

PDBBM 884

PROGRAM GRANT AGREEMENT

between

THE GOVERNMENTS OF

THE UNITED REPUBLIC OF TANZANIA

and

THE UNITED STATES OF AMERICA

for the

AGRICULTURAL TRANSPORT ASSISTANCE PROGRAM

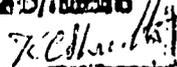
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Program No.....: 621-T-602
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FUNDS AVAILABLE


Office of the Comptroller A/D/Tanzania

Date:

8/31/88



Date: August 31, 1988

PROGRAM GRANT AGREEMENT

A.I.D. Program No. 621-T-602

Dated: August 31, 1988

Between the Governments of

The United Republic of Tanzania ("Grantee")

and

The United States of America, acting through the
Agency for International Development ("A.I.D.")

Article 1: The Grant

To finance the foreign exchange costs of certain commodities and commodity-related services ("Eligible Items") necessary to provide support for the Government of Tanzania's efforts to alleviate constraints in the agricultural transport sector, the United States, pursuant to the Foreign Assistance Act of 1961, as amended, agrees to grant the Government of the United Republic of Tanzania under the terms of this Agreement, an amount not exceeding Five Million Two Hundred Ten Thousand United States Dollars (\$5,210,000) ("Grant").

Article 2: Program Description

The Program will consist of mutually-agreed allocations of Grant funds to provide foreign exchange financing to the public and private sectors of Tanzania for the importation of equipment, machinery, and spare parts, and commodity-related services for the agricultural transport sector, in support of a program of policy and institutional reforms in the agricultural transport sector which is being undertaken by the Grantee; a technical assistance and training program which is being separately financed through the Agricultural Transport Assistance Program Support Project which is intended to improve the Government of Tanzania's capacity to identify, select, and undertake rehabilitation and maintenance activities on rural roads; and mutually-agreed allocations of currencies of the United Republic of Tanzania which shall be deposited in a Special Account under Section 6.1 of this Agreement. Planned utilization of Grantee resources in support of the Program are described in Annex 1 hereto.

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Article 3: Conditions Precedent to Disbursement

SECTION 3.1: Conditions Precedent. Prior to the first disbursement under the Grant, or to the issuance by A.I.D. of documentation pursuant to which disbursement will be made, the Grantee will, except as the Parties may otherwise agree in writing, furnish to A.I.D. in form and substance satisfactory to A.I.D.:

- (a) An opinion of counsel acceptable to A.I.D. that this Agreement has been duly authorized and/or ratified by, and executed on behalf of, the Grantee, and that it constitutes a valid and legally binding obligation of the Grantee in accordance with all of its terms;
- (b) A statement representing and warranting that the named person or persons have the authority to act as the representative or representatives of the Grantee pursuant to Section 8.2, together with a specimen signature of each person certified as to its authenticity;
- (c) A procurement plan including the procedures by which all procurement financed under this Grant will be carried out, the criteria and procedures for determining importer eligibility, and the mechanism for publicizing procurement and making awards;
- (d) Evidence that the Grantee has established a Rural Roads Division in the Ministry of Communications and Works with national responsibility for the development, prioritization, and implementation of rural roads rehabilitation and maintenance activities;
- (e) A written plan, approved by the Grantee, setting forth the measures or actions the Grantee plans to take in order to maintain its classified road network, including domestic taxes, fees, or other financing;
- (f) Evidence that the Grantee has awarded \$1.0 million of road rehabilitation contracts for gravel and/or earth roads to private sector firms; and
- (g) Evidence that the Grantee has established in the Cooperative and Rural Development Bank of Tanzania (CRDB) a special Local Currency Account for deposit of local currency in an amount equivalent to the U.S. Dollar disbursement under the ATAP Grant.

SECTION 3.2. Notification. When A.I.D. has determined that the conditions precedent specified in Section 3.1 have been met, it will promptly notify the Grantee.

SECTION 3.3 Terminal Date for Conditions Precedent. If all the conditions specified in Section 3.1 have not been met by June 30, 1989, or such later date as A.I.D. may specify in writing, A.I.D., at its option, may terminate this Agreement by written notice to the Grantee.

Article 4: Procurement, Eligibility, and Utilization of Commodities.

SECTION 4.1. A.I.D. Regulation 1 (attached as Annex 2). This Grant and the procurement and utilization of commodities and commodity-related services financed under it are subject to the terms and conditions of A.I.D. Regulation 1 as from time to time amended and in effect, except as A.I.D. may otherwise specify in writing. If any provision of A.I.D. Regulation 1 is inconsistent with a provision of this Agreement, the provision of this Agreement shall govern.

SECTION 4.2. Eligible Items. The commodities eligible for financing under this Grant shall be road construction equipment and spare parts; truck spare parts and tires, including raw materials for retreading tires; tools and equipment for truck and road repair work; materials for fabricating and reconditioning spare parts for road rehabilitation equipment; ancillary equipment permitting fuller or more efficient use of primary equipment; and such other items as may be mutually agreed upon by the Parties and specified in Implementation Letters issued to the Grantee in accordance with Section 8.1 of this Agreement. Commodity-related services as defined in A.I.D. Regulation 1 are eligible for financing under this Grant. Eligible Items will be subject to the requirements and Special Provisions of Parts I, II, and III of the A.I.D. Commodity Eligibility Listing which will be transmitted with the first Implementation Letter. Other commodities or services shall become eligible for financing only with the written agreement of the Parties. A.I.D. may decline to finance any specific commodity or commodity-related service when in its judgment such financing would be inconsistent with the purposes of the Grant or of the Foreign Assistance Act of 1961, as amended.

SECTION 4.3. Procurement Source. All Eligible Items shall have their source and origin in the United States or in other countries included in A.I.D. Geographic Code 935 (attached as Annex 3 and as from time to time amended and notified to the Grantee) of the A.I.D. Geographic Code Book as in effect at the time orders are placed or contracts entered into for such Eligible Items, except as A.I.D. may specify in Implementation Letters or as it may otherwise agree in writing.

SECTION 4.4. Eligibility Date. No commodities or commodity-related services may be financed under this Grant if they were procured pursuant to orders or to contracts firmly placed or entered into prior to the date of this Agreement, except as A.I.D., in consultation with the Grantee, may otherwise agree in writing.

SECTION 4.5. Procurement for Public Sector. With respect to procurement under this Grant by or for the Grantee, its departments and instrumentalities, the provisions of Section 201.22 of A.I.D. Regulation 1 regarding formal competitive bid procedures will apply unless A.I.D. otherwise agrees in writing.

SECTION 4.6. Procurement for Private Sector. Private sector procurements under \$1,000,000 may be conducted in accordance with negotiated procurement procedures as set forth in Section 201.23 of A.I.D. Regulation 1. Procurements over \$1,000,000 must be referred to A.I.D. for a determination as to whether negotiated or formal A.I.D. Regulation 1 procedures shall apply. However, the importer may elect to procure through the formal competitive procedures of Section 201.22 of A.I.D. Regulation 1 whether required or not.

SECTION 4.7. Special Procurement Rules

(a) The source and origin of ocean and air shipping will be deemed to be the ocean vessel's or aircraft's country of registry at the time of shipment.

(b) All international air shipments financed under this Grant will be on carriers holding U.S. certification to perform the services, to the extent such carriers are available, unless shipment would be delayed an unreasonable amount of time (in the judgment of the Grantee, and as approved by A.I.D. in writing) awaiting a U.S. flag carrier either at point of origin or transshipment. The Grantee must certify to the facts in the vouchers or other documents retained as part of the Grantee's records.

SECTION 4.8. Utilization of Commodities.

(a) The Grantee will assure that commodities financed under this Grant will be effectively used for the purposes for which the assistance is made available. To this end, the Grantee will use its best efforts to assure that the following procedures are followed:

(i) accurate arrival and clearance records are maintained by customs authorities; commodity imports are promptly processed through customs at ports of entry; such commodities are removed from customs and/or bonded warehouses within ninety (90) calendar days from the date the commodities are unloaded from the vessel at the port of entry, unless the importer is hindered by force majeure or A.I.D. otherwise agrees in writing; and

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(ii) the commodities are consumed or used by the importer not later than one (1) year from the date the commodities are removed from customs, unless a longer period can be justified to the satisfaction of A.I.D. by reason of force majeure or special market conditions or other circumstances.

(b) The Grantee will assure that commodities financed under this Grant will not be reexported in the same or substantially the same form, unless specifically authorized by A.I.D.

SECTION 4.9. Shipping

(a) Commodities which are to be transported to the territory of the Grantee may not be financed under this Grant if transported either: (1) on an ocean vessel or aircraft under flag registry of a country which is not included in A.I.D. Geographic Code 935 as in effect at the time of shipment, or (2) on an ocean vessel which A.I.D., by written notice to the Grantee, has designated as ineligible, or (3) under an ocean or air charter which has not received prior A.I.D. approval.

(b) Unless otherwise authorized, A.I.D. will finance only those transportation costs incurred on aircraft or ocean vessels under flag registry of the United States of America.

(c) Unless A.I.D. determines that privately-owned United States-flag commercial ocean vessels are not available at fair and reasonable rates for such vessels, (1) at least fifty percent (50%) of the gross tonnage of all goods (computed separately for dry bulk carriers, dry cargo liners and tankers) financed by A.I.D. which may be transported on ocean vessels will be transported on privately-owned United States-flag commercial vessels, and (2) at least fifty percent (50%) of the gross freight revenue generated by all shipments financed by A.I.D. and transported to the United Republic of Tanzania on dry cargo liners shall be paid to or for the benefit of privately-owned United States-flag commercial vessels. Compliance with the requirements of (1) and (2) of this subsection must be achieved with respect to both cargo transported from U.S. ports and cargo transported from non-U.S. ports, computed separately.

SECTION 4.10. Insurance. Marine insurance on commodities financed by A.I.D. under this Grant may also be financed under

this Grant provided that such insurance is placed in a country included in the Geographic Code authorized in Section 4.3 of this Agreement, in accordance with the applicable provisions of A.I.D. Regulation 1, Subparts B and C.

Article 5: Disbursement

SECTION 5.1. Letters of Commitment to Banks. After satisfaction of the conditions precedent to first disbursement, the Grantee may obtain disbursements of funds under this Grant by submitting Financing Requests to A.I.D. for the issuance of letters of commitment for specified amounts to one or more banking institutions in the United States designated by the Grantee and satisfactory to A.I.D. Such letters will commit A.I.D. to reimburse the bank or banks on behalf of the Grantee for payments made by the banks to suppliers or contractors, under letters of credit or otherwise, pursuant to such documentation requirements as A.I.D. may prescribe. Banking charges incurred in connection with letters of commitment and disbursements shall be for the account of the Grantee and may be financed by this Grant.

SECTION 5.2. Other Forms of Disbursement Authorization. Disbursements of the Grant may also be made through such other means as the Parties may agree to in writing.

SECTION 5.3. Terminal Date for Requests for Disbursement Authorization. No letter of commitment or other disbursement authorization will be issued in response to a request received after twenty-four (24) months from the date of signing of this Agreement, except as A.I.D. may otherwise agree in writing.

SECTION 5.4. Terminal Date for Requests for Disbursement. No disbursement of grant funds shall be made against documentation submitted after thirty (30) months from the date of signing of this Agreement, except as A.I.D. may otherwise agree in writing.

Article 6: General Covenants

SECTION 6.1. Special Local Currency Account. The Grantee covenants that, except as A.I.D. may otherwise agree in writing:

(a) It will establish an interest-bearing Special Local Currency Account (Special Account) in the Cooperative and Rural Development Bank of Tanzania and deposit or cause to be deposited therein currency of the United Republic of Tanzania in a sum equivalent to the U.S. Dollar disbursements under the ATAP Grant calculated at the highest rate of exchange not unlawful for any person in Tanzania on the date of disbursement of the corresponding dollar amount.

(b) Except as provided in subsection (c) below, funds in the Special Account shall be used to finance the local costs of rural road maintenance and rehabilitation projects, including design and supervision services, the costs of staff training and development for the Rural Roads Division, and for such other purposes as may be mutually agreed upon by A.I.D. and the Grantee.

(c) The Local Currency equivalent of not less than Two Hundred Sixty Thousand Five Hundred United States Dollars (\$260,500) from the Special Account, determined by using the highest exchange rate per U.S. Dollar not unlawful in Tanzania on the date of disbursement from the Special Account, shall be made available to the United States Government for the requirements of operating the A.I.D. Program in Tanzania.

(d) The Grantee will furnish A.I.D. with such reports and information relating to activities financed with funds from the Special Account and the performance of the Grantee's obligations with respect thereto as A.I.D. may reasonably request. The Grantee will maintain, or cause to be maintained, in accordance with generally accepted accounting principles and practices consistently applied, such books and records relating to the Special Account as are necessary to adequately show, without limitation, the receipt and use of funds from the account by the Grantee for agreed purposes. Such books and records will be audited regularly and in accordance with generally accepted auditing standards, and maintained for at least three years after the date of the last disbursement from the Special Account.

(e) A.I.D. or any of its authorized representatives shall have the right to inspect, at all reasonable times, the books and records maintained by the Grantee as required under this Agreement and to inspect the activities financed from the Special Account.

(f) If A.I.D. determines that any disbursement from the Special Account is not supported by valid documentation in accordance with this Agreement, or is in violation of United States law, or is not made or used in accordance with the terms of this Agreement, A.I.D. may require the Grantee to redeposit into the Special Account in local currency the amount of such disbursement within sixty (60) days after receipt of request therefor. Such redeposits shall be used for purposes specified in Section 6.1(b). The right to request such a redeposit shall continue for three (3) years from the date of the last disbursement from the Special Account.

(g) Any interest earned on funds in the Special Account prior to their use for agreed upon activities

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will be retained in the Account and used for purposes authorized in subsection (b) of this section.

SECTION 6.2. Additionality. The Grantee agrees that use of the local currency from the Special Account shall be additional to, and not a substitute for, the Grantee's existing budgetary resources for the roads sub-sector.

SECTION 6.3. Environmental Concerns.

(a) The Grantee agrees that all contracts entered into by the Grantee with public or private sector firms for the design of new rural roads or for the rehabilitation of existing roads, as well as all rehabilitation or construction of rural roads financed in whole or in part by local currency from the Special Account, will specifically address drainage requirements and will require the incorporation of measures to mitigate soil erosion;

(b) The Grantee covenants that, except as A.I.D. may otherwise agree in writing, an environmental assessment for equipment that is clearly road rehabilitation equipment shall be conducted and the assessment's recommendation agreed to within six months of the date of this agreement.

SECTION 6.4. Taxation. This Agreement and the Grant will be free from any taxation or fees imposed under laws in effect in the United Republic of Tanzania.

SECTION 6.5. Reports and Records. In addition to the requirements in A.I.D. Regulation 1, the Grantee will:

(a) Furnish A.I.D. such reports and information relating to the goods and services financed by this Grant and the performance of the Grantee's obligations under this Agreement as A.I.D. may reasonably request;

(b) Maintain or cause to be maintained, in accordance with generally accepted accounting principles and practices consistently applied, such books and records relating to this Grant as may be prescribed in Implementation Letters. Such books and records may be inspected by A.I.D. or any of its authorized representatives at all times as A.I.D. may reasonably require, and shall be maintained for three years after the date of last disbursement by A.I.D. under this Grant;

(c) Permit A.I.D. or any of its authorized representatives at all reasonable times during the above referenced three-year period to inspect the commodities financed under this Grant at any point, including the point of use.

SECTION 6.6. Completeness of Information. The Grantee confirms:

(a) that the facts and circumstances of which it has informed A.I.D., or caused A.I.D. to be informed, in the course of reaching agreement with A.I.D. on the Grant, are accurate; and

(b) that it will inform A.I.D. in timely fashion of any subsequent facts and circumstances that materially affect, or that it is reasonable to believe might so affect, the Grant or the discharge of responsibilities under this Agreement.

SECTION 6.7. Other Payments. The Grantee affirms that no payments have been or will be received by any official of the Grantee in connection with the procurement of goods or services financed under the Grant, except fees, taxes, or similar payments legally established in the country of the Grantee.

SECTION 6.8. Minimum Size of Transaction. No foreign exchange allocation or letter of credit issued pursuant to this Agreement shall be in an amount less than Five Hundred Dollars (\$500), except as the Parties may otherwise agree in writing.

SECTION 6.9. Cooperation. The Grantee and A.I.D. will cooperate to assure that the purposes of the Program will be accomplished. To this end, the Parties, at the request of either, will exchange views on the progress of the Program, the performance of obligations under the Program Agreement, the performance of any consultants, contractors or suppliers engaged in the Program or the Program Support Project, and other matters relating to the Program. The Grantee and A.I.D. agree to participate in semi-annual meetings to review disbursement of the Program Grant and Special Account. Additionally, the Grantee agrees to undertake jointly with A.I.D. interim assessments during the five year life-of-program on such areas as the allocation and distribution of foreign exchange and the participation of the private sector in the rehabilitation and maintenance of rural roads. The first interim assessment shall be undertaken no later than August, 1990.

SECTION 6.10. Full and Open Competition. The Grantee agrees that all contracts to be entered into by the Grantee for the design of rural roads or the rehabilitation of existing roads financed in whole or in part with local currency from the Special Account, will be awarded competitively, without preference to government organizations or parastatal companies.

Article 7: Termination; Remedies

SECTION 7.1. Termination. This Agreement may be terminated by mutual agreement of the Parties at any time. Either Party may terminate this Agreement by giving the other Party thirty (30) days written notice.

SECTION 7.2. Suspension. If at any time

(a) The Grantee shall fail to comply with any provision of this Agreement; or

(b) Any representation or warranty made by or on behalf of the Grantee with respect to obtaining this Grant or made or required to be made under this Agreement is incorrect in any material respect; or

(c) An event occurs that A.I.D. determines to be an extraordinary situation that makes it improbable either that the purposes of the Grant will be attained or that the Grantee will be able to perform its obligations under this Agreement; or

(d) Any disbursement by A.I.D. would be in violation of the legislation governing A.I.D.; or

(e) A default shall have occurred under any other agreement between the Grantee or any of its agencies and the Government of the United States or any of its agencies;

then, in addition to remedies provided in A.I.D. Regulation 1, A.I.D. may:

(1) Suspend or cancel outstanding commitment documents to the extent that they have not been utilized through irrevocable commitments to third parties or otherwise, or to the extent that A.I.D. has not made direct reimbursement to the Grantee thereunder;

(2) Decline to issue additional commitment documents or to make disbursements other than under existing ones; and

(3) At A.I.D.'s expense, direct that title to goods financed under the Grant be vested in A.I.D. if the goods are in a deliverable state and have not been offloaded in ports of entry of the United Republic of Tanzania.

