AGENCY FOR INTERNATIONAL DEVELOPMENT

HANDBOOK TRANSMITTAL MEMORANDUM	DATE July 19, 1993	TRANS. MEMO NO. 1B:89

MATERIAL TRANSMITTED:

Handbook 1B - Procurement Policy

The definition of an eligible supplier of commodities is revised to include the requirement that a corporation or partnership organized under the laws of a country or area in the authorized geographic code must also have a place of business in the country.

FILING INSTRUCTIONS:

1. REMOVE PAGES: 5-11 & 5-12 (TM 1B:86)

   REPLACEMENT PAGES: 5-11 & 5-12

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4. File this TM 1B:89 in the front of the handbook binder; discard TM sheet 1B:88.

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<u>CHECKLIST FOR HANDBOOK 1</u>
<u>SUPPLEMENT B - PROCUREMENT POLICIES</u>

AUTHOR OFFICE: FA/PPE

3/17/92	Handbook 1B reissued in its entirety,	1B:82
4/22/92	Pages Index-i and Index-ii	1B:83
5/11/92	Pages Index-1 thru Index-14	1B:84
8/12/92	Chapter 22	1B:85
9/3/92	Pages 5-2 thru 5-4, 5-8 thru 5-10, and 5-13 thru 5-19 of Chapter 5	1B:86
3/30/93	Chapters 8, 12, 20, 23, and pages 19-1 and 19-2 of Chapter 19	1B:87
5/5/93	TC-1 thru TC-10, 7-13 & 7-14 of Chapter 7, 15-11 thru 15-19 of Chapter 15, and 21-5 thru 21-8 of Chapter 21	1B:88
7/21/93	Pages 5-11 and 5-12 of Chapter 5	1B:89

AGENCY FOR INTERNATIONAL DEVELOPMENT

HANDBOOK TRANSMITTAL MEMORANDUM	DATE May 5, 1993	TRANS. MEMO NO. 1B:88

MATERIAL TRANSMITTED:

Handbook 1B - Procurement Policy

Updates to Chapters 7, 15, and 21.

Chapter 7 is amended to change policy on AID-financing of inland freight. The changes (1) clarify the provision allowing the financing of intermodal freight by dropping the requirement that point of delivery be established in the carrier's tariff and (2) delegate the authority to waive the restriction on the financing of inland freight to the field.

Chapter 15 is amended to reflect the changes in letter of credit procedures since the Treasury Department no longer issues letters of credit on behalf of AID. References to the Letter of Credit-Treasury Financial Communication System (LOC-TFCS) are deleted and new guidance on letters of credit issued by AID is added to the sections covering grants and cooperative agreements to nonproject organizations and AID-direct contracts.

Chapter 21 is amended to bring the guidance on the activities financed under the Development Fund for Africa into conformity with the guidance issued by the Africa Bureau on January 24, 1993. The coverage of Housing Guaranty Programs is being reissued and Indus Basin Development Fund is being deleted.

FILING INSTRUCTIONS:

1. REMOVE PAGES: / REPLACEMENT PAGES:

REMOVE PAGES:	REPLACEMENT PAGES:
TC-1 thru TC-10 (TM 1B:87)	TC-1 thru TC-11
7-13 & 7-14 (TM 1B:82)	7-13 & 7-14
15-11 thru 15-21 (TM 1B:82)	15-11 thru 15-19
21-5 thru 21-9 (TM 1B:82)	21-5 thru 21-8

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CHECKLIST FOR HANDBOOK 1
SUPPLEMENT B - PROCUREMENT POLICIES

AUTHOR OFFICE: FA/PPE

3/17/92	Handbook 1B reissued in its entirety,	1B:82
4/22/92	Pages Index-i and Index-ii	1B:83
5/11/92	Pages Index-1 thru Index-14	1B:84
8/12/92	Chapter 22	1B:85
9/3/92	Pages 5-2 thru 5-4, and 5-8 thru 5-19 of Chapter 5	1B:86
3/30/93	Chapters 8, 12, 20, 23, and pages 19-1 and 19-2 of Chapter 19	1B:87
5/5/93	TC-1 thru TC-10, 7-13 & 7-14 of Chapter 7, 15-11 thru 15-19 of Chapter 15, and 21-5 thru 21-8 of Chapter 21	1B:88

AGENCY FOR INTERNATIONAL DEVELOPMENT

HANDBOOK TRANSMITTAL MEMORANDUM	DATE September 3, 1992	TRANS. MEMO NO. 1B:86

MATERIAL TRANSMITTED:

Handbook 1 - Procurement Policy

Chapter 5, Source and Nationality

Chapter 5 is amended to incorporate the changes in eligibility of the cooperating country as a source of procurement which were approved by the Administrator in December 1990. The requirement to send waivers to FA/PPE has been deleted. The requirement to send waiver reports to the Bureaus has been deleted from the handbook, but Bureaus may have separate requirements in place which will continue.

The Table of Contents has been revised to reflect the change in pagination.

FILING INSTRUCTIONS:

1. REMOVE PAGES: / REPLACEMENT PAGES:

REMOVE PAGES:	REPLACEMENT PAGES:
TC-3 and TC-4 (TM 1B:82)	TC-3 and TC-4
5-1 through 5-20 (TM 1B:82)	5-1 through 5-19

2. Initial the Transmittal Memorandum Checksheet (in the back of the Handbook binder) beside TM 1B:86.

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CHECKLIST FOR HANDBOOK 1
SUPPLEMENT B - PROCUREMENT POLICIES

AUTHOR OFFICE: FA/PPE

3/17/92	Handbook 1B reissued in its entirety,	1B:82
4/22/92	Pages Index-i and Index-ii	1B:83
5/11/92	Pages Index-1 thru Index-14	1B:84
8/12/92	Chapter 22	1B:85
9/3/92	TOC page TC-3, pages 5-2 thru 5-4, and 5-8 thru 5-19 of Chapter 5	1B:86

AGENCY FOR INTERNATIONAL DEVELOPMENT

HANDBOOK TRANSMITTAL MEMORANDUM	**DATE** April 22, 1992	**TRANS. MEMO NO.** 1B:83

MATERIAL TRANSMITTED:

Handbook 1 - Procurement Policy
Supplement B

This Handbook Index incorporates revisions upto and including TM 1B:82.

SUPERSEDES:

None

FILING INSTRUCTIONS:

1. Remove superseded material as indicated under SUPERSEDES.
2. File the attached index at the end of Handbook 1B.
3. Initial the Transmittal Memorandum Checksheet (in the back of the Handbook binder) beside TM 1B:83.

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CHECKLIST FOR HANDBOOK 1
SUPPLEMENT B - PROCUREMENT POLICIES

AUTHOR OFFICE: FA/PPE

3/17/92	Handbook 1B reissued in its entirety,	1B:82
4/22/92	Individual Index to HB. 1B	1B:83

AGENCY FOR INTERNATIONAL DEVELOPMENT

HANDBOOK TRANSMITTAL MEMORANDUM	DATE March 9, 1994	TRANS. MEMO NO. 1B:90

MATERIAL TRANSMITTED:

Handbook 1B - Procurement Policy

Guidance on the procedures for conducting the procurement of pharmaceuticals is amplified to provide that M/OP/CC is the USAID/W office designated to approve the procurement of pharmaceuticals.

FILING INSTRUCTIONS:

1. REMOVE PAGES: 4-13 and 4-14 (TM 1B:82)

   REPLACEMENT PAGES: 4-13 and 4-14 (TM 1B:90)

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(202) 736-4747

CHECKLIST FOR HANDBOOK 1
SUPPLEMENT B - PROCUREMENT POLICIES

AUTHOR OFFICE: M/PPE

3/17/92	Handbook 1B reissued in its entirety.	1B:82
4/22/92	Pages Index-i and Index-ii	1B:83
5/11/92	Pages Index-1 thru Index-14	1B:84
8/12/92	Chapter 22	1B:85
9/3/92	Pages 5-2 thru 5-4, 5-8 thru 5-10, and 5-13 thru 5-19 of Chapter 5	1B:86
3/30/93	Chapters 8, 12, 20, 23, and pages 19-1 and 19-2 of Chapter 19	1B:87
5/5/93	TC-1 thru TC-10, 7-13 & 7-14 of Chapter 7, 15-11 thru 15-19 of Chapter 15, and 21-5 thru 21-8 of Chapter 21	1B:88
7/21/93	Pages 5-11 and 5-12 of Chapter 5	1B:89
3/9/94	Chapter 4, pages 4-13 and 4-14	1B:90

4C3a(2)

*

(a) To the extent possible, all proposed procurement should be identified and set forth in the Project Paper for M/OP/CC approval. If that is not possible, the proposed procurement should be submitted separately, prior to the solicitation/tender, for M/OP/CC approval; *

(b) All procurement must be by formal competitive bidding when procured by the cooperating country or alternatively, in accordance with the procurement policies and procedures of the designated U.S. Government procurement agency;

(c) All pharmaceuticals should comply with the U.S. Food and Drug Administration (or other controlling U.S. authority) regulations governing United States interstate shipment of pharmaceuticals. Non-U.S. products which do not meet this test may be financed under special circumstances (see 4C3d).

(3) Nonproject Assistance

(a) All pharmaceuticals to be procured must be generically described.

(b) In contrast to project assistance, pharmaceuticals procured as nonproject assistance are normally required to be in bulk form in order to minimize problems of overpricing and product identification. Finished dosage form, however, is not precluded if there is a special reason for it.

(c) When pharmaceuticals are to be procured as nonproject assistance, the following rules apply:

1. Public sector procurement of pharmaceuticals, except where noted in 3, below, must be made by formal competitive bidding;

2. When the procurement is undertaken by public sector agencies purchasing for resale or by the private sector, in which brand acceptance is often an important factor, brand name procurement is allowable;

3. When public sector agencies brand name pharmaceuticals, negotiated procurement is allowable;

4. All pharmaceuticals must comply with the U.S. Food and Drug Administration (or other controlling U.S. authority) regulations governing United States interstate shipment of pharmaceuticals.

* 5. All procurements require prior approval by M/OP/CC; *

6. In addition to the applicable price rules in Subpart G of AID Regulation 1, bulk pharmaceuticals are subject, at the prefinancing stage, to the special price rules found in Part II-D of Appendix B, Handbook 15.

b. Source of Policy

(1) The policy stated above stems primarily from AID's reliance on the U.S. Food and Drug Administration for promulgation and enforcement of standards for the safety and effectiveness of pharmaceutical products used in the foreign assistance programs.

(2) With a view toward protecting unexpired patents on U.S.-manufactured pharmaceutical products, Section 606(c) of the Foreign Assistance Act prohibits the procurement of U.S.-patented pharmaceutical products outside the United States, unless expressly authorized by patent holders.

(3) The special price rules reflect AID and Congressional concern as to the prices paid for pharmaceutical products.

c. Implementation

(1) To ensure that only safe effective pharmaceuticals are financed, AID bases its eligibility standards for pharmaceuticals, drug substances/products, and biologics on the U.S. Food and Drug Administration's regulations governing their United States interstate shipment. In keeping with this, information made available by the FDA on the safety and efficacy of finished dosage form pharmaceuticals will be supplied to AID Missions when requested. Such information is used in assisting recipient governments in selecting those pharmaceutical products best suited to their needs.

AGENCY FOR INTERNATIONAL DEVELOPMENT

HANDBOOK 1

SUPPLEMENT B

PROCUREMENT POLICIES:

INTEGRATED STATEMENT OF PROCUREMENT POLICIES

FOR COMMODITIES AND SERVICES

(TM 1B:82)
(5-18-77)

INTRODUCTION

BACKGROUND

Existing expressions of AID procurement policies relating to program funds have been published in a wide range of sources, including Handbooks, Regulations, opinions of the General Counsel, circular airgrams, precedent setting ad hoc policy determinations on specific issues, and many others. In some instances, conflicting expressions of policy may be found, and in other cases policy guidance is either nonexistent or inadequate. There are inconsistencies in policies relating to the procurement of goods and the procurement of services. Frequently, statements of policy are not clear, or are unnecessarily complex.

In recent years AID has made a number of special studies of various aspects of procurement policies and procedures, aimed at correcting some of these deficiencies. It became apparent that there was a critical need to produce an integrated, consistent, and authoritative statement of all policies applicable to the procurement of goods and services with program funds.

In April 1976, the Deputy Administrator established an Expert Working Group which was given the assignment of producing an integrated, consistent, and codified body of procurement policies for goods and services financed with program funds.

REVISED PROCUREMENT POLICIES

The "Integrated Statement of Policies on the Procurement of AID-financed Commodities and Services" was prepared by the Expert Working Group in response to this assignment, and is being issued herewith as Supplement B to Handbook 1 - Policy.

POLICY

SUPPLEMENT B, PROCUREMENT POLICIES

TABLE OF CONTENTS

Chapter 5 - SOURCE AND NATIONALITY (cont.)

Chapter 6 - ELIGIBILITY OF SUPPLIERS AND CONTRACTORS (Certified 3/30/93)

Chapter 7 - ELIGIBILITY OF DELIVERY SERVICES
(Certified 3/30/93)

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*REVISED

Chapter 25 - CRITERIA FOR CHOICE OF IMPLEMENTATION INSTRUMENT FOR AID PROGRAMS OR PROJECTS UNDER AID-DIRECT CONTRACT/GRANT PROCEDURES (Continued)

Chapter 26 - ADMINISTRATIVE PROCUREMENT
(Certified 3/30/93)

CHAPTER 1

SCOPE AND APPLICATION

1A. Scope

1. This Integrated Statement of Procurement Policies prescribes all AID policies dealing with the procurement of goods and services with program funds. Any instructions or other guidance not included in this Statement is not AID procurement policy. The policies included in this Statement, published as Supplement B to Handbook 1, are applicable to all procurement financed with program funds unless they are made inapplicable in whole or in part by specific provisions of Supplement B.

