

## § 201.25

(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

## 22 CFR Ch. II (4–1–11 Edition)

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