

**Determination and Findings (D&F)**  
**Authorization for the Use of Other than Full-and-Open Competition in the Award or Modification of Contracts**

Pursuant to the authority set forth in Section 706.302-70(b)(3)(ii) of the Acquisition Regulation (AIDAR) of the U.S. Agency for International Development (USAID), I have determined that it is necessary to provide for the following exceptions to competition in the award and modification of contracts in support of USAID's response to activities and programs related to an outbreak of contagious infectious diseases (as defined below) to avoid the impairment of U.S. foreign assistance and the U.S. Government's foreign-policy objectives. I am making this determination in consideration of the supporting findings set forth below; it will remain in force and effect for five years from the date of the authorization of this Expedited Procedures Package (EPP) for Responding to Outbreaks of Contagious Infectious Diseases.

1. The nature and/or description of the action being approved.

As a matter of law and policy, USAID's regular practice is to follow full-and-open competition in the award of contracts and in instances when a proposed modification to an existing contract triggers competition requirements. However, in exceptional circumstances, these interests must give way to the overriding objective of providing emergency and often life-saving interventions on a timely basis. Approval of this authority for exceptions to full-and-open competition is necessary to provide the flexibility that is essential to USAID's ability to implement activities to respond to outbreaks of contagious infectious diseases in a timely and vigilant manner in the context of rapidly changing circumstances that threaten the global community. This action authorizes the award of new contracts by using other than full-and-open competition procedures, as well as non-competitive modifications to existing contracts. This EPP covers activities financed from all sources of the Agency's funding, including prior-year funding, as well as current and future Fiscal Year appropriations, unless Congress has enacted special rules for them.

This EPP would apply under any of the following circumstances below, any one of which would constitute an "Outbreak of a Contagious Infectious Disease":

1. The Director-General of the World Health Organization (WHO) declares an infectious-disease outbreak to be a Public Health Emergency of International Concern (PHEIC);
2. The Administrator makes funds available from the Emergency Response Fund for Contagious Infectious-Disease Outbreaks (ERF) to address a declared PHEIC or another outbreak of a dangerous infectious disease;
3. The United Nations Interagency Standing Committee declares an infectious-disease outbreak to have potential humanitarian consequences, or to constitute a humanitarian crisis; or

4. The Assistant Administrator for Global Health (AA/GH) determines that an infectious-disease outbreak is of such significance that an immediate response from USAID is warranted:
  - a. In making such a determination, the AA/GH must document his or her determination and the factors on which he or she based it, and provide an Information Memorandum to the Administrator. Factors to consider include, but are not limited to, the following:
    - A. Pathogenicity: The situation involves the emergence of a highly pathogenic agent;
    - B. Potential to Spread Widely: The disease has the potential to spread beyond the initial area of the outbreak and pose a regional or global threat;
    - C. Local Response Capacity: The health institutions and supply-chains in affected or at-risk countries are inadequate to investigate and/or respond to the outbreak, given limited knowledge about the disease and/or tools to combat it; and/or
    - D. U.S. Interest: Whether or not the disease has spread to the United States, it has a strong potential for adverse impact on the Homeland.

Whereas USAID's Operating Units (OUs) may seek to use this EPP with existing partners and existing awards, it enables them to engage with any qualified, capable partner, whether the organization is a current holder of a contract with USAID or not. USAID encourages the use of this EPP with new and underutilized partners as defined in the Agency's *Acquisition and Assistance Strategy*; private-sector partners as defined in the Agency's Private-Sector Engagement Policy; and community- and faith-based partners that could scale their operations to prevent or respond to an Outbreak of a Contagious Infectious Disease. OUs should not use this EPP to extend non-performing programs.

### **Justification**

Authorization of the use of other than full-and-open competition is necessary, given the urgent need for USAID to mobilize technical, financial, and other resources rapidly to minimize the impact on the health of populations and economies in countries that often have limited capacity to respond quickly to save lives during an Outbreak of a Contagious Infectious Disease. Expeditiously providing funds in as responsive a manner as possible takes priority over other options that would delay such funding, especially where delay or inflexibility could compromise USAID's ability to provide life-saving support to those affected by an Outbreak of a Contagious Infectious Disease.