2. The policies given here may be expressed elsewhere in the same or in different form. For example, other Handbooks may repeat these policies in order to provide a setting for a description of implementation procedures. Irrespective of other expressions of these procurement policies this compilation remains the overriding source of policy guidance. This Supplement B is not in any way a substitute for AID regulations published in the Federal Register and used to implement AID policies. Those regulations alone contain the exact expression of rules needed for the legal enforcement of pertinent AID policies.

3. When new policies are adopted or existing policies amended or abolished, the approval documents for such changes will include the specific language that is to be incorporated into this Supplement B to effect the changes.

1B. Maintenance of Procurement Policies

1. The management of Supplement B is the responsibility of the Associate Administrator for Finance and Administration (AA/FA) who has designated the Deputy (DAA/FA) as Coordinator of Procurement Policy. The Coordinator has the responsibility of maintaining the integrity of this compilation through oversight of amendments, additions, and deletions. The Deputy Administrator has established a Procurement Policy Advisory Panel to assist in consideration of proposed policy changes and will call upon offices responsible for the maintenance of particular Handbooks to conform such Handbooks to changes made from time to time in this compilation. This delegation of management responsibility does not change any existing responsibilities for the initiation of changes in procurement policies.

1B

2. The manner in which policies are implemented can have a profound influence on the effectiveness of such policies, and may even negate or otherwise change their intent. For this reason the content of implementation instructions and procedures is of crucial importance. Thus, the officer charged with responsibility for maintenance of this statement plays an active role in overseeing the preparation of implementation instructions. The implementation material prepared for the Handbooks is critically reviewed by him/her to assure that it does, in fact, support the intent of the related policies.

1C. Organization of the Supplement

The procurement policies are organized under chapter headings which generally offer a clear guide to the reader seeking an expression of policy on a particular issue. Cross-references are included where appropriate. Each chapter contains four major sections:

1. Policy

This Section presents a statement of current policy. Background information is included where it contributes to a better understanding of the policy. There is also stated the extent of the applicability of the policy, for example, as to project and nonproject assistance.

2. Source of Policy

This Section gives a brief explanation of the source of the policy including references to legislation, executive orders, etc., where applicable. Aside from the obvious purpose of better informing the reader, this section is also intended to identify to officials who may be concerned with future revisions of policies the original source material behind the present formulation.

3. Implementation of Policy

This Section contains references to Handbooks and Regulations dealing with the implementation of the policy and in some cases includes other material that provides guidance on implementation.

4. Waivers

This Section notes the office that has waiver authority and in some cases gives the grounds for granting waivers. This is not intended to be a full and definitive statement on waivers since such guidance, more properly, is material for the Handbooks dealing with implementation.

CHAPTER 2

DEFINITIONS OF TERMS USED 1/

Approved Applicant--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 including any agent acting on behalf of such approved applicant.

Bid Bond or Guaranty--A bond or guaranty that accompanies a bid, when invitations for bids require it, to assure that the bidder will, if his/her bid is accepted, execute the contract. Invitations for bids generally require the posting of a bid or guaranty.

Borrower/Grantee--The government of any cooperating country, or any agency, instrumentality or political subdivision thereof, or any private entity to which AID directly makes funds available by loan or grant.

Cash Transfer--A form of nonproject assistance, usually for budget support, in which funds are transferred to a cooperating country without a requirement for documentation evidencing the actual use of the funds by the cooperating country.

Cargo Preference--The requirement to use U.S. flag carriers in accordance with the provisions of Section 901(b) of the Merchant Marine Act of 1936, as amended.

Charter Party--The requirement for the hire of a ship or aircraft for one or more voyages or for a period of time.

Collaborative Assistance--A method of providing long-term technical assistance involving the professional collaboration of an educational institution, international research center, or cooperative development organization and a cooperating country institution for problem solving-type activities to develop new institutional forms and capabilities, to devise operating systems and policies, and to conduct joint research and development, including training.

1/ Definitions are written to conform to general AID usage, as presented in the integrated statement of procurement policy. More specific definitions are contained in the AID Regulations and Handbooks applicable to procurement.

Commission--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.

Commodity-- Any material, article, supply, goods, or equipment.

Commodity Code-- The designation of a commodity by means of the U.S. Department of Commerce Schedule B classification of commodities by ten-digit codes.

Commodity Import Program (CIP)--A form of nonproject assistance by which AID makes dollars available to a cooperating country to finance the importation of categories of commodities under a loan or grant agreement.

Commodity Related Services--Delivery services and incidental services.

Contract--See: Cost Plus Fixed Fee Contract; Fixed Price Type Contracts Containing Fixed Rate Payment Provisions; Lump Sum Contract; Requirements Contract; Unit Price Contract.

Cooperating Country--The country receiving AID assistance.

Cost Plus Fixed Fee Contract--A contract in which the contractor undertakes to provide specified goods or services in return for reimbursement of all costs incurred -- direct, administrative, overhead, etc. -- plus a fee (profit) in an amount fixed at the execution of the contract.

Debarment of Suppliers, Contractors, and Recipients--A determination that certain persons will be excluded from eligibility for U.S. Government-financed contracts and assistance for a fixed period of time. Such determinations by AID are made for the causes prescribed in and implemented by the procedures in AID Regulation 8 and FAR 9.4.

Delivery Service--Any service customarily performed in a commercial export transaction which is necessary to effect a physical transfer of commodities to the cooperating country. Examples of such services are: export packing, loading, wharfage, lighterage, insurance, commodity inspection services, services of freight forwarder, and ocean and other freight.

Demurrage--The amount paid by the charterer to the ship owner or operator for detention of the vessel in port in excess of the number of days stipulated in the charter party. An extra charge to the charterer for delays in loading or discharging the cargo.

Despatch--The amount paid by a ship owner or operator to the charterer for the time saved in loading or discharging cargo. An allowance by the ship owner or operator for time saved in loading or discharging the cargo.

Direct Reimbursement--A method of financing under which AID reimburses the borrower/grantee for eligible transactions which the borrower/grantee has already paid for with its own foreign exchange or local currency resources.

Discount--Any allowance or payment to or for the benefit of a buyer.

Excess Property--U.S. Government-owned property which has been determined to be excess to the needs of the owning Federal agency.

FAA--The Foreign Assistance Act of 1961, as amended.

FAR (Federal Acquisition Regulation)--The basic acquisition regulation governing the award and administration of AID-direct contracts. The FAR is supplemented by the AID Acquisition Regulation (AIDAR). FAR citations are generally followed by a series of numbers (e.g., FAR 5.201(b), FAR Part 14, FAR Subpart 6.3); in this way they differ from the term "FAR" meaning fixed amount reimbursement.

FAR (Fixed Amount Reimbursement)--A technique used in project assistance under which the amount of reimbursement is fixed in advance based upon cost estimates reviewed and approved by AID. Reimbursement is made upon the physical completion of a project, subproject, or a quantifiable element within the project. The emphasis is upon reimbursement based on planned outputs rather than inputs and costs.

Fixed Price Type Contracts Containing Fixed Rate Payment Provisions (also known as Fixed Price Time Rate Contract--A contract in which the contractor undertakes to provide specified services of uncertain quantity and duration in return for payment at a time-unit rate (daily, monthly, etc.) fixed for each type of skill at the execution of the contract, such rate to include the contractor's costs and profit.

Force Majeure--An unforeseeable event, outside the control of a contractor, which prevents him/her from performing a contractual obligation in whole or in part.

Formal Competitive Bidding--A system of procurement under which sealed bids are solicited through adequate advertising of a full statement of well defined requirements and specifications and all the conditions to be considered in the selection of the successful bidder together with the date for the submission of bids. Bids submitted before the closing date are evaluated in terms of the advertised conditions and the award is made to the lowest price responsive and responsible bidder.

Freight Differential--The amount by which the cost of the ocean freight bill for the portion of commodities required to be carried on U.S.-flag vessels exceeds the prevailing cost of carrying the same amount on foreign flag vessels.

General Average--A doctrine of maritime law applicable to all ocean shipments whereby, when part of a marine cargo ship is deliberately sacrificed in the interest of saving the whole, the owners of the sacrificed portion are entitled to contributions from the owners of the saved portion of the cargo and ship.

Geographic Code--A three-digit code used by AID to designate countries or geographic areas for the purpose of defining eligible sources or nationalities under AID programs and projects. See Handbook 18, Appendix D, Section III, Attachment A11, the AID Geographic Code Book. The more commonly used geographic codes are: Code 000 - The United States; Code 899 - The "Free World;" Code 935 - "Special Free World," that is Code 899 plus the cooperating country itself; Code 941 - "Selected Free World," the United States and a large group of less developed countries--the category of countries which are currently eligible sources for loan-financed procurement.

Importer Shelf Item--Goods that are normally imported and kept in stock, in the form in which imported, for sale to meet a general demand in the country. Imported items are not goods that have been imported specifically for use on an AID-financed project.

Importer--Any person or organization, public or private, in the cooperating country authorized by the borrower/grantee to use AID funds for the procurement of commodities, including any borrower/grantee who undertakes such procurement.

Incidental Services--The installation or erection of AID-financed equipment, or the training of personnel in the maintenance, operation, and use of such equipment.

Indefinite Quantity Contract--A contract that provides for the purchase of an indefinite quantity, within stated limits, of specified supplies or services during the period of the contract, with deliveries scheduled by placement of delivery orders. The contract must specify a guaranteed minimum order and cumulative maximum amount.

Institutional Grants--Grants to educational and research institutions in the United States under the authority of Section 122(d) of the FAA to strengthen their capacity to develop and carry out programs concerned with economic and social development of less developed countries.

International Organization--Any international or regional development-related organization created by international agreement having membership consisting primarily of national governments or public agencies thereof.

Invitation for Bids--A solicitation of offers from potential suppliers of specified commodities and/or services under formal competitive bidding procedures.

Letter of Commitment (L/COM)--An agreement between AID and a U.S. bank under which the bank is authorized to make payments to contractors and suppliers for eligible commodities and services. The bank is reimbursed by AID for payments made in accordance with the letter of commitment.

Letter of Credit (LOC)--A financing instrument used in connection with grants or contracts with state and local governments in the United States, with educational and nonprofit institutions, and with grants to the international organizations. It permits frequent small advances as needed while avoiding premature withdrawals from the Treasury.

Liner Shipment--Shipment by a "liner" vessel which operates on published sailing and arrival dates between named ports.

Local Cost Financing--The procurement of goods and services in a cooperating country with the currency of that country where the local currency has been obtained with AID appropriated dollars.

Lump-Sum Contract (Also known as Fixed Price Contract)--A contract in which the contractor undertakes to provide specified goods or services in return for a single payment amount fixed at the execution of the contract.

Mission Director--The term includes, for the purposes of waivers and authorizations, the principal AID official at a foreign post, e.g., Mission Director, AID Representative, or AID Affairs Officer.

Nationality--The citizenship or place of residence of an individual or place of incorporation or establishment of a firm.

Nonproject Assistance--The transfer of resources, under AID financing, for the purpose of promoting economic development and/or political stabilization by means of short-term relief from budgetary or balance of payments constraints on the economy of a cooperating country.

Origin--The country in which a commodity is mined, grown, or produced. See Chapter 5 for the special tests applicable to produce commodities.

Payment Bond or Guaranty--A commitment in the form of a bond or guaranty furnished by a contractor or supplier to assure payments to all persons supplying labor and materials in performance of the work under a contract.

Performance Bond or Guaranty--A commitment in the form of a bond or guaranty furnished by a contractor or supplier to ensure satisfactory completion of all contract requirements.

P.L. 480--The Agricultural Trade Development and Assistance Act of 1954, as amended.

Prequalification--The act of determining those firms which have the interest and resources -- technical, managerial, and financial -- to provide the goods or services to be procured.

Project Assistance--AID assistance through the financing of projects. A project is a discrete endeavor to achieve a finite result directly related to a development problem by providing funds, personnel, and/or goods for a specific activity.

Proprietary Procurement--The procurement of goods by reference to a trade name, special design requirements, or specifications that can be met by the product of only one producer. See also "Sole Source Procurement."

Public Sector--The sector of the economy of a cooperating country managed, directed, or otherwise controlled by governmental or quasi-governmental entities, national, regional, or local.

Request for Proposals--A solicitation of offers from potential suppliers of described services for a negotiated contract.

Requirements Contract--A contract that provides for the purchase of all actual needs for specified supplies or services for a specified period, with deliveries scheduled by placement of delivery orders. The contract specifies the maximum level of goods or services which may be ordered.

Sealed Bidding Procurement--See Formal Competitive Bidding.

Shelf Item--See Imported Shelf Item.

Sole Source Procurement--A procurement in which goods or services can be obtained from only one person or firm. See also "Proprietary Procurement."

Source--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 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.

Special Letter of Credit--An irrevocable letter of credit is issued by a U.S. bank, at AID's request, the beneficiary of which is designated by the borrower/grantee. (The beneficiary is usually the Central Bank of the cooperating country.) The foreign exchange made available to the borrower/grantee by the Special Letter of Credit is used by the cooperating country to finance imports.

Supplier--Any person or organization, governmental or otherwise, who furnishes commodities and/or commodity-related services financed by AID.

Suppliers Certificate--Either the form AID 282, "Supplier's Certificate and Agreement with the Agency for International Development/Invoice and Contract Abstract," or the form AID 1450-4 "Supplier's Certificate and Agreement with the Agency for International Development for Project Commodities", including the "Invoice-and-Contract Abstract" on the reverse of each form, 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 implementation document.

