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ADS Chapter 324

Post Procurement

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 ADS 324 – Post Procurement

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ADS 324 – Post Procurement

324.1 OVERVIEW

To assure the effective use of USAID-financed commodities for the purpose for which they were made available.

This chapter is applicable to program assistance, except agreements with other U.S. Government agencies, or to grants and contributions to international organizations where USAID funds are mixed with those from other sources.

324.2 PRIMARY RESPONSIBILITIES

a. Bureau Assistant Administrators

(1) Assure that activities for which they are responsible are being implemented in accordance with this section.

b. Principal USAID Officers at Posts and Strategic Objective Teams

(1) Assure that activities for which they are responsible are being implemented in accordance with this section.

324.3 POLICY DIRECTIVES AND REQUIRED PROCEDURES

The following are the official Agency policies and corresponding essential procedures.

324.3.1 Agreement Provision

USAID assistance agreements shall provide that the cooperating country shall ensure that commodities are effectively used for the purpose for which they were made available.

324.3.2 Use of Commodities

Commodities shall be used in accordance with the purpose of the results package.

324.3.3 Customs Clearance

Commodities supplied under commodity import programs (CIPs) shall be cleared through customs (including removal from customs by the importer) within 90 calendar days from the date of their unloading, unless a longer period is approved by USAID, and either consumed, used, or sold within one year after their removal from customs.

324.3.4 Arrival and Disposition Records

The cooperating country shall maintain a system of records documenting the arrival and disposition of commodities financed by USAID.

a. The cooperating country is required to maintain, for a period of at least three years from the date of payment or reimbursement by USAID, a system of records documenting the arrival and disposition of commodities financed by USAID. The system shall:

- (1)** Identify the parties to the transaction and provide other data necessary for end-use investigations;
- (2)** Provide evidence to show whether the commodities are received in the quantity and condition for which payment was made; and
- (3)** Provide for a record of adjustments resulting from importers' claims for losses, shortages, or damages to commodities.

b. For assistance other than CIPs, the USAID Mission is responsible for the review of progress reports to verify that commodities financed by USAID are being effectively used in the activity, and if not, that they are transferred to other activities or otherwise disposed of as approved by USAID.

c. Under CIPs, the cooperating country can either rely upon its overall system applied to all imports in the form of controls or surveillance over import licenses, foreign exchange allocations and customs release, or establish a system specifically for the purpose of carrying out its responsibilities for USAID-financed commodities. In either case, the system must accomplish the following:

- (1)** Provide evidence sufficient to determine whether the commodities were received in the quantity and condition for which payment was made;
- (2)** Provide information on when commodities were off-loaded and cleared from customs, as well as determine the amount, nature, and value of USAID-financed commodities not cleared from customs and the reasons for their failure to clear;
- (3)** Identify adjustments resulting from importers' claims for losses, shortages or damages to USAID-financed commodities; and
- (4)** Provide sufficient data for end-use verification, including information need to monitor USAID's prohibition on re-exporting the commodities.

d. The USAID controller shall certify that the cooperating country's system is

adequate to achieve the requirements in E324.3.4.3. If the USAID controller determines that the cooperating country's system is not adequate, and that the cooperating country does not have the resources to develop a system, to achieve the requirements in E324.5.4c, it is the responsibility of the USAID to either develop and implement a system, develop a system and hire a contractor to implement it, or hire a contractor to develop a system and implement it, in order to accomplish the required actions.

324.3.5 Re-export

USAID financed commodities shall not be re-exported in the same, or substantially the same, form in which they were imported, unless authorized in writing by USAID (the responsible geographic bureau, in consultation with the DAA/M).

324.3.6 End-Use Checks

The USAID Mission shall carry out, or arrange to have carried out, end-use checks on commodities to confirm their utilization in accordance with the requirements of the underlying agreement.

The USAID shall carry out, or arrange to have carried out, end-use checks on commodities. It is not necessary that every commodity be checked. The USAID mission may determine a representative sampling or percentage of commodities to be checked. The sampling shall, however, cover commodities at all value levels under the program, i.e. not be limited to high value procurements. In some instances, the mission will find it necessary to perform end use checks on all commodities in a specific category, e.g., data processing equipment. (See Appendix 10A of HB 15) for an illustrative Mission Order and illustrative commodity arrival control procedures.) In those cases where commodities arrive just before the Assistance Completion Date (ACD), end use checks should continue for one year following the ACD.