To be responsive to an Outbreak of a Contagious Infectious Disease, USAID's financial and technical support must flow rapidly to the areas where they are needed most, with the most

effective interventions. The timeframe required by fully competitive award procedures, if followed, would not enable USAID to act in a manner consistent with U.S. foreign policy. Over the past five years, the Agency has supported critical response efforts throughout the world to deadly Outbreaks of Contagious Infectious Diseases, including Ebola, Zika, pneumonic plague, and COVID-19, in a timely and technically sound manner consistent with the International Health Regulations of 2005 (IHR). In a number of these cases, Congress has appropriated significant additional funding to address the outbreaks on an urgent basis. While Outbreaks of Contagious Infectious Diseases differ based on the pathogen, magnitude, and location, the need for urgent assistance remains critical in any epidemic or pandemic. Engaging with host-country partners, civil society, the private sector, faith-based organizations, foundations, and multilateral institutions, USAID can help contain and mitigate Outbreaks of a Contagious Infectious Disease that have the potential to pose a regional or global threat. The availability and use of expedited procurement procedures would have a significant impact on containing and mitigating an outbreak and saving lives.

2. Citation of the appropriate statute and/or regulation upon which the D&F is based.

Under Section 113(e)(2) of Title 40 of the U.S. Code (USC), competition requirements shall not impair or affect the authorities of an Executive Branch Department or Agency with respect to “any program conducted for purposes of ... transfer to foreign governments, or foreign aid, relief or rehabilitation.” USAID has implemented this provision through §706.302-70(b)(3)(ii) of Title 48 of the Code of Federal Regulations (CFR), which provides an exception to competition for “awards for countries, regions, projects, or programs for which the Administrator of USAID makes a formal written determination with supported findings that compliance with full and open competition procedures would impair foreign assistance objectives, and would be inconsistent with the fulfillment of the foreign assistance program.”

Under Section 706.302-70(c)(2) of Title 48 of the CFR, determinations under the authority used herein will not be subject to the requirement for certification by a Contracting Officer or approval in accordance with Part 6.304 of the Federal Acquisition Regulation (FAR).

3. Findings that detail the particular circumstances, facts, or reasoning essential to support the determination. Necessary supporting documentation shall be obtained from appropriate requirements and technical personnel.

While it is impossible to list all of the circumstances that justify the use of this EPP, the following are some of the most-common situations in which the authority would be necessary, and examples of how USAID would use it to support U.S. foreign-assistance objectives in these situations:

First, USAID frequently needs to extend existing contracts beyond their present Scopes of Work to bridge gaps between existing programs and activities and the establishment of new programs and activities, including the rapid response needed to contain and mitigate an Outbreak of a Contagious Infectious Disease. The continuation or acceleration of existing activities beyond their present scope to support the services and supplies that might be necessary to detect a

contagious infectious disease, diagnose it, and treat it in high-risk populations; ensure the continued supply of emergency protective gear and commodities used at health facilities and laboratories; and support accurate communications with the public about risk and preventative measures, which is of critical importance during the rapidly changing environment of an Outbreak of a Contagious Infectious Disease. Expedited procedures to authorize the extension of programs beyond their present Scopes of Work would enable USAID to maintain such programmatic components while moving forward to reach the goals of an emergency response.