Suspension of Suppliers, Contractors, and Recipients--A determination that certain persons will be excluded from eligibility for U.S. Government-financed contracts and assistance for a period of time pending a determination whether to proceed with debarment action. Such determinations by AID are made for the causes prescribed in and implemented by the procedures in AID Regulation 8 and FAR 9.4.

Unit Price Contract--A contract in which the contractor undertakes to provide specified goods and services at a quantity-unit fixed at the execution of the contract for each item as delineated in the contract. (Total contract payment will be the sum of numbers of each item of goods furnished, or work items accomplished, multiplied by the relevant unit rate.)

Voluntary Agency--Any U.S. voluntary nonprofit agency registered with, and approved by, the Advisory Committee of Voluntary Foreign Aid of the Agency for International Development.

CHAPTER 3

RESPONSIBILITY FOR PROCUREMENT

3A. Policy

1. Applicability

This Chapter applies to bilateral project assistance governed by Handbook 3.

2. Selection of Responsible Contracting Entity

a. Mission Directors are responsible for assuring that project design assigns procurement responsibility in a manner which best fits the particular circumstances and will result in the most effective implementation of AID-financed projects.

b. The responsibility for procurement of AID-financed project goods and services required to implement bilateral projects may be assigned among a wide range of entities. The host country implementing agency itself or other host country agencies (such as central contracting agencies) may be involved. Either AID/W or the Mission may assume procurement responsibility, or AID or the host country may arrange for intermediaries (such as other U.S. government agencies, private firms, nonprofit organizations, or educational institutions) to procure needed goods or services.

c. Mission Directors and staff should bear clearly in mind the distinction between AID-direct and host country contracts. AID-direct contracts follow the Federal Acquisition Regulation (and AID Acquisition Regulation) and maximize AID control over the activity in question. When AID decides to use host country contracting procedures, on the other hand, it acts as a financier and not a contracting party, reserving certain rights of approval and project monitoring.

d. In assigning contracting responsibility, the Mission Director should take the following into account:

3A2

(1) General Factors

(a) No general AID preference between AID-direct and host country contracts;

(b) Borrower/Grantee (B/G) preference;

(c) Project design and objectives, including the type of goods or services required and any timing constraints;

(d) Procurement capability of the B/G, including contractor selection, contract administration, and audit capability (see 3A3 below);

(e) Relative costs;

(f) Systems and procedures for effective contract support, including payment and other administrative and logistic support availability;

(g) Availability and experience of AID procurement, legal and program staff to advise and assist the host government or to undertake AID-direct contracting; and

(h) Effects on establishment of desired institutional or professional relationships.

(2) Special Circumstances

(a) U.S. university as a contracting party. Use of an AID-direct contract may often prove to be more appropriate and effective for carrying out a project when a U.S. university will be involved;

(b) Collaborative assistance selection procedure. Either an AID-direct or a host country contract, or a combination thereof, may be used--depending on the circumstances that pertain to the respective roles of the parties and the nature of the long-term collaborative relationships that are desired;

3A2(2)

(c) Potential for Disadvantaged Enterprise Contract. When a proposed procurement can be performed by a socially and economically disadvantaged enterprise, AID may either (1) contract directly with the U.S. Small Business Administration (SBA) which subcontracts the award to such a business concern under Section 8(a) of the Small Business Act or (2) restrict competition to disadvantaged enterprises in accordance with specific provisions of foreign assistance legislation;

(d) U.S. Government Agency involvement. The B/G may designate a U.S. Government Agency to provide, or contract for, services or commodities when specialized expertise is required; and

(e) Construction services. Use of a host country contract is usually more appropriate for the procurement of construction services.

3. Assessment of an Host Country Agency's Procurement System and Mission Director's Certification

Prior to making a determination to assign a procurement that is estimated to exceed $250,000 in value to an agency of the host country, a formal assessment of the agency's procurement system must be made (or have been made within the prior three years), and the Mission Director must certify that the host country agency has or will obtain the capability to undertake the procurement. Application of these requirements to procurements of lesser values is at the mission's discretion, and limited scope assessments are encouraged for procurements that do not exceed $250,000 if the mission has had no prior satisfactory experience with the host country agency.

3B. Sources of Policy

Sections 102 and 601 of the FAA. Action Memorandum on Host Country Contracting Policies approved by the Administrator on February 23, 1982. Procurement Executive guidance in State 399975, dated November 27, 1990.

3C. Implementation

Handbooks 3, 11, 12, 14, and 15. Implementation of requirements for assessment and certification of an host country agency's procurement system to be in Handbook 3, Sup B.

3D. <u>Waivers</u>

There are no waivers of these policies. The selection of the responsible contracting entity is made by the AID official approving the project and reflected in the Project Paper or other project approval document. When a contract is anticipated to exceed $250,000, the assignment of procurement responsibility to an agency of the host country requires an assessment of the agency's procurement system and the Mission Director's certification of its capability.

CHAPTER 4

ELIGIBILITY OF COMMODITIES

4A. Introduction: The AID Commodity Eligibility Listing

1. Policy

a. General

(1) This Section applies to both project and nonproject assistance.

(2) It is AID policy to finance only those commodities which it has determined are eligible in terms of general and specific program objectives. Two of AID's general policy objectives are especially relevant:

(a) That the resources it provides in the form of commodities make a positive contribution to development, and,

(b) that the program is carried out in full accord with the Foreign Assistance Act, other pertinent laws, and relevant U.S. policies.

(3) The first of these general objectives is promoted in part through the establishment of broad limitations on the categories of commodities that are made eligible or made ineligible for AID financing. Thus, luxury goods such as alcoholic beverages, jewelry, and gambling equipment, are ineligible. Similarly, it is AID's concern to secure the maximum development impact of expenditures for commodities which leads to restrictions on the financing of used equipment, unsafe or ineffective products, etc. The most effective means of achieving this objective is through the designation of only certain commodities or groups of commodities as being eligible for financing through the project implementation process.

(4) The second general objective also leads to the imposition of commodity eligibility restrictions. The FAA contains many constraints affecting the types of commodities that AID may finance. There are, for example, statutory constraints relating to agricultural commodities, motor vehicles, and abortion equipment which AID must

respond to in its procurement policies through the imposition of limitations on commodity eligibility. The policies derived from these constraints are described in subsequent sections of this Chapter.

(5) This Chapter deals with all the procurement policies on the eligibility of commodities for AID-financing that are general in nature. It does not deal with programmatic determinations of commodity eligibility.

b. The AID Commodity Eligibility Listing

(1) The "AID Commodity Eligibility Listing" (see Handbook 15, Appendix B) indicates AID's current position on the eligibility or ineligibility of commodities for AID financing. The U.S. Department of Commerce Schedule B, as amended from time to time (a statistical classification of commodities by ten-digit codes), is the document used in identifying commodities in the "AID Commodity Eligibility Listing" and also for the coding of commodity transactions for control and reporting purposes.

(2) Part I of the "AID Commodity Eligibility Listing" provides the eligibility status of commodities for financing and Indicates, where appropriate, eligibility criteria and special provisions applicable to certain commodities or classes of commodities.

(3) Part II of the "AID Commodity Eligibility Listing" provides guidance on the additional considerations and conditions applicable to the eligibility of certain commodities or classes of commodities, such as agricultural commodities, pesticides, pharmaceuticals, and rebuilt or reconditioned equipment.

(4) Part III of the "AID Commodity Eligibility Listing" specifies certificates that are required to support the eligibility for financing of certain commodities and gives detailed technical definitions of eligibility standards for certain commodities.

c. Application of "AID Commodity Eligibility Listing"

(1) Project Assistance

(a) Under project assistance, AID decides what commodities are authorized for financing based on the needs of the project. Commodities which are ineligible under the "AID Commodity Eligibility Listing" may be financed if included in the project approval document. However, if ineligibility is based on a requirement in 4C or 4D on restricted and ineligible commodities, the waiver provision in the applicable section must be followed. If an ineligible commodity that was not included in the project approval document is needed for satisfactory completion of a project, AID will finance it only after it has been approved in writing by:

1. The Assistant Administrator who has program responsibility or his/her designee, or

2. The principal AID officer at Post, in consultation with a Commodity Management Officer, or

3. If ineligibility is based on a requirement in 4C or 4D, the official designated in the waiver provisions of the applicable section.

(b) Part II of the AID Commodity Eligibility Listing, which provides information and guidance on additional requirements and considerations to be used as criteria for the eligibility of certain commodities, applies to project as well as nonproject assistance.

(2) Nonproject Assistance

(a) Under nonproject assistance commodity import programs, the entire "AID Commodity Eligibility Listing," or a portion thereof, may be authorized for financing. Commodities which are normally ineligible are not authorized for financing unless specifically made eligible by the appropriate Geographic Bureau Assistant Administrator or his/her designee or by the Principal AID Officer at Post, in consultation with a Commodity Management Officer. However, as with project assistance, if ineligibility is based on a requirement in 4C or 4D on restricted and ineligible commodities, the waiver provisions in the applicable section must be followed. In addition, AID reserves the right, upon review of a supplier's Application for Approval of Commodity Eligibility (AID 11), to decline to finance any commodity when in AID's judgement such financing would adversely affect AID's program objectives or foreign policy objectives of the United States.

(b) A copy of the approval of an otherwise ineligible commodity must be sent to the Commodity Support Division, Office of Procurement, as soon as possible to assure approval of the form AID 11, Application for Approval of Commodity Eligibility.

2. Source of policy

The "AID Commodity Eligibility Listing" is based upon a concern for the prudent and effective use of AID funds, upon implementation responses to statutory constraints, and upon the need to give exact expression to these concerns in what is frequently a highly technical field. In the subsequent sections, there are separate expressions of sources of policy for each restriction on commodity eligibility included in this Chapter. In the aggregate, these sources of policy are the source of policy for the "AID Commodity Eligibility Listing."

3. Implementation

See Handbook 15, Chapter 2B and Appendix B; also Handbook 4, Chapter 5.

4. Waiver Authority

Determinations to finance commodities which are ineligible in the "AID Commodity Eligibility Listing" are made as described in 4A1c above. If a waiver is sought for part of the "AID Commodity Eligibility Listing" which is based upon an eligibility constraint treated in the subsequent sections of this Chapter, then the waiver authority given in that section is applicable. Any other waivers relating to this section must be approved by the Assistant Administrator who has program responsibility for either project or nonproject assistance.

4B. Prior Approval

1. Policy

a. This Section is applicable only to nonproject assistance.

b. AID will not authorize payment to a supplier or effect payment to a borrower/grantee under commodity import programs until it has approved the commodities the supplier is furnishing as being eligible and suitable for financing. Every supplier must provide AID with a certified description of the commodities being supplied. Eligibility and suitability of commodities are defined as including the following elements:

(1) The commodity is authorized for financing by the applicable loan or grant agreement.

(2) The commodity is unused.

(3) The source of the commodity satisfies the authorized source requirements.

(4) The supplier is eligible for AID financing.

(5) From a preliminary scanning, it appears that the price charged is not inconsistent with AID's price requirements.

2. Source of the Policy

The policy of requiring suppliers to certify the description of commodities and AID prior approval of the eligibility and suitability of such commodities under commodity import programs is based upon the provisions of Section 604(f) of the FAA. The Section states:

> "No funds authorized to be made available to carry out Part I of this Act shall be used under any commodity import program to make any payment to a supplier unless the supplier has certified to the agency primarily responsible for administering such Part I, such information as such agency shall by regulation prescribe, including but not limited to a description of the commodity supplied by him and its condition, and on the basis of such information such agency shall have approved such commodity as eligible and suitable for financing under this Act."

3. Implementation of Policy

For implementation instructions see Handbook 15, Chapter 2; AID Regulation 1, Sections 201.11(k) and 201.52(a)(8). Appendix D to AID Regulation 1 shows form AID 11 which is used to implement the policy.

4B

4. Waivers

The policy of prior approval of commodities under commodity import programs is not waived.

4C. Restricted Commodities

1. Agricultural Commodities

a. Policy

This Section is applicable to both project and nonproject assistance.

(1) Prior Approval Specific Commodities

(a) All proposed AID-financed procurements of certain agricultural commodities must be referred to AID/W for prior approval. These commodities are: wheat, rice, corn, soybeans, sorghums, flour, meal, beans, peas, tobacco, hides and skins, cotton, vegetable oils, and animal oils and fats. This policy stems from questions relating to supply, availability under the P.L. 480 programs, and suitability for AID financing.

(b) AID/W considers the cooperating country's request for the above commodities during the negotiation stage of an AID loan or grant, or anytime thereafter. The review of the request will include an examination of the following supply and marketing conditions:

1. The eligibility and availability of the commodity under an existing P.L. 480 financing agreement with the recipient country, or the possibility of a new agreement. P.L. 480 financing, if available, will be the preferred means of supply, except that AID will consider financing additional quantities of the commodity if the P.L. 480 amount is deemed inadequate and there are no other reasons for excluding the commodity from the AID loan or grant.

2. The projected near-term (6-month) and long-term (12-month) U.S. availability and price range of the commodity.

3. The availability of other-donor financing and projected export availability of the commodity from such other source.

4C1a(1)(b)

(c) Under project assistance, the Bureau Assistant Administrator (AA) responsible for the project may approve the purchase of restricted agricultural commodities in consultation with the Office of Procurement and the Office of Food for Peace. The Bureau AA may redelegate this authority. Under nonproject assistance, the Office of Procurement may approve such purchases in consultation with the appropriate Regional Bureau and the Office of Food for Peace.