324.3.7 Records Retention and Audit Rights

All agreements, bilateral and USAID direct, financed in whole or in part by USAID, shall contain appropriate provisions requiring the maintenance and retention of records and provide for the audit rights of such records by USAID.

324.3.8 Refund Claims

USAID shall claim a refund from a supplier, contractor, nonprofit grantee, or cooperating country when audits or other sources show that USAID funds have been used to finance a transaction which is not in compliance with the USAID rules and regulations as required in the underlying agreement, or which is ineligible for other reasons, such as fraud.

USAID shall claim a refund from a supplier, contractor, nonprofit grantee, or

cooperating country when audits or other sources show that USAID funds have been used to finance a transaction which is not in compliance with the USAID rules and regulations as required in the underlying agreement or which is ineligible for other reasons, such as fraud. The USAID Controller, in coordination with USAID/W, issues such refund claims. (See HB 19, Ch 7) Claims may be limited to the cost of that portion of a transaction which is not in compliance with USAID's rules and regulations as required in the underlying agreement or which is ineligible, or for bilateral assistance, the claim may be for the entire amount of the procurement if USAID chooses to disassociate itself entirely from the transaction.

324.3.8.1 Cooperating Country Responsibility

All refund claims under bilateral assistance may be issued against the cooperating country since it is ultimately responsible through the underlying agreement for the terms of such agreement. However, USAID shall proceed first against suppliers, contractors, and nonprofit grantees when they have failed to comply with USAID requirements.

324.3.8.2 Claims Against a Cooperating Country

There are generally three situations in which a claim against a cooperating country is appropriate:

- a.** When a transaction violates the terms of the underlying agreement, e.g., importation of ineligible commodities, source and origin violations, non-utilization of commodities in accordance with conditions outlined in the agreement, shipments on ineligible flag vessels, or failure to meet cargo preference requirements. The refund requested in these cases is the entire amount of the transaction. Such transactions are ineligible for USAID financing and the only satisfactory resolution is USAID's disassociation from them.
- b.** When payment in violation of USAID rules and regulations accrues to the benefit of the importer, if no fraud is imputed. The determination of whether to proceed against the supplier or the country will depend on the facts of the case.
- c.** When the supplier or contractor cannot be reached because of disappearance, bankruptcy, or other reasons.

When a cooperating country claim, instead of a supplier/contractor claim, is issued, or when USAID cannot collect from the supplier/contractor, the amount of the claim will depend on the nature of the violation. Where there is a violation of a statutory price requirement, the claim must be for the full amount of the transaction, unlike a supplier/contractor claim where a request for refund may be only for the overcharge. Should the transaction involve an improper payment to the importer, a claim against the country for repayment of the improper payment is sufficient.

324.3.8.3 Suppliers' and Contractors' Certificate

Suppliers or contractors, by signing a certificate and agreement with USAID (form AID 282, form 1450-4, or form 1440-3), certify that they shall, upon request of USAID, promptly make appropriate refund to USAID, plus interest from the time of payment to the supplier or contractor, in event of violations of any of the terms of the certificate. Interest against a supplier or contractor who has signed one of the previously mentioned forms shall be at the rate established by the Secretary of Treasury in accordance with the Internal Revenue Code 26 U.S.C. 6621(b). M/FM/FPS advises USAID paying offices of the new rate each time it is changed.

324.3.8.4 Non-Applicability of Interest Rate

The interest rate established in E324.3.8.3 does not apply to the following:

- a. USAID direct contracts for commodities and/or services. (See 48 CFR 1 to 2 and 48 CFR 7, for interest rate coverage on claims.)
- b. Local procurement of commodities and/or services.
- c. Fixed amount reimbursement (FAR) type projects.
- d. Grants and contributions to nonprofit and international organizations.
- e. Procurements through other U.S. Government agencies.
- f. Overseas shipments of food commodities by voluntary non-profit relief agencies subject to AID Regulation 2 or 11 for which a Voluntary Agency and Carrier Certificate, for AID 1550-1, is required.

324.3.8.5 Outstanding Refund Claims

Depending on the circumstances, refund claims against suppliers/contractors/nonprofit grantees, which remain, outstanding despite persistent follow up shall be:

- a. Converted to claims for refund against the cooperating country (under bilateral assistance);
- b. Considered for inclusion on the Department of the Army Hold-Up List of Indebted Contractors;
- c. Compromised, suspended or terminated; or
- d. Referred for collection to either the General Accounting Office or Department of Justice, as appropriate.

USAID may consider withholding or delaying approval of new assistance activities if refund claims against a country have been outstanding for more than 1 year.

324.3.8.6 Refund Claim Procedures

Procedures for refund claims are contained in Chapter 7 of Handbook 19 and AID Regulation 13.

324.3.8.7 Waiver of Claims

Claims against suppliers shall not be waived. Claims against cooperating countries may be waived by the Administrator of USAID, acting with the advice of the General Counsel, if such a waiver is in the foreign policy interest of the United States.

324.3.9 Suspension or Termination of Assistance

Each USAID assistance agreement shall contain a provision which allows for suspension or termination of assistance if the Administrator or other appropriate authority has determined that circumstances in a particular country make the attainment of assistance objectives improbable, or make the continuation of U.S. assistance contrary to U.S. law or policy.

324.3.9.1 Mitigating Financial Losses

It is USAID policy to mitigate financial losses to both the U.S. Government and affected suppliers when assistance is suspended. USAID does not have general authority to compensate suppliers of services under cooperating country contracts, which have been suspended by USAID, but shall request such authority when appropriate.

324.3.9.2 Vesting Title and Diversion of Cargo

In suspending or terminating assistance, the Administrator has authority to vest title in USAID to all goods in the custody of ocean carriers, and to direct the carriers to divert the goods to a specified port.

324.3.9.3 Provision on Vesting and Diversion

All USAID-financed contracts for equipment shall include a provision subjecting the contractor/supplier to vesting and diversion rights of USAID.

324.3.9.4 Disposal

Policies applicable to disposal of commodities to which title has been vested in USAID depend on whether the commodities are located in the United States, located overseas, or are subject to waste or spoilage.

a. Commodities located in the United States shall be disposed of in the following order of preference:

- (1) Used in other USAID programs;
- (2) Limited negotiated sales to original suppliers or producers after consultation with the General Services Administration (GSA);
- (3) Sales on a reimbursement basis to other U.S. Government agencies with GSA assistance;
- (4) If GSA does not agree on reimbursement, referral to GSA for disposition under provisions of the Federal Property and Administrative Services Act.

b. Commodities located overseas shall be disposed of in the following order of preference:

- (1) Used in other USAID programs;
- (2) Solicitation of offers from original U.S. suppliers, or from other prospective U.S. buyers on either a formal or informal basis, whichever method is likely to result in the highest return;
- (3) Public sales by formal bid, advertised in the United States as well as appropriate overseas locations.

c. For commodities subject to waste or spoilage, disposition is made by whatever method is fastest and most advantageous in accordance with authority under Section 605 of the FAA which allows disposition of such commodities without regard to provisions of any law relating to disposal of property owned by the U.S. Government.

Before section 605 authority can be used, a determination must be made that it is necessary to dispose of the retained property in order to prevent waste or spoilage or to conserve the property's usefulness. The Assistant Administrator for Management has this authority and may redelegate it.

The organization responsible for disposal must have contracting authority.

324.4 MANDATORY REFERENCES

324.4.1 External Mandatory References

- a. [22 CFR 201.41, Audit and inspection](#)
- b. [22 CFR 201.42, Reexport of USAID-financed commodities](#)

- c. [Title I, Part II of the Accounting and Auditing Act of 1950 \(Public Law 81-784\)](#)
- d. [The Federal Claims Collection Act of 1966, as amended \(31 USC 3711\)](#)
- e. [The Debt Collection Act of 1982 \(31 USC 3716\)](#)
- f. [Foreign Assistance Act of 1961, as amended, \(FAA\) Sections 605 and 620\(h\).](#)

324.4.2 Internal Mandatory References

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- a. [ADS 300, Agency Acquisition and Assistance \(A&A\) Planning](#)

324.5 ADDITIONAL HELP

- a. [Illustrative Example of Commodity Arrival Control and End-Use Review System](#)
- b. [Suspension or Termination of Assistance](#)

324.6 DEFINITIONS

Commodity Import Program (CIP)

A program in which USAID provides foreign exchange to a host country that, by the terms of the applicable agreement between USAID and the host country, is used to finance particular commodity import transactions of the host country. (Chapters [320](#) and 324)

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