In addition, as funding levels increase to respond to an Outbreak of a Contagious Infectious Disease, including through supplemental appropriations or Congressional directives, USAID often uses existing contracts to meet the demand. This sometimes requires raising the ceiling of a contract far above its original Total Estimate Cost (TEC) or beyond the original completion date of the award. When this happens, it is often not in the best interest of USAID or U.S. foreign policy to stop programs prematurely or re-compete an award, and USAID needs tools to respond flexibly by raising ceilings or extending completion dates or making new procurements on an expedited basis. When such rapid changes are necessary, existing contractors might be able to absorb the additional funding; however, they need USAID to increase the TECs of their contracts quickly to continue their current activities in addition to the urgent activities required to support the response to the Outbreak of a Contagious Infectious Disease. In other cases, if existing contractors cannot absorb additional funds or do not have the capacity for new activities, then the Agency might need to bring on new ones urgently. This is particularly true in engaging new and non-traditional partners, who might have particular expertise in a critical technical area but are not currently in a contractual relationship with USAID. It is also especially true of potential private-sector partners with which USAID could co-create scalable solutions rapidly to implement through their networks and platforms. Allowing for such rapid procurements would allow the Agency to take advantage of the speed with which the private sector can move through market-based systems to address both the direct and secondary development impacts of an Outbreak of a Contagious Infectious Disease.

This EPP encourages all of USAID's OUs to consider engaging partners that are new to the Agency or non-traditional, such as private-sector firms or community and faith-based organizations that have a high capacity to scale social mobilization, behavior-change communications, and similar technical approaches to address the risk of the spread of contagious infectious diseases.

Moreover, as the priorities in an Outbreak of a Contagious Infectious Disease evolve, significant and unanticipated changes often occur in the supplies and services needed to carry out the activities and initiatives USAID funds. In many cases, USAID/Washington mechanisms and Mission bilateral programs might have experience and respected expertise in a particular country, yet need the flexibility to expand quickly to new geographic areas in a country or region, or across the world, to address an Outbreak of a Contagious Infectious Disease. During the 2018 outbreak of Ebola in North Kivu Province in the Democratic Republic of Congo (DRC), a bilateral program managed by the USAID Mission in the DRC worked in one at-risk Province but required the flexibility to work in additional Provinces to which Ebola threatened to spread. During the 2016 outbreak of the Zika virus in Latin America and the Caribbean, USAID

had to respond quickly in a region where USAID's health programs largely had ended a decade earlier. To ensure a rapid and effective response, USAID modified a malaria contract for indoor residual spraying in Africa to work in Latin America and the Caribbean to conduct vector-control activities for the *aedes aegypti* mosquito (a non-malaria vector) and control the spread of the Zika. While USAID ultimately completed the necessary contract modification, the Agency could have moved more quickly to address the outbreak had an EPP been in place.

As programs rapidly scale up and technical priorities shift to address an Outbreak of a Contagious Infectious Disease, the Agency's staffing needs might also require commensurate shifts to ensure the adequate oversight of U.S. foreign-assistance investments. In many instances, a rapid expansion and re-organization of staffing is required to meet the demands of a response to an Outbreak of a Contagious Infectious Disease. For example, existing USAID/Washington support-services contracts might require modification to provide staff surge capacity in relevant technical areas to our field Missions to contain or mitigate an epidemic. In addition, the Agency might need to award or extend Personal Services Contracts (PSCs) quickly to ensure adequate staffing for activities under an Outbreak of a Contagious Infectious Disease. While following standard contracting procedures for PSCs could take up to one year, the use of limited competition to issue PSCs would allow USAID to obtain the services of new, qualified staff and/or transition existing staff in an expeditious manner to support programming during an outbreak. By facilitating the alignment of staff technical skills with evolving technical priorities, this EPP would allow USAID to ensure our programs remain at the forefront of global efforts to control an epidemic or pandemic.

Other urgent or critical situations might emerge during which USAID would find it necessary to rely upon this authority. This EPP would provide the flexibility necessary for USAID/Washington and USAID's Missions to respond most appropriately to these situations, without undue procedural constraints that would have a negative impact on programmatic results.

4. A determination, based on the findings, that the proposed action is justified under the applicable statute or regulation.

I have determined that it is critical to the objectives of U.S. foreign-assistance that USAID maintain flexibility to respond rapidly and effectively to an Outbreak of a Contagious Infectious Disease to contain and mitigate it and save lives.

5. Expiration date of the D&F, if required.

This D&F is effective immediately upon my authorization, and will remain valid for five years from the date of my signature.