(2) Prior Approval with Respect to Parity

(a) Whenever offshore procurement of agricultural commodities or products thereof is contemplated, AID/W must determine the parity position of the commodity. This determination should be made as close as possible to the date of procurement. When the prices of such commodities in the United States are below parity, AID will not finance offshore procurement except in the limited circumstances discussed in 4C1a(2)(c) below. This restriction applies to products of such commodities (e.g., rolled oats and soybean meal) as long as they have not been processed to such an extent that they can no longer be described as a product of the original agricultural commodities.

(b) Parity means a comparison between the current cost of production and price received for a commodity and a similar ratio of costs and prices from the reference years of 1910-1914. A commodity's parity position is determined by the Office of Procurement in consultation with the U.S. Department of Agriculture.

(c) AID may authorize the financing of a non-U.S. agricultural commodity or product thereof even though the domestic price is less than parity when the commodity to be financed could not reasonably be procured in the United States in fulfillment of the objectives of a particular assistance program under which such commodity procurement is to be financed. Thus, when development projects do not contain a potential for financing of agricultural commodities exported from the United States, such as a project involving the purchase of local agricultural commodities for cooperative marketing, AID may authorize non-U.S. procurement.

(d) The decision whether non-U.S. agricultural commodities may be financed in accordance with the paragraph above is made by the Assistant Administrator who has program responsibility in consultation with the Office of Procurement and the Office of the General Counsel.

b. Source of Policy

These policies reflect AID's determination that the foreign assistance program not be a means for lowering domestic stocks of agricultural commodities and also reflects the preferred means of supply accorded to P.L. 480 financing to the extent available. See Section 604(c) of the FAA. Another source of policy is Section 604(e) of the FAA which prohibits AID-financed procurement of any agricultural commodity or product thereof outside the United States when its domestic price is less than parity unless the commodity cannot reasonably be procured in the United States in fulfillment of the objectives of the assistance program under which the commodity is to be financed.

c. Implementation of Policy

Handbook 15, Chapter 2; Appendix B, Part IIA.

d. Waivers

(1) There is no provision for waiver of the policy in 4C1a(1) requiring prior approval.

(2) Waivers of the policy set forth in 4C1a(2) may be authorized only by the President in accordance with Section 614(a) of the FAA. A determination made pursuant to 4C1a(2)(C) to finance non-U.S. commodities does not require a waiver by the President. A geographic source waiver, in accordance with the provisions of Chapter 5 will be necessary if the commodity is to be purchased from a country not eligible under the Agreement.

2. Motor Vehicles

a. Policy

(1) This Section applies to project and nonproject assistance with the exceptions noted below.

(2) Definition of Motor Vehicles

Motor vehicles are defined for purposes of this Section as self-propelled vehicles with passenger carriage capacity such as highway trucks, passenger cars and buses, motorcycles, scooters,

4C2a(2)

motorized bicycles, and utility vehicles. Excluded from this definition are industrial vehicles for materials handling and earthmoving such as lift trucks, tractors, graders, scrapers, and off-the-highway trucks.

(3) Special Statutory Requirement for Motor Vehicles

(a) In accordance with Section 636(i) of the FAA, motor vehicles, to be eligible for AID-financing, must be manufactured in the United States unless "special circumstances" exist, in which case the requirement for manufacture in the United States may be waived. (See 4C2d below for circumstances which may justify a waiver.) A vehicle which was manufactured in the United States and meets AID's componentry requirements, defined in 5B1c of Chapter 5, may be financed by AID if purchased from any eligible source country.

(b) A vehicle which was assembled in the United States but then subjected to minor disassembly to reduce shipping costs is considered a U.S.-manufactured vehicle. "Knocked-down vehicles" consisting of parts or subassemblies which are shipped from the United States for final assembly into completed vehicles elsewhere are considered to be "manufactured" in the country of final assembly within the meaning of Section 636(i). Therefore, such finished vehicles are not eligible for AID financing without a waiver pursuant to 4C2d of this Chapter. The parts and subassemblies, since they are not vehicles may be financed by AID subject to AID's source, origin and componentry rules in Chapter 5.

(4) Applicability of Source, Origin, and Componentry Rules

In view of the statutory requirement for U.S. manufacture, the origin (as defined in Chapter 5 of this Supplement) of a vehicle must be the United States if it is to be financed without a waiver. The standard AID componentry rules apply, and vehicles manufactured in the United States may be purchased from any eligible source country in which they are located (see Chapter 5 of this Supplement). U.S.-manufactured vehicles may be financed out of a free port or bonded warehouse if they were shipped into the free port or bonded warehouse from an eligible source country.

(5) Limitations on Passenger Cars

(a) Nonproject Assistance

As a general rule, AID will not finance passenger cars under nonproject assistance. Even the least expensive cars are luxury items in less developed countries and thus, not suitable for AID financing. In those exceptional cases where the financing of passenger cars under nonproject assistance is deemed warranted by the Mission, prior approval of the proposed procurement must be obtained from AID. In such cases if AID/W does grant approval, procurement of only the most economical cars for the intended purpose is permitted. (AID does not finance the cost of automobile radios and other generally nonessential appointments in the absence of a strong justification of why they are needed.)

(b) Project Assistance

AID may finance the procurement of passenger cars which are necessary to the attainment of a project's objectives and are not otherwise available. Proposals for their procurement are incorporated and justified in the Project Paper or, if the requirement is not known at the time of its preparation, in a subsequent submission to AID/W. Passenger cars for projects may include air conditioning (installed as original equipment or after market) if the Mission Director determines that is justified. Factors which should be considered in making such a determination include the climate in which the vehicle will operate, the capabilities for servicing air conditioning equipment, and the need for austerity and economy in project accomplishment.

b. Source of Policy

The requirement that motor vehicles must be U.S. manufactured is contained in Section 636(i) of the FAA:

"Notwithstanding Section 640 or any other provision of this Act none of the funds made available to carry out this Act shall be used to finance the purchase, sale, long-term lease, exchange, or guaranty of a sale of motor vehicle unless such vehicles are manufactured in the United States; provided that where special circumstances exist the President is authorized to waive the provisions of this section in order to carry out the purpose of this Act."

c. Implementation of the Policy

Handbook 15, Appendix B, Part I.

d. Waivers

(1) The Assistant Administrators who have program responsibility have been delegated authority to waive the requirement that motor vehicles be manufactured in the United States, when necessary to carry out the purpose of the FAA. Circumstances which may merit waiving the requirement are (a) inability of U.S. manufacturers to provide a particular type of needed vehicle; e.g., light weight motorcycles, right-hand drive vehicles; (b) present or projected lack of adequate service facilities and supply of spare parts for U.S. manufactured vehicles; or (c) an emergency requirement for vehicles for which non-AID funds are not available, and which can be met in time only by purchase of non-U.S. manufactured vehicles.

(2) When a waiver is necessary, preference will be given to procurement of vehicles which are assembled in the cooperating country or a code 941 country using a substantial number of parts and subassemblies manufactured in the United States. Consideration may be given to making a blanket waiver for an entire loan or grant agreement or for all projects in a country to allow purchase of such locally assembled U.S. model vehicles. Any blanket waivers should be reexamined at least annually to see whether the waiver should be continued.

(3) The Assistant Administrators' waiver authority is included in Delegation of Authority No. 405. In accordance with the requirements for authorizing source waivers which are set forth in Section 5B4c, Chapter 5 of this Supplement, AID/W-issued waivers must indicate consultation with GC and FA/OP.

(4) Under Delegation of Authority No. 405, Assistant Administrators may redelegate authority up to $50,000 (exclusive of transportation costs) to waive the requirement that motor vehicles be manufactured in the United States.

(5) It should be noted that, with the exception of disaster relief authority, the authority to waive source, origin or nationality requirements is contained only in Delegation 405.

3. Pharmaceuticals

a. Policy

This Section is applicable to nonproject and project assistance.

(1) General

(a) There are no statutory restrictions relating to the procurement of pharmaceuticals other than Section 606(c) of the FAA which prohibits procurement outside the United States of those pharmaceuticals which infringe on U.S. patents. Given their importance to human life and health, however, AID gives especially careful consideration to pharmaceutical procurement requests, particularly to those under its nonproject assistance programs intended for general market use.

(b) Measures are taken to assure that only safe and efficacious pharmaceuticals are procured, that they are manufactured in accordance with accepted quality standards, that prices paid for them are appropriate, and that in all respects, AID's financing of pharmaceutical procurements is carried out in a manner sensitive to the special public and Congressional interest in this important commodity.

(c) Pharmaceuticals have an important place in AID health projects. Moreover, given the dependence of many developing countries on external sources to meet their need for sophisticated pharmaceuticals and given the large share of the United States in their manufacture, they are a commodity appropriate for inclusion in AID nonproject assistance programs.

(d) As a general rule, the source of AID-financed pharmaceuticals is limited to the United States, and the standard AID 50% componentry rule is applicable.

(2) Project Assistance

All pharmaceuticals to be procured must be generically described. Pharmaceuticals for projects are normally required to be in finished dosage form, but if a justifiable requirement for bulk pharmaceuticals exists, it may be approved. When pharmaceuticals are to be procured for a project the following rules apply:

4C3a(2)

(a) To the extent possible, all proposed procurement should be identified and set forth in the Project Paper as it is prepared or, if that is not possible, submitted separately later for AID/W approval;

(b) All procurement must be by formal competitive bidding when procured by the cooperating country or alternatively, in accordance with the procurement policies and procedures of the designated U.S. Government procurement agency;

(c) All pharmaceuticals should comply with the U.S. Food and Drug Administration (or other controlling U.S. authority) regulations governing United States interstate shipment of pharmaceuticals. Non-U.S. products which do not meet this test may be financed under special circumstances (see 4C3d).

(3) Nonproject Assistance

(a) All pharmaceuticals to be procured must be generically described.

(b) In contrast to project assistance, pharmaceuticals procured as nonproject assistance are normally required to be in bulk form in order to minimize problems of overpricing and product identification. Finished dosage form, however, is not precluded if there is a special reason for it.

(c) When pharmaceuticals are to be procured as nonproject assistance, the following rules apply:

1. Public sector procurement of pharmaceuticals, except where noted in 3, below, must be made by formal competitive bidding;

2. When the procurement is undertaken by public sector agencies purchasing for resale or by the private sector, in which brand acceptance is often an important factor, brand name procurement is allowable;

3. When public sector agencies brand name pharmaceuticals, negotiated procurement is allowable;

4C3a

4. All pharmaceuticals must comply with the U.S. Food and Drug Administration (or other controlling U.S. authority) regulations governing United States interstate shipment of pharmaceuticals.

5. All procurements require prior approval by AID/W;

6. In addition to the applicable price rules in Subpart G of AID Regulation 1, bulk pharmaceuticals are subject, at the prefinancing stage, to the special price rules found in Part IID of Appendix B, Handbook 15.

b. Source of Policy

(1) The policy stated above stems primarily from AID's reliance on the U.S. Food and Drug Administration for promulgation and enforcement of standards for the safety and effectiveness of pharmaceutical products used in the foreign assistance programs.

(2) With a view toward protecting unexpired patents on U.S.-manufactured pharmaceutical products, Section 606(c) of the Foreign Assistance Act prohibits the procurement of U.S.-patented pharmaceutical products outside the United States, unless expressly authorized by patent holders.

(3) The special price rules reflect AID and Congressional concern as to the prices paid for pharmaceutical products.

c. Implementation

(1) To ensure that only safe effective pharmaceuticals are financed, AID bases its eligibility standards for pharmaceuticals, drug substances/products, and biologics on the U.S. Food and Drug Administration's regulations governing their United States interstate shipment. In keeping with this, information made available by the FDA on the safety and efficacy of finished dosage form pharmaceuticals will be supplied to AID Missions when requested. Such information is used in assisting recipient governments in selecting those pharmaceutical products best suited to their needs.

4C3c

(2) The Application for Approval of Commodity Eligibility (form AID 11) is the instrument to be used to check the suitability of the pharmaceuticals and the eligibility of the price in individual transactions in nonproject procurement prior to financing.

(3) Certain pharmaceuticals are not financed in any form for reasons of their inappropriateness, danger, or public image considerations.

(4) For further details, see Handbook 15, Appendix B, Parts IID and III.

(d) <u>Waivers</u>

(1) The prohibition on off-shore procurement of pharmaceuticals which infringe on U.S. patents may not be waived.

(2) Exceptions to the general rule that AID-financed pharmaceuticals must be of U.S source may be made under the authority set forth in Chapter 5B4 after consultation with the Office of Procurement. If Code 941 is the authorized source for procurement under the loan or grant agreement, an exception from the U.S. source requirement to permit a specific pharmaceutical procurement from a Code 941 country would require only the authorization of the Office of Procurement.

(a) Under project assistance, waivers of the U.S. source policy will be considered if:

<u>1</u>. The pharmaceutical product is essential to the project;

<u>2</u>. The product, in the same or substantially equivalent form, is not available from the United States, or the delivered price from the United States would be at least 50% more than from another source; and

<u>3</u>. Information is available to attest to the safety, efficacy, and quality of the product, or the product meets the standards of the U.S. FDA or other controlling U.S. authority.

(b) Under nonproject assistance, waivers of the U.S. source policy will be considered if:

1. The pharmaceutical product is essential;

2. The product, in the same or substantially equivalent form, is not available from the United States, and

3. The product meets the standards of the U.S. FDA or other controlling U.S. authority.

4. <u>Pesticides</u>

a. <u>Policy</u>

(1) <u>Applicability</u>. This policy is applicable to project and nonproject assistance.

