

## Agency for International Development

## § 201.75

information or statement contained therein.

(d) *Protection of bank making payment.* Acceptance by the bank of any document in the ordinary course of business in good faith as being a genuine and valid document and sufficient in the premises, and the delivery thereof to USAID, shall constitute full compliance by the bank with any provision of this part, the letter of commitment requiring delivery of a document of the sort that the document actually so delivered purports to be. The bank shall be entitled to receive and retain reimbursement of the amount of all payments made by it against documents so accepted, notwithstanding that such payments may be made in connection with a purchase in excess of the price calculated in accordance with the applicable provisions of subpart G.

(e) *Payment to third persons.* The bank's right of reimbursement shall not be affected by the fact that payment is made to the approved applicant or at the request of the approved applicant or such beneficiary to a person other than the supplier under the contract to which such payment relates, if the bank has complied with all other requirements of the letter of commitment and has satisfied itself in good faith that the person to whom it makes payment has, in turn, made payment to the supplier.

(f) *Bank procedures with regard to certain suppliers.* In the event a bank receives written advice from USAID concerning special conditions which are applicable to transactions of particular suppliers, such bank will use reasonable care to maintain procedures designed to ensure that accommodations thereafter furnished by it with respect to such suppliers by means of the issuance, confirmation, advising or transfer of letters of credit, or the making of payments not under letters of credit shall reflect such special conditions. While banks are expected to comply with the foregoing obligation, a bank which has used reasonable care to establish and maintain such procedures will not be responsible for any inadvertent furnishing of any such accommodation not containing applicable special conditions or the making of payment thereunder. For the purpose

of ascertaining whether the supplier is a person or organization subject to an USAID advice concerning special conditions applicable to its transactions under this paragraph, a bank, in making payment under a letter of credit or otherwise, may consider as supplier the person or organization issuing the invoice.

(g) *Provision of implementing documents.* A bank shall not be responsible for compliance with any provision of an implementing document other than a letter of commitment.

### § 201.74 Additional documents for USAID.

In addition to the documents required for reimbursement, a bank shall retain in its files for a period of at least 3 years and shall make available to USAID promptly upon request a copy of any of the following documents which may pertain to an USAID-financed transaction:

(a) Each letter of credit issued, confirmed, or advised by it, together with any extension or modification thereof;

(b) Payment instructions received from the approved applicant;

(c) Each application and agreement relating to such letter of credit or instructions for payment, together with any extension or modification thereof;

(d) A detailed advice of the interest, commissions, expenses, or other items charged by it in connection with each such letter of credit or payment instructions.

### § 201.75 Termination or modification.

If USAID directs that the delivery of commodities be terminated, orders that title to commodities be vested in it, or modifies any implementing document concerning the disposition of documents, USAID shall give written notice thereof to the banks holding applicable letters of commitment and shall instruct each bank with regard to the disposition of documents. Each such bank shall be relieved of any liability whatsoever to the approved applicant for anything done or omitted to be done under instruction of USAID. Notwithstanding the foregoing, a bank shall comply with the instructions of USAID only to the extent that it may do so without impairing or affecting

## § 201.80

any irrevocable obligation to any person or organization except an approved applicant, and in the event the bank shall incur any costs, expenses, or liabilities, including any liability to the approved applicant, it shall be repaid and reimbursed by USAID in respect thereof.

### Subpart I—Rights and Remedies of USAID, and Waiver Authority

#### § 201.80 Purpose.

This subpart sets forth certain USAID rights and remedies against borrower/grantees and suppliers, and prescribes certain general provisions relating to the waiver by USAID of this part.

#### § 201.81 Rights of USAID against borrower/grantees.

If any transaction financed hereunder violates the requirements of this part or any U.S. statute or any rule or regulation of USAID promulgated under any such statute, USAID may require the borrower/grantee to refund the amounts USAID determines are attributable to such violation and may exercise any right of acceleration or termination contained in the implementing document. The borrower/grantee shall be deemed to have agreed to make such refund or accelerated payment promptly upon request by USAID and shall be deemed to have consented to any modification of the implementing document determined by USAID to be necessary to reflect any such refund or acceleration.

#### § 201.82 Rights of USAID against suppliers.

Without limiting the responsibility of the borrower/grantee or other parties, USAID may require an appropriate refund to it by a supplier under any transaction which violates the requirements of this part, whenever in USAID's opinion the failure of the supplier to comply with the rules and other requirements of this part has contributed to such violation. Any refund requested will include interest from the time of payment to the supplier. Interest will be charged at the

## 22 CFR Ch. II (4-1-05 Edition)

rate established by the Secretary of the Treasury in accordance with the Internal Revenue Code, 26 U.S.C. 6621(b).

#### § 201.83 No waiver of alternative rights or remedies by USAID.

No right reserved to USAID in this subpart to seek a refund from a borrower/grantee, and no exercise of such right, whether or not successful, shall in any way limit or affect, under the doctrine of the election of remedies or otherwise, USAID's rights against a supplier under this subpart I or under the laws of the United States, or of any other country or political subdivision thereof, nor shall any right or remedy herein reserved to USAID against a supplier in any way derogate from or otherwise limit any other rights or remedies which may accrue to USAID under such laws.

#### § 201.84 Limitation on period for making refund requests.

USAID will endeavor, but shall not be bound, to make any requests for refunds from a borrower/grantee within three years from the date of the last disbursement of USAID funds for the transaction to which such request relates.

#### § 201.85 Legal effect of USAID approvals and decisions.

In any transaction subject to this part 201, USAID may reserve certain rights to approve the transaction for USAID-financing. USAID, in reserving any approval rights, acts solely as a financing entity to assure the proper use of United States Government funds. Any decision by USAID to exercise or refrain from exercising these approval rights shall be made as a financier and shall not be construed as making USAID a party to the contract or incurring any liability to the parties jointly or to any of them.

#### § 201.86 Waiver and amendment authority.

USAID may waive, withdraw, or amend at any time any or all of the provisions of this part.