SECTION 7.3. Cancellation by A.I.D. If, within sixty (60) days from the date of any suspension of disbursements pursuant to Section 7.2, the cause or causes thereof have not been corrected, A.I.D. may cancel any part of the Grant that is not then disbursed or irrevocably committed to third parties.

SECTION 7.4. Refunds.

(a) In addition to any refund otherwise required by A.I.D. pursuant to A.I.D. Regulation 1, if A.I.D. determines that any disbursement is not supported by valid documentation obtained from the Grantee in accordance with this Agreement, or is in violation of United States law, or is not made or used in accordance with the terms of this Agreement, A.I.D. may require the Grantee to refund the amount of such disbursement in U.S. dollars to A.I.D. within sixty (60) days after receipt of

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request therefor. Refunds paid by the Grantee to A.I.D. resulting from violations of the terms of this Agreement shall be considered as a reduction in the amount of A.I.D.'s obligation under the Agreement and shall be available for reuse under the Agreement if authorized by A.I.D. in writing.

(b) The right to require such a refund of a disbursement will continue, notwithstanding any other provision of this Agreement, for three (3) years from the date of the last disbursement under this Agreement.

SECTION 7.5. Nonwaiver of Remedies. No delay in exercising or omitting to exercise any right, power, or remedy accruing to A.I.D. under this Agreement will be construed as a waiver of such rights, powers, or remedies.

Article 8: Miscellaneous

SECTION 8.1. Implementation Letters. From time to time, for the information and guidance of both parties, A.I.D. and the Grantee will agree on Implementation Letters describing the procedures applicable to the implementation of the Agreement. Except as permitted by particular provisions of this Agreement, Implementation Letters will not be used to amend or modify the text of this Agreement.

SECTION 8.2. Representatives. For all purposes relevant to this Agreement, the Grantee will be represented by the individual holding or acting in the office of the Principal Secretary, Ministry of Finance, Economic Affairs and Planning and A.I.D. will be represented by the individual holding or acting in the office of A.I.D. Representative, Tanzania, each of whom, by written notice, may designate additional representatives. The names of the representatives of the Grantee and of A.I.D., with specimen signatures, will be provided to A.I.D. and to the Grantee respectively, which may accept as duly authorized any instrument signed by such representatives in implementation of this Agreement, until receipt of written notice of revocation of their authority.

SECTION 8.3. Amendment of Agreement. This Agreement may be amended by written agreement of the authorized representatives of the Parties named in Section 8.2.

SECTION 8.4. Communications. Any notice, request, document or other communication submitted by either party to the other under this Agreement will be in writing or by telegram or cable, and will be deemed duly given or sent when delivered to such party at the following address:

To the Grantee: Ministry of Finance, Economic Affairs and
Planning
The United Republic of Tanzania

Mail Address: P.O. Box 9111
Dar es Salaam,
Tanzania

Alternate Address for Cables:
"HAZINA" Dar es Salaam
Telex 41329, Dar es Salaam; Callback: "FINANCE"

To A.I.D.: USAID Mission to Tanzania
Luther House, Dar es Salaam

Mail Address: P.O. Box 9130
Dar es Salaam

Alternate Address for Cables:
Telex 41951, Dar es Salaam; Callback "USAID"

All such communications shall be in English, unless the Parties otherwise agree in writing. Other addresses may be substituted for the above upon the giving of notice.

IN WITNESS WHEREOF, the Grantee and the United States of America, each acting through its duly authorized representative, have caused this Agreement to be signed in their names and delivered as of the day and year first above written.

THE UNITED REPUBLIC OF TANZANIA

By: 

Gilman Rutihinda

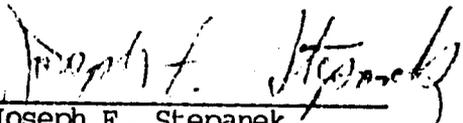
Title: Principal Secretary
Ministry of Finance,
Economic Affairs
and Planning

THE UNITED STATES OF AMERICA

By: 

Donald K. Petterson

Title: Ambassador

By: 

Joseph F. Stepanek

Title: A.I.D. Representative

Annex 1

AGRICULTURAL TRANSPORT ASSISTANCE PROGRAM

(621-T-602)

SUMMARY OF GRANTEE RESOURCES FOR ATAP PROGRAM

The amount of Government of Tanzania resources to be directed to the ATAP Program, including Project 621-0166, has been estimated at Tanzanian Shillings 6,465,000,000. This total comprises the local currency counterpart generated by the Program Grant, and set aside in the Special Local Currency Account provided for in Section 6.1 of the Program Grant (less 5% AID Trust Fund); as well as the Grantee's recurrent budget for the Rural Roads Division, limited amounts of the Regional Administration and District Council Road Budgets; in-country costs associated with training and consultancies funded by the Project; costs of surveys and publication of information; costs of servicing of road construction and rehabilitation equipment; recurrent maintenance costs for the classified road network; estimated costs of rural roads contract administration; and other Grantee program administration expenses.

The Grantee contribution to the Program is estimated in the following budget table:

Grantee Resources

(TShs. 000's)

	YR 1	YR 2	YR 3	YR 4	YR 5	TOTAL
1. OBJECTIVE 1						
A) Rural Roads Division	500	750	1,000	1,500	1,750	5,500
B) Counterpart	-	20,000	50,000	50,000	50,000	170,000
Sub-Total	500	20,750	51,000	51,500	51,750	175,500
2. OBJECTIVE 2						
A) Recurrent Maintenance Costs for Classified Road Network	1,160,000	1,190,000	1,220,000	1,210,000	1,200,000	5,980,000
Sub-Total	1,160,000	1,190,000	1,220,000	1,210,000	1,200,000	5,980,000
3. OBJECTIVE 3						
A) Contract Administration (Rural Roads)	200	250	300	350	400	1,500
B) Counterpart Programming	-	50,000	100,000	100,000	50,000	300,000
Sub-Total	200	50,250	100,300	100,350	50,400	301,500
4. PROGRAM MANAGEMENT	2,000	1,500	1,500	1,500	1,500	8,000
TOTAL	1,162,700	1,262,500	1,372,800	1,363,350	1,303,650	6,465,000

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"Title 22 - Foreign Relations

Chapter II. Agency for International Development, Department of State

[AID Regulation 1]"

**PART 201—RULES AND PROCEDURES
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287 (1-78))

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Appendix C—(Reserved)

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Commodity Eligibility. (A.I.D. 11
(10-18-70))

Authority: Sec. 621, Foreign Assistance Act
of 1961, as amended, 75 Stat. 445 (22 U.S.C.
2381).

Subpart A—Definitions and Scope of This Part

§ 201.01 Definitions.

As used in this part, the following terms shall have the meanings indicated below:

(a) *The Act.* "The Act" means the Foreign Assistance Act of 1961, as amended from time to time.

(b) *A.I.D.* "A.I.D." means the Agency for International Development or any successor agency, including, when applicable, each US AID.

(c) *A.I.D. geographic code.* "A.I.D. geographic code" means a code in the A.I.D. Geographic Code Book which designates a country, a group of countries, or an otherwise defined area. Principal A.I.D. geographic codes are described in § 201.11(b)(4) of this part.

(d) *AID/W.* "AID/W" means the A.I.D. in Washington, D.C. 20523, including any office thereof.

(e) *Approved applicant.* "Approved applicant" means the person or organization designated by the borrower/grantee to establish credits with banks in favor of suppliers or to instruct banks to make payments to suppliers, and includes any agent acting on behalf of such approved applicant.

(f) *Bank.* "Bank" means a banking institution organized under the laws of the United States, or any State, territory, or possession thereof, or Puerto Rico or the District of Columbia.

(g) *Borrower/grantee.* "Borrower/grantee" means the government of any cooperating country, or any agency, instrumentality or political subdivision thereof, or any private entity to which A.I.D. directly makes funds available by loan or grant.

(h) *Commodity.* "Commodity" means any material, article, supply, goods, or equipment.

(i) *Commodity-related services.* "Commodity-related services" means delivery services and/or incidental services.

(j) *Cooperating country.* "Cooperating country" means the country receiving the A.I.D. assistance subject to provisions of this Part 201.

(k) *Delivery.* "Delivery" means the transfer to, or for the account of, an importer of the right to possession of a commodity, or the rendering to, or for the account of, an importer of any commodity-related service.

(l) *Delivery services.* "Delivery services" means any service customarily per-

formed in a commercial export transaction which is necessary to effect a physical transfer of commodities to the cooperating country. Examples of such services are the following: Export packing, local drayage in the source country (including waiting time at the dock), ocean and other freight, loading, heavy lift, wharfage, tollage, switching, dumping and trimming, lighterage, insurance, commodity inspection services, and services of a freight forwarder. "Delivery services" may also include work and materials necessary to meet A.I.D. marking requirements.

(m) *Implementing document.* "Implementing document" means any document issued by A.I.D. which authorizes the use of A.I.D. funds for the procurement of commodities and/or commodity-related services and which specifies conditions which will apply to such procurement.

(n) *Importer.* "Importer" means any person or organization, governmental or otherwise, in the cooperating country who is authorized by the borrower/grantee to use A.I.D. funds under this Regulation for the procurement of commodities, and includes any borrower/grantee who undertakes such procurement.

(o) *Incidental services.* "Incidental services" means the installation or erection of A.I.D.-financed equipment, or the training of personnel in the maintenance, operation and use of such equipment.

(p) *Purchase contract.* "Purchase contract" means any contract or similar arrangement under which a supplier furnishes commodities and/or commodity-related services financed under this part.

(q) *Source.* "Source" means the country from which a commodity is shipped to the cooperating country, or the cooperating country if the commodity is located therein at the time of the purchase. Where, however, a commodity is shipped from a free port or bonded warehouse in the form in which received therein, "source" means the country from which the commodity was shipped to the free port or bonded warehouse.

(r) *Supplier.* "Supplier" means any person or organization, governmental or otherwise, who furnishes commodities and/or commodity-related services financed under this Part 201.

(s) *Supplier's Certificate.* "Supplier's Certificate" means AID Form 382 (1-78) "Supplier's Certificate and Agree-

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ment with the Agency for International Development", including the "Invoice-and-Contract Abstract" on the reverse of such form (Appendix A to this Part 201), or any substitute form which may be prescribed in the letter of commitment, request for the opening of a special letter of credit, or other pertinent implementing document.

(t) *United States*. "United States" means the United States of America, any State, territory or possession thereof, Puerto Rico and the District of Columbia.

(u) *US AID*. "US AID" means the A.I.D. mission or representative to any cooperating country.

(v) [Reserved]

(w) *Commodity Approval Application*. "Commodity Approval Application" means the Application for Approval by the Agency for International Development of Commodity Eligibility (A.I.D. Form 11) which appears as Appendix D to this Part 201.

(x) *Schedule B*. "Schedule B" means "Schedule B. Statistical Classification of Domestic and Foreign Commodities Exported from the United States" issued and amended from time to time by the U.S. Bureau of the Census, Department of Commerce, and published in 15 CFR 30.92.

[A.I.D. Regulation 1, 36 F.R. 7096, Apr. 14, 1971, as amended at 37 F.R. 12792, June 29, 1972; 38 FR 13641, May 24, 1973; 38 FR 18010, July 6, 1973]

§ 201.02 Scope and application.

The appropriate implementing document will indicate whether and the extent to which this Part 201 shall apply to the procurement of commodities or commodity-related services or both. Whenever this Part 201 is applicable, those terms and conditions of this part will govern which are in effect on the date of issuance of an irrevocable letter of credit under which payment is made or is to be made from funds made available under the Act, or, if no such letter of credit has been issued, on the date payment instructions for payment from funds made available under the Act are received by the paying bank.

(a) The borrower/grantee is responsible for compliance with the applicable provisions of this part by importers

and suppliers and for assuring that importers and suppliers are informed of the extent to which this part applies.

(b) Subpart B sets forth conditions governing the eligibility for A.I.D. financing of transactions covering commodities and commodity-related services.

(c) Subpart C prescribes procedures which importers shall follow in purchasing commodities.

(d) Subpart D sets forth the responsibilities of suppliers.

(e) Subpart E contains provisions relating to

(1) The diversion of shipments and the vesting in A.I.D. of title to commodities;

(2) The effect of termination or modification of any loan, grant or implementing document; and

(3) A.I.D. audit and inspection rights.

(f) Subpart F describes the financing process and prescribes the documents which shall be submitted to banks and to A.I.D.

(g) Subpart G contains the price tests which shall be met and limitations on amounts and types of payments which A.I.D. will finance.

(h) Subpart H defines the rights and responsibilities of banks.

(i) Subpart I sets out the rights and remedies which are reserved to A.I.D. and provides for the waiver under special circumstances of the provisions of this Part 201.

(j) Unless otherwise indicated, references in this Part 201 to subparts or to sections relate to subparts or sections of this Part 201.

[A.I.D. Regulation 1, 36 F.R. 7096, Apr. 14, 1971, as amended at 37 F.R. 12792, June 29, 1972; 43 F.R. 25998, June 16, 1978]

Subpart B—Conditions Governing the Eligibility of Procurement Transactions for A.I.D. Financing

§ 201.10 Purpose.

This subpart sets forth requirements for A.I.D. financing applicable to transactions for the procurement of commodities and/or commodity-related services.

§ 201.11 Eligibility of commodities.

To qualify for A.I.D. financing, a commodity procurement transaction shall satisfy the following requirements:

(a) *Description and condition of the commodity*. The commodity shall conform to the description in the imple-

menting document. Unless otherwise authorized by AID/W in writing, the commodity shall be unused, and may not have been disposed of as surplus by any governmental agency.

(b) *Source*—(1) *General rule.* The source of the commodity shall be a country authorized in the implementing document by name or by reference to an A.I.D. geographic code. In addition, the commodity shall have been mined, grown, or through manufacturing, processing, or assembly produced in a source country authorized in the implementing document.

(2) *Exceptions.* A produced commodity will not be eligible for A.I.D. financing if

(i) It contains any component from countries other than free world countries as described in A.I.D. Geographic Code 935; or

(ii) It contains components which were imported into the country of production from such free world countries other than authorized source countries; and

(a) Such components were acquired by the producer in the form in which they were imported; and

(b) The total cost of such components (delivered at the point of production) amounts to more than 50 percent, or such other percentage as A.I.D. may prescribe, of the lowest price (excluding the cost of ocean transportation and marine insurance) at which the supplier makes the commodity available for export sale (whether or not financed by A.I.D.).

(c) For the purpose of calculating eligible components under this paragraph (b)(2)(ii), "authorized source countries" shall include the cooperating country itself whenever AID has authorized procurement from a geographic code other than AID Geographic Code 000.

(3) *Waiver provision.* AID/W may from time to time waive or modify the requirements of subparagraph (2) (ii) of this paragraph in appropriate cases.

(4) *Identification of principal geographic code numbers.* The A.I.D. Geographic Code Book sets forth the official description of all geographic codes used

by A.I.D. in authorizing or implementing documents to designate authorized source countries or areas. The following are summaries of the principal codes:

Code 000—"The United States": The states of the United States, the District of Columbia, and areas of U.S. associated sovereignty, including the trust territories.

Code 899—"Free World": Any area or country, except the cooperating country itself and the following countries: Afghanistan, Albania, Bulgaria, Cambodia, Cuba, Czechoslovakia, German Democratic Republic, Hungary, Iran, Laos, Libya, Mongolia, North Korea, People's Democratic Republic of Yemen (South Yemen), People's Republic of China, Poland, Romania, Syria, Union of Soviet Socialist Republic (USSR), and Vietnam.

Code 935—"Special Free World": Any area or country in the Free World, including the cooperating country.

Code 941—"Selected Free World": The United States and any independent country in the Free World, except the cooperating country itself and the following: Andorra, Angola, Australia, Austria, Bahrain, Belgium, Canada, Cyprus, Denmark, Federal Republic of Germany, Finland, France, Gabon, Greece, Hong Kong, Iceland, Iraq, Ireland, Italy, Japan, Kuwait, Liechtenstein, Luxembourg, Malta, Monaco, Mozambique, Netherlands, New Zealand, Norway, Portugal, Qatar, Saudi Arabia, San Marino, Singapore, South Africa, Spain, Sweden, Switzerland, United Arab Emirates, United Kingdom, Vatican City, and Yugoslavia.

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(c) *Date of shipping documents.* The documents required as evidence of shipment under §201.52(a)(4) shall show that the date of shipment was within the shipping period, if any, specified in the implementing document.

(d) *Medium of transportation.* Shipment shall not be effected.

(1) By a transportation medium owned, operated or under the control of any country not included within A.I.D. Geographic Code 935; or

(2) On a vessel which A.I.D. has designated ineligible; or

(3) Under any ocean or air charter which has not received prior approval by A.I.D. W.

(e) *Marine insurance.* If A.I.D. determines that the government of a co-operating country, by statute, decree, rule, or regulation, discriminates with respect to A.I.D.-financed procurement against any marine insurance company authorized to do business in any State of the United States, then any A.I.D.-financed commodity shipped to the co-operating country shall be insured against marine risks and such insurance shall be placed in the United States with a company or companies authorized to do a marine insurance business in a State of the United States. "Discrimination" within the meaning of this paragraph may be found to exist whenever the effect of governmental action by a co-operating country is to hinder an importer in entering into a c.i.f. contract with a U.S. supplier or in instructing a U.S. supplier to place marine insurance in the United States.

(f) *Timely submission of documents.* All documents required under §201.52 to be submitted by a supplier in order to receive payment or reimbursement shall be submitted to A.I.D. or to a designated bank, whichever is appropriate, on or before the terminal date specified in the letter of commitment, the request for the opening of a special letter of credit, or other implementing document.

(g) *U.S. Treasury Department regulations.* Procurement transactions shall comply with the requirements of the Foreign Assets Control Regulation and Cuban Assets Control Regulation of the U.S. Treasury Department.

(h) *Commodities shipped out of free port or bonded warehouse.* No commodity shipped out of a free port or bonded warehouse is eligible for A.I.D. financing if it was shipped to the free port or bonded warehouse without compliance with the requirements set forth in paragraphs (d) (1) and (2) of this section or if it was shipped from the free port or bonded warehouse without compliance with the requirements set forth in paragraphs (d) (1), (2) and (3) of this section.

(1) *Purchase price.* The purchase price for the commodity shall satisfy the requirements of Subpart G.

(j) *Purchases from eligible suppliers.* Commodities procured with funds made available under this Part 201 shall be purchased from eligible suppliers. A supplier shall not be eligible to receive A.I.D. funds if:

(1) The supplier has been suspended or debarred by A.I.D. pursuant to A.I.D. Regulation 8, Part 208 of this chapter; or

(2) The supplier has been placed by A.I.D. on prior review and approval pursuant to §201.33 of this part and A.I.D. has not, in fact, given its prior approval to the supplier for the furnishing of specific goods; or

(3) The Supplier is not an individual, resident in a country included in the authorized source code; a nonresident citizen of a country included in the authorized source code; a corporation or partnership organized under the laws of a country included in the authorized source code; or a controlled foreign corporation (within the meaning of section 957 et seq. of the Internal Revenue Code) as attested by current information on file with the Internal Revenue Service of the United States (on IRS Form 959, 2952, 3646, or on substitute or successor forms) submitted by shareholders of the corporation; "or a joint venture or unincorporated association consisting entirely of individuals, corporations or partnerships which fit any of the foregoing categories."

(k) *Determination of commodity eligibility.* The commodity shall be approved in writing by A.I.D. for each sale transaction as eligible for A.I.D. financing. Such approval shall be indicated on the Commodity Approval Application submitted to A.I.D. by the supplier.

[A.I.D. Regulation 1, 36 F.R. 7006, Apr. 14, 1971, as amended at 37 F.R. 12792, June 29, 1972; 37 F.R. 18192, Sept. 8, 1972; 37 F.R. 26516, Dec. 13, 1972]

App A to HB 15, 10-30-80
(as amended to Sept 24, 1981) (TM 15:56)

§ 201.12 Eligibility of incidental services.

Incidental services may be financed under the same implementing document which makes funds available for the procurement of equipment if, (a) Such services are specified in the purchase contract relating to the equipment; and (b) The price satisfies the requirements of § 201.68; and (c) The portion of the total purchase contract price attributable to such services does not exceed \$50,000 or 25 percent of the total purchase contract, whichever is less.

§ 201.13 Eligibility of delivery services.

(a) *General.* Delivery of AID-financed commodities may be financed under the implementing document provided the delivery services meet the requirements in this section.

(b) *Transportation costs—(1) Ocean transportation costs.* (i) Unless otherwise authorized, AID will finance only those ocean transportation costs which meet the requirements of this paragraph (b)(1).

(a) When Geographic Code 000 is the authorized source for procurement, AID will finance only those costs incurred on vessels under U.S. flag registry.

(b) When Geographic Code 941 is the authorized source for procurement, AID will finance only those costs incurred on vessels under flag registry of countries included in Code 941 and the cooperating country.

(c) AID will finance costs incurred on vessels under flag registry of any free world country if the costs are part of the total cost on a through bill of lading paid to a carrier for initial carriage on a vessel which is authorized in accordance with paragraphs (b)(1)(i) (a) or (b) of this section.

(ii) When an eligible flag vessel is not available for shipment, a supplier may request a waiver of the eligibility requirements from the Office of Commodity Management, Transportation Division, AID, Washington, D.C. 20523.

(2) *International air transportation costs.* (i) AID will finance only those international air transportation costs which meet the requirement of this paragraph (b)(2). For the purposes of this subparagraph the term "U.S. flag air carrier" means one of a class of air carriers holding a certificate of public convenience and necessity issued by the Civil Aeronautics Board, approved by the President, authorizing operations between the U.S. or its territories and one or more foreign countries.

(ii) (a) Under all AID grants and under AID loans when the authorized source for procurement in Geographic Code 000, AID will finance only those costs incurred on U.S. flag air carriers unless such service is not available.

(b) Under AID loans when the authorized source for procurement is Geographic Code 941, AID will finance only those costs incurred on U.S., cooperating country, or Geographic Code 941 flag air carriers unless such service is not available.

(c) AID will finance international air transportation costs incurred on aircraft under flag registry of any free world country if the costs are part of the total cost on a through bill of lading paid to a carrier for initial carriage on an aircraft which is eligible in accordance with paragraphs (b)(2)(ii)(a) or (b) of this section.

(iii) (a) Expenditures for international air transportation furnished by air carriers which are not eligible under the provisions of paragraph (b)(2)(ii) of this section will be financed by AID only when service by eligible air carriers is unavailable. Criteria for determining when service by eligible air carriers is unavailable are the same as those published in 41 CFR 1-1.323-3 for determining when certified U.S. flag air carriers are unavailable. (Guidance on determining when service is unavailable may also be obtained from the Office of Commodity Management, Transportation Division.)

(b) When service by eligible flag air carriers is unavailable, any Code 935 flag air carrier may be used.

(c) In the event the supplier selects an air carrier other than an eligible flag carrier for international air transportation, it must include a certification on invoices which include such transportation costs as follows:

Certification of Unavailability of U.S. (Code 941 and Cooperating Country) Flag Air Carriers

I hereby certify that transportation service by U.S. (Code 941 and Cooperating Country) flag air carriers was unavailable for the following reason(s): (state reason(s)).

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App A to HB 15, 10-30-80
 (as amended to Sept 24, 1981
 (TM 15:56)

* (3) *Other Conditions and Limitations.* Notwithstanding paragraphs (b)(1) and (b)(2) of this section, unless otherwise authorized, AID will not finance transportation costs

(i) For shipment beyond the point of entry in the cooperating country except when intermodal transportation service covering the carriage of cargo from point of origin to destination is used, and the point of destination, as stated in the carrier's through bill of lading, is established in the carrier's tariff; or

(ii) On a transportation medium owned, operated or under the control of any country not included in Code 935; or

(iii) On any vessel designated by AID as ineligible to carry AID-financed cargo; or

(iv) Under any ocean or air charter covering full or part cargo (whether for a single voyage, consecutive voyages, or a time period) which has not received prior approval by AID/W (Office of Commodity Management); or

(v) Which are attributable to brokerage commissions which exceed the limitations specified in § 501.85(1) or to address commissions, dead freight, or demurrage.

(c) *Inspection services.* AID will finance inspection of AID-financed commodities if such inspection is specified in the purchase contract, performed by independent inspectors at the request of the importer and is either customary in export transactions for the commodity involved or is necessary to determine conformity of the commodities to the contract.

(d) *Insurance.* (1) Unless otherwise authorized, AID will finance premiums for marine insurance including war risk on AID-financed commodities only if

(i) The insurance is placed within a country included in the authorized geographic code: *Provided*, That if the authorized geographic code is any other

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- * than AID Geographic Code 000, the cooperating country itself shall be recognized as an eligible source; and
 - (ii) Such insurance is placed either in accordance with the terms of the commodity purchase contract or on the written instructions of the importer; and
 - (iii) Insurance coverage relates only to the period during which the commodities are in transit to the cooperating country, except that it may include coverage under a "warehouse-to-warehouse" clause; and
 - (iv) The premiums do not exceed the limitations contained in § 201.68; and
 - (v) The insurance provides that loss payment proceeds shall be paid in U.S. dollars or other freely convertible currency.
- (2) Within the meaning of § 201.11(e), as well as of this subparagraph, insurance is "placed" in a country only if payment of the insurance premium is made to, and the insurance policy is issued by, an insurance company office located in that country.

§ 201.14 Eligibility of bid and performance bonds and guaranties.

The cost of any bid bond or guaranty posted by a successful bidder or of any performance bond or guaranty posted by a supplier is eligible for financing under the implementing document to the extent that the principal amount of the bond or guaranty does not exceed the amount customary in international trade for the type of transaction and commodity involved. Bonds or guaranties may be payable in U.S. dollars, or freely convertible currency or local currency and may be posted in favor of either AID or the borrower/grantee: *Provided* That the bond or guaranty conforms to the requirements of the invitation for bids or the contract, as applicable.

§ 201.15 U.S.-flag vessel shipping requirement.

(a) *General requirements.* At least 50 percent of the gross tonnage of all commodities financed with A.I.D. dollar funds and transported to the cooperating country on ocean vessels shall be transported on privately owned U.S.-flag commercial vessels. The foregoing requirement shall apply separately for shipments on dry bulk carriers, dry cargo liners, and tankers from each of the following geographical areas: United States, Europe and Africa, Near East and South

Asia, Latin America and Canada, and Far East. Additionally, at least 50 percent of the gross freight revenue generated by all shipments financed with A.I.D. dollar funds and transported to the cooperating country on dry cargo liners shall be paid to or for the benefit of privately owned U.S.-flag commercial vessels.

(b) *Responsibility of borrower/grantee.* The borrower/grantee shall be responsible for assuring compliance with the requirements of paragraph (a) of this § 201.15 and for imposing upon sub-borrowers, contractors and importers such requirements regarding shipping arrangements with suppliers as will assure discharge of this responsibility. Such compliance shall be achieved during each U.S. fiscal year

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as well as each quarterly period thereof, or during such other period or periods as may be specified by A.I.D. in agreements or implementing documents.

(c) *Nonavailability of U.S.-flag vessels.* Upon application of the borrower/grantee, AID/W (Office of Commodity Management)

will determine and advise

the borrower/grantee whether or not a privately owned U.S.-flag commercial vessel is available for a specific shipment of commodities at fair and reasonable rates. Such determination and advice of nonavailability does not relieve the borrower/grantee of the obligation to comply with the requirements of paragraphs (a) and (b) of this section except to the extent that A.I.D. after reviewing shipments by the borrower/grantee during the fiscal year, quarterly period thereof, or other relevant time period, determines that such compliance has not been possible. Any such determination and advice will not in any way affect the eligibility for A.I.D. financing of transportation costs on foreign flag vessels.

(d) *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 United States, rebuilt outside the United States, or documented under any foreign registry until such vessel shall have been documented under the laws of the United States for a period of 3 years.

[A.I.D. Reg. 1, 36 F.R. 7006, Apr. 14, 1971, as amended at 36 F.R. 21190, Nov. 4, 1971; 37 F.R. 12792, June 29, 1972; 43 F.R. 25998 and 25999, June 16, 1978]

* Revised

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 A.I.D.

§ 201.21 Notice to supplier.

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

(a) Notice that the transaction is to be financed by A.I.D. under this Part 201;

(b) The identification number of the implementing document;

(c) All additional information prerequisite to A.I.D. 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 made, shipping provisions, and documentation requirements); and, where appropriate,

(d) Notice relative to the marking requirements of § 201.31(d) that the importer is the government of the cooperating country or any of its subdivisions or instrumentalities.

[38 F.R. 11921, June 23, 1971]

§ 201.22 Formal competitive bid procedures.

If the implementing document requires, or if the importer elects procurement through the formal competitive procedures set forth in this section, then except as paragraphs (f) or (g) of this section may apply, the following minimum requirements shall be applicable:

(a) *Contents of the invitation for bids.* Every invitation for bids and every attachment or amendment to an invitation shall be in the English language. The invitation shall contain the following:

(1) *Statement of requirements.* The invitation shall state specifically that the formal competitive bid procedures set forth in this § 201.22 apply. The terms and conditions which apply to the procurement shall be clearly indicated, including any factors other than price to be used in evaluation. Commodity specifications shall be stated in terms of U.S. standards, in a non-restrictive manner, and in sufficient detail to permit maximum response from prospective

(2) *Statement regarding submission of bids.* Invitations for bids shall state the applicable invitation number, the address to which bids are to be sent, the closing hour and date for submission and the date, hour, and place for public opening of bids. If additional drawings, details, regulations or forms are necessary for bidding, the invitation shall state where such material may be obtained.

(3) *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.

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

(b) *Advertising the invitation for bids.* The importer shall comply with the minimum notification requirements set forth in this paragraph (b). He may also take any further steps to notify prospective suppliers which are consistent with prudent procurement.

(1) *Submission to A.I.D.* Three copies of the invitation for bids must be sent to A.I.D., Small Business Office, Washington, D.C. 20523, and a number of copies which is adequate in relation to the probable number of interested suppliers shall be made available in eligible source countries at suitable places designated by the borrower/grantee and agreed to by A.I.D. Invitations must be available to prospective suppliers free of charge, unless otherwise authorized by the Small Business Office, AID/W. All copies must be accompanied by a complete set of any additional drawings, details, applicable government regulations, and other pertinent data necessary to the preparation of bids, or make reference to such additional documents as are readily available to the public or are available for public inspection.

(2) *Time of submission.* Copies of the invitation for bids must be furnished sufficiently in advance of the bid-closing date to permit adequate preparation of bids. Unless a longer period is prescribed

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by the Small Business Office, AID/W, or upon application of the importer a lesser period is authorized by such Office, the required copies shall be sent so as to arrive in the Small Business Office, AID/W, at least 45 days in advance of the bid-closing date.

(3) *Resubmission of invitation for bids to A.I.D.* A.I.D. may require the revision and resubmission to A.I.D. of any invitation for bids which does not comply with the requirements of this § 201.22. In such cases the importer shall effect changes necessary to assure compliance with the applicable requirements. The bid-closing date will be extended as A.I.D. (Small Business Office) may instruct.

(c) *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.

(d) *Awards.* Every award shall be made to that responsible bidder whose bid, conforming to the invitation for bids, is lowest in price, unless another bid is demonstrably more advantageous to the importer because of any factor (other than price) set forth in the invitation for bids as a factor to be considered in the evaluation of bids.

(e) *Submission of award information to A.I.D.* The importer shall complete Form A.I.D. 11-83 "Abstract of Bids", identifying thereon the successful bidder, and noting any two or more identical bids or any evidence of suspected collusion. If the lowest bid has not been accepted, the importer shall justify the award and shall append to the Abstract a statement of reasons for rejecting all lower bids. The Abstract and any justification statement shall be sent in triplicate to the Office of Commodity Management, A.I.D. Washington, D.C. 20523, to arrive within 20 days after the award of the contract.

* (f) *Exemption for small value procurement.* With respect to transactions for which the estimated value does not exceed \$25,000, the importer is exempted from the advertising requirements of paragraph (b) of this section. This exemption does not apply to procurement undertaken in amounts not exceeding \$25,000 for the purpose of evading the requirements of paragraph (b) of this section. *

(g) *Waiver provisions.* A.I.D. may waive the requirements set forth in this § 201.22 (a) through (e) in the following situations:

(1) *Proprietary procurement.* (i) Procurement where A.I.D. has determined that, in order to assure the interchangeability or standardization of equipment, or because of special design requirements, or for any similar reason, purchase of a commodity by reference to a particular specification, trade name, or designation is necessary.

(ii) Application for waivers shall be made in writing to A.I.D. by the importer and shall include supporting justification together with the recommendations of the borrower/grantee. In the absence of other instructions, such applications shall be submitted to the US AID for transmittal to AID/W. Notice of approval or rejection of any such application of a waiver will normally be transmitted to the importer through the US AID.

(2) *Emergency procurement.* (i) Procurement where A.I.D. determines that the time required to meet these requirements would result in

(a) Unacceptable delay or to a substantial increase in the cost of:

(1) A project's completion or

(2) A plant's production or

(b) Failure to meet required agricultural planting schedules.

(ii) A request for an emergency procurement waiver shall be made by the importer to the US AID. The request shall state the facts justifying such emergency procurement and shall bear the endorsement of the borrower/grantee. Emergency procurement requires the prior written approval of the US AID.

(3) *Special situations.* Procurement where AID/W has determined that it would be impracticable or inconsistent with the purpose of the Act to require adherence to the procedures prescribed in paragraph (b) of this section.

[A.I.D. Regulation 1, 36 FR 7096, April 14, 1971, as amended at 39 FR 17946, May 22, 1974; 43 F.R. 25999, June 16, 1978]

§ 201.23 Negotiated procurement procedures.

(a) *General requirements.* In the absence of a clear statement concerning the applicability of formal competitive bid procedure set forth in § 201.27 (a) through (e) or in the event such procedures are waived in accordance with § 201.23 (g), a solicitation by an importer requesting an offer or quotation from a supplier to furnish commodities shall be understood as a representation that the

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procurement will be accomplished pursuant to negotiated arrangements. Procurement on a negotiated basis shall be in accord with good commercial practice. Solicitations by the importer for quotations and offers shall be made uniformly to a reasonable number of prospective suppliers and all quotations and offers received, whether or not specifically solicited, shall be given consideration before making an award.

(b) *Publicizing.* To provide suppliers in the United States with an opportunity to participate in furnishing commodities which may be purchased on a negotiated basis under A.I.D. financing, A.I.D. will periodically publish for each cooperating country a list of commodities which may be expected to be imported, and the names and addresses of the importers which have traditionally purchased those commodities. Interested suppliers will then make offers or furnish quotations, on the products they desire to sell, directly to the importer of those products. A.I.D. will not publicize specific proposed purchases which are to be undertaken on a negotiated basis unless specifically requested to do so by the importer in accordance with the provisions of paragraph (c) of this section.

(c) *Notification.* If the importer elects to solicit quotations and offers for specific proposed purchases through publication by A.I.D., A.I.D. will notify prospective suppliers of the export opportunity. Requests for such notification shall be submitted to the Small Business Office, A.I.D., Washington, D.C. 20523, and shall contain the name and address of the importer, a full description of the commodities and/or services required, applicable price and delivery terms, and other relevant procurement data in the English language and in terms of U.S. standards.

(d) *Notice of quotations and offers received.* A.I.D. may require that the importer furnish an abstract in the English language and identify thereon all offers or quotations received, the offer accepted or order placed, the price, the quantity, the name and address of all persons submitting offers or quotations and of their principals, if any (including manufacturers or processors of the commodity).

(e) *Procurement under special supplier-importer relationships.*

(1) Solicitation of offers from more than one supplier is not required if

(i) The importer is purchasing for resale or processing, as the supplier's regularly authorized distributor or dealer, a

commodity which, under the terms of the distributorship or dealer agreement, the importer is precluded from buying from another supplier, or

(ii) The importer is purchasing for resale a registered brand-name commodity from a supplier who is the exclusive distributor of that commodity to the area of the importer.

(2) A.I.D. may require the importer to furnish, or cause to be furnished, to A.I.D. documentary evidence of the existence of the relationships described in paragraph (e) (1) of this section.

[A.I.D. Regulation 1, 36 FR
7096, April 14, 1971 as amended
at 39 FR 17946, May 22, 1974]

§201.24 [Reserved]

[A.I.D. Regulation 1, 36 FR
7096, April 14, 1971 as amended
at 39 FR 17946, May 22, 1974]

§201.25 Advance and progress payments
for custom-made commodities.

Advance or progress payments prior to shipment may be made with AID funds if the procurement involves any commodity made to the special specifications of the importer and if prior written approval to make such payments has been obtained from AID by the importer, through the borrower/grantee, or if such payments are authorized in the implementing document. Any request for AID approval may be submitted either to AID/W or to the USAID for transmittal to AID/W. AID/W will consider such request only if (a) The total purchase price exceeds \$200,000; (b) The initial advance, if any, does not exceed 10 percent of the total purchase price; (c) Each progress payment is at least 10 percent of the total purchase price; (d) The total

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of all payments prior to shipment does not exceed 80 percent of the total purchase price; and (e) The borrower/grantee or AID requires the supplier to establish in favor of the borrower/grantee a performance guaranty or prepayment bond.

§ 201.26 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 guaranteed.

§ 201.27 Expenditure of marine insurance loss payments.

If the importer receives directly or indirectly any marine insurance loss payment under a marine insurance policy financed pursuant to this part, the importer shall use such loss proceeds to procure from a source specified in the implementing document which originally provided the A.I.D. funds commodities which have not been designated by A.I.D. to the borrower/grantee as ineligible for A.I.D. financing.

Subpart D—Responsibilities of Suppliers

§ 201.30 Purpose.

This subpart establishes the responsibilities of suppliers who furnish commodities and/or commodity-related services. The subpart also establishes procedures for prior review by A.I.D. of relevant contract data.

§ 201.31 Suppliers of commodities.

(a) *Performance of the sales contract.* The supplier of commodities shall comply with the terms and conditions of his contract with the importer and of any letter of credit under which he secures payment.

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

(1) The commodity conforms to the description contained in his contract and letter of credit and, unless otherwise authorized by A.I.D. 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 his contract or letter of credit;

(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 him on or before the terminal date specified in the letter of credit, or, if there is no letter of credit, in his contract;

(5) The provisions of the U.S. Treasury Department Foreign Assets Control Regulation and Cuban Assets Control Regulation are complied with; and

(6) The purchase price of the commodity meets the requirements of Subpart G 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 him for his own or for the importer's account comply with the requirements (other than those relating to freight rates) of § 201.13 and, if required by A.I.D., for assuring that any shipping documents obtained by him contain an appropriate diversion clause pursuant to § 201.43. The supplier shall deliver to A.I.D. any shipping documents available to him whenever such delivery is requested by A.I.D.

(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 containers, whether shipped from the United States or from any other source country, carry the official AID (clashed hands) emblem. Additionally, except as AID may otherwise prescribe, when the supplier is given notice by the importer that the importer is the government of a cooperating country or any of its subdivisions or instrumentalities, the supplier shall also be responsible for assuring that all commodities carry the AID emblem. The last five digits of the AID financing document number shall be marked on each export shipping container in characters at least equal in height to the shippers marks.

* Revised

(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 shipping container and the nature of the surface to be marked. The emblem placed on commodities shall be as durable as the trademark, company or brand name affixed by the producer; the emblem on each export shipping container shall be affixed in a manner which assures that the emblem will remain legible until the container reaches 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 package or export shipping container. 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 AID/W (Office of Commodity Management) and from the USAID.

(2) *Exception to requirement for affixation of emblems.* To the extent compliance is impracticable, affixation 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 subparagraph (2) of this paragraph (d) the supplier (or, when appropriate, the borrower/grantee) may request AID/W

(Regional Assistant Administrator or his/her designee) for a waiver.

(e) *Export licenses.* The supplier shall assure that all necessary export licenses 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 A.I.D. Mission in the importing country) which may be specified in the Letter of Credit or other payment instruction covering the transaction. Prior

to presenting the documents specified in § 201.52 for payment, the supplier shall mail a copy of the Ocean Bill of Lading described in § 201.52(a)(4)(i) to the Maritime Administration, Cargo Preference Control Center, Commerce Building, Washington, D.C. 20545.

(g) *Adjustment of refunds, credits, and allowances.* All adjustments in the purchase price in an A.I.D.-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 A.I.D. Any such payment shall be transmitted to the Office of

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A.I.D., Washington, D.C.,

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. A.I.D. 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 A.I.D. in accordance with the provision of § 201.67(a)(5).

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

(i) *Termination or modification of A.I.D. financing.* The supplier shall be responsible for compliance with the provisions of § 201.45 applicable to him.

[A.I.D. Reg. 1, 36 F.R. 7096, Apr. 14, 1971, as amended at 36 F.R. 11921, June 23, 1971; 36 F.R. 21190, Nov. 4, 1971; 39 F.R. 17946, May 22, 1974]

§ 201.32 Suppliers of delivery services.

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

* (b) Reserved

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(c) *Adjustments in the price of delivery services.* The supplier of delivery services shall pay to the

Office of Financial Management,

A.I.D., Washington, D.C. 20523, 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.

(d) *Marine insurance reporting requirement.* With respect to any loss payment exceeding \$6,000 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
*AID/W, Office of Commodity Management,
the *

amount and date of the payment, a description of the commodity, the A.I.D. identification number, name of the carrier, vessel, and voyage number (alternatively, flight or inland carrier run number), date of the bill of lading, the identity and address of the assured, and the identity and address of any assignee of the assured to whom payment has actually been made.

§ 201.33 *Prior review of proposed sales.*

A.I.D. may require that a supplier submit to A.I.D. for prior review any proposed sale of commodities or of commodity-related services which is to be financed by A.I.D. Upon being notified by A.I.D. that such prior review will be required, the supplier shall submit to A.I.D. for review all proposed transactions of the type covered by the notification in accordance with instructions contained therein. The supplier shall also provide any further information, documentation, or certification which A.I.D. may specify after review of a proposed transaction. A.I.D. will notify the supplier of any special documents or certifications which the supplier must submit in order to obtain payment under such transactions and will forward to the banks appropriate amendments to letters of commitment or to requests for the opening of a special letter of credit.

* Revised

Subpart E—General Provisions Relating to A.I.D. Financing of Commodities and Commodity-Related Services

§ 201.40 *Purpose.*

This subpart sets forth certain provisions of general application to transactions subject to this part.

§ 201.41 *Audit and inspection.*

The borrower/grantee shall maintain records adequate to document the arrival and disposition in the cooperating country of all commodities financed by A.I.D. and to identify the importer (or the first purchaser or transferee if the commodity is imported by the borrower/grantee) for a period of 3 years following the date of payment or reimbursement by A.I.D. or for such other period as A.I.D. and the borrower/grantee agree. In addition, the borrower/grantee or the importer shall, to the extent either exercises control or custody over the commodities, permit A.I.D. or any of its authorized representatives at all reasonable times during the 3-year or other agreed period to inspect the commodities at any point, including the point of use and to inspect all records and documents pertaining to such commodities.

§ 201.42 *Reexport of A.I.D.-financed commodities.*

Unless specifically authorized by A.I.D., commodities imported into a cooperating country under A.I.D. financing may not be exported in the same or substantially in the same form from the cooperating country. In the event of any unauthorized reexport, the borrower/grantee shall pay promptly to A.I.D., upon demand, the entire amount reimbursed or such lesser or greater amount as A.I.D. may deem appropriate under the circumstances of the particular transaction. Such an amount shall in no event, however, exceed the greater of either the amount reimbursed or the amount realized from the reexport.

§ 201.43 *Diversion clause.*

A.I.D. may require that charter parties, bills of lading, or other ocean shipping documents covering A.I.D.-financed commodities contain a clause substantially as follows:

A.I.D. may at any time prior to unloading prescribe a different port of discharge from among the ports covered by the applicable conference tariff. Diversion charges shall apply in accordance with the tariff. Deviation insurance and extra handling costs actually incurred shall be reimbursed.

§ 201.44 Vesting in A.I.D. of title to commodities.

(a) *Vesting upon order of A.I.D.* A.I.D. may direct that title to A.I.D.-financed commodities in transit to a cooperating country shall be vested in A.I.D. if in the opinion of A.I.D. such action is necessary to assure compliance with the provisions or purposes of any act of Congress.

(1) *Rights of A.I.D. upon vesting of title.* In accordance with instructions by A.I.D., the borrower/grantee, supplier, and bank shall transfer such negotiable bills of lading, suppliers' invoices, packing lists, inspection certificates or other designated documents relating to the commodities as are in, or may come into, their possession.

(2) *Diversion of commodities.* A.I.D. may direct the master or operator of a vessel or an inland carrier carrying the commodities to divert them away from the port or other destination specified in the shipping documents and to deliver them at such other destination as A.I.D. may designate.

(b) *Financial responsibility of A.I.D. under vesting order.* (1) A.I.D. will reimburse a supplier who has not already received payment under the sales contract for all commodities with respect to which A.I.D. has taken title under a vesting order.

(2) A.I.D. will assume the responsibility for any extra costs (including the costs of marine insurance and handling) which are incurred as a result of a diversion. With respect to liner shipments, such costs shall not exceed diversion charges as per tariff, and shall include only those deviation insurance and extra handling costs which are actually incurred.

(3) A.I.D. shall incur no liability to the borrower/grantee, the importer, or to the approved applicant by reason of any order which vests in A.I.D. title to commodities, or by reason of any request for the diversion of commodities.

§ 201.45 Termination or modification of a loan, grant or implementing document.

(a) *Effect of termination or modification.* (1) Except as provided in subparagraph (2) of this paragraph, the availability of A.I.D. funds to finance the procurement of commodities and commodity-related services shall terminate or shall be modified, whenever and to the same extent that the implementing document, letter of commitment or special letter of credit which relates to such delivery is terminated or modified

by operation of provisions contained in the document or by the exercise of rights otherwise reserved to A.I.D.

(2) Unless the supplier and A.I.D. agree otherwise, to the extent that the supplier has received an irrevocable letter of credit from a bank under an A.I.D. letter of commitment, the purchase contract shall be affected only to the extent necessary to comply with any vesting order issued by A.I.D. in accordance with § 201.44.

(b) *Responsibilities of parties after termination or modification of A.I.D. financing.* Upon termination or modification of A.I.D. financing of commodities or commodity-related services, the supplier, importer and approved applicant shall make such arrangements as are necessary to obtain the cancellation or modification of any letter of credit in favor of the supplier.

§ 201.46 Compensation to supplier if shipment is prohibited.

(a) *Payment to supplier.* A.I.D. shall make appropriate payment to a supplier for the value of A.I.D.-financed commodities available for immediate shipment from the United States if all the following conditions are satisfied:

(1) Shipment is prohibited by order of the U.S. Government and such order has general application to all shipments to the cooperating country.

(2) Payment may not be made by the bank under the terms of the letter of credit or payment instructions.

(3) The supplier is unable to dispose of the commodities without loss.

(4) The supplier tenders to A.I.D. a negotiable warehouse receipt covering the commodities in question and presents to A.I.D. such other documentation required by § 201.52 as may be appropriate under the circumstances.

(b) *Other settlement.* In lieu of accepting title to the commodities, A.I.D. may negotiate with the supplier such other settlement as may be fair and equitable under the circumstances.

§ 201.47 Use of marine insurance loss proceeds.

The borrower/grantee shall pay promptly to A.I.D. a sum equal to the proceeds received by an importer or his assignee in settlement of a marine insurance claim under a marine insurance policy financed pursuant to this part if such proceeds are not expended in the manner provided by § 201.27 within a reasonable period after receipt by the importer.

Subpart F—Payment and Reimbursement

§ 201.50 Purpose.

This subpart describes:

(a) The methods by which A.I.D. will make payment or reimbursement for commodities and commodity-related services which have been furnished;

(b) The documentation required to be submitted to A.I.D. for the purpose of obtaining such payment or reimbursement; and

(c) The terminal date for presentation of documents which A.I.D. requires as a condition for reimbursement.

§ 201.51 Methods of financing.

In procurement subject to this Part 201 the following methods of financing may be employed by A.I.D. In each case, the method of financing shall be consistent with provisions in the pertinent implementing documents.

(a) *Direct reimbursement.* Upon presentation to A.I.D. of the documents specified in § 201.52, a borrower/grantee will be reimbursed for the cost of commodities and commodity-related services procured by the borrower/grantee directly or procured by other importers with the authorization of the borrower/grantee, if such commodities or services are eligible under the implementing document and under this Part 201 for A.I.D. financing.

(b) *Letter of commitment to a bank.* At the request of the borrower/grantee, A.I.D. will issue a letter of commitment to a bank for a specified amount in dollars. Reimbursement to a bank will be in accordance with the terms of such letter of commitment for sight payments made for the account of an approved applicant. Any such payment by a bank made in anticipation of a letter of commitment and falling within the scope of payments authorized by such letter when issued will be deemed to be a payment to be reimbursed by A.I.D. thereunder.

(1) *Requests for letters of commitment.* Requests for the issuance of letters of commitment shall be in the English language and shall be submitted to A.I.D. by the borrower/grantee in duplicate. They shall contain the following:

(i) Identification of the implementing document;

(ii) The dollar amount of the letter of commitment;

(iii) The name and address of the bank to which the letter of commitment is to be issued;

(iv) The name and address of the approved applicant;

(v) The expiration date to be stated in the letter of commitment, which shall be not later than the final date specified in the implementing document for submission of documentation to the bank as a basis for disbursement against the letter of commitment, except that, if a terminal shipping date is provided in the implementing document, the expiration date shall be the last day of the month following the month in which the terminal shipping date occurs; and

(vi) Identification of the items to be financed under the letter of commitment (including Schedule B identification).

(2) *Approved applicant's request to bank—(i) Form and effect of request.* An approved applicant may apply to the bank holding a letter of commitment for the issuance, confirmation, or advice of a commercial letter of credit for the benefit of a supplier, or may instruct the bank to make payments at sight to such supplier, or may instruct the bank to make payments at sight to or for the account of the borrower/grantee.

(ii) *Borrower/grantee assignment under letter of commitment.* The borrower/grantee's request to A.I.D. for a letter of commitment shall be deemed notification to A.I.D. of assignment of any rights to receive reimbursement for the specified funds under the related implementing document. A.I.D. by issuance of the letter of commitment shall be deemed to have consented to such assignment. Any such assignment or consent shall inure to the benefit of the bank's legal successors and assignees.

(iii) *Requirements imposed by bank.* The borrower/grantee and the approved applicant shall be deemed to have consented to imposition by the bank upon the beneficiary of any letter of credit or payment instruction of such requirements as the bank deems necessary in order to comply with its applicable obligations to A.I.D. Such consent shall be deemed an express condition incorporated in any request of the approved applicant under subparagraph (2)(i) of this paragraph.

(3) *Reimbursement of bank.* Upon presentation to A.I.D. of the documents described in § 201.52, A.I.D. will reimburse the bank for any amounts paid by it in dollars to or on behalf of the approved applicant pursuant to a letter of commitment, subject, however, to compliance by the bank with the requirements of Subpart H. Such documents in the normal course should be presented to A.I.D. promptly. Bank

charges will be eligible for reimbursement if authorized in the letter of commitment. Reimbursement will be made by check within 30 days.

(c) *Special letter of credit.* Upon application of the borrower/grantee, A.I.D. may request a bank to open a special letter of credit, revocable or irrevocable, for a designated beneficiary.

(1) *Financing instructions.* The beneficiary of the special letter of credit may instruct the bank to issue subsidiary letters of credit, or to make payments at sight, to designated parties or may claim reimbursement from the bank for payments which it has made to suppliers upon submission to the bank of the documents required under § 201.52. When issuing subsidiary letters of credit to parties designated by the beneficiary of the special letter of credit, the bank will instruct such parties to make reference in their documents to the A.I.D. reference number indicated in the A.I.D. request for the opening of a special letter of credit.

(2) *Reimbursement of bank.* Upon presentation to A.I.D. of the documents described in § 201.52, A.I.D. will reimburse the bank for any amounts paid by it in dollars pursuant to the letter of credit, subject, however, to compliance by the bank with the requirements of Subpart H. Such documents in the normal course should be presented to A.I.D. promptly. Bank charges will be eligible for reimbursement if authorized in the A.I.D. request for the opening of a special letter of credit. Reimbursement will be made by check within 30 days.

(3) *Availability of documents.* The bank shall make available to A.I.D., upon request, a copy of each subsidiary letter of credit issued; a copy of each payment instruction or request; and a copy of each document in its possession received by it against payment.

(d) *Bank charges under letter of commitment or special letter of credit.* (1) To claim reimbursement for commissions, transfers or other charges, not including interest on advances, the bank shall submit Voucher SF 1034 and shall attach thereto a copy of the payment advice which identifies the costs being billed.

(2) To claim reimbursement for interest on advances, the bank shall claim reimbursement on Voucher SF 1034, attaching thereto

(1) The monthly statement of advance account established under the letter of

commitment or special letter of credit, in duplicate, showing

(a) The opening balance;

(b) The date and amount of each charge attributable to the letter of commitment or special letter of credit, indicating the number of the letter of commitment or special letter of credit, subsidiary letter of credit, or payment instruction or request under which the charge was made;

(c) The date and amount of each A.I.D. reimbursement to the bank, indicating either the A.I.D. bureau voucher number or the number of the letter of commitment or special letter of credit, subsidiary letter of credit, or payment instruction or request under which the payment was made; and

(d) The closing balance;

(ii) The bank's monthly advice of charge, in duplicate, showing

(a) The outstanding balance in the advance account on each day of the period covered; and

(b) The amount of interest charged during the period.

(3) *Certification.* Each claim for reimbursement shall have endorsed thereon or attached thereto a certification by an authorized representative of the bank that the charges for which payment is being claimed are in accordance with the schedule of charges agreed on between the bank and the approved applicant or beneficiary.

(4) *Report.* The bank shall render a report as of the end of each calendar * month to AID/W (Office of

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and to the approved applicant or beneficiary. The report shall contain the following information based upon actual paid invoices and paid bank charges:

(i) The balance as of the end of the previous reporting period;

(ii) Increases or decreases during the current reporting period in the authorized amount of the letter of commitment or special letter of credit;

(iii) Total payments made during the current reporting period; and

(iv) The balance as of the close of the current reporting period.

(e) *Letter of commitment to a supplier.* At the request of a borrower/grantee, A.I.D. may issue a letter of commitment to a supplier assuring payment by A.I.D. of specified amounts to cover the cost of commodities and commodity-related services. The letter of commitment to a supplier will identify the sales

* Revised

App A to HB 15, 10-30-80
(as amended Sept 24, 1981)
(TM 15:56)

contract to which it relates and the implementing document under which it is issued.

[A.I.D. Regulation 1, 36 F.R. 7096, Apr. 14, 1971, as amended at 37 F.R. 12792, June 29, 1972]

§ 201.52 Required documents.

(a) *Commodities and commodity-related services.* Claims for reimbursement or payment with respect to commodities and commodity-related services shall be supported by the documents listed in subparagraphs (1) through (8) of this paragraph or by such other documents as may be required in the implementing document, letter of commitment, or request for the opening of a special letter of credit. Each document shall indicate the identification number of the applicable implementing document, letter of commitment, or request for the opening of a special letter of credit.

(1) *Voucher.* Voucher SF 1034 with three copies, to be prepared by the borrower/grantee, by the approved applicant, or by the bank as assignee or agent for the approved applicant.

(2) *Supplier's invoice.* (i) One copy of the supplier's detailed invoice showing the following:

(a) The name and address of the importer;

(b) The quantity and the description of each item shipped, in sufficient detail for ready identification;

(c) The total gross sales price;

(d) The total net sales price (determined by deducting from the total gross sales price the amounts required to be deducted under § 201.65(g));

(e) The sales price for each item net of all trade discounts to which the importer is entitled;

(f) The delivery terms (e.g., f.o.b., f.a.s., c.i.f., and c. & f.);

(g) The dollar amount of any incidental services which are not included in the price of the commodity and for which reimbursement is claimed;

(h) The dollar amount of all delivery services obtained by the supplier of the commodity for the importer's account which are not included in the price of the commodity and for which reimbursement is claimed;

(i) To the extent that the commodity price includes transportation cost as defined in § 201.61(c) or other commodity-related services, a description of such services and the dollar amounts attributable to such services; and

(j) Unless a Supplier's Certificate covering marine insurance is submitted, the name and address of the supplier of such insurance and the dollar cost thereof.

(ii) Each invoice shall be marked "PAID" by the supplier, or alternatively, the bank may certify by an endorsement on or attachment to the invoice that payment has been made in the amount shown on the invoice.

(iii) [Reserved]

(3) *Charter party.* A copy (or photostat) of any charter party under which shipment is made, submitted (i) by the commodity supplier whenever A.I.D. finances any portion of the dollar price of a commodity sale under c.&f. or c.i.f. delivery terms, or (ii) by the supplier of ocean transportation whenever A.I.D. finances the freight under any freight reimbursement arrangement. If shipment is made under a consecutive voyage or time charter and the person or organization seeking reimbursement or payment has previously submitted to A.I.D. a copy (or photostat) of said charter party in support of a prior claim for reimbursement or payment, such person or organization may, in lieu of further submission of the charter party, certify to the fact of prior submission.

(4) *Evidence of shipment.* (i) A copy (or photostat) of the bill of lading (ocean, charter party, airway, railway, barge, or truck) or parcel post receipt evidencing shipment from the point of export in the source country or a free port or bonded warehouse. The bill of lading shall indicate the carrier's complete statement of charges, including all relevant weights, cubic measurements, rates and additional charges, whether or not freight is financed by AID.

(ii) When the commodity is transported to the cooperating country under its own power (e.g., a fishing vessel), AID will require a certificate signed by the importer or its authorized agent, certifying that the commodity has been received by the importer, to be submitted instead of a bill of lading.

(iii) When the supplier is not responsible under the terms of its agreement with the importer for assuring that the commodities are loaded on board the vessel, such as when delivery terms are f.a.s. port of shipment, the

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(as amended to Sept 24, 1981)
(TM 15:56)

* Importer may request and the Office of Commodity Management may authorize the following documentation, instead of a bill of lading, to be submitted with a claim for reimbursement or payment for the commodities:

(a) A dock or warehouse receipt containing commodity description, weight and cubic measurement, port of loading, and, if available, name and flag of vessel; the receipt must show consignment of the commodities to a person or organization designated by the importer; and

(b) A letter from the consignee addressed to AID undertaking to arrange for shipment of the goods to the cooperating country and to deliver to the Chief, Banking and Finance Division, Office of Financial Management, AID, Washington, D.C. 20523, within 15 days from the date of shipment, a copy of bill of lading evidencing shipment to the cooperating country. The bill of lading shall indicate the carrier's complete statement of charges as in paragraph (a)(4)(i) of this section.

(5) Documentation on shipment to a free port or bonded warehouse. (i) In the case of commodities shipped from a free port or bonded warehouse, the supplier shall:

(a) Provide as an attachment to a copy of the invoice a copy of the bill of lading (bearing a notation of the freight cost) covering the shipment of the commodity into the free port or bonded warehouse, or

(b) If such a bill of lading is not available to the supplier, provide the following information and certify to its accuracy to the best of his knowledge and belief: the country or area from which the commodities were shipped to such free port or bonded warehouse; the name and flag of the vessel which transported the commodities from the source country to the free port or bonded warehouse; the cost of the freight on such shipment; and the free port or bonded warehouse to which shipment was made from the source country, or

(c) With respect to commodities which have been commingled in the warehouse in such a way that shipments out of the warehouse cannot be related to particular shipments into the warehouse, the supplier shall certify to the best of his knowledge and belief that a portion of the commodities was transported to the free port or bonded warehouse on vessels under the flag registry of a country included within the geographic code authorized by A.I.D. for the transaction, and the quantity for which A.I.D. financing is sought does not exceed that amount.

(ii) In the event a supplier cannot comply with the requirements of subdivision (i) of this subparagraph, it will be assumed, in the absence of evidence to the contrary, that the commodity was transported to the free port or bonded warehouse by a vessel under the flag registry of a country under A.I.D. Geographic Code 935 other than the United States.

(6) Supplier's certificates. An original and one copy of the Supplier's Certificate executed by

(i) The supplier of the commodity for the cost of the commodity and any commodity-related services furnished by the commodity supplier;

(ii) The carrier for the cost of ocean or air transportation financed by AID;

(iii) The insurer for the cost of marine insurance financed by AID if such cost exceeds \$50.

(7) [Reserved]

(8) Commodity Approval Application. One signed original of the Commodity Approval Application executed by the commodity supplier and countersigned by A.I.D. In the case of claim for reimbursement or payment of partial shipment presented subsequent to submission of the original Commodity Approval Application, one reproduced copy of the original countersigned Commodity Approval Application, appropriately certified as such by the supplier.

(b) Execution of certificates. (1) The original of each Supplier's Certificate, and Commodity Approval Application shall be signed by hand and shall bind the person or organization in whose behalf the execution is made.

(2) The Supplier's Certificate covering the cost of marine insurance may be executed on behalf of the marine insurer by an insurance broker or by a commodity supplier if the commodity supplier is the assured under an open cargo insurance policy issued by the marine insurer and is authorized under such policy to bind the marine insurer by issuing insurance certificates or policies in favor of importers. In each such case, the insurance broker or commodity supplier shall indicate on the Supplier's Certificate the name and address of the insurance company which is acting as the supplier of marine insurance and shall describe himself below his signature as a commodity supplier issuing a certificate under an open cargo insurance policy or as an insurance broker.

[A.I.D. Reg. 1, 36 F.R. 7096, Apr. 14, 1971, as amended at 36 F.R. 21190, Nov. 4, 1971; 37 F.R. 12792, June 29, 1972; 38 F.R. 13641, May 24, 1973]

App A to HB 15, 10-30-80,
as amended (TM 15:56)

§ 201.53 Final date for presentation of documents.

(a) *Direct reimbursement.* Prescribed documents shall be presented to A.I.D. by the borrower/grantee no later than the terminal date specified in the implementing document.

(b) *Letter of commitment to bank or special letter of credit.* Prescribed documents shall be presented by the bank to A.I.D. and shall cover (1) payments or negotiations made under letters of credit expiring no later than the expiration date stated in the letter of commitment or the request for the opening of a special letter of credit, or (2) payments to a supplier, the approved applicant, or, at the request of an approved applicant, to a person other than the supplier, made no later than such expiration date.

Subpart G—Price Provisions

§ 201.60 Purpose and applicability of this subpart.

This subpart prescribes rules relating to prices, discounts, commissions, credits, allowances, and other payments. These rules shall be observed in the procurement of commodities and commodity-related services financed under this part. The rules implement and supplement the requirements of the Act relating to prices in such procurement. The general purpose of these rules is to assure the prudent use of A.I.D. funds.

(a) *Statutory price limitations.* (1) Section 604(a) of the Act provides:

Funds made available under this Act may be used for procurement outside the United States . . . only if the price of any commodity procured in bulk is lower than the market price prevailing in the United States at the time of procurement, adjusted for differences in the cost of transportation to destination, quality, and terms of payment.

(2) Section 604(b) of the Act provides:

No funds made available under this Act shall be used for the purchase in bulk of any commodities at prices higher than the market price prevailing in the United States at the time of purchase, adjusted for differences in the cost of transportation to destination, quality, and terms of payment.

(b) *Transactions covered.* The rules and conditions prescribed by this subpart apply to all A.I.D.-financed transactions subject to this regulation whether or not the commodities are purchased in bulk.

(c) *Compliance.* Compliance with this Subpart G and with any additional price requirement contained in the implementing document shall be a condition to the financing by A.I.D. of procurement transactions under this part. Post-audit of transactions will be made by A.I.D. to determine whether there has been such compliance.

§ 201.61 Meaning of terms in this subpart.

(a) *Time of purchase.* "Time of purchase" means that period encompassing the date the purchase price is fixed during which prices in comparable sales remain substantially constant.

(b) *The date the purchase price is fixed.* "The date the purchase price is fixed" means the date on which the parties agree on the price. If, however, the parties establish the price as of any other date which is subsequent to the date of such agreement and not later than the date of delivery, the term means such other date regardless of whether it precedes, coincides with or follows the legally effective date of the purchase contract.

(c) *Transportation cost.* "Transportation cost" means the cost of all transportation by land, sea, or air from the port of export to the destination in the cooperating country, plus the cost of marine insurance, if any, covering such transaction. (Note: Such costs are financed by A.I.D. only to the extent provided in § 201.13.)

(d) *Purchase price.* "Purchase price" means the total amount which the purchaser agrees to pay or make available to or for the benefit of the supplier (including any person or organization designated by the supplier to receive such payment) for any commodity or commodity-related service which is wholly or partly financed by A.I.D.

(e) *Comparable sale.* (1) "Comparable sale" means any sale of or bona fide offer to sell the same commodity, or (in the absence of such a sale or offer to sell) any sale of or offer to sell a similar commodity which, with respect to the quantity, quality, grade, period of delivery, supply area, terms of sale, or class of purchaser, either

(i) Is not sufficiently different from the sale being tested to result customarily in a price different from the price in the sale being tested; or

(ii) Can be related to the sale being tested through application of a customary price differential.

(2) A sale which is otherwise comparable to another sale is not rendered non-comparable by virtue of its being made out of a free port or bonded warehouse. The fact that a sale is made out of a free port or bonded warehouse shall not cause that sale to differ from otherwise comparable sales with respect to terms of sale, supply area, or period of delivery.

(f) *Comparable export sale.* "Comparable export sale" means any "comparable sale" in export transactions.

(g) *Comparable domestic sale.* "Comparable domestic sale" means any "comparable sale" not in export transactions.

(h) *Export differential.* "Export differential" means the customary difference in price between domestic sales and otherwise comparable export sales.

(i) *Class of purchaser.* "Class of purchaser" means any group of purchasers which is separately identifiable and which is distinguishable from other purchasers on the basis of quantity purchased, distribution function or established trade practice.

(j) *Period of delivery.* "Period of delivery" means the length of time between the date of the purchase contract and the date by which delivery is to be completed.

(k) *Supply area.* "Supply area" means

(1) The source country; or

(2) If the commodity is customarily sold at different prices (exclusive of transportation costs) from different geographical areas within a source country, the specific geographic area within the source country from which the commodity is shipped to the cooperating country.

(l) *Similar commodity.* "Similar commodity" means a commodity which

(1) Is functionally interchangeable with the commodity in the sale being tested; and

(2) Affords the purchaser substantially equivalent serviceability.

(m) *Producer.* "Producer" means any person who grows, mines, manufactures, processes, or assembles a commodity in the form in which it is exported.

(n) *Commission.* "Commission" means any payment or allowance by a supplier to any person for the contribution which that person has made to securing the sale for the supplier or which that person makes to securing on a continuing basis similar sales for the supplier.

(o) [Reserved]

* (p) (Reserved)

(q) [Reserved]

(r) [Reserved]

* (s) (Reserved)

(t) *Representative of the importer.* "Representative of the importer" means any entity affiliated with the importer by ownership or management ties.

* (u) (Reserved)

(v) [Reserved]

(w) [Reserved]

* Revised

(x) *State.* "State" means the District of Columbia, Puerto Rico, or any State territory or possession of the United States.

(y) (Reserved)

(1) A corporation which has been organized under the laws of any State of the United States, which maintains a regular place of business in the United States, and which is at least 51 percent beneficially owned by citizens of the United States or U.S. firms or both; or

(2) A sole proprietorship in which the sole proprietor is both a citizen and resident of the United States; or

(3) A partnership or association in which the majority of partners or association members are both citizens and residents of the United States.

[A.I.D. Regulation 1, 36 F.R. 7096, Apr. 14, 1971, as amended at 37 F.R. 12792, June 29, 1972; 38 FR 13641, May 24, 1973]

§ 201.62 Responsibilities of borrower/grantee and of supplier.

(a) *Responsibilities of borrower/grantee.* The borrower/grantee shall:

(1) When required by A.I.D., develop and periodically update, or cooperate with A.I.D. in the development and updating of, lists of importers who have traditionally imported the commodities which may be purchased under the loan or grant. Such listings shall be by commodity groupings selected by A.I.D., cover all commodities eligible for financing, and, to the extent such information is available, show the names and addresses of all importers regardless of the source from which their imports originated.

(2) Insure that the importer

(i) Procures in accordance with the conditions set forth in Subpart C as applicable, and

(ii) Except as provided otherwise in § 201.22(d) pays no more than the lowest available competitive price, including transportation cost, for the commodity.

(b) *Responsibility of supplier.* In accordance with the provisions contained in the Supplier's Certificate which the supplier executed in order to receive payment, the supplier is responsible for compliance with the provisions of this Subpart C other than paragraph (a) of this section.

[A.I.D. Regulation 1, 36 FR 7096, April 14, 1971 as amended at 39 FR 17946, May 22, 1974]

§ 201.63 Maximum prices for commodities.

(a) *U.S. prevailing market price—U.S. source.* The purchase price for a commodity the source of which is the United States shall not exceed the market price prevailing in comparable export sales in the United States at the time of purchase adjusted for differences in the transportation cost: *Provided, however,* That if there are no such comparable export sales, then the purchase price, excluding transportation cost, may not exceed the market price prevailing in comparable domestic sales in the United States at the time of purchase, adjusted upward or downward by the appropriate export differential.

(b) *U.S. prevailing market price—non-U.S. source.* The purchase price, including transportation cost, for a commodity the source of which is not the United States shall be lower than the market price prevailing in comparable export sales in the United States at the time of purchase including transportation cost: *Provided, however,* That if there are no such comparable export sales in the United States, then the purchase price from the source outside the United States, including transportation cost, must be lower than the market price prevailing in comparable domestic sales in the United States at the time of purchase, adjusted upward or downward by the appropriate export differential and transportation cost.

(c) *Supplier's comparable export price—U.S. and non-U.S. sources.* (1) The purchase price, excluding transportation cost, shall not exceed prices generally charged by the supplier in comparable export sales from the source country at the time of purchase.

(2) The requirement in subparagraph (1) of this paragraph shall not apply to the purchase price

(i) In any sale under formal competitive bid procedures; or

(ii) In any sale of a commodity generally traded on an organized commodity exchange.

(3) "Comparable export sales" for the purpose of this paragraph shall not include sales

(i) Under formal competitive bid procedures; or

(ii) Of a commodity by a supplier to affiliates if the supplier as a general practice sells the commodity to affiliates at prices lower than the prices he charges to nonaffiliates.

(d) *Source country prevailing market price—non-U.S. source.* The purchase price, excluding transportation cost, shall not exceed the market price prevailing

in the source country in comparable export sales at the time of purchase: *Provided, however,* That, if there are no such comparable export sales, then the purchase price, excluding transportation cost, shall not exceed the market price prevailing in comparable domestic sales in the source country at the time of purchase adjusted upward or downward by the appropriate export differential.

(e) *Price test in the absence of comparable sales at time of purchase—U.S. and non-U.S. sources—*(1) *Sale by supplier who is not the producer.* The purchase price shall not exceed the sum of—

(i) The lower of the following: The price paid by the supplier for the commodity or the price charged by the producer in the original sale of that specific commodity; and

(ii) A markup over the amount allowed in subdivision (i) of this subparagraph, which may not exceed the lower of the following: The markup over direct cost that is usual and customary in sales by the supplier of the same commodity, if any, or the most similar commodity, or, the markup over direct cost that is usual and customary in such sales by the competitors of the supplier; and

(iii) To the extent not included in subdivision (i) of this subparagraph, an amount not to exceed the cost at prevailing rates of those expenses recognized in paragraph (a) of § 201.64 and actually incurred in moving the commodities supplied from the point of purchase to a position alongside or on board the vessel or other export conveyance at point of export.

(2) *Sale by a supplier who is the producer.* The purchase price shall not exceed a price established in accordance with the customary pricing practices of the supplier for other products of the same general class as the commodity sold.

(f) *Additional rule for sugar.* In addition to being subject to the other price limitations contained in this section, the purchase price for sugar shall not exceed the world price as derived from the daily market quotations on the New York Sugar Exchange for No. 8 Contract spot, f.o.b. and stowed, adjusted for differences in quality, bagging, transportation cost, and other appropriate considerations.

(g) *Additional rule for crude oil, petroleum fuels, and lubricants.* In addition to being subject to the other price limitations of this section, the purchase price, including transportation cost, for crude oil, petroleum fuel, or lubricants procured from a non-U.S. source shall

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not exceed the prevailing price, including transportation cost, at which such commodity is available at the time of purchase in quantities similar to the contract amount from the same or from any other eligible source for otherwise comparable export sales. This limitation shall not apply to the purchase price of such a commodity procured under formal competitive bid procedures. "Comparable export sales" for the purpose of this paragraph shall not include sales under formal competitive bid procedures.

(h) *Additional rules for sales through or out of a free port or bonded warehouse.* (1) The purchase price including transportation costs to a cooperating country of a commodity which has passed through a free port or bonded warehouse shall not exceed:

(i) The maximum price f.o.b. or f.a.s. source country eligible for A.I.D. financing under the foregoing provisions of this § 201.63; plus

(ii) Transportation costs calculated on the basis of the prevailing ocean freight rate for direct shipments from the source country to the cooperating country on the type and flag of vessel on which the commodity actually moved for the greater portion of its voyage from the source country through the free port or bonded warehouse to the cooperating country.

(2) The purchase price of a commodity f.o.b. or f.a.s. a free port or bonded warehouse shall not exceed the maximum price established in paragraph (1) of this § 201.63(h) minus transportation costs from the free port or bonded warehouse to the cooperating country calculated on the basis of the prevailing ocean freight rate from the free port or bonded warehouse to the cooperating country for the type and flag of vessel on which the commodity actually moved between those points.

§ 201.64 Application of the price rules to commodities.

(a) *Calculation of commodity prices on a common basis.* In testing whether the purchase price of a commodity exceeds the price in comparable export sales or in comparable domestic sales, as applicable under § 201.63 (a), (c), (d), and (e), it is necessary to insure that the price being tested as well as the prices being used as a test or measurement are calculated on the basis of delivery alongside or on board the vessel or other export conveyance. Such prices will include, therefore, in addition to the price of the commodity at an internal point in the source country, transportation from that point to the port of export in the source country, and to the extent not already included in the price at the internal point, inspection, export packing, forwarder's fees at customary rates, the cost of placing the commodities on board the vessel or export conveyance (unless this cost is covered in the export freight), and other necessary costs customary in the trade.

(b) *Calculation of commodity prices which involve transportation costs.* (1) In testing a purchase price which includes transportation cost (customarily known as a c. & f. or c.i.f. price) for compliance with the requirements of § 201.63 (a), (c), (d), and (e), A.I.D. will subtract from such price transportation cost as calculated by reference to the freight rate (for the type and flag of vessel on which the commodity was shipped) prevailing on the date the purchase price is fixed. In the absence of evidence to the contrary, the actual transportation cost paid by the supplier shall be presumed to be the transportation cost calculated in accordance with the formula contained in the foregoing sentence.

(2) In testing a purchase price involving transportation cost for compliance with § 201.62 and § 201.63 (b), (f), and (g), the test or measurement prices shall be

(i) Prices based upon transportation by a U.S.-flag carrier if the price tested involves transportation by a U.S.-flag carrier; or

* paragraph (i) deleted

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(ii) Prices based upon transportation by either a U.S.-flag carrier or a foreign-flag carrier, whichever is lower, if the price tested involves transportation by a foreign-flag carrier.

(c) *Calculation of amount eligible for financing when shipment is through or out of a free port or bonded warehouse.*

(1) In the case of a shipment to a cooperating country which has passed through a free port or bonded warehouse, A.I.D. will finance no more than the lower of the following:

(i) The maximum price described in § 201.63(h)(1), or

(ii) The maximum price described in § 201.63(h)(1)(i) plus any transportation costs into or out of the free port or bonded warehouse which can be documented in accordance with § 201.52(a)(5)(i) as having been incurred on a carrier flying the flag of a country included in the geographic code authorized by A.I.D. for the transaction.

(2) In the case of a shipment f.o.b. or f.a.s. a free port or bonded warehouse, A.I.D. will finance no more than the lower of the following:

(i) The maximum price described in § 201.63(h)(2), or

(ii) The maximum price described in § 201.63(h)(1)(i) plus any transportation costs into the free port or bonded warehouse which can be documented in accordance with § 201.52(a)(5)(i) as having been incurred on a carrier flying the flag of a country included in the geographic code authorized by A.I.D. for the transaction.

(d) *Determination of prevailing market price.* In the determination of any prevailing market price for any commodity, relevant published and other price information will be considered.

[A.I.D. Regulation 1, 36 F.R. 7096, Apr. 14, 1971, as amended at 37 F.R. 12792, June 29, 1972]

§ 201.65 Commissions, service payments, and discounts.

(a)-(f) [Reserved]

(g) *Trade discounts, credits and allowances.* To arrive at the net amount eligible for AID financing all trade discounts, credits, and allowances to which the importer is entitled shall be deducted from the gross amount of the supplier's invoice submitted under paragraph (a)(2) of § 201.52.

(h) *Commissions and other payments or benefits to importers, purchasing agents, and others.* Unless otherwise authorized by AID, no commission or other payment, credit, allowance, or benefit of any kind shall be paid, made, or given in connection with any sale subject to this part by the supplier or his agent—

(1) To or for the benefit of the importer; or

(2) To or for the benefit of a purchasing agent or representative of an importer, even though such purchasing agent or other agent or representative may also have an agreement with a supplier to represent the supplier; or

(3) To any third party in connection with a sale by the supplier to his dealer, distributor, or established agent in the cooperating country.

(i) *Commissions and other payments or benefits attributable to AID financing.* Every commission or other payment, credit, allowance, or benefit of any kind paid, made or given in connection with the sale of commodities financed under this part to any person described in paragraphs (h)(1), (2), or (3) of this § 201.65 shall be presumed conclusively to have been paid from AID funds and shall thereby be subject to the requirements of this Part 201.

(j) *Maximum commission.* A commission shall not exceed the amount which the supplier customarily pays in connection with similar transactions or the amount which is customary in the trade.

(k) *Report of commissions and other payments or benefits.* All commissions and other payments, credits, allowances, or benefits of any kind paid, made or given by the supplier in connection with AID-financed sales to or for the benefit of his agent, the importer, or any representative of the importer shall be fully reported on the invoice-and-contract abstract of the supplier's certificate required under § 201.52(a)(6).

(l) *Brokerage commission.* In connection with ocean freight services A.I.D. will finance a brokerage commission only if—

(1) Such commission does not exceed 2½ percent of the ocean freight charge;

(2) Such commission is payable to an individual resident in a country included in the authorized source code; a non-resident citizen of a country included in the authorized source code; or a corporation or partnership organized under the laws of a country included in the authorized source code; and

(3) The names of all persons receiving such commissions appear on the face of the charter party.

(m) *Address commissions.* An address commission to or for the benefit of a charterer shall be deemed a discount on the stated freight rate or freight charge which the supplier of transportation services shall deduct from the cost

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of transportation financed by A.I.D. If the supplier of the commodity is the charterer, he shall refund to A.I.D. any address commission received by him. If the supplier of the commodity is not the charterer, the borrower/grantee shall be responsible for making a refund to A.I.D. of any such commissions received by the charterer.

[A.I.D. Regulation 1, 36 FR 7096, Apr. 14, 1971, as amended at 38 FR 13641, May 24, 1973; 41 F.R. 48732, Nov. 5, 1976.]

§ 201.66 Side payments.

Any payment which an importer makes to a supplier, whether or not indicated on the supplier's invoice and whether or not financed by A.I.D., in connection with an A.I.D.-financed transaction shall be disclosed by the supplier on the Supplier's Certificate and shall be considered as part of the actual purchase price in applying the rules of this Subpart G.

§ 201.67 Maximum freight charges.

(a) *Ocean freight rates*—(1) *Similar shipments*. "Similar shipments" means shipments which are similar with respect to type of commodity, commodity rate classification, quantity, vessel flag category, choice of ports, and other pertinent factors. In determining whether shipments are similar, no effect shall be given to the identity of the shipper or to the circumstance that the shipment is or is not financed by the Government of the United States.

(2) *Maximum charter rates*. (i) A.I.D. will not finance ocean freight under any charter which has not been submitted to and received prior approval by AID/W. A.I.D. will not approve a charter if the freight rate exceeds

(a) The rate prevailing for similar shipments;

(b) The lowest rate charged by the carrier for similar shipments on the same voyage; or

(c) The "guideline" rate established by the Maritime Administration for use of U.S. Government agencies in determining whether rates are fair and reasonable for the cargo, vessels, and transportation concerned.

(ii) In determining the rate prevailing for similar shipments, recognized sources of charter market rate information will be consulted and, if necessary, will be supplemented by other information which contributes to a realistic determination of the prevailing charter rate.

(3) *Effect of A.I.D. approval of a charter*. A.I.D. prior approval of a charter shall be confirmed by A.I.D. in writing and shall then be final except in cases where the freight rate exceeds the lowest rate charged by the supplier for similar shipments on the same voyage or where A.I.D.'s prior approval is based on false or misleading representations made to A.I.D. by the charterer or ocean carrier.

(4) *Maximum liner rates*. A.I.D. will not finance ocean freight for a cargo liner shipment at a rate which exceeds

(i) The conference contract rate or the conference noncontract rate, whichever is lower;

(ii) The rate named in any tariff or other rate listing for the same destination and commodities on file at the Federal Maritime Commission; or

(iii) The lowest rate charged by the carrier for similar shipments on the same voyage.

(5) *Despatch*. (i) The borrower/grantee, or the supplier with respect to despatch earned by the supplier, shall be responsible for refunding to A.I.D. all despatch earned

(a) At the port of unloading on c.i.f. or c. & f. shipments, or

(b) At the port of loading or unloading on f.o.b. or f.a.s. shipments, to the extent that despatch exceeds demurrage incurred on the same voyage.

(ii) Refunds of despatch, supported by the vessel's signed lay time statement(s), must be transmitted to the Office of Financial Management, AID, Washington, D.C. 20523, within 90 days after date of discharge of cargo on which the despatch was earned.

(b) *Airfreight rates*. AID will not finance airfreight which exceeds the applicable rate on file at the Civil Aeronautics Board, Washington, D.C. (AID Regulation 1, 36 FR 7096, Apr. 14, 1971, as amended at 37 FR 12792, June 29, 1972; 43 FR 25997, June 16, 1978; 45 FR 77198, Oct. 30, 1980)

§ 201.68 Maximum prices for commodity-related services.

The price for an AID-financed commodity-related service other than ocean or air transportation shall not exceed (a) the prevailing price, if any, for the same or similar services; or (b) the price paid to the supplier under similar circumstances by other customers.

§ 201.69 Commodity price subject to escalation.

If a purchase contract contains a price escalation clause, A.I.D. will finance

(a) The purchase price of the commodity before operation of the price escalation clause if at the time of purchase such price does not exceed the applicable price limitations contained in this subpart; and

(b) That portion of the commodity price attributable to the operation of the price escalation clause if such clause

(1) Is applied to a base price which qualifies for A.I.D.-financing under paragraph (a) of this section.

(2) Uses a formula based on variations in a cost factor which is reasonably related to the price of the commodity subject to escalation and is readily determinable;

(3) Provides for downward as well as upward adjustment of the price; and

(4) Accords with recognized trade practice.

Subpart H—Rights and Responsibilities of Banks

§ 201.70 Purpose.

This subpart sets forth the rights and responsibilities of banks with regard to reimbursement under a letter of commitment or a special letter of credit opened pursuant to an A.I.D. request. Banks will not be held responsible for the requirements of Subparts B, C, D, E (excluding § 201.44(a)(1)), and Subpart G except insofar as provisions of these subparts are included in this Subpart H or in a letter of commitment or a request for the opening of a special letter of credit issued by A.I.D. to a bank.

§ 201.71 Terms of letters of credit.

(a) *Letters of credit under letters of commitment.* Any letter of credit issued, confirmed or advised under an A.I.D. letter of commitment and any agreement relating to such letter of credit or to instructions for payment issued by an approved applicant may not be inconsistent with or contrary to the terms of the letter of commitment. In particular, the description of commodities or services in any such letter of credit or agreement may not be inconsistent with the description and Schedule B identification set forth in the letter of commitment. Any such letter of credit or agreement may be modified or extended at any time in such manner and to such extent as is acceptable to the approved applicant and the bank: *Provided*, That such modification or extension may not be inconsistent with or contrary to the terms of

the letter of commitment. In the case of any inconsistency or conflict between the terms and conditions of the letter of commitment and the instructions of the approved applicant, the terms and conditions of the letter of commitment shall control.

(b) *Special letters of credit.* Any special letter of credit or subsidiary letter of credit issued thereunder at the instruction of the beneficiary of such special letter of credit and any agreement relating to such special letter of credit or subsidiary letter of credit or to instructions for payment issued by the beneficiary, or any party designated by him, must not be inconsistent with or contrary to the terms of the A.I.D. request for the opening of a special letter of credit. In the case of any inconsistency or conflict between the terms and conditions of such request and instructions of the beneficiary, or any party designated by him, the terms and conditions of such request shall control.

§ 201.72 Making payments.

(a) *Collection of documents.* The bank shall be responsible for obtaining the documents specified in Subpart F and in the letter of commitment or the request for the opening of a special letter of credit when making payment under a letter of credit or pursuant to instructions of an approved applicant.

(b) *Examination of documents other than Supplier's Certificate.* The bank shall examine the documents (other than the Supplier's Certificate and the Commodity Approval Application) to be submitted to A.I.D. in accordance with good commercial practice to determine whether such documents comply with the requirements of subparagraphs (1) through (7) of this paragraph in the following particulars, and no other.

(1) *Shipment.* The documents submitted as evidence of the shipment of commodities under § 201.52(a)(4) shall be dated within the shipping period, if any, specified in the letter of commitment or the request for the opening of a special letter of credit. The bill of lading shall contain the carrier's statement of charges whether or not freight is financed by AID.

(2) *Source of commodities.* The documents submitted in connection with the claim for reimbursement on commodities may not indicate that the source of the commodities is inconsistent with the

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A.I.D. geographic code designation contained in the letter of commitment or the request for the opening of a special letter of credit.

(3) *Destination.* The documents submitted shall indicate that the destination of the commodities, by shipment, transshipment, or reshipment, is the cooperating country named in the letter of commitment or the request for the opening of a special letter of credit.

(4) *Description.* The documents shall describe and identify the commodities or services in a manner which, according to good commercial practice, is not inconsistent with the description contained in the letter of credit or payment instructions issued under a letter of commitment or a request for the opening of a special letter of credit. The bank shall not be required to determine whether the supplier's invoice meets the detailed requirements of § 201.52(a)(2)(i).

(5) *Discounts and purchasing agent's commissions.* If the documents disclose that the invoice price includes either discounts or commissions payable to purchasing agents, the bank shall not make payment of such discounts and commissions. In the absence of such information, however, the bank shall not be required to make independent inquiry as to whether the invoice price includes such items.

(6) *Certifications.* Each supplier's invoice presented for payment shall contain such other certifications as may be required in the letter of commitment or the request for the opening of a special letter of credit. The bank shall accept only certifications which, to the best of its knowledge and belief, have been signed by hand.

(7) *Other requirements.* The documents submitted shall contain such other information as required by the letter of commitment or the request for the opening of a special letter of credit except that the bank shall have responsibility in this regard only to the extent specifically indicated in the letter of commitment or such request.

(c) *Acceptance of certificates.* A bank shall not accept for submission to A.I.D. the original of the Supplier's Certificate, or the Commodity Approval Application,

unless, to the best knowledge and belief of the bank, each such original has been signed by hand by the supplier and the Commodity Approval Application has been countersigned by A.I.D.

[A.I.D. Regulation 1, 38 FR 7096, Apr. 14, 1971, as amended at 38 FR 13641, May 24, 1973]; 41FR48732, Nov. 5, 1976.

§ 201.73 Limitations on the responsibilities of banks.

The following general limitations on the responsibilities of banks issuing, advising, or confirming letters of credit and making payments under letters of credit or otherwise, shall apply.

(a) *Sufficiency and completeness of documents.* Any document, including the Supplier's Certificate, and the Commodity Approval Application, submitted by a bank to A.I.D. in support of a claim for reimbursement, shall be sufficient if it purports to be the sort required to be delivered and if it has been accepted by the bank in the ordinary course of business in good faith. Except as may be required in discharge of its responsibilities under § 201.72 (b) and (c) the bank's right of reimbursement shall not be affected by the fact that any document required to be submitted by it is incomplete or may indicate noncompliance with any provision of this part.

(b) *Reimbursement right notwithstanding certain deficiencies.* A bank's right to reimbursement from A.I.D. for payments which the bank has made will not be affected by the fact that the Commodity Approval Application, or the Invoice-and-Contract Abstract on the reverse of the Supplier's Certificate may be incomplete, or may indicate noncompliance with any provision of this Part 201, the letter of commitment, a request for the opening of a special letter of credit, or any other implementing document, or may be inconsistent with other documents required for reimbursement.

(c) *Nonresponsibility of bank for truth or accuracy of statements or certifications.* The bank shall not be responsible for the truth or accuracy of any information or statement contained in any Supplier's Certificate or any other document or certification to be submitted by it to A.I.D., notwithstanding any knowledge or information in the actual or constructive possession of the bank to the contrary. The bank shall not be obligated to look beyond the documents, including any certification endorsed

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thereon, to be submitted by it or to make any independent investigation as to the truth or accuracy of any 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 A.I.D., shall constitute full compliance by the bank with any provision of this part, the letter of commitment or the request for the opening of a special letter of credit 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 the beneficiary of a special letter of credit 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 or the request for the opening of a special letter of credit 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 A.I.D. 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 hereafter 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 A.I.D. 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 or a request for the opening of a special letter of credit. [A.I.D. Regulation 1, 36 FR 7096, Apr. 14, 1971, as amended at 38 FR 13641, May 24, 1973]

§ 201.74 Additional documents for A.I.D.

In addition to the documents required for reimbursement a bank shall retain in its files for a period of at least 5 years and shall make available to A.I.D. promptly upon request a copy of any of the following documents which may pertain to an A.I.D.-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 A.I.D. 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, A.I.D. shall give written notice thereof to the banks holding applicable letters of commitment or requests for the opening of special letters of credit 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 A.I.D. Notwithstanding the foregoing, a bank shall

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comply with the instructions of A.I.D. only to the extent that it may do so without impairing or affecting 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 A.I.D. in respect thereof.

[A.I.D. Regulation 1, 36 F.R. 7096, Apr. 14, 1971, as amended at 37 F.R. 12792, June 29, 1972]

Subpart I—Rights and Remedies of A.I.D., and Waiver Authority

§ 201.80 Purpose.

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

[A.I.D. Regulation 1, 36 F.R. 7096, Apr. 14, 1971, as amended at 37 F.R. 12792, June 29, 1972]

§ 201.81 Rights of A.I.D. 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 A.I.D. promulgated under any such statute, A.I.D. may require the borrower/grantee to refund the amounts A.I.D. 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 A.I.D. and shall be deemed to have consented to any modification of the implementing document determined by A.I.D. to be necessary to reflect any such refund or acceleration.

*** § 201.82 Rights of AID against suppliers**

Without limiting the responsibility of the borrower/grantee or other parties, AID may require an appropriate refund to it by a supplier under any transaction which violates the requirements of this part, whenever in AID'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 rate established by the Secretary of the Treasury in accordance with the Internal Revenue Code, 26 U.S.C. 6621(b).

* Revised

§ 201.83 No waiver of alternative rights or remedies by A.I.D.

No right reserved to A.I.D. 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,

A.I.D.'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 A.I.D. against a supplier in any way derogate from or otherwise limit any other rights or remedies which may accrue to A.I.D. under such laws.

§ 201.84 Limitation on period for making refund requests.

A.I.D. 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 A.I.D. funds for the transaction to which such request relates.

§ 201.85 Waiver and amendment authority.

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

APPENDIX A—SUPPLIER'S CERTIFICATE AND AGREEMENT WITH THE AGENCY FOR INTERNATIONAL DEVELOPMENT (AID 282 (1-78))

The supplier hereby acknowledges that the sum indicated on the accompanying invoice as claimed to be due and owing under the terms of the contract described on the reverse hereof (hereafter referred to as "said contract") is to be paid, in whole or in part, out of funds made available by the United States under the Foreign Assistance Act of 1961, as amended.

In consideration of the receipt of such sum, the supplier agrees with and certifies to AID as follows:

1. The undersigned is the supplier of the commodities or commodity-related services indicated in the Invoice and Contract Abstract on the reverse hereof, has complied with the applicable provisions of Regulation 1 of the Agency for International Development (AID), as in effect on the date hereof (22 CFR Part 201), is entitled under said contract and under the applicable letter of credit, credit advice, or other payment instructions to the payment of the sum claimed, and is executing this Certificate and Agreement for the purpose of obtaining such payment from funds made available by the United States as described above.

2. On the basis of information from such sources as are available to the supplier and to the best of his information and belief, the purchase price is not higher than the maximum price permitted under each of the requirements of Subpart G of AID Regulation 1, relating to maximum prices, other than Section 201.62 (a).

3. The supplier will, upon request of AID, promptly make refund to AID of any amount by which the purchase price exceeds the maximum price permitted under such provisions of Subpart G of Regulation 1, plus interest from the time of payment to the supplier.

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4. The supplier will, upon the request of AID, promptly make appropriate refund to AID, plus interest from the time of payment to the supplier, in the event of

(a) His nonperformance, in whole or in part, under said contract, including any failure to pay dispatch, or

(b) Any breach by him of any of his undertakings in this Certificate and Agreement, or

(c) Any false certification or representation made by him in this Certificate and Agreement or in the Invoice-and-Contract Abstract on the reverse hereof.

5. The amount shown on the reverse hereof in block 9c is net of all credits, allowances, and discounts granted and payments made by the supplier or his agent to or for the account of the importer, including all discounts and payments for quantity purchases and prompt payment customarily allowed other customers under similar circumstances. The supplier will promptly pay to AID (Office of Financial Management, AID, Washington, D.C. 20523) any adjustment refunds, credits, or allowances which hereinafter become payable to or for the account of the importer arising out of the terms of said contract or the customs of the trade.

6. The supplier has complied with the provisions of § 201.65 of AID Regulation 1 and has not compensated any person to obtain said contract except to the extent, if any, indicated on the reverse hereof.

7. The supplier or his agent has not given or received and will not give or receive a side payment, "kickback", commission, or any other payment, credit, allowance or benefit of any kind in connection with the said contract or any transaction or series of transactions of which said contract is a part, other than those payments or benefits permitted under § 201.65 of AID Regulation 1 and those referred to in paragraphs 1 and 5 above.

8. Any commodity supplied under said contract:

(a) Is accurately described on the reverse hereof and, unless otherwise authorized by AID, is new and unused, does not contain any rebuilt or rehabilitated components and has not been disposed of as surplus by any government agency; and

(b) On the basis of information from such sources as are available to the supplier and to the best of his information and belief, meets the requirements of § 201.11(b) of AID Regulation 1 as to source, country where mined, grown, or produced and limitation on components.

9. If the supplier is the producer, manufacturer, or processor of the commodity, said contract is not a cost-plus-percentage-of-cost contract.

10. The supplier will for a period of not less than three (3) years after the date hereof maintain all business records and other documents which bear on his compliance with any of the undertakings and certifications herein and will at any time requested by AID make such records and documents available to AID for examination,

and promptly furnish to AID such additional information in such form as AID may request concerning the purchase price, the cost to the supplier of the commodities and/or commodity-related services involved, and/or any other facts, data, or business records relating to the supplier's compliance with his undertakings and certifications in this certificate and agreement.

11. The supplier has complied with the provisions contained and referred to in Subpart D of AID Regulation 1.

12. The supplier has not been informed of his ineligibility to act as a supplier or otherwise participate in AID financed transactions. If the supplier has been advised to submit proposed sales to AID for prior review under the provisions of § 201.33 of AID Regulation 1, the supplier has made such submission for said contract, has been notified by AID of the results of such review and has complied with all conditions and requirements specified in such notification.

13. The commodity supplier certifies that he has submitted a copy of every ocean bill of lading, applicable to the commodities and transactions described on the reverse hereof, to the Maritime Administration, Cargo Preference Control Center, Commerce Building, Washington, D.C. 20523 and that such bill(s) of lading state all of the carrier's charges including the basis for calculation such as weight or cubic measurement.

14. The supplier has filled in all applicable portions of the Invoice-and-Contract Abstract on the reverse hereof and certifies to the correctness of the information shown therein.

**PERSONAL CERTIFICATION BY NATURAL PERSON
SIGNING THIS CERTIFICATE AND AGREEMENT**

The natural person who signs this Certificate and Agreement hereby certifies either that he is the supplier or that he has actual authority to sign in behalf of the supplier and to bind the supplier with regard to all certifications and agreement contained in this Certificate and Agreement. He further certifies, if he is not personally the supplier, that either he is an employee of the supplier or he has a written power of attorney to sign for, and bind the supplier. He acknowledges that he is signing and submitting this Certificate and Agreement for the purpose of receiving payment from AID funds and that AID in making funds available for such payment will rely upon the truth and accuracy of this Personal Certification as well as all other representations in this Certificate and Agreement.

The Supplier's Certificate and Agreement and the Personal Certification herein shall be governed by and construed in accordance with the laws of the United States of America.

App A

Type or print name and title of official authorized to sign.

Signature of official authorized to sign for (check one).

Date.

Commodity Supplier Carrier Insurer

Place executed (city, state, country).

NOTES.—(a) Any amendments of, or additions to, the printed provisions of this Supplier's Certificate and Agreement are improper and will not be considered a part thereof. (b) False statements herein are punishable by United States law. (c) The word "Copy" must be written on all signed copies other than the original.

INSTRUCTIONS FOR COMPLETING FORM AID 232

Execution of Form. This form is designed for use with the U.S. Standard Master for International Trade. An original and one copy of this form, completed by the following suppliers of commodities or services, as appropriate, must accompany each invoice for which payment is requested.

(a) **Commodity Supplier**—executed by the commodity supplier covering the cost of the commodity, including the cost of any commodity-related service paid by the commodity supplier for his own or the buyer's account;

(b) **Transportation Supplier (Carrier)**—executed by each transportation supplier (carrier) or, in the case of a through Bill of Lading, the issuing carrier, for the cost of ocean or air transportation financed by AID;

(c) **Insurance Supplier (Insurer)**—executed by the insurance supplier (insurer) or, under the circumstances set forth in § 201.52(b)(2) of AID Regulation 1, by an insurance broker or the commodity supplier for the cost of marine insurance financed by AID when such cost exceeds \$50.

The original must be signed by a person authorized by the supplier who shall indicate his title and certify to his authority.

Submission in English Language. The form must be completed in the English language only and all amounts of money must be shown in U.S. dollars.

Obtaining Forms. The form (as well as copies of AID Regulation 1 referenced in this form) may be obtained in limited quantities from banks holding AID Letters of Commitment, from district offices of the Department of Commerce, the AID office in the supplier's country or the Distribution Branch, Agency for International Development, Washington, D.C. 20523. The forms may be reproduced, providing the reproduction is identical in size, color and format.

INSTRUCTIONS FOR COMPLETING ENTRIES ON INVOICE-AND-CONTRACT ABSTRACT GENERAL INSTRUCTIONS

Except as provided in the instructions for specific blocks, suppliers must complete all blocks or enter the letters "NA" (Not Applicable), as follows:

Commodity Supplier—Complete all blocks except 12 and 13; however, if the commodity supplier has paid for the transportation and/or insurance for his own or the buyer's account block 12 and 13 will also be completed by the commodity suppliers. The blocks for item 11 are to be completed only when the address in block 1 is a U.S. address.

Transportation Supplier (Carrier)—Complete blocks 1 through 8 as well as blocks 13, 14, and 16.

Insurance Supplier (Insurer)—Complete blocks 1 through 8a as well as blocks 12, 14, and 16.

INSTRUCTIONS FOR INDIVIDUAL BLOCKS

Block 1: Enter the commodity supplier's name and address. *Caution: if the form is executed by the carrier or the insurer, enter the commodity supplier's name and address in block 1 and complete block 16.*

Block 2: For AID use only.

Block 3: Enter AID implementing document number furnished in the Letter of Credit or Importer's Instructions. This number will normally be the Loan or Grant Agreement number, Letter of Commitment number or the Project Implementation Order number.

Block 4: Enter the importer's name and address. *Caution: on other documents prepared from the Standard Master, such as the Bill of Lading, the corresponding block may call for the name and address of the party to whom the carrier is to give notice of arrival. When such party is not the importer, be sure to enter the importer's name and address.*

Block 5: Enter the name of the vessel.

Block 6: Enter the flag of registry.

Block 7: Enter the port shown on the Bill of Lading.

Block 8: Commodity Information.

a: Enter the description of each commodity and its U.S. Department of Commerce Schedule B number, if available. For multi-item invoices, enter a summary description of the group of items and the appropriate Schedule B number(s), if available.

b: Enter the Bill of Lading weight.

c: Enter the Bill of Lading measurement.

Block 9: Invoice Information.

a: Enter the invoice number of the accompanying invoice to which this abstract relates.

b: Enter the invoice date.

c: Enter the net amount for which the supplier seeks payment. (See paragraphs 5 and 6 of the Supplier's Certificate.)

Block 10: Contract Information.

a: Enter the date of the contract.

b: Enter the total contract amount.

c: Enter the country of source as defined in Section 201.01 of AID Regulation 1.

Block 11: Supplier Information.

This section must be completed when a U.S. address is indicated in Block 1. The information is required to enable AID to compile reports requested by Congress.

a: Indicate whether the supplier is a small business as defined in FPR Subpart 1-1.7 (CFR Title 41). A small business is an enterprise which (1) is independently owned and operated for profit, is not dominant in its field of operation, and, with its affiliates, has no more than 500 employees (or the higher number of employees designated for specific industry groups in FPR 1-1.701-1 (CFR Title 41)), or (2) is certified as a small business by the Small Business Administration. If the supplier is unsure of his classification, he may obtain guidance from the nearest field or regional office of the Small Business Administration.

b: If the supplier is not a small business, enter the best estimate of the percentage of the total invoice amount paid or to be paid to subcontractors or suppliers of components who are small business concerns.

c: Indicate whether the supplier is a minority business as defined in FPR 1-1.1303 (CFR Title 41). A minority business is an enterprise which is at least 50 percent owned by minority group members. For the purpose of this definition, minority group members are Negroes, Spanish-speaking Americans, American-Orientals, American Indians, American Eskimos and American Aleuts.

d: If the supplier is not a minority business, enter the best estimate of the percentage of the total invoice amount paid or to be paid to subcontractors or suppliers of components who are minority business concerns.

Block 12: Insurance Information.

Complete block 12 only if the insurance premium exceeds \$50.

a: Enter the insured value of the shipment.

b: Enter the total premium.

c: Enter the type of coverage and the insurance rate. If "Other" is checked, explain below or in block 15.

Block 13: Transportation Information.

a: Check appropriate vessel type.

b: Enter the Bill of Lading or air waybill number.

c: Enter the Bill of Lading or air waybill date.

d: Enter freight rate, other freight charges and the total dollar amount of freight charges after discount.

Block 14: Information as to Commissions, Credits, Allowances, Similar Payments and Side Payments.

Enter in blocks 14 a, b and c pertinent information with reference to (a) all commissions and other payments, credits, allowances or benefits of any kind, paid or to be paid by the supplier to or for the benefit of his agent, the importer or the importer's agent as required by § 201.65(k) of AID Regulation 1; and (b) any side payments, not shown on the invoice, made or to be made by the importer to the supplier, in connection with the transaction, as required by § 201.66 of AID Regulation 1. If there is insufficient space to furnish the required information in block 14 continue the listing into block 15 or enter "Continued" or "See attached" listing in block 14a and attach a separate sheet to the form. If no commissions or other payments, credits, allowances,

benefits, or side payments are involved, enter "NONE" in block 14.

Block 16: Check the appropriate box and print or type carrier's or insurer's name and address.

AID 203 (1-78)—INVOICE-AND-CONTRACT ABSTRACT

1. Commodity supplier's name and address—
 2. For AID Use _____
 3. AID implementation number _____
 4. Importer's name and address _____
 5. Vessel _____
 6. Flag _____
 7. Port of exit _____
 8. Commodity information:
 - a. Description of commodity and Schedule B No. _____
 - b. Gross weight _____
 - c. Measurement _____
 9. Invoice information:
 - a. Number _____
 - b. Date _____
 - c. Amount after discount _____
 10. Contract information:
 - a. Date _____
 - b. Total amount _____
 - c. Source (country) _____
 11. Supplier information:
 - a. Small business: Yes No (Complete b).
 - b. Estimated value (percent of block 9c) furnished from small businesses _____
 - c. Minority business: Yes No (Complete d).
 - d. Estimated value (percent of block 9c) furnished from minority businesses _____
 12. Insurance information:
 - a. Insured value _____
 - b. Premium _____
 - c. All risk Rate _____
 Other risk Rate _____
 Other— Rate _____
 (specify)
 13. Transportation information:
 - a. Vessel type: Bulk Berth Tankr.
 Air
 - b. B/L or air waybill number _____
 - c. B/L or air waybill date _____
 - d. Freight rate _____
 - Other freight charges _____
 - Total freight charges _____
 14. Information as to commissions, credits, allowances, similar payments and side payments:
 - a. Recipient's name _____
 - b. Recipient's address _____
 - c. Amt. paid or to be paid _____
 15. Additional information and remarks _____
 16. If certification on other side is made by carrier or insurer, type or print name and address of company _____
- (Sec. 621, Foreign Assistance Act of 1961, as amended, 78 Stat. 4214; (22 U.S.C. 2381) 22 CFR 201.85.)

APPENDIX B—(Reserved)
[39 FR 17946, May 22, 1974]

APPENDIX C--RESERVED

APPENDIX D--APPLICATION FOR APPROVAL OF
 COMMODITY ELIGIBILITY

AID 11(10-16-70)

Budget Bureau No. 24-R0055

Approval Expires 6-31-74

TRANSACTION NO. (Assigned by A.I.D.)

TRANSACTION IDENTIFICATION

1. A.I.D. No. -----
2. Payment Terms:
 Letter of Credit No. -----
 Date -----
 Name and Address of U.S. Bank -----

 Other Payment Terms -----
3. Import License No. -----
 Date -----
4. Supplier's Relationship to Authorized
 Source Country:
 Corporation or Partnership Organized
 under Source Country Laws.
 Individual: Citizen or Resident of
 Source Country.
 Controlled Foreign Corporation.
 Other.
5. Supplier's Name and Address -----

6. Importer's Name and Address -----

7. Contract:
 Total Amount -----
 Date -----
8. Shipping Plans as of Time of Applica-
 tion:
 a. Partial Shipment No Yes \$-----
 b. Loading Port -----
 c. Destination Port -----
 d. Month(s) of Shipment -----

COMMODITY IDENTIFICATION

9. Schedule B 7-Digit Code(s):
 (a) -----
 (b) -----
 (c) -----
 (d) -----
 (e) -----
10. Commodity Details:

11. Unit and Unit Price FAS/FOB Vessel
 (Named Port of Loading):

12. Commodity Condition: Unused
 Other.
13. Source:
 a. Authorized Area -----
 b. Shipped From -----
 c. Produced in -----
14. Components:
 a. From Other than 13.a Source Yes
 No.
 b. If 14.a is "Yes," Country Imported
 From -----
 c. Cost Per Unit of 14.b Compo-
 nents -----

15. Information about Producers and Plants:

- a. Name of Producer(s) and Location of
 Plants -----
- b. Size Class of Producer(s) Small Busi-
 ness Not Small Business .
- c. Estimated Value Furnished from Each
 Plants -----

16. Remarks and Additional Information-----

17.:

SUPPLIER'S CERTIFICATIONS

As a condition for securing a determina-
 tion of commodity eligibility preparatory to
 the receipt by the supplier of funds made
 available by the United States under the
 Foreign Assistance Act of 1961, as amended,
 in payment in whole or in part in the trans-
 action described and for the commodity
 identified on this form, the undersigned,
 acting on behalf of the supplier whose name
 appears in block 5 above and authorized
 to bind the supplier, agrees with and certifies
 to A.I.D. as follows:

1. The supplier has contracted for the
 sale of the commodity described on this form
 to the importer whose name appears in
 block 6, and the supplier has either attached
 to this form a copy of such contract or has
 furnished in block 2 information concerning
 a letter of credit confirmed or advised in his
 favor under a payment obligation assumed
 by the importer in the sales contract.
2. The supplier has filled in the applicable
 portions of this form and certifies to the cor-
 rectness of the information shown herein.
3. The supplier agrees that the commodity
 will be shipped and invoiced in accordance
 with the information shown herein; that if
 any change in commodity identification takes
 place after A.I.D. has approved this transac-
 tion, the supplier will resubmit this form to
 A.I.D. for review and further approval for
 financing in light of the changed commod-
 ity; and that this Commodity Approval Ap-
 plication which the supplier proposes to use
 as a basis for securing payment from A.I.D.
 funds, is in every respect the original or
 true copy of the original application ap-
 proved by A.I.D. The supplier acknowledges
 that any commodity, other than a commodity
 described on this form from any supplier
 approved by A.I.D. below, is ineligible for
 A.I.D. financing with respect to the sale
 transaction for which this form must be sub-
 mitted as a condition for payment.
4. The supplier certifies that he is an in-
 dividual resident in a country included in
 the authorized source code; a nonresident
 citizen of a country included in the author-
 ized source code; a corporation or partner-
 ship organized under the laws of a country
 included in the authorized source code; or
 a controlled foreign corporation (within the
 meaning of section 957 et seq. of the Inter-
 nal Revenue Code) as attested by current
 information on file with the Internal Re-
 venue Service of the United States (on IRS
 Form 959, 2952, 3646, or any substitute or suc-
 cessor forms) submitted by shareholders of
 the corporation. If the supplier is a controlled
 foreign corporation without a regular place

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of business in the United States, the supplier appoints any shareholder or officer thereof agent for the supplier to receive service of process in the United States in connection with any dispute arising between the supplier and A.I.D. and relating to the commodity sale financed by A.I.D.

5. The supplier has not received notice directly by mail or indirectly by publication in the FEDERAL REGISTER or otherwise that A.I.D. has suspended or debarred him pursuant to A.I.D. Regulation 8 (22 CFR Part 208) or that the Treasury Department has placed his name on the Consolidated List of Designated Nationals and thereby rendered him ineligible to receive A.I.D. funds. To the best of his knowledge, the supplier has not acquired, and in any event will not acquire, for resale under A.I.D. financing the goods described in a description, condition, and suspended or debarred by A.I.D. or included on the Treasury List of Designated Nationals or from any affiliate of such a person.

6. The supplier acknowledges that this application, when approved, is not valid for shipments having a delivery date on or after the expiration date shown below.

Typed or Printed Name and Title.....

Signature of Authorized Representative of Supplier

Date.....

18.:

A.I.D. APPROVAL

By the signature and seal which appear below, A.I.D. has given limited approval to the sale described on this form. This approval is limited strictly to a determination that the commodity which the supplier has described is of a description, condition, and source eligible for A.I.D. financing. This approval and determination of commodity eligibility does not represent an approval of the sale price and does not in any way preclude an A.I.D. refund claim based upon a detailed analysis of the transaction upon postaudit in accordance with the provisions of A.I.D. Regulation 1 (22 CFR Part 201). A.I.D. expressly reserves to itself such rights as it may have under that regulation and under such other A.I.D. forms as the supplier may be required to submit by the terms of financing documents and by the terms of Regulation 1.

Expiration Date.....

Approved for A.I.D. Authorized Signature

Date.....

19.:

CERTIFICATE FOR PARTIAL SHIPMENT

I hereby certify that the partial shipment for which payment is being requested from A.I.D. funds is being made under the con-

tract covered by the original validated form AID-11 of which this is a true copy.

Typed or Printed Name and Title.....

Signature of Authorized Representative of Supplier

Date.....

GENERAL INSTRUCTIONS

Requirement for payment: Section 201.11 (k) of A.I.D. Regulation 1 declares that a commodity sale transaction is eligible for A.I.D. financing only if A.I.D. provides a determination of the commodity eligibility on the Commodity Approval Application. Section 201.52(a)(8) of the regulation states that to secure payment in connection with any sale governed by the regulation, a supplier must submit to the paying bank the signed original of this form, countersigned by A.I.D. As appropriate, a reproduced copy of the validated form, certified as provided in the second paragraph below, is required with each subsequent claim for partial shipments made under the original validated form AID-11.

Approval by A.I.D.: To secure A.I.D. approval, a supplier must submit signed and properly executed original and one copy of the form, addressed to the Agency for International Development, Office of the Controller, Washington, D.C. 20523, or to the alternative direct mail address published in A.I.D. small Business Memorandums, A.I.D. will indicate its approval in Block 18 of the form if the form is properly executed and if A.I.D. has no objection to financing the described commodity. If A.I.D. refuses approval, the Agency will return the form to the supplier with an explanation for the refusal. In either case, an identification number will be assigned by A.I.D. in the upper right-hand corner of the form. Any followup correspondence between the supplier and A.I.D. should refer to this number.

Partial shipments: In the event a supplier expects to make more than one shipment under a single contract, letter of credit, or collection document, he may either submit a separate form AID-11 covering each shipment, or submit a single form AID-11 covering the entire contract. In the latter case, the original A.I.D.-approved form will be presented to the paying bank with the supplier's first request for payment and a reproduced copy of the approved form, properly certified in block 19, will be presented with each request for payment for subsequent partial shipments. See detailed instructions for block 8.

Duration of A.I.D. approval: A.I.D. approval remains valid for 6 months as evidenced by the expiration date entered by A.I.D. in block 18. If the letter of credit is valid for a longer period, upon request from the supplier and submission of a copy of the letter of credit,

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A.I.D. will provide an approved expiration date corresponding to the expiration date of the letter of credit. If the A.I.D. approval expires prior to delivery, the supplier must reapply for approval, making reference to the transaction number assigned by A.I.D.

Timing of submission: Under letter of credit financing the application normally should be submitted subsequent to receiving confirmation or advice concerning the credit, but prior to shipment. The form may, however, be submitted prior to receipt of such credit provided that an original or true copy of the contract with the importer accompanies the application. Under any other method of financing, the application will be submitted following receipt of instructions that the transaction is to be A.I.D.-financed and must be accompanied by an original or true copy of the contract with the importer. In no case should the form be submitted prior to the time the supplier is able to furnish all required information in blocks 12 through 15.

Submissions in English language: Every commodity description which appears on the form must be stated in English. If a supplier furnishes as an attachment to this form a contract in a language other than English, an English translation of the commodity description must also be furnished.

Necessity for complete information: All numbered blocks MUST be appropriately completed. If the application contains incomplete blocks, it will NOT be processed but will be returned for completion.

A.I.D. geographic codes: See § 201.11(b)(4) of A.I.D. Regulation 1 for countries and areas included in geographic code numbers.

Obtaining forms: Forms may be obtained in limited quantities from banks holding A.I.D. letters of commitment, field offices of the Department of Commerce, the A.I.D. office in the supplier's country, U.S. Embassies or consulates, local banks, or the Distribution Branch, Agency for International Development, Washington, D.C. 20523. A supplier may reproduce the form provided the reproduction is identical with the original copy in every respect, including size, color, and format. A supplier may overprint his name and address in block 5.

INSTRUCTIONS RELATING TO SPECIFIC ITEMS

Block 1: Enter the letter of commitment number or Project Implementation Order number, as applicable. If neither is available, enter the loan or grant agreement number. A.I.D. cannot act on an application unless one of these numbers is provided.

Block 2: Indicate the method of financing. If by letter of credit, enter the letter of credit number assigned by the U.S. bank, the date the bank issued, advised, or confirmed the letter of credit, and the name and address of the bank concerned. If the application is submitted prior to receipt of this

information, enter the words "Firm contract" and attach a copy of the contract.

If the transaction is not to be financed by letter of credit, enter the applicable payment terms (e.g., sight draft collection, open account) and attach a copy of the contract.

Block 3: The importer should provide the supplier with this information. Generally the import license number appears on the letter of credit. If the information is not known or is not available at the time of submission of the application, enter "Unknown". (In some cases it may be necessary for A.I.D. to require this information before approving the application.)

Omit this information and enter "NA" (not applicable) if the importer has not been required by his government to secure an import license.

Block 4: Check the appropriate box to indicate the supplier's relationship to a country in the authorized source code. This information is relevant to certification 4 in block 17. If the box for "Controlled Foreign Corporation" is checked, show the U.S. payment address in block 16. If "Other" is checked, furnish explanation of relationship in block 16.

Block 5: Enter name and address, taking care to center the information in order to permit A.I.D. to use a window envelope in returning the form.

Block 7: Enter the total contract sales price, i.e., the total remuneration (in whatever currency and whether paid directly to the supplier or in whole or in part to a designee of the supplier) to be received under the contract. Enter contract date or date the purchase order was accepted.

Block 8: (a) Check the appropriate box to indicate whether the supplier expects to make partial shipments. If "yes" and a separate application form will be submitted for each partial shipment, enter the value of the shipment to which this application relates. If only one application form will be submitted to cover all partial shipments, omit the dollar value.

(b) Enter the proposed loading port. If only the range of ports is known, enter the range of ports; e.g., North Atlantic, South Atlantic, Gulf, Pacific, Great Lakes. If expected that partial shipments will be made, but only one application form is to be submitted, entries under (b) and (c) will relate to the first shipment only.

(c) Enter the proposed destination port.

(d) Enter the month in which it is expected shipment will be made. In the case of partial shipments, indicate the estimated first and last months of shipments; e.g., April-September.

Blocks 9 and 10: Enter the U.S. Department of Commerce Schedule B 7-digit code or the A.I.D. 10-digit Schedule B-Vietnam

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code, as appropriate, in block 9 and describe the commodity in block 10, giving size, quantity, and a clear word description of the commodity, including any special formula or other distinguishing characteristics such as substandard quality (e.g., reject, imperfect, second) which will help to identify it.

If the contract or the letter of credit identifies the commodity by other than Schedule B code or A.I.D. Schedule B—Vietnam code (e.g., Standard International Trade Classification, Brussels Trade Classification, Importing country tariff classification), this identification should be furnished as part of the commodity description.

If the commodity description varies significantly within the same Schedule B code, separate entries must be furnished for each commodity.

Block 11: Enter the unit and unit price for the commodity on an F.A.S. or F.O.B. basis for the loading port specified in block 8.b. For other delivery terms, enter a constructive price F.A.S. or F.O.B. vessel; i.e., subtract from a C. & F. or C.I.F. price estimated ocean freight and marine insurance, or add to an inland price (e.g., ex plant, F.O.B. rail cars (named point)) the estimated inland freight and accessorial costs necessary to place the commodity in the custody of the ocean carrier.

If the supplier is unable to compute a unit price F.A.S. or F.O.B. vessel, the unit price of the commodity may be shown on the basis of the inland price with estimated inland freight cost, if available, footnoted in an explanatory entry in block 16. This alternative is not applicable to certain commodities subject to an eligibility test based on maximum P.A.S. value per unit. (Such commodities are identified in Office of Small Business Memorandums.)

Special instructions—multicoded items: If the shipment (or contract) is made up of commodities bearing differing Schedule B codes, or if the commodity description varies significantly within the same Schedule B code, separate entries must be furnished for each code or description. When there are six or more items to be listed in blocks 9 through 11, a signed and dated accepted contract, order, invoice, or other separate listing of the information may be attached to the original and copy of the form AID-11, provided the full 7-digit Schedule B code, complete and accurate description of the commodity, and F.A.S. or F.O.B. vessel unit price are shown for each. If the information required by blocks 12 through 15 is not common to all commodities listed, appropriate information related to each such commodity is also required to be shown either on the attachment or in the blocks 12 through 15 and related to the appropriate line of the attachment. If an attachment is used in lieu of entry of the information on form AID-11, complete blocks 9-11 inclusive, and 12-15 inclusive (when applicable) by entering the words "See attachment"

Special instructions—Blocks 12 through

15: If more than one commodity is listed in block 9, provide information required by blocks 12 through 15 on separate lines in those blocks, identified to the corresponding line on which the commodity is listed in block 9. For example, information concerning a commodity listed on line (c) in block 9 would be identified as line (c) in blocks 12 through 15. When only one form AID-11 is submitted, information in these blocks should be descriptive of the total contract. If a separate form AID-11 is submitted for each shipment under the contract, the information in these blocks should cover only that single shipment.

Block 12: Enter check mark in the appropriate box to indicate the condition of the commodity. If the commodity is other than unused, describe the condition in the space below or in block 16. For this purpose, any commodity declared surplus by a U.S. Government agency and any commodity containing rebuilt or rehabilitated components are not considered as "unused."

Block 13: See § 201.11(b) (4) of A.I.D. Regulation 1 for countries and areas included in geographic code numbers.

(a) Enter in block 13.a the authorized geographic source area as provided by the importer.

(b) Enter in block 13.b the country from which the commodity will be shipped to the importer. If the commodity will be shipped from a free port or bonded warehouse, indicate this fact in block 16 and give the location of the bonded warehouse.

(c) Enter in block 13.c the country in which the commodity has been or will be mined, grown, or produced through manufacturing, processing, or assembly.

Block 14: (a) Enter in block 14.a "Yes" if the commodity includes components imported into the country of production from a country not included in the authorized geographic source area indicated in block 13.a. If such components are not included, enter "No."

(b) If block 14.a is "Yes," identify in block 14.b each country from which components were imported into the country of production.

(c) In block 14.c enter the total cost, within each unit of the finished product, attributable to components imported from each country indicated in block 14.b. If the supplier is unable to furnish information required by blocks 14.b and 14.c at the time of submission of the application and no component percentage other than the 50 percent set forth in § 201.11(b) (2) (ii) (b) of A.I.D. Regulation 1 has been authorized for the commodity, A.I.D. will accept a statement in these blocks or in block 16 that (1) the commodity contains no components from other than "free world" countries, and (2) the total cost of components imported into the country of production from other than countries included in the authorized geographic source code (or the cooperating country itself when ever Code 941 is au-

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thorized) per unit of finished commodity is no more than 50 percent of the lowest selling price per unit at which the supplier makes the commodity available for export. If A.I.D. has authorized a percentage for non-source free world components other than 50 percent, the supplier should state such other higher or lower modification of the percentage rule, with a citation to the pertinent modification; and the actual percentage of non-source free world components in the product, or an affirmation that the percentage of such components is not in excess of the percentage allowed by A.I.D. The supplier should thereafter be prepared to demonstrate the accuracy of these statements upon request of A.I.D.

Block 15: At the supplier's option, this information may be omitted from the original form and shown only on the duplicate copy which does not leave A.I.D.'s possession. (a) Enter the name of the producer (e.g., the manufacturer, processor, assembler) and the location (city and State or country) of the plant where produced. "Same as block 5" may be entered when appropriate.

(b) (This information is required only when a U.S. address is indicated in block 15.a. The information is required so that A.I.D. can compile information recommended by Congress.) Indicate whether the producer is considered a small business concern for the purposes of U.S. Government procurement. Generally a small business concern is a firm that (1) is not dominant in its field of operations and, with its affiliates, employs fewer than 500 employees, or (2) is certified as a small business concern by the Small Business Administration. (Code of Federal Regulations, Title 13, Part 121, as amended.) If a producer is unsure of his classification, he may obtain guidance from the nearest field or regional office of the Small Business Administration.

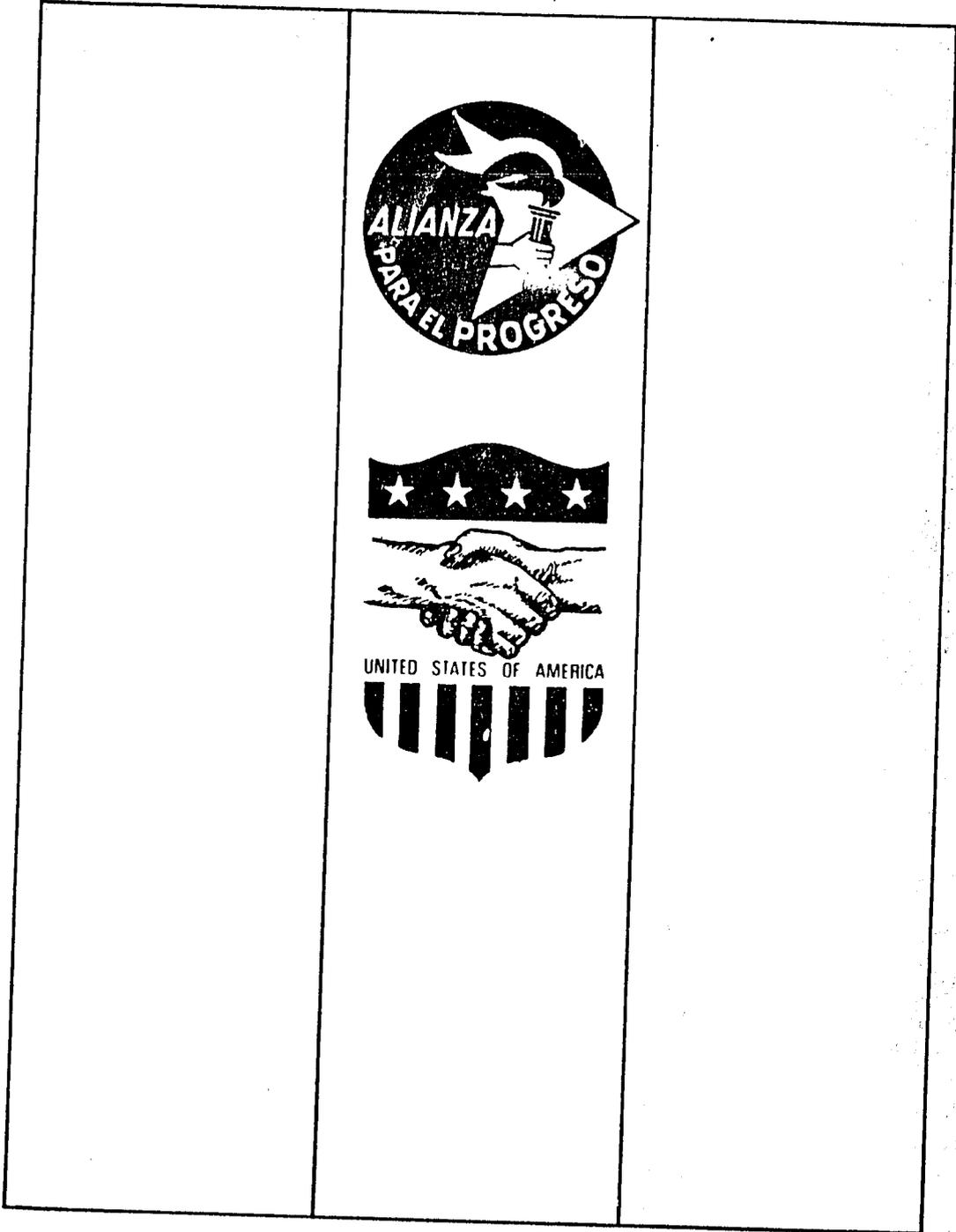
(c) Enter the part of the total commodity value, F.A.S. or F.O.B. vessel port of loading, attributable to the goods furnished from each plant.

Block 16: This block may be used to furnish explanation of or additional information in connection with, any entries on the form. Identify any explanatory entry to the block (and line, as appropriate) to which it relates.

Block 17: The supplier, or his authorized representative, must manually sign this certification, showing name, title, and date signed.

Block 18: For A.I.D. use. Note that A.I.D. approval is not valid for deliveries on and after the expiration date shown in this block.

Block 19: If reproduced copies of this original form are presented with the supplier's request for payment (see third paragraph of General Instructions), the supplier or his authorized representative must manually sign this certification in block 19 of the reproduced form, showing name, title, and the date signed.



Copies available from A.I.D. Distribution Branch MO/PAV

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ATTACHMENT 2A

RELEVANT A.I.D. GEOGRAPHIC CODES

000 UNITED STATES

899 FREE WORLD

Any area or country in the Free World* excluding the participating country itself.

935 SPECIAL FREE WORLD

Any area or country in the Free World*, including the participating country itself.

941 SELECTED FREE WORLD

Any independent country in the Free World*, except the cooperating country itself and the following:

Europe		Other	
Andorra	Luxembourg	Angola	Mozambique
Austria	Malta	Australia	New Zealand
Belgium	Monaco	Bahamas	Nicaragua
Denmark	Netherlands	Bahrain	Qatar
Finland	Norway	Canada	Saudi Arabia
France	Portugal	China, Republic of (Taiwan)	Singapore
Germany, Federal Republic of (including West Berlin)	San Marino	Cyprus	South Africa
Ireland	Spain	Gabon	United Arab Emirates
Italy	Sweden	Greece	
Iceland	Switzerland	Hong Kong	
Liechtenstein	United Kingdom	Iraq	
	Vatican City	Japan	
	Yugoslavia	Kuwait	

*"Free World" excludes the following areas or countries:

Afghanistan, Albania, Bulgaria, Cambodia, Cuba, Czechoslovakia, Estonia, German Democratic Republic, Hungary, Iran, Laos, Latvia, Libya, Lithuania, Mongolia, North Korea, People's Democratic Republic of Yemen (South Yemen or Aden), People's Republic of China, Poland, Romania, Syria, Union of Soviet Socialist Republics, Viet Nam.