(2) For AID purposes <u>pesticides</u> are defined as substances or mixtures of substances:

(a) Intended for preventing, destroying, repelling, or mitigating any unwanted insects, rodents, nematodes, fungi, weeds, and other forms of plant or animal life or viruses, bacteria, or other micro-organisms (except viruses, bacteria, or other micro-organisms infesting humans or live animals), or

(b) Intended for the use as a plant regulator, defoliant, or desiccant.

(3) <u>General</u>. Pesticides are not eligible for AID financing under either project or nonproject assistance unless the specific pesticide(s) and the use of the pesticide(s) have received prior approval from AID/W in accordance with the procedures established in AID Regulation 16 (Appendix 2D of Handbook 3). These procedures include the preparation of a separate section in the Initial Environmental Examination for the project for the purpose of evaluating the economic, social, and environmental risks and benefits of the planned pesticide use to determine whether the use may result in significant environmental impact. In certain cases a more extensive Environmental Assessment or Environmental Impact Statement may also be required.

(4) Subject to the procedures set forth in AID Regulation 16, AID may fund pesticides on a project-by-project basis for public health, and food production and preservation programs. Section 216.3(b) (2) of AID Regulation 16 makes an exception to the pesticide procedures for projects:

(a) Where AID is a minor donor to a multidonor project (i.e., when AID does not control the planning or design of the multidonor project and either (i) AID's total contribution to the project is both less than $1,000,000 and less than 25 percent of the estimated project cost, or (ii) AID's total contribution is more than $1,000,000 but less than 25 per cent of the estimated project cost and the environmental procedures of the donor in control of the planning of design of the project are followed, but only if the AID Environmental Coordinator determines that such procedures are adequate).

(b) Which includes assistance for procurement and/or use of pesticides for research or limited field evaluation purposes by or under the supervision of project personnel. Treated crops shall not be used for human or animal consumption unless appropriate tolerances have been established (see Section 216.3(b)(2)(iii) of AID Regulation 16). However, treated crops may be fed to animals for research purposes.

(5) AID does not normally fund pesticides under nonproject assistance programs.

b. <u>Source of Policy</u>

The above policy stems from the provisions of AID Regulation 16 (22 CFR 216) as revised effective October 23, 1980 (45 FR 70239) and from the Aid Policy Statement on Pesticide Support approved by the Administrator June 6, 1978. This Policy Statement reflects AID's recognition that the proper selection and use of pesticides can contribute to increased agricultural productivity and improved public health, and that the proper management of pesticide use is a prerequisite to the development and implementation of integrated pest management programs which avoid the sole reliance upon pesticide by employing a wide range of biological, cultural, mechanical and chemical techniques to hold pests below damaging economic levels while offering maximum protection to the environment.

c. Implementation of Policy

A summation of the AID Policy Statement on Pesticide Support and specific requirements to be used as criteria for determining pesticide eligibility are contained in Part IIC, Appendix B of Handbook 15.

d. Waivers

(1) The procedures set forth in AID Regulation 16 for procurement of pesticides under project assistance may be waived under emergency conditions. Emergency conditions are deemed to exist when the Administrator of AID determines in writing that:

(a) A pest outbreak has occurred or is imminent;

(b) Significant health problems (either human or animal) or significant economic problems will occur without the prompt use of the proposed pesticide; and

(c) Insufficient time is available before the pesticide must be used to evaluate the proposed use in accordance with the provisions of AID Regulation 16.

(2) In a very limited number of circumstances AID may authorize procurement of pesticides under nonproject assistance when the Administrator determines that:

(a) Emergency conditions as defined in paragraph 4C4d(1) above exist; or

(b) Compelling circumstances exist such that failure to provide the proposed assistance would seriously impede the attainment of U.S. foreign policy objectives or the objectives of the Foreign Assistance Program. The term "compelling circumstances" is intended to imply only those most serious situations in which no other way exists to provide the pesticide except through the Commodity Import Program. The decision as to whether such circumstances exist will be based, to the extent practicable, upon a consideration of the factors set forth in Section 216.3(b) (1) (i) of AID Regulation 16 and the history of efficacy and safety governing the past use of pesticides in the recipient country.

5. Rubber Compounding Chemicals and Plasticizers

a. Policy

(1) This Section is applicable to both project and nonproject assistance.

(2) It is AID policy not to finance rubber compounding chemicals and plasticizers. These materials have legitimate uses as "blowing agents" in the manufacture of rubber and plastic products, but they also have potential uses as high explosives.

b. Source of Policy

The policy is based upon AID experience. Also see "Report on Investigation of U.S. Programs in Vietnam," 42nd Report by the Committee on Government Operations, House Report No. 2257, 89th Congress, 2nd Session, page 29.

c. Implementation of Policy

See Handbook 15, Chapter 2.

d. Waivers

The policy may be waived upon specific authorization of the Mission Director.

6. Used Equipment

a. Policy

(1) This Section is applicable to both project and nonproject assistance.

(2) It is AID policy generally to finance only unused equipment. When the purchase of equipment in other than unused condition can be justified, AID will consider borrower/grantee requests for authority to procure rebuilt or reconditioned equipment. Such procurement is subject to the conditions described in the references under the "Implementation" section below.

(3) This policy statement on the financing of used equipment does not apply to the financing of U.S. Government-owned excess property.

b. Source of Policy

(1) The policy of generally financing only unused equipment is based upon AID's experience. Too frequently, the procurement of used equipment resulted in serious program delays and costly replacement of defective equipment.

(2) On the other hand, under proper safeguards, the procurement of used equipment can provide certain advantages such as lower cost and quicker delivery as compared to new equipment. In addition, used equipment of older and less sophisticated design, if spare parts are available, may offer operational and maintenance advantages to less developed countries.

c. Implementation of Policy

See Handbook 15, Chapter 6; Appendix B, Parts II-E and II-F; Part III, Special Provision Number 61.

d. Waivers

(1) The policy of requiring special authority for the procurement of used equipment is not subject to waiver.

(2) Waivers of the special conditions applicable to the procurement of used equipment may be granted by the Assistant Administrators who have program responsibility, acting in consultation with FA/OP.

7. Fertilizer

a. Policy

This Section is applicable to project and nonproject assistance.

(1) Regardless of the authorized source for commodity procurement under AID loan or grant, it is AID policy to restrict fertilizer procurement to U.S. sources except when there are, or are

expected to be, significant U.S./offshore price differentials or any adverse impact on domestic availability or price. This policy does not apply to local currency purchases of fertilizer within the cooperating country for use on AID-financed projects.

(2) AID will not finance fertilizer shipments from the United States during the period of peak demand in the U.S., February through May each year.

(3) Awards for the fertilizer and for the transportation must be approved by FA/OP in consultation with GC and the appropriate Geographic Bureau. In addition, fertilizers must conform to product and bagging specifications approved by AID Inspection by a firm approved by the borrower/grantee and AID is required prior to shipment in order to assure conformance.

b. Source of Policy

The policy reflects AID and congressional concerns in maximizing the use of U.S. fertilizer products, maintaining an adequate supply of fertilizer to the LDC's to support AID's agricultural programs to improve food production and nutrition, and simultaneously assuring that U.S. domestic requirements are met. To help assure that domestic fertilizer supply and prices will not be adversely affected by AID purchases, AID initiated a policy in May 1973 of not financing fertilizer shipments from the U.S. during February through May. AID-financed purchases of fertilizers were restricted to U.S. sources by a memorandum from the Deputy Administrator dated July 7, 1975.

c. Implementation of Policy

See Handbook 15, Chapter 6, and Part II-B of Appendix B.

d. Waivers

(1) The Director of FA/OP may authorize procurement of non-U.S. fertilizer upon a finding of significant price differentials or adverse impact as described in 4C7a(1) above. Procurement of non-U.S. fertilizer may be authorized for a specified period of time as well as for individual purchases.

(2) When procurement of non-U.S. fertilizer is approved by FA/OP a source waiver, in accordance with the provisions of Chapter 5B4 is also required.

(3) The Director of FA/OP may waive the February-May restriction on shipment of fertilizer from the U.S. as appropriate.

4D. Ineligible Commodities

1. Military Equipment

a. Policy

(1) This Section applies to both project and nonproject assistance.

(2) General Policy

Economic assistance funds may not be used to finance any goods and services when the primary purpose of such assistance is to meet military requirements of the cooperating country. There is no exception to this policy. Under this policy, AID may not finance goods and services such as:

(a) Military hardware delivered to anyone on behalf of a recipient government for military purposes.

(b) Common-use items, whether for consumption or further assembly, delivered to anyone for the purpose of filling a standing order from the military.

(c) A commodity which is specifically designed for military use, although not "inherently military," regardless of whether it is imported in its original form or is to be assembled.

(3) Interpretations of Policy

(a) The converse of 4D1a(2) above is that AID may finance common-use items that ultimately end up with the military if at the time of the sales there is no evidence that the items are destined for military use. Noncapital commodities going to private enterprise or

4D1a(3)(a)

a government, but which might be thereafter sold to military, are permitted on an economic development or stabilization rationale.

(b) Capital machinery or equipment not designed specifically to produce military hardware is eligible for AID financing even though the machinery or equipment might later be used to produce commodities that are sold to the military. The primary purpose of the funding of the transaction is economic, the output only a secondary purpose.

(c) The crucial factor in determining eligibility for AID financing is: given the objective facts surrounding a transaction, was the <u>purpose</u> of the funding <u>at the time of the transaction</u> to provide economic or military assistance.

(d) Also, commodities that may be considered to be "military equipment"; e.g., night vision scopes, provided to foreign government military or nonmilitary organizations, may be AID-financed if the equipment is to be used solely in narcotics control or in other AID approved special programs.

b. <u>Source of Policy</u>

(1) The Congress provides specific appropriations for military assistance. The use of economic assistance appropriations for military assistance purposes is precluded by Revised Statutes, 31 U.S.C. 1301(a). Military assistance which includes Section 3678 of the financing of any "defense article" is authorized by Part II, Chapter 2 of the FAA. A "defense article" is defined in Section 644 of the FAA as:

(a) any weapon, weapons system, munition, aircraft, vessel, boat, or other implement of war;

(b) any property, installation, commodity, material, equipment, supply, or goods used for the purposes of furnishing military assistance;

(c) any machinery, facility, tool, material, supply or other item necessary for the manufacture, production, processing, repair, servicing, storage, construction, transportation, operation, or use of any article listed in this subsection; or

(d) any component or part of any article listed in this subsection.

(2) The distinction that is drawn between a standing order for common-use goods and goods that are sold from stock is based on an opinion of the Comptroller General in the Premier Auto case (Unpublished) Opinion B-167196 of September 18, 1969) that when goods are furnished to fill a standing military order they are being imported for the express purpose of meeting specific requirements of the military establishment. Therefore, the proper funding authority should be military assistance appropriations. See Chapter 2, paragraph 2C4a, of Handbook 15; GC Gladson memorandum of July 18, 1972; and GC/Fries memorandum of July 25, 1974.

c. Implementation of Policy

The responsibility to implement the policy on military commodities rests primarily with the aid recipient. Military hardware offers few if any problems. The buyer is usually an entity associated with the armed forces ministries. Host governments generally have adequate controls to direct the buyer to the proper source of funding. Questions are more likely to arise in connection with imported common-use items not purchased by the military in the first instance. At the time of the transaction, even the seller may not know whether the commodity he/she ships is to meet a standing order of the military. The host government is expected to segregate its purchases for known military use. Improper funding of commodities for military use does not arise very often. When it does, reliance on postaudit and refunds to disassociate AID from the funding of military commodities is the customary method to enforce this policy on military commodities. See also Handbook 15, Chapter 2.

d. Waivers

It is AID policy not to waive the restrictions on procurement of military commodities.

4D

2. Surveillance Equipment

a. Policy

All types of surveillance equipment are ineligible for AID financing under both project and nonproject assistance except for the Narcotics Control Program. In general, ineligible items include equipment such as microphones, transmitters, listening devices, and recording devices of microminiature design, and components thereof. In rare instances, some of these devices may have a nonsurveillance use in AID programs. In such instances, it is the legitimacy of the purpose rather than the specific characteristics of the commodity that determines its eligibility.

b. Source of Policy

(1) Surveillance equipment was determined to be ineligible for AID financing by the Administrator in 1966 with his approval of Policy Determination 32 which has since been incorporated into Handbook 15, Appendix B.

(2) Section 660 of the FAA is the authority for both the general prohibition on the financing of surveillance equipment and the exception to permit the financing of such equipment in the case of the Narcotics Control Program.

c. Implementation of Policy

See Handbook 15, Chapter 2; Appendix B.

d. Waivers

This policy may not be waived.

3. Commodities and Services for Support of Police and Other Law Enforcement Activities

a. Policy

(1) This Section is applicable to nonproject and project assistance.

(2) It is AID policy not to finance, or to authorize under Section 607 of the FAA, the furnishing of commodities and services for the training, support, administration, or operation of any police or other law enforcement forces or for any program of internal intelligence or surveillance.

(3) AID may, however, assist foreign countries in selected clearly defined law enforcement activities, not involving matters of internal security, in which the United States has a special interest. For example, AID provides assistance in programs to control international narcotics traffic.

b. Source of Policy

Section 660 of the FAA both prohibits the use of AID funds for general police assistance and authorizes assistance in specific law enforcement activities to permit funding for the control of international crime such as narcotics traffic. The extension of this policy to Section 607 activities is based upon a GC Memorandum to the Administrator dated June 4, 1976.

c. Implementation of Policy

AID has discontinued, as required by Section 660 of the FAA, all assistance for police training. The project review and approval process should assure that projects for police training other than for narcotics control will not be approved. In the case of narcotics control, the project agreements provide for Mission surveillance of the end-use of all goods and services procured to assure that assistance to police forces does not go beyond that for narcotics control. AID relies on prior approval of commodities and the audit review process to assure compliance in nonproject assistance procurement with Section 660.

d. Waivers

Waivers of the policy set forth in this Section may be authorized only by the President in accordance with Section 614(a) of the FAA.

