commodities](#)
- d. [ADS 313, Eligibility of Suppliers and Contractors](#)
- e. [ADS 315, Cargo Preference](#)
- f. [ADS 322, Procurement of Insurance](#)
- g. **Financing Request (FR) (Form AID 1130-2) and instructions**

- h. **Instructions and Format for Monthly Progress Reports**
- i. [Policy Determination \(PD\) 20, U.S. Programs and U.S. Jobs](#)
- j. [USAID Commodity Eligibility Listing](#)

#### **307.5 ADDITIONAL HELP**

- a. **Designation of B/G Authorized Representative**
- b. **Guidelines for Drafting Legal Opinions Concerning Validity of the Agreement**
- c. [Use of Procurement Agents](#)

#### **307.6 DEFINITIONS**

##### **borrower/grantee**

The government of the cooperating country, or any agency, instrumentality or political subdivision thereof, or any private entity, to which USAID directly makes funds available by loan or grant. (Chapter 307)

##### **Commodity Import Program (CIP)**

A program in which USAID provides foreign exchange to a host country that, by the terms of the applicable agreement between USAID and the host country, is used to finance particular commodity import transactions of the host country. (Chapters 307, [320](#), [324](#))

##### **Financing Request (FR)**

The document used by the Borrower/ Grantee to request issuance of a specific disbursing authorization (such as a Bank Letter of Commitment) to initiate detailed financing arrangements for procurement of commodities and commodity-related services authorized by the Agreement and the pertinent Implementation Letter. (Chapter 307)

##### **incidental services**

Installation or erection of USAID-financed equipment, or the training of personnel in the maintenance, operation and use of such equipment. (Chapter 307)

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