

Department of State

§ 201.21

(1) At least fifty percent (50%) of the gross tonnage (computed separately for dry bulk carriers, dry cargo liners, and tankers from each of two geographic areas—the U.S. and all other countries) of all goods financed by USAID which are transported on ocean vessels shall be transported on privately owned U.S. flag commercial vessels; and

(2) At least fifty percent (50%) of the gross freight revenue generated by all shipments of USAID-financed commodities which are transported to the territory of the borrower/grantee on dry cargo liners shall be paid to or for the benefit of privately owned U.S. flag commercial vessels.

(b) *Methods of compliance.* (1) Compliance with these requirements with respect to dry cargo liner vessels shall be achieved for the total of liner shipments made during the term of the loan or grant agreement. If USAID determines at any time during the term of the agreement that compliance may not be achieved, USAID may require that all subsequent shipments be made on U.S. flag liners until compliance is assured.

(2) Compliance with these requirements with respect to dry bulk carriers and tankers shall be achieved for each quantitative unit of cargo. A quantitative unit of cargo is the total tonnage of a commodity or commodities included in one invitation for bids or other solicitation of offers from ocean carriers for the transportation of cargo which may move in full shipload lots. USAID shall approve a charter or other contract of affreightment for a non-U.S. flag vessel only if USAID has determined that at least 50% of the quantitative unit will move on U.S. flag vessels, to the extent that such vessels are available at fair and reasonable rates for such vessels. U.S. flag dry cargo liners whose offers are responsive to the terms of the invitation for bids or other solicitation of vessels may be used for achieving compliance for the quantitative unit.

(c) *Nonavailability of U.S. flag vessels.* Upon application of the borrower/grantee or the supplier, USAID/W, Office of Procurement, Transportation Division, shall determine and advise the applicant whether or not privately owned U.S. flag vessels are available

for any specific shipment of commodities at fair and reasonable rates. A determination that U.S. flag vessels are not available does not carry with it the authorization for USAID to finance freight on a vessel not otherwise authorized; this requires a separate waiver approval in accordance with § 201.13(b)(1)(ii).

(d) *Responsibility.* The borrower/grantee is responsible for compliance with the requirements of this section and for imposing upon subborrowers, contractors and importers such requirements regarding shipping arrangements with suppliers as will assure discharge of this responsibility.

(e) *Privately owned U.S. flag commercial vessels.* For purposes of this section the term “privately owned U.S. flag commercial vessels” shall not include any vessel which, subsequent to September 21, 1961, shall have been either built outside the U.S., rebuilt outside the U.S. or documented under any foreign registry until such vessel shall have been documented under the laws of the U.S. for a period of 3 years.

Subpart C—Procurement Procedures; Responsibilities of Importers

§ 201.20 Purpose.

This subpart prescribes procurement procedures which shall apply to an importer whenever a commodity procurement is to be financed by USAID subject to this part 201.

§ 201.21 Notice to supplier.

The importer is responsible for providing the supplier with the following information (either through the invitation for bids, the request for quotations or otherwise):

(a) Notice that the transaction is to be financed by USAID under this part 201;

(b) The identification number of the implementing document;

(c) All additional information prerequisite to USAID financing and contained in the instructions from the borrower/grantee to the importer (for example, eligible source of commodity, periods during which deliveries must be

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made, shipping provisions, and documentation requirements); and, where appropriate,

(d) Notice of the marking requirements in § 201.31(d), when the importer is the government of the cooperating country or any of its subdivisions or instrumentalities.

§ 201.22 Procurement under public sector procedures.

(a) *General requirements.* When the importer is the government of the cooperating country or any of its subdivisions, agencies or instrumentalities, all purchase contracts for commodities shall be awarded under public sector procedures in this section unless otherwise authorized by USAID. Such contracts shall be awarded on a competitive basis unless otherwise authorized by USAID under paragraph (g) of this section.

(b) *Formal competitive bidding.* Formal competitive bidding procedures shall be used for all procurements estimated to exceed \$100,000 or the equivalent, exclusive of ocean or air transportation costs, except when other procedures are authorized in accordance with this section. Formal competitive bidding procedures may also be used for procurements under \$100,000 at the option of the importer. Formal competitive bidding procedures include advertising the availability of an invitation for bids in accordance with paragraph (h) of this section, issuance of the invitation for bids, public opening of sealed bids, evaluation of bids, and award of the contract, except as provided in § 201.22(b)(3), to the lowest responsive bid by a responsible bidder.

(1) *Contents of the invitation for bids.* The invitation for bids and every attachment and amendment thereto shall be in the English language and shall be available to prospective suppliers free of charge unless otherwise authorized by USAID. The following minimum requirements are applicable:

(i) *Statement of requirements.* The invitation for bids shall state specifically that the formal competitive bidding procedures set forth in this § 201.22 apply. The terms and conditions of the procurement shall be clearly indicated, including any factors other than price to be used in the evaluation. Com-

modity specifications shall be stated in a non-restrictive manner and in sufficient detail to permit maximum response from prospective suppliers. The metric system of measurements shall 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.

(ii) *Statement regarding submission of bids.* The invitation for bids shall be appropriately numbered and state the complete physical address, as well as any post office box number, to which bids or offers are to be sent, the closing hour and date for submission and the date, hour and place of the public opening of the bids. If additional drawings, details, regulations or forms are necessary for submitting a bid, the invitation shall state where such material may be obtained.

(iii) *Statement regarding this part 201.* The invitation for bids shall expressly indicate the extent to which any resulting contract is subject to the requirements of this part 201.

(iv) *Statement regarding late bids.* The invitation for bids shall state that no bid received at the address designated in the invitation after the closing hour and date for submission will be considered for award unless its late arrival at that address is attributable solely to mishandling of the bid documents by the importer or any of its agents directly associated with receiving or processing the bids. In no case will the importer consider a bid which was not received at the place of public opening before the award was made.

(2) *Handling bids.* Bids received shall be held intact and sealed and shall be safeguarded against disclosure of contents prior to bid opening. The bids shall be opened publicly as specified in the bid invitation, and all properly submitted bids shall be considered. Direct submission of a bid by a prospective supplier, rather than through an agent or other representative of the supplier in the cooperating country, shall not be cause for rejection.

(3) *Awards.* Every award shall be made to that responsible bidder whose responsive bid is lowest in price. If any factor other than price is used in evaluating bids, each such factor shall be