4. Abortion Equipment and Services

a. Policy

(1) General

AID funds may not be used:

(a) To purchase or distribute commodities or equipment for the purpose of inducing abortions as a method of family planning;

(b) To finance services for the performance of abortions as a method of family planning;

(c) For any biomedical research which relates, in whole or in part, to methods of, or the performance of abortions or involuntary sterilization as a method of family planning;

(d) To motivate or coerce any person to practice abortions; and

(e) To lobby for abortions.

(2) Nonproject Assistance

For nonproject assistance, the policy is simple and clear. Equipment or supplies for the purpose of inducing abortions as a method of family planning are ineligible for inclusion in a commodity import program.

(3) Project Assistance

(a) AID funds will not be used for the direct support of abortion activities in cooperating countries. However, AID may provide general population assistance program support to cooperating countries and institutions so long as AID funds are wholly attributable to the permissible aspects of such programs.

(b) AID does not and will not fund information, education, training, or communication programs that seek to promote abortion as a method of family planning. AID will finance training of doctors of developing countries in the latest techniques used in obstetrics-gynecology practice. AID will not disqualify such training programs if they include pregnancy termination within the overall curriculum. However, AID funds will not be used to expand the pregnancy termination component of such programs, and AID will pay only the extra cost of financing the participation in existing programs of doctors of developing countries. Such training is provided only at the election of the participants.

(c) AID funds are not and will not be used to pay women in the less developed countries to have abortions as a method of family planning. Likewise, AID funds are not and will not be used to pay persons to perform abortions or to solicit persons to undergo abortions.

(d) AID funds will not be used to finance any biomedical research which relates, in whole or in part, to methods of, or the performance of, abortions or involuntary sterilizations as a means of family planning. (Epidemiologic or descriptive research to assess the incidence, extent or consequences of abortion is not precluded.)

(e) AID funds may not be used to lobby for abortion.

b. Source of Policy

Section 104(f) of the Foreign Assistance Act. Section 525 of the Foreign Assistance and Related Programs Appropriations Act, 1982. Policy Determination No. 56 of June 10, 1974 (Supplement D4 of Handbook 2). Policy Determination No. 70 of June 14, 1977 (Supplement D5 of Handbook 2).

c. Implementation of Policy

Handbook 15, Chapter 2; Handbook 14, Part 752; and Handbook 13.

d. Waivers

Waivers of the policy set forth in this section may be authorized only by the President in accordance with Section 614(a) of the FAA.

5. Luxury Goods and Gambling Equipment

a. Policy

(1) General

It is AID policy not to finance, either for project or nonproject assistance, commodities that are normally considered luxury goods. Luxury goods include such commodities as alcoholic beverages and equipment for their production and use, equipment and supplies for gambling facilities, certain recreational supplies and equipment, jewelry, stamps, coins, furs, and the more expensive textiles.

(2) Project Assistance

Under project assistance, financing certain types of goods that would normally fall within the luxury category as set forth in the AID Commodity Eligibility List (see 4A of this Chapter) can be made eligible by a determination of the Assistant Administrator who has program responsibility, in consultation with FA/OP, or the principal AID officer at post, in consultation with a Commodity Management Officer, that the goods are essential for the completion of the project; e.g., color television tubes which are required for a technical school. It is emphasized that conferring eligibility on luxury-type goods for a project is the exception which must be supported by a strong, written justification.

(3) Nonproject Assistance

Under nonproject assistance, exceptions to the general policy are made only when clearly justified by the intended end use of the commodities in question; e.g., athletic equipment which is to be used for schools. Exceptions for gambling equipment are not made under any circumstances.

(4) Gambling Facilities

Notwithstanding the above possibility of exceptions for certain types of luxury goods under project assistance, it is AID policy not to be connected under any circumstances with financing gambling facilities. No AID funds, investment guarantees, nor AID-controlled local currency may be used to finance gambling facilities or hotels, casinos, tourist accommodations, or housing which have or plan to install such facilities. Where appropriate, a clear affirmation of this point should be included in loan and grant agreements.

b. Source of Policy

(1) The FAA states, _inter alia_:

"...Bilateral assistance...shall emphasize programs in support of countries which pursue development strategies designed to meet basic human needs...The Congress declares that the principal purpose of United States bilateral development assistance is to help the poor majority of people in developing countries...to satisfy their basic needs..." (Section 102).

(2) The pursuit of such objectives obviously rules out the use of AID funds for the procurement of luxury goods.

(3) The policy on gambling facilities was promulgated in 1968 in Policy Determination 42, now incorporated into Handbook 15.

c. Implementation of Policy

See Handbook 15, Chapter 2, and Appendix B.

d. Waivers

(1) Nonproject Assistance

(a) It is AID's general policy not to waive the restrictions on luxury-type goods for nonproject assistance. However, when the intended end use justifies departures from this policy; e.g., athletic equipment for schools, the financing of such goods may be authorized. Departures from this policy are not permitted for the financing of gambling equipment.

(b) The financing of commodities which are normally considered luxury-type items may be authorized in appropriate situations by the Assistant Administrator who has program responsibility, in consultation with FA/OP, or the principal AID officer at post, in consultation with a Commodity Management Officer. A copy of the approval must be sent to the Commodity Support Division, Office of Procurement, as soon as possible to assure approval of the form AID 11.

(2) Project Assistance

In accordance with paragraph 4D5a(2) above, a determination is made by the Assistant Administrator who has program responsibility, in consultation with FA/OP, or the principal AID officer at post, in consultation with a Commodity Management Officer, when goods that would normally fall within the luxury category are deemed essential for the completion of a project. Such determinations, however, are not considered waivers.

6. Weather Modification Equipment

a. Policy

(1) This Section is applicable to both project and nonproject assistance.

(2) AID, reflecting a general policy of the U.S. Government, does not provide assistance for weather modification. AID's position is based upon the uncertain and potentially unfavorable results of such activities, including real or imagined physical or environmental damage to the cooperating country and its neighbors, socio-cultural problems, and politico-legal complications.

b. Source of Policy

See AIDTO CIRCULAR A-495 of August 19, 1975.

c. Implementation of Policy

(1) For project assistance, the policy is implemented through the project planning and approval process.

(2) For nonproject assistance, the policy is implemented chiefly through the prior approval mechanism (see Section 4B of this Chapter).

d. Waivers

Departures from this policy must be approved by the Administrator.

4E. Eligibility of Commodities Determined by Ineligibility of Carrier and Marine Insurance

1. Policy

a. General

(1) Commodities that are otherwise eligible may be made ineligible for financing because of the carrier on which they are shipped or because of conflicts with AID's marine insurance policy.

(2) The policies in this section are equally applicable to project and nonproject assistance.

b. The Effects of Carrier Ineligibility

(1) Commodities shipped by a transportation medium owned, operated, or under the control of any country not included in Geographic Code 935 are ineligible. (Code 935, "Special Free World," consists of all countries in the Free World including the cooperating country itself.)

(2) Commodities are ineligible if shipped on a vessel which AID has designated as ineligible.

(3) Commodities are ineligible if shipped under ocean or air charter that has not received prior approval by AID/W.

(4) These policies apply whether or not transportation costs are financed by AID.

c. The Effects of Marine Insurance Policy

When AID has found that a cooperating country discriminates against any marine insurance company authorized to do business in any State of the United States and that a cooperating country, contrary to AID policy (see Chapter 11 of this Supplement), fails to insure all AID-financed commodities with U.S. insurance companies, then those commodities are ineligible for AID financing.

2. Source of Policy

The policies related to carrier eligibility are based upon administrative extensions of the FAA Section 604(a) (restrictions on non-U.S. procurement) (see Chapter 7 of this Supplement).

3. Implementation of Policy

For implementation guidance see AID Regulation 1, Sections 201.11(d) and (e); Handbook 11, Chapter 3.

4. Waivers

a. Project Assistance

The Assistant Administrators who have program responsibility, acting in consultation with GC, may waive the application of the policies described in this Section, except for Section 4E1c, which may be waived only by the President in accordance with Section 614(a) of the FAA.

b. Nonproject Assistance

* FA/OP acting in consultation with GC may waive the application of these policies described in this section, except for Section 4E1c, which may be waived only by the President in accordance with Section 614(a) of the FAA.

4F. Metric Specifications

1. Policy

a. This policy applies to both project and nonproject assistance.

b. The metric system of measurement shall be used for specifications and quantitative data that are incorporated in or required by AID-financed procurements, grants, and business-related activities. The purpose of this U.S. Government policy is to enhance the competitiveness of U.S. industry by promoting the adoption of standards that facilitate the export of its products to international markets, where the metric system is virtually the universal standard.

c. Depending upon the metric system's level of acceptance for particular applications, specifications and quantitative data may be expressed in both the metric and the traditional equivalent units (with the metric units listed first). However, as the level of acceptance for metric units increases with their repetitive use, specifications and data will be developed and expressed more and more exclusively in metric units, and the use of the traditional units will be discontinued. The target date for completing the transition of AID's systems and procedures from the use of dual units of measurement to the exclusive use of metric units, to the maximum extent practical, is December, 1996.

2. Source of Policy

Metric Conversion Act of 1975, Omnibus Trade and Competitiveness Act of 1988, Executive Order No. 12770, and the AID Metric Transition Plan, dated November 26, 1991. *

4F

* 3. Implementation

The metric policy will be implemented in the following AID handbooks: HB 3, Sup A and B, and HB 20--covering preparation of statements of work and purchase descriptions--and HB's 11, 12, 13, 14, and 15--covering the implementing instruments.

4. Waivers

a. The requirement to use the metric system of measurement may be waived when AID determines in writing that such usage is impractical or it is likely to cause U.S. firms to experience significant inefficiencies or the loss of markets.

b. The AID Metric Executive, FA/AS; the Contracting/Grant Officer; and the AID official who approves the procurement/grant requirement (by signing a PIO/C, PIO/T, PIL, or equivalent document) are authorized to waive the metric requirement for one of the above reasons. The AID Metric Executive is authorized to overrule a decision to grant a waiver or to nullify a blanket waiver made by the other above officials so long as a contractor/grantee's rights under an executed contract/grant are not infringed upon.

c. A blanket waiver for a class of multiple transactions may be issued for a term not to exceed three years.

d. When a waiver will be based upon the adverse impact on U.S. firms, clearance from the AID Metric Executive and the Office of Small and Disadvantaged Business Utilization (SDB) will be obtained prior to authorization.

e. The basis for each waiver and any plans to adapt similar requirements to metric specifications in future procurements/grants should be documented in the procurement, grant, project, or CIP file.

f. (1) Each procurement activity will maintain a log of the waivers from the metric requirements which are authorized for contracts, grants, and purchase orders. The logs shall list the commodity/service being procured, total dollar value of the procured item(s), waiver date, authorizing official, basis for waiver, and AID actions that can promote metrication and lessen the need for future waivers. Mission project and commodity offices will maintain logs for commodities/services financed by host country contracts and CIP's.

(2) Within 30 days of the closing of each fiscal year, each AID/W procurement activity and Mission will submit a copy of the metric waiver log for the year to the AID Metric Executive. (Mission logs to be consolidated in a Mission report.) Repetitive purchases of commercially produced and marketed items and classes of items may be consolidated in reporting procurements that do not exceed $10,000 cumulatively during the reporting period. *

CHAPTER 5

SOURCE AND NATIONALITY

5A. Definitions, General Rules, and AID Geographic Codes

1. Policy

a. Applicability

This Chapter applies to both project and nonproject assistance, except as specifically stated otherwise.

b. General Rules

(1) The rules relating to the determination of the source and origin of commodities are contained in Section 5B, below; those relating to the nationality of suppliers of commodities in Section 5C and those relating to the nationality of suppliers of services in Section 5D.

(2) Rules on "source," "origin," and "componentry" relate only to commodities. The terms are defined in rules set forth in detail in Section 5B, following. In general, these rules determine the eligibility of a transaction by reference to the goods, not the supplier. They relate to the place where goods are produced as defined in Section 5B1b, and from which they are shipped, as defined in Section 5B1a.

(3) Rules on "nationality" relate only to suppliers or contractors, and not to the goods or services which they supply. Rules on nationality are based on such factors as place of incorporation, ownership, citizenship, residence, etc. For procurement of services, nationality is the sole criterion for eligibility. For procurement of commodities, nationality of the supplier is an additional eligibility criterion to the rules on source, origin, and componentry. The rules governing the nationality of suppliers of commodities are different from those governing the suppliers of services, because commodities are also subject to source/origin rules and because of different policy considerations.

(4) A transaction can be financed by AID only if the commodities (by reason of source, origin, and componentry) and the supplier of goods or services (by reason of nationality) are from countries or areas included in the geographic code authorized for the transaction. Provisions for waivers which authorize a different geographic code for a particular procurement or transaction and for waiving other rules are included in this and the subsequent sections.

(5) It is AID policy to avoid competition between U.S. entities (whether firms or private nonprofit organizations) and entities owned by governments as suppliers of services. Details on this policy and criteria for waiving it are included in Section 5D.

(6) Special definitions and rules apply to "commodity related services"; these are contained in Section 5B1d.

c. AID Geographic Codes

(1) AID uses geographic codes, which are lists of categories of countries and areas, in applying its source/origin and nationality rules. Such codes are used in all loan and grant authorizations and agreements and in all contracts financed by AID.