6. The signature of the official authorized to sign the D&F and the date signed.

In accordance with 706.302-70(b)(3)(ii) of the AIDAR, the Administrator of USAID is the appropriate official to sign this class D&F, in accordance with Agency regulations.

## **Blanket Determination for Restricting Eligibility in the Award or Amendment of Assistance Instruments**

Consistent with the Federal Grant and Cooperative Agreement Act of 1977, the U.S. Agency for International Development (USAID) encourages unrestricted competition in the award of discretionary grants and cooperative agreements. USAID's policy regarding these assistance awards requires unrestricted competition, unless one of the pre-approved conditions or a programmatic justification to restrict eligibility applies and is documented in accordance with Chapter 303 of the Automated Directives System (ADS), Grants and Cooperative Agreements to Non-Governmental Organizations. One of the seven pre-approved conditions is an award made under an Administrator-approved blanket determination or justification to restrict eligibility for an approved class of awards.

Pursuant to Chapter 303 of the ADS, I have determined that it is necessary to provide a blanket authorization to restrict eligibility in the award or amendment of grants and cooperative agreements to respond rapidly and effectively to an Outbreak of Contagious Infectious Diseases. In doing so, USAID will contribute to the containment and mitigation of an outbreak and save lives.

I have based this Expedited Procedures Package (EPP) on the justifications set forth below, and it applies to all forms of restricted eligibility, including: (1) a funding opportunity that is limited to a specific type of entity or otherwise narrows the pool of applicants that may compete for a grant or cooperative agreement; (2) an award or other assistance action limited to one or a limited number of recipients; and, (3) an amendment of a grant or cooperative agreement beyond its original program description and/or Total Estimated Amount (TEA or "ceiling"). This action authorizes the award of new assistance instruments by using other than full-and-open competition procedures, as well as non-competitive modifications to existing grants and cooperative agreements. This EPP covers activities financed from all sources of the Agency's funding, including prior-year funding, as well as current and future Fiscal Year appropriations, unless Congress has enacted special rules for these appropriations.

This EPP would apply under any of the following circumstances below, any one of which would constitute an "Outbreak of a Contagious Infectious Disease":

The Director-General of the World Health Organization (WHO) declares an infectious-disease outbreak to be a Public Health Emergency of International Concern (PHEIC);

1. The Administrator makes funds available from the Emergency Response Fund for Contagious Infectious-Disease Outbreaks (ERF) to address a declared PHEIC or another outbreak of a dangerous infectious disease;
2. The United Nations Interagency Standing Committee declares an infectious-disease outbreak to have potential humanitarian consequences, or to constitute a humanitarian crisis; or

3. The Assistant Administrator for Global Health (AA/GH) determines that an infectious-disease outbreak is of such significance that an immediate response from USAID is warranted:
  - a. In making such a determination, the AA/GH must document his or her determination and the factors on which he or she based it, and provide an Information Memorandum to the Administrator. Factors to consider include, but are not limited to, the following:
    - A. Pathogenicity: The situation involves the emergence of a highly pathogenic agent;
    - B. Potential to Spread Widely: The disease has the potential to spread beyond the initial area of the outbreak and pose a regional or global threat;
    - C. Local Response Capacity: The health institutions and supply-chains in affected or at-risk countries are inadequate to investigate and/or respond to the outbreak, given limited knowledge about the disease and/or tools to combat it; and/or
    - D. U.S. Interest: Whether or not the disease has spread to the United States, it has a strong potential for adverse impact on the Homeland.

Whereas USAID's Operating Units (OUs) may seek to use this EPP with existing partners and existing awards, it enables them to engage with any qualified, capable partner, whether the organization is a current recipient of a grant or cooperative agreement with USAID or not. USAID encourages the use of this EPP with new and underutilized partners as defined in the Agency's *Acquisition and Assistance Strategy*; private-sector partners as defined in the Agency's Private-Sector Engagement Policy; and community- and faith-based partners that could scale their operations to prevent or respond to an Outbreak of a Contagious Infectious Disease. OUs should not use this EPP to extend non-performing programs.

### **Justification**

It is critical to the objectives of U.S. foreign assistance that USAID be able to maintain flexibility to respond rapidly and effectively to an Outbreak of a Contagious Infectious Disease. To be responsive, USAID's financial and technical support must flow rapidly to the areas where they are needed most, with the most effective interventions. The timeframe required by fully competitive award procedures, if followed, would not enable USAID to act in a manner consistent with U.S. foreign policy. Over the past five years, the Agency has supported critical response efforts throughout the world to deadly Outbreaks of Contagious Infectious Diseases, including Ebola, Zika, pneumonic plague, and COVID-19, consistent with the International Health Regulations of 2005 (IHR). In a number of these cases, Congress has appropriated significant additional funding to address the outbreaks on an urgent basis. While Outbreaks of Contagious Infectious Diseases differ based on the pathogen, magnitude, and location, the need

for urgent assistance remains critical in any epidemic or pandemic. Engaging with host-country partners, civil society, the private sector, faith-based organizations, foundations, and multilateral institutions, USAID can help contain and mitigate Outbreaks of a Contagious Infectious Disease that have the potential to pose a regional or global threat. The availability and use of expedited procurement procedures would have a significant impact on containing and mitigating an outbreak and saving lives.

While it is impossible to list all of the circumstances that justify the use of this EPP, the following are some of the most-common situations in which the authority would be necessary, and examples of how USAID would use it to support U.S. foreign-assistance objectives in these situations:

First, USAID frequently needs to extend existing grants, cooperative agreements, and other assistance instruments beyond their present Scopes of Work to bridge gaps between existing programs and activities and the establishment of new programs and activities, including the rapid response needed to contain and mitigate an Outbreak of a Contagious Infectious Disease. The continuation or acceleration of existing activities beyond their present scope to support the services and supplies that might be necessary to detect a contagious infectious disease, diagnose it, and treat it in high-risk populations; ensure the continued supply of emergency protective gear and commodities used at health facilities and laboratories; and support accurate communications with the public about risk and preventative measures, which is of critical importance during the rapidly changing environment of an Outbreak of a Contagious Infectious Disease. As an example, in 2012, USAID used the EPP to amend an existing grant to fund essential diagnostic laboratory equipment for the in-country collection, shipment, and analysis of samples of suspected Middle East Respiratory Syndrome (MERS) caused by a novel coronavirus (MERS-CoV). Expedited procedures to authorize the extension of programs beyond their present Scopes of Work would enable USAID to maintain such programmatic components while moving forward to reach the goals of an emergency response.

In addition, as funding levels increase to respond to an Outbreak of a Contagious Infectious Disease, including through supplemental appropriations or Congressional directives, USAID often uses existing assistance instruments to meet the demand. This sometimes requires raising the ceiling of a grant, cooperative agreement, or other mechanism far above its original TEA or beyond the original completion date of the award. When this happens, it is often not in the best interest of USAID or U.S. foreign policy to stop programs prematurely or re-compete an award, and USAID needs tools to respond flexibly by raising ceilings or extending completion dates or making new procurements on an expedited basis.

When such rapid changes are necessary, existing implementing partners might be able to absorb the additional funding; however, they need USAID to increase the TEAs of their grants, cooperative agreements, or other instruments quickly to continue their current activities in addition to the urgent activities required to support the response to the Outbreak of a Contagious Infectious Disease. During the outbreak of Ebola in West Africa, projects had to balance the potential of shutting down other aspects of their projects, in the affected countries or elsewhere, given that the TEA of their awards could not accommodate the unanticipated influx of

emergency funds to address the outbreak. In one case, the lengthy modification process delayed the project's work and hampered USAID's capacity to respond to the outbreak.

In other cases, if existing implementing partners cannot absorb additional funds or do not have the capacity for new activities, then the Agency might need to bring on new ones urgently. This is particularly true in engaging new and non-traditional partners, who might have particular expertise in a critical technical area but are not currently in a contractual relationship with USAID. It is also especially true of potential private-sector partners with which USAID could co-create scalable solutions rapidly to implement through their networks and platforms. Allowing for such rapid procurements would allow the Agency to take advantage of the speed with which the private sector can move through market-based systems to address both the direct and secondary development impacts of an Outbreak of a Contagious Infectious Disease.

This EPP encourages all of USAID's OUs to consider engaging partners that are new to the Agency or non-traditional, such as private-sector firms or community and faith-based organizations that have a high capacity to scale social mobilization, behavior-change communications, and similar technical approaches to address the risk of the spread of contagious infectious diseases.

Other urgent or critical situations might emerge during which USAID would find it necessary to rely upon this authority. This EPP would provide the flexibility necessary for USAID/Washington and USAID's Missions to respond most appropriately to these situations, without undue procedural constraints that would have a negative impact on programmatic results.

## **Source-and-Nationality Waiver for Activities and Programs during an Outbreak of a Contagious Infectious Disease**

As part of this Expedited Procedures Package (EPP), the Bureau for Global Health and the COVID-19 Task Force of the U.S. Agency for International Development (USAID) are asking the Administrator to approve a source-and-nationality waiver to establish Geographic Code 935 (which includes any country except those restricted for foreign-policy reasons or under sanctions imposed by the United States and/or the United Nations) for the procurement of goods and services for activities and programs to respond to an Outbreak of a Contagious Infectious Disease (as defined in the Action Memorandum by which the Administrator approved the EPP). As described below, this is similar to waivers authorized in the past for infectious-disease outbreaks. Such a waiver is critical to the Agency's ability to ensure the ready availability of services and commodities to respond to Outbreaks of Contagious Infectious Diseases and save lives. Absent such a waiver, the programs would experience significant barriers in providing services in a timely manner, and would have to expend significant time and resources to address source-and-nationality issues. For these reasons, we recommend that the Agency use Geographic Code 935 as the applicable source-and-nationality code for an Outbreak of a Contagious Infectious Disease as outlined in this EPP.

### **Background**

According to Section 228.11 of Title 22 of the Code of Federal Regulations (CFR) and Chapter 310 of the Automated Directives System (ADS), the default Principal Geographic Code for USAID's procurement of goods 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). The Administrator may authorize source-and-nationality waivers to Code 935 under 228.30(a)(3) of Title 22 of the CFR 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." The Administrator may approve such waivers on a regional, country, or program basis.

The Agency has previously approved waivers for infectious-disease outbreaks. As part of the Pandemic Influenza and Other Emerging Threat Efforts (PIOET) Expedited Procedures in effect from 2006 through 2018, the Administrator approved the establishment of Geographic Code 935 (which includes all countries except countries restricted for foreign-policy reasons and those under sanctions imposed by the United States and/or the United Nations) as the applicable authorized source-and-nationality code for any goods and services procured in direct support of USAID's relief and containment efforts with respect to an emergency that involved pandemic influenza or another "Emerging Infectious Disease Threat," as defined under those previous waivers. The waivers also enabled USAID and its partners to obtain readily available equipment and materials quickly in nearby countries, which accelerated implementation. They also gave USAID the flexibility needed to purchase services and supplies that were compatible with other Federal Departments and Agencies and other donors. Absent a blanket waiver, USAID would

have experienced significant barriers in providing services in a timely manner, and would have had to expend significant time and resources to address source-and-nationality issues.

As with the previous waivers, a source-and-nationality waiver for goods and services during an Outbreak of a Contagious Infectious Disease, as defined in this EPP, would allow USAID to respond quickly to an emergency situation with the procurement of goods and services such as motor vehicles, essential laboratory equipment and supplies, infection-control materials for health facilities, and medicines. Expedited processes for the procurement of medical supplies, or to fill gaps in essential medicines for the treatment of symptomatic patients who are awaiting the verification of the cause of their illness, could be necessary during an Outbreak of a Contagious Infectious Disease.

### **Recommendation**

We recommend that you approve this source-and-nationality waiver for goods and services procured in relation to an Outbreak of a Contagious Infectious Disease so USAID can implement critical programs and activities in a timely, flexible, and cost-effective manner. Permitting USAID and its implementing partners to use sources under Code 935 would ensure USAID-funded projects could procure a sufficient quantity of high-quality goods and services at an accelerated pace, which would allow the rapid flow of assistance to the areas where it is needed most. It also would increase the effectiveness of reaching vulnerable populations affected by the outbreak and respond to rapidly shifting mandates and priorities.

This source-and-nationality waiver would apply to any goods and services procured in support of activities to prevent, contain, or mitigate an Outbreak of a Contagious Infectious Disease necessary to meet the objectives of the emergency response. Further, although Code 937 includes the recipient country and other developing countries, capacity, quality, and other considerations require that programs maintain the option to source commodities and services beyond Code 937, on a worldwide basis.

This waiver would make Code 935 fully applicable for procurement at both the level of prime contract and sub-contracts (including procurements under grants and cooperative agreements). This waiver would cover unrestricted and restricted commodities, including motor vehicles and pharmaceuticals. However, the following rules would apply:

- For pharmaceuticals, this waiver would not waive the additional “restricted-commodity” approvals required in Chapter 312 of the ADS; and.
- For motor vehicles, additional considerations appear below.

For awards and purchases that rely on this source-and-nationality waiver, the cognizant Contracting Officer or Agreement Officer (CO/AO) should document the applicability of this waiver in the award’s file. The source-and-nationality waiver within this EPP would apply to awards made on or before the date that is five years from the date of the signature by the Administrator of this authorization, or when the waiver does not apply to the entire instrument,

to purchases made on or before such date. The source-and nationality waiver also would apply to procurement financed from all sources of the Agency's funding, including prior-year funding, as well as current and future Fiscal Year appropriations, unless Congress has enacted special rules for these appropriations.

### **Motor Vehicles**

The Code 935 waiver above includes motor vehicles. In addition to the source-and-nationality restrictions in Part 228 of Title 22 of the CFR, 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 the Agency may waive this requirement based on the existence of "special circumstances." Chapter 312.3.3.2.b.3 of the ADS further provides that the Administrator may issue blanket waivers for the procurement of non-U.S.-manufactured motor vehicles on a regional, country, or program basis if the waiver documents the special circumstances and provides adequate supporting justification. Chapter 312 of the ADS provides that the special circumstances that merit waiving the requirement include, but are not limited to, the following:

- (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 USAID or its partners will use the vehicle; or
- (c) An emergency requirement for motor vehicle(s) that the Agency only can meet in time only by purchase of non-U.S.-manufactured motor vehicle(s) and for which no non-USAID funds are available.

The emergency nature of an Outbreak of a Contagious Infectious Disease meets the "special circumstances" requirement in Section 636(i) FAA, as amended. The approval process for the purchase of non-U.S.-procured motor vehicles adds additional time and costs, which would divert critical attention and resources from USAID and our implementing partners attention from critical activities to contain and mitigate the outbreak. In most of the areas in which USAID's response to an Outbreak of a Contagious Infectious Disease is occurring, the service and maintenance facilities for U.S.-procured vehicles might not be readily available, and it could be difficult or impossible to obtain spare parts for such vehicles in a timely manner.

USAID would hold the overall procurement of non-U.S.-produced motor vehicles to a minimum, and carry it out only when necessary. USAID's Missions and implementing partners would have to document a special circumstance for each purchase, according to Chapter 312 of the ADS. Specifically, implementing partners would have to provide, within 90 days after each such purchase, an informational copy of such documentation to the cognizant USAID Contracting Officer's Representative/Agreement Officer's Representative (COR/AOR) for inclusion in the contract or award's file. Your approval of this source-and-nationality waiver would constitute the required "special circumstance" finding required for non-U.S.-manufactured motor vehicles under Chapter 312 of the ADS and Section 636(i) of the FAA, as amended.