

(v) The amount of the progress payments does not exceed 95 percent of the total FAS purchase price.

(2) *Notice.* In order for progress payments to be eligible under a competitive procurement, the solicitation document must state that such payments will be allowed and that a request for progress payments will not be considered an adverse factor in the award of the contract.

(3) *Approval.* All progress payments must be approved in writing by USAID.

(c) *Advance payments—(1) Conditions for eligibility.* Advance payments may be authorized only if USAID has made a positive determination in writing that:

(i) USAID will benefit therefrom, in terms of increased competition and/or lower prices, prior to the issuance of the solicitation or prior to award of a noncompetitive contract; and

(ii) The supplier has a financial management system which is adequate for controlling and accounting for U.S. government funds.

(2) *Amount.* The amount of the advance is based on an analysis of the working capital required under the procurement contract, taking into consideration the availability of the supplier's own working capital and shall be limited to the minimum amount needed for immediate disbursing needs.

(3) *Security.* The supplier must establish an advance payment bond or guaranty in favor of the borrower/grantee providing adequate security for the amount of the advance payment.

(4) *Notice.* In order for advance payments to be eligible under a competitive procurement, the solicitation document must state that such payments will be allowed and that a request for advance payments will not be considered an adverse factor in the award of the contract.

(5) *Approvals.* All advance payments must be approved by USAID in writing.

§ 201.25 Bid and performance bonds and guaranties.

Whenever the importer requires the posting of a bid bond or guaranty or performance bond or guaranty, the type of bond or guaranty (certified check, irrevocable letter of credit, bank bond, bank guaranty, or surety

bond) shall be at the option of the bidder or supplier. Posted bid bonds or guaranties shall be returned to unsuccessful bidders promptly after an award is made. Unless converted to a required performance bond or guaranty, any bid bond or guaranty posted by the successful bidder shall also be returned promptly. Performance bonds or guaranties (as distinguished from commodity warranties of quality or performance) shall be canceled no later than 30 days after completion of the contract performance guarantied.

§ 201.26 Expenditure of marine insurance loss payments.

Unless otherwise authorized by USAID, any marine insurance loss payment under a marine insurance policy financed pursuant to this part 201 received by the importer, either directly or indirectly, shall be used by the importer as follows:

(a) To procure from a source specified in the implementing document which originally provided the USAID funds, commodities which have been designated by USAID to the borrower/grantee as eligible for USAID financing; or

(b) To cover the cost of repairs to commodities damaged during shipment.

Subpart D—Responsibilities of Suppliers

§ 201.30 Purpose.

This subpart establishes the responsibilities of suppliers who furnish commodities and/or commodity-related services.

§ 201.31 Suppliers of commodities.

(a) *Performance of the sales contract.* The supplier of commodities shall comply with the terms and conditions of its contract with the importer and any letter of credit or direct letter of commitment under which it secures payment.

(b) *Responsibilities relating to eligibility of commodities.* The supplier shall fulfill its responsibilities under § 201.11 by assuring that:

(1) The commodity conforms to the description contained in its contract and letter of credit or direct letter of

commitment and, unless otherwise authorized by USAID in writing, the commodity is unused and has not been disposed of as surplus by any governmental agency;

(2) The source of the commodity complies with the provisions of §201.11(b) relating to source as required by its contract, letter of credit or direct letter of commitment;

(3) The provisions of §201.11(d) relating to the medium of transportation are complied with to the extent that the supplier arranges such transportation;

(4) All documents required by §201.52 to be submitted by the supplier to receive payment are submitted by it on or before the terminal date specified in the letter of credit, direct letter of commitment, or, if payment is to be made at sight, the purchase contract;

(5) The provisions of the U.S. Treasury Department Foreign Assets, Sanctions, Transactions and Funds Control Regulations published in 31 CFR parts 500 through 599, as from time to time amended, are complied with; and

(6) The purchase price of the commodity meets the requirements of subpart G of this part applicable to the supplier.

(c) *Responsibilities relating to eligibility of delivery services.* The supplier of commodities shall be responsible for assuring that any delivery services obtained by it for its own or for the importer's account comply with the requirements of §201.13 and, if required by USAID, for assuring that any shipping documents obtained by it contain an appropriate diversion clause pursuant to §201.43. The supplier shall deliver to USAID any shipping documents available to it whenever such delivery is requested by USAID.

(d) *Marking of shipping containers and commodities—(1) Affixing emblems and identification numbers.* The supplier of commodities shall be responsible for assuring that all export packaging, whether shipped from the United States or from any other source country, carries the official USAID (clasped hands) emblem. Additionally, except as USAID may otherwise prescribe, when the supplier is given notice by the importer that the importer is the government of the cooperating country or any

of its subdivisions or instrumentalities, the supplier shall also be responsible for assuring that, in addition to the shipping cartons or other export packaging, all commodities carry the USAID emblem. The USAID financing document number shall be marked on each export shipping carton and box in characters at least equal in height to the shipper's marks. When commodities are shipped as containerized freight in a reusable shipping container, the container is not considered export packaging within the meaning of this paragraph and the outside of the container need not be marked; however, the cartons, boxes, etc., inside the container must be marked.

(i) *Durability of emblems.* Emblems shall be affixed by metal plate, decalcomania, stencil, label, tag or other means, depending upon the type of commodity or export packaging and the nature of the surface to be marked. The emblem placed on commodities shall be as durable as the trademark, commodity or brand name affixed by the producer; the emblem on each export packaging unit shall be affixed in a manner which assures that the emblem will remain legible until the unit reach the consignee.

(ii) *Size of emblems.* The size of an emblem may vary depending upon the size of the commodity and the size of the export packaging. The emblem shall in every case be large enough to be clearly visible at a reasonable distance.

(iii) *Design and color of emblems.* Emblems shall conform in design and color to samples available from the Office of Procurement, Commodity Support Division, USAID, Washington, DC 20523-1415, and from the Mission.

(2) *Exception to requirement for affixing emblems.* To the extent compliance is impracticable, emblems shall not be required for:

(i) Raw materials shipped in bulk (including grain, coal, petroleum, oil, and lubricants);

(ii) Vegetable fibers packaged in bales; and

(iii) Semifinished products which are not packaged in any way.

(3) *Waiver.* If compliance with the marking requirement is found to be impracticable with respect to other commodities not excepted by paragraph

(d)(2) of this section, the supplier (or, when appropriate, the borrower/grantee) may request a waiver from USAID (Regional Assistant Administrator or his/her designee).

(e) *Export licenses and approvals.* The supplier shall be solely responsible for assuring that all necessary export licenses and approvals are obtained.

(f) *Distribution of shipping documents.* The supplier shall make the customary commercial document distribution, as well as any special distribution (e.g., to the USAID Mission in the importing country) which may be specified in the letter of credit, direct letter of commitment or other payment instruction covering the transaction. Prior to presenting the documents specified in § 201.52 for payment, the supplier shall mail not later than 30 days from the date of shipment a legible copy of all rated ocean bill(s) of lading described in § 201.52(a)(4)(i) to: Maritime Administration, Division of National Cargo, 400 Seventh Street SW., Washington, DC 20590-0001; and Transportation Division, Office of Procurement, USAID, Washington, DC 20523-7900.

(g) *Adjustment refunds, credits, and allowances.* All adjustments in the purchase price in an USAID-financed transaction in favor of the importer arising out of the terms of the contract or the customs of the trade shall be made by the supplier in the form of a dollar payment to USAID. Any such payment shall be transmitted to the Office of Financial Management, USAID, Washington, DC 20523-7702, and shall be accompanied by a statement explaining the adjustment and shall specify the name and address of the importer, the date and amount of the original invoice, and the identification number of the implementing document, if known, under which the original transaction was financed. USAID will advise the borrower/grantee of such adjustment refunds received. Despatch earned by the supplier, other than despatch earned at the port of loading on c.i.f. and c. & f. shipments, shall be refunded to USAID in accordance with § 201.67(a)(5).

(h) *Vesting in USAID of title to commodities.* The supplier shall be responsible for compliance with the provisions of § 201.44 applicable to it.

(i) *Termination or modification of USAID-financing.* The supplier shall be responsible for compliance with the provisions of § 201.45 applicable to it.

[55 FR 34232, Aug. 22, 1990, as amended at 64 FR 17535, Apr. 12, 1999]

§ 201.32 Suppliers of delivery services.

(a) *Performance of the service contract.* The supplier of delivery services financed by USAID shall comply with the terms and conditions of its contract to supply delivery services.

(b) *Adjustment in the price of delivery services.* The supplier of delivery services shall pay to the Office of Financial Management, USAID, Washington, DC 20523-7792, all adjustments in the purchase price in favor of the importer (or person purchasing the ocean transportation services) arising out of the terms of the contract or the customs of the trade. Any such payment shall be accompanied by a statement explaining the adjustment and shall specify the name and address of the importer or other person for whom the adjustment is made, the date and amount of the original invoice, and the identification number of the implementing document, if known, under which the original transaction was financed.

(c) *Marine insurance reporting requirement.* With respect to any loss payment exceeding \$10,000 in value which a supplier of marine insurance makes under a marine insurance policy financed pursuant to this part, the supplier of marine insurance shall, within 15 days of making such payment, report to the Commodity Support Division, Office of Procurement, USAID, Washington, DC 20523-7900, the amount and date of the payment, a description of the commodity, the USAID identification number, name of the carrier, vessel, and voyage number (alternatively, flight or inland carrier run number), date of the bill(s) of lading, the identity and address of the assured, and the identity and address of the assignee of the assured to whom payment has actually been made.

[55 FR 34232, Aug. 22, 1990, as amended at 64 FR 17535, Apr. 12, 1999]