(2) The geographic codes and the countries and areas which they include are listed in AID Geographic Code Book (Handbook 18, Appendix D, Section III, Attachment A 11). Principal codes are also summarized in AID Regulation 1 (Handbook 15, Appendix A, 22 CFR 201.11 (b)(4)) and in Attachments 1A, 2A, and 3A to Chapters 1, 2, and 3 of Handbook 11.

* d. Policy on Sources of Procurement *

(1) Code 000 (United States) is the authorized source for:

(a) All grants, except those to countries which are designated by the U.N. as "Least Developed Countries" (LLDC's)[1/];

1/ The list of U.N.-designated LLDC's is updated in annual reports of the U.N. Conference on Trade and Development (UNCTAD) Secretariat and of the Chairman of the Development Assistance Committee (DAC) of the Organization for Economic Development (OECD).

The 1989 U.N.-designated LLDC's are:

Africa--Benin, Botswana, Burkina Faso, Burundi, Cape Verde, Central African Republic, Chad, Comoros, Djibouti, Equatorial Guinea, Ethiopia, Gambia, Guinea, Guinea-Bissau, Lesotho, Malawi, Mali, Mauritania, Mozambique, Niger, Rwanda, Sao Tome and Principe, Sierra Leone, Somalia, Sudan, Tanzania, Togo, and Uganda;

Asia--Afghanistan, Bangladesh, Bhutan, Burma, Kiribati, Laos, Maldives, Nepal, Western Samoa, Tuvalu, Vanuatu, and Yemen; and

Latin America--Haiti.

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5A1d(1)

(b) Economic Support Fund loans;

(c) AID-direct contracts, except AID-direct contracts financed under bilateral loans or grants which are governed by the source authorization of the loan or grant;

(d) Grants covered by AID Handbook 13 - Grants, having a total procurement element (i.e., the sum of all contracts for goods and services) in excess of $250,000. For grants with a total procurement element of $250,000 or less, an order of preference for the source of procurement is stated in the grant. See Chapter 16B of this Supplement.

(2) Code 941 (the United States and certain Less Developed Countries (LDC's) is the authorized source for:

(a) Grants to LLDC's; and

(b) Development loans.

* (3) The cooperating country is an eligible source under specific rules covering ocean and air transportation and marine insurance (see Chapters 7 and 11 of this handbook) and for certain specified categories of goods and services where local procurement is appropriate. (See Chapter 18 of this handbook). *

(4) Countries are included in Code 941 ("Selected Free World") on the basis of criteria originally set forth by White House directives. To be eligible under Code 941, LDC's must be non-European with annual per capita income of $1,000 or less in 1968 dollars and be eligible to receive U.S. assistance. Countries in the Western Hemisphere south of Cuba and non-European countries receiving AID assistance do not have to meet the per capita income test.

(5) Section 604(g) of the Foreign Assistance Act provides that AID funds may not be used for "procurement of construction or engineering services from advanced developing countries, eligible under the Geographic Code 941, which have attained a competitive capability in international markets for construction services or engineering services." AID has consequently excluded certain countries, normally eligible under Code 941, from eligibility when engineering or construction services are financed, as discussed in State telegram 039564 of February 14, 1981.

2. Source of Policy

See Sections 5B2, 5C2, and 5D8.

3. Implementation of Policy

See Sections 5B3, 5C3, and 5D9.

4. Waivers

a. Changes from the geographic code authorized in accordance with paragraphs 5A1d(1) and 5A1d(2) can be made only in accordance with the waiver provisions of 5B4 for source and origin and of paragraphs 5C4 and 5D10 for nationality of suppliers.

b. Changes from the policy on sources of procurement or criteria for inclusion in geographic codes as set forth in 5A1d can be made only * by the Administrator. Changes in the composition of geographic codes are made by the Office Director of the Directorate for Policy. *

5B. Source and Origin of Commodities and Commodity-Related Services

1. Policy

a. Source

"Source" means the country from which a commodity is shipped to the cooperating country or the cooperating country itself if the commodity is located therein at the time of purchase. However, where 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.

b. Origin

To make the "source" rule a meaningful economic measure in assisting U.S. producers and labor and the U.S. balance of payments, AID prescribed an "origin" test in 1960. The "origin" of a commodity is the country or area in which a commodity is mined, grown, or produced. A commodity is produced when through manufacturing, processing or substantial and major assembling of components a commercially recognized new commodity results that is substantially different in basic characteristics or in purpose or utility from its components. Merely packaging various items together for a particular procurement or relabeling items does not constitute production of a commodity.

5B1

c. Componentry

Rules on components assure that the benefit of the "origin" rule accrues to the producing country. "Components" are the goods that go directly into the production of a produced commodity. AID componentry rules for commodities produced in eligible source countries are as follows:

(1) If the commodity contains no imported component, it meets AID's componentry requirements.

(2) If the commodity contains components imported from countries included in Geographic Code 935 which are not included in the authorized geographic code for the procurement, the components are limited according to the following rules:

(a) They are limited only if they are acquired by the producer in the form in which they were imported.

(b) The total cost of such components to the producer of the commodity (delivered at the point of production of the commodity) may not exceed 50 percent 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 AID).

(c) AID may prescribe percentages other than 50 percent for specific commodities. The percentage of allowable foreign componentry may be decreased for a specific procurement by the USAID or AID/W at the request of the cooperating country. Other changes in the percentage of allowable foreign componentry may be authorized by the Director of the Office of Procurement in certain circumstances or may be authorized as source/origin waivers in accordance with 5B4.

(d) Components from the cooperating country may be used in unlimited amounts whenever any geographic code other than Code 000 is authorized.

(3) Any component from a non-Free World country makes the commodity ineligible for AID financing.

d. Commodity-Related Services

(1) Delivery Services

(a) Ocean and Air Transportation - The eligibility of transportation services is determined by the flag registry of the vessel or aircraft. See Chapters 7 and 10 of this Supplement regarding eligibility of delivery services and cargo preference.

(b) Marine Insurance - The eligibility of marine insurance is determined by the country in which it is "placed". Insurance is "placed" in a country if payment of the insurance premium is made to, and the insurance policy is issued by, an insurance company office located in that country. Eligible countries for placement are governed by the authorized geographic code, except that if Code 941 is authorized, the Cooperating Country is also eligible. See Chapter 11 of this Supplement, regarding marine insurance.

(c) Other Delivery Services - No source or nationality rules apply to other delivery services such as export packing, loading, commodity inspection services, and services of a freight forwarder. Such services are eligible in connection with a commodity which is financed by AID.

(2) Incidental Services

Source and nationality rules do not apply to suppliers of incidental services specified in the purchase contract relating to the equipment. Incidental services are defined as installation or erection of AID-financed equipment or the training of personnel in the maintenance, operation and use of such equipment. Citizens or firms of any country not included in AID Geographic Code 935 are ineligible to supply incidental services, except that non-U.S. citizens lawfully admitted for permanent residence in the U.S. are eligible regardless of their citizenship.

e. Special Rules Requiring Procurement from the United States

(1) FAA Section 604(d) requires that if a recipient country discriminates by statute, decree, rule, or practice with respect to AID-financed procurement against any marine insurance company authorized to do business in any State of the United States, then any AID-financed commodity shipped to that country shall be insured against marine risks and the insurance shall be placed in the United States with a company or companies authorized to do a marine insurance business in any State of

5B1e(1)

the United States. See Chapter 11. The decision of any cooperating country to insure all public sector procurement locally with a government-owned insurance agency is not considered discrimination within the meaning of Section 604(d).[27] The cooperating country's government is held to be given the same right as private importers; i.e., to place insurance wherever it wishes.

(2) FAA Section 604(e) requires that agricultural commodities and products thereof be procured in the United States if the U.S. domestic price is less than parity unless the commodity cannot reasonably be procured in the United States in fulfillment of the objectives of a particular assistance program under which such commodity procurement is to be financed. FAA Section 604(c) also contains special source rules regarding agricultural commodities under grant financing (see Section 4C1 of this Supplement).

(3) FAA Section 636(i) limits the eligibility of motor vehicles to those manufactured in the United States (see Section 4C2 of this Supplement).

(4) Cargo Preference: Section 901(b) of the Merchant Marine Act of 1936, as amended, requires that at least 50 percent of all AID-financed cargos which are transported on ocean vessels be carried on U.S.-flag ocean vessels (to the extent that such vessels are available at fair and reasonable rates), whether or not AID finances the freight (see Chapter 10 of this Supplement).

(5) Air Carrier Preference: Section 5 of the International Air Transportation Fair Competitive Practices Act requires that all grant-financed air transportation of cargo or passengers be on U.S.-flag air carriers (see Chapter 7C of this Supplement).

[27] GC/DC&P opinion of October 20, 1976, Subject: "Public Sector Procurement Marine Insurance."

2. Source of Policy

The basic source of policy is Section 604(a) of the FAA. Presidential Determinations of October 18, 1961 and August 1, 1962 exercised the legislative authority to permit procurement from Free World developing countries. Building on these determinations, the President's Foreign Assistance Message to the Congress of September 15, * 1970 enunciated a general policy of using this expanded source of procurement.

The following sections of the FAA are also sources of policy: Section 602 covers participation of U.S. small business in the program (see Chapter 23); Section 604(c) concerns procurement of U.S. agricultural commodities, (See Chapter 4), Section 604 (d) relates to marine insurance (see Chapter 11), Section 604(e) restricts the procurement of agricultural commodities or products thereof when domestic prices are below parity (see Chapter 4); Section 606(c) associates the U.S. source procurement of pharmaceuticals with the use of patents (see Chapter 4); and Section 636(i) deals with procurement of motor vehicles (see Chapter 4). The Merchant Marine Act of 1936, as amended, is the source of the policy on cargo preference (see Chapter 10 of this Supplement).

3. Implementation of Policy

Eligibility requirements for commodities and most commodity-related services are controlled by means of the geographic code designated in each loan or grant agreement, contract, or other obligating document. The geographic code controlling each procurement of goods and services is normally repeated in contracts, letters of commitment, and letters of credit.

4. Waivers

In some cases it may be necessary to expand the authorized source in order to accomplish project or program objectives. This is done by processing a procurement source waiver. When a waiver is processed to include a new source, procurement is not limited to the added source, but may be from any country included in the authorized source.

a. Criteria

Any waiver of (change in) the authorized list of eligible countries or geographic code must be based upon one of the following criteria: [37]

[37] When a waiver is for the procurement of motor vehicles, the waiver must also be justified pursuant to the criteria in paragraph 4C2d(1). *

5B4a

(1) There is an emergency requirement for which non-AID funds are not available, and the requirement can be met in time only from suppliers in a country or area not included in the authorized geographic code.

(2) The commodity is not available from countries or areas included in the authorized geographic code.

(3) For project assistance only, when Geographic Code 000 is authorized and the lowest available delivered price from the United States is reasonably estimated to be 50 percent or more higher than the delivered price from a country or area included in Geographic Code 941.

* (4) For project assistance only, when Geographic Code 000 is authorized and the estimated cost of U.S. construction materials (including transportation and handling charges) is at least 50 percent higher than the cost of locally produced materials.

(5) For nonproject assistance, an acute shortage exists in the United States for a commodity generally available elsewhere.

(6) Persuasive political considerations.

(7) Procurement in the cooperating country (where it is not already eligible) would best promote the objectives of the foreign assistance program.

(8) Such other circumstances as are determined to be critical to the success of project objectives.

b. Certification Supporting Waivers to Code 899 or Code 935

Waivers from Codes 000 or 941 to Codes 899 or 935, in addition to meeting one of the criteria in paragraph a. above, must be supported by the following certification: "Exclusion of procurement from Free World countries other than the cooperating country and countries included in Code 941 would seriously impede attainment of U.S. foreign policy objectives and objectives of the foreign assistance program." The fore- going certification is required by the Presidential Determination of October 18, 1961 (26 FR 10543, November 9, 1961), under Section 604(a) of the FAA.

c. Authority to Grant Waivers

(1) Blanket Waivers

(a) Subject to subparagraphs (b) and (c) below, blanket waivers of the source policies set forth in 5A1d(1) or (2) which are intended to apply to an entire country program can be authorized only by the Administrator, and blanket which are intended to apply to an entire agreement for project or program assistance may be granted only by the Assistant Administrator having program responsibility or higher. *

5B4c(1)

* (b) For projects in LLDCs where the authorized source Code is 941, a blanket waiver to include the cooperating country may be granted by the Mission Director, Assistant Administrator, or higher within any limitations on their authority to approve projects and source waivers. In all other cases, a blanket waiver to include the cooperating country may be granted only by the Administrator.

(c) Blanket waivers to establish Code 899 or Code 935 as authorized sources are normally not granted; it is AID's policy to make only specific exceptions to the general rule that AID-financed procurement is limited to countries included in Codes 000 and 941.

(2) Waivers for Individual Transactions

Waivers valid for an individual procurement may be authorized in accordance with Delegation of Authority No. 405 by Assistant Administrators and the head of the Office of Foreign Disaster Assistance for programs within their responsibility, and to an extent such authority has been redelegated, by Mission Directors and AID Representatives. Any individual transaction not exceeding $5,000 (not including transportation) does not require a waiver.

(3) Waiver Control

(a) AID/W-Issued Waivers - All commodity waivers issued in AID/W under the authority of AID Delegation of Authority 405 or any redelegations thereunder, including those covered by a project paper or project authorization, shall indicate consultation with GC and FA/OP.

(b) Mission-Issued Waivers

Copies of all Mission-approved commodity waivers under the authority of AID Delegation of Authority 405 or any redelegation thereunder, including those covered by a project paper or project authorization shall indicate consultation with the Regional Legal Advisor, if available. *

d. Waivers of Authorized Code for Commodity-Related Services

See the waiver sections of Chapters 7, 10, and 11 of this Supplement.

e. Waivers of Special Rules Requiring Procurement from the U.S.

See the waiver paragraphs of the pertinent sections of Chapter 4 on restricted commodities.

5C. Nationality of Suppliers of Commodities

1. Policy

a. A supplier providing goods must fit one of the following categories to be eligible for AID financing:

(1) An individual who is a citizen or a legal resident of a country or area included in the authorized geographic code except as provided in Section 5C1b.

(2) A corporation or partnership organized under the laws of, and with a place of business in, a country or area included in the authorized geographic code;

(3) A controlled foreign corporation, i.e., any foreign corporation of which more than 50 percent of the total combined voting power of all classes of stock is owned by United States shareholders within the meaning of Section 957 et seq. of the Internal Revenue Code, 26 U.S.C. 957; or

(4) A joint venture or unincorporated association consisting entirely of individuals, corporations, or partnerships which are eligible under any of the foregoing categories.

b. Citizens of any country or area or firms or organizations located in, organized under the laws of any, or owned in any part by citizens or organizations of any country or area not included in Geographic Code 935 are ineligible for financing by AID as suppliers of commodities or as agents in connection with the supply of commodities. There are limited exceptions to this policy:

(1) non-U.S. citizens lawfully admitted for permanent residence in the United States are eligible, as individuals or owners, regardless of their citizenship, and

(2) DAA/FA may authorize the eligibility of organizations having minimal ownership by citizens or organizations of non-Code 935 countries.

2. Source of Policy

There are no specific statutory provisions with respect to the nationality of suppliers. However, AID has viewed Sections 601 and 602 of the FAA broadly as a mandate to consider the nationality of suppliers of both goods and services in addition to considering the source and origin of goods.

3. Implementation of Policy

Handbooks 11, 13, 14, and 15.

5C

4. Waivers

a. Changes in the authorized Geographic Code with respect to the nationality of suppliers of commodities are subject to the same requirements as those related to the source of commodities set forth in 5B4, above. The authorities for granting such waivers are those specified in Section 5B4c.

b. Code changes authorized by waiver with respect to the source of commodities automatically apply to the nationality of their suppliers.

c. A waiver to effect a change in the geographic code only with respect to the nationality of the supplier of commodities, but not in the source of the commodities, may be sought if the situation requires it.

5D. Nationality of Suppliers of Services

1. Privately Owned Commercial Suppliers

An individual or a privately owned commercial firm is eligible for financing by AID as a contractor [4] or as a subcontractor providing services only if the criteria in subparagraphs a, b, or c below are met and, in the case of the categories described in b and c, the certification requirements in subparagraph d are met.

a. The supplier is an individual who is a citizen of and whose principal place of business is in a country or area included in the authorized geographic code or a non-U.S. citizen lawfully admitted for permanent residence in the United States whose principal place of business is in the United States;

b. The supplier is a privately owned commercial (i.e., for profit) corporation or partnership that is incorporated or legally organized under the laws of a country or area included in the authorized geographic code, has its principal place of business in a country or area included in the authorized geographic code, and meets the criteria set forth in either subparagraph (1) or (2) below:

(1) The corporation or partnership is more than 50% beneficially owned by individuals who are citizens of a country or area included in the authorized geographic code and non-U.S. citizens lawfully admitted for permanent residence in the United States. In the case of corporations, "more than 50% beneficially owned" means that more than 50% of each class of stock is owned by such individuals; in the case of partnerships, "more than 50% beneficially owned" means that more 50% of each category of partnership interest (e.g., general, limited) is

[4] Personal Services Contractors (PSC's) are not included under the term "contractor".

5D1b(1)

owned by such individuals. (With respect to stock or interest held by companies, funds or institutions, the ultimate beneficial ownership by individuals is controlling.)

(2) The corporation or partnership:

(a) has been incorporated or legally organized in the United States for more than 3 years prior to the issuance date of the invitation for bids or request for proposals, and

(b) has performed within the United States similar administrative and technical, professional, or construction services under a contract or contracts for services and derived revenue therefrom in each of the 3 years prior to the date described in the preceding paragraph, and

(c) employs United States citizens and non-U.S. citizens lawfully admitted for permanent residence in the United States in more than half its permanent full-time positions in the United States, and

(d) has the existing capability or can provide the necessary resources in the United States to perform the contract.

c. The supplier is a joint venture or unincorporated association consisting entirely of individuals, corporations, partnerships, or nonprofit organizations which are eligible under 1a or 1b, above, or 2 below.

d. A duly authorized officer of a firm or nonprofit organization shall certify that the participating firm or nonprofit organization meets either the requirements of subparagraphs b(1) or b(2), or 5D2. In the case of corporations, the certifying officer shall be the corporate secretary. With respect to the requirements of subparagraphs b(1), the certifying officer may presume citizenship on the basis of the stock-holder's record address, provided the certifying officer certifies, regarding any stockholder (including any corporate fund or institutional stockholder) whose holdings are material to the corporation's eligibility, that the certifying officer knows of no fact which might rebut that presumption.

5D

2. Nonprofit Organizations

Nonprofit organizations, such as educational institutions, foundations, and associations, are eligible for financing by AID as contractors or subcontractors for services if they meet all of the criteria listed in subparagraphs a, b, and c below, and the
* certification requirement in 1d. above is met. 5/

Any such institution must:

a. Be organized under the laws of a country or area included in the authorized geographic code; and

b. Be controlled and managed by a governing body, a majority of whose members are citizens of countries or areas included in the authorized geographic code; and

c. Have its principal facilities and offices in a country or area included in the authorized geographic code.

3. Government-Owned Organizations

Firms operated as commercial companies or other organizations (including nonprofit organizations other than public educational institutions) which are wholly or partially owned by governments or agencies thereof are not eligible for financing by AID as contractors or subcontractors, except if their eligibility has been established by a waiver in accordance with the provisions in paragraphs 5D.10.a(2) and 5D.10.d, below.

4. Joint Ventures

A joint venture or unincorporated association is eligible only if each of its members is eligible in accordance with Sections 5D1, 2, or 3 above.

5/ International agricultural research centers and such other international research centers as may be, from time to time, formally listed as such by the Assistant Administrator, Bureau for Research and Development, are considered to be of U.S. nationality.

*

5D

5. Construction Services from Foreign-Owned Local Firms

When the host country is an authorized source for services, and the estimated cost of the contract for construction services is $5 million or less, a local corporation or partnership which does not meet the test in Section 5D1 above for eligibility based on ownership by citizens of the host country (i.e., it is foreign-owned local firm) will be eligible if it is determined by AID to be an integral part of the local economy.

However, such a determination is contingent on first ascertaining that no U.S. construction company with the required capability is currently operating in the host country or, if there is such a company, that it is not interested in bidding for the proposed contract. In the latter case, inquiries on a company's interest should be addressed to its headquarters. [6/]

A foreign-owned local firm is an integral part of the local economy provided:

a. It has done business in the host country on a continuing basis for not less than three years prior to the issuance date of invitations for bids or requests for proposals:

b. It has a demonstrated capability to undertake the proposed activity;

c. All, or substantially all, of its directors of local operations, senior staff and operating personnel are resident in the host country;

d. Most of its operating equipment and physical plant are in the host country.

6/ If only one U.S. construction company is interested, negotiation with a single source must be authorized in accordance with Chapter 12C4a(2)(b)3 of this Supplement. *

6. Ineligible Suppliers

Citizens of any country or area, and firms and organizations located in, organized under the laws of, or owned in any part by citizens or organizations of any country or area not included in Geographic Code 935 are ineligible for financing by AID as suppliers of services or as agents in connection with the supply of services. There are limited exceptions to this policy:

(1) non-U.S. citizens lawfully admitted for permanent residence in the United States are eligible, as individuals or owners, regardless of their citizenship, and

(2) DAA/FA may authorize the eligibility of organizations having minimal ownership by citizens of organizations of non-Code 935 countries.

7. Nationality of Employees under Contracts or Subcontracts for Services

a. General

The policies set forth in 5D1 through 5D5, above, do not apply to the employees of contractors or subcontractors. Such employees must, however, be citizens of countries included in Geographic Code 935 or, if they are not, have been lawfully admitted for permanent residence in the United States.

b. Construction Contracts

It is AID's policy that when the contractor on an AID-financed construction project is a U.S. firm, at least half of the supervisors and other specified key personnel working at the project site must be citizens or permanent legal residents of the United States. Exceptions may be authorized by the Mission Director in writing if special circumstances make compliance impractical.

8. Source of Policy

AID has viewed Sections 601 and 602 of the FAA broadly as a mandate to consider the nationality of suppliers of both goods and services in addition to considering the source and origin of goods. In addition, 5D8

with respect to engineering and professional services for capital projects, Section 601(d) specifically calls for the use of U.S. firms and Section 604(g) limits the eligibility of certain code 941 firms for engineering and construction services.

9. Implementation of Policy

Handbooks 11, 13, 14, and State telegram 039564 of February 14, 1981.

10. Waivers

a. Criteria

A waiver to authorize a different geographic code or include additional suppliers must be based on one of the following criteria:

(1) Privately Owned Commercial Suppliers

(a) There is an emergency requirement for which non-AID funds are not available and the requirement can be met in time only from suppliers in a country or area not included in the authorized geographic code.

(b) No suppliers from countries or areas included in the authorized geographic code are able to provide the required services.

(c) Persuasive political considerations.

* (d) Procurement of locally available services would best promote the objectives of the foreign assistance program. *

(e) Such other circumstances as are determined to be critical to the achievement of project objectives.

(2) Government-Owned Organizations

In addition, or alternatively if a change in the geographic code is not required, a waiver to make government-owned organizations described in 5D3, above, eligible for financing by AID must be justified on the basis of the following criteria;

5D10a(2)

(a) The competition for obtaining a contract will be limited to host country firms or organizations meeting the criteria set forth in 5D1 or 5D2, above; or

(b) The competition for obtaining the contract will be open to firms from countries or areas included in the authorized geographic code and eligible under the provisions of Sections 5D1 or 5D2 above, but it has been demonstrated through prequalification that no U.S. firm is interested in competing for the contract; or

(c) The competition for obtaining the contract will be open to firms from countries or areas included in the authorized geographic code and it has been demonstrated, through prequalification or otherwise, that one or more U.S. firms are interested in competing for the contract but the foreign policy interests of the United States outweigh any competitive disadvantage at which U.S. firms might be placed or any conflict of interest that might arise by permitting a government-owned organization to compete for the contract.

b. <u>Certification of Changes of the Authorized Geographic Code to Codes 899 or 935</u>

Waivers from Codes 000 or 941 to Codes 899 or 935, in addition to meeting one of the criteria in Section 5C.10.a, must be supported by the following certification: "The interests of the United States are best served by permitting the procurement of services from Free World countries other than the cooperating country and countries included in Code 941."

c. <u>Authority to Grant Waivers of Authorized Geographic Code</u>

Changes in the authorized geographic code with respect to the nationality of suppliers of services are subject to the same provisions as those related to the source of commodities set forth in paragraph 5B4c, above.

d. <u>Authority to Grant Waivers to Make Government-Owned Organizations Eligible</u>

(1) Waivers justified on the grounds of United States foreign policy interests under the provisions of paragraph 5D.10.a(2)(c), above, must be authorized by the Assistant Administrator having program

5D10d(1)

* responsibility after consultation with the Deputy Assistant to the Administrator for Finance and Administration (DAA/FA) and GC.

(2) Waivers based on the criteria listed in paragraphs 5D.10.a(2)(a) or (b) may be granted by the Mission Director.

e. Waiver Control

(1) AID/W-Issued Waivers - All services waivers issued in AID/W under the authority of AID Delegation of Authority 405 or any redelegations thereunder, including those covered by a project paper or project authorization, shall indicate consultation with GC and FA/OP.

(2) Mission-Issued Waivers - Copies of all Mission-approved services waivers under the authority of AID Delegation of Authority 405 and any redelegation thereunder, including those covered by a project paper or project authorization shall indicate consultation with the Regional Legal Advisor, if available. *

CHAPTER 6

ELIGIBILITY OF SUPPLIERS AND CONTRACTORS

6A. Nationality (See Chapters 5C and 5D)

6B. Foreign Assets Control

1. Policy

a. This Section applies to project and nonproject assistance.

b. It is AID policy not to finance or participate in any transaction that is prohibited by the U.S. Treasury Department Foreign Assets, Sanctions, Transactions, and Funds Control Regulations published in 31 CFR Parts 500-599, as from time to time amended. These regulations apply to the following countries and their nationals:

Cambodia, Cuba, North Korea, and Vietnam

plus additional listings on the "Consolidated List of Designated Nationals" published by the U.S. Treasury Department.

In terms of AID operations, the effect of these regulations is to preclude the above named countries from being sources of goods or services under AID financing, or as recipients of AID assistance. In addition, nationals of the listed countries are ineligible as suppliers, contractors, or agents.

2. Source of Policy

The primary source of the policy is the Treasury Department's regulations promulgated under the Trading with the Enemy Act of 1917, as amended. Section 620(f) of the FAA precludes assistance to any Communist country except where the President reports to the Congress a justification in the terms specified. Section 620(a) of the FAA provides that no assistance shall be furnished to the present government of Cuba.

3. Implementation

See Handbook 15, Chapter 2, and AID Regulation 1, 201.11(g).

4. Waivers

This policy may not be waived.

6C. Suspension and Debarment

1. Policy

This section applies to both project and nonproject assistance.

a. One of the sanctions available to AID to protect the integrity of its programs and to assure prudent use of its funds is the exclusion of suppliers and contractors from AID-financed transactions through the suspension/debarment procedure. This procedure is used only to protect the interests of the Government where there is strong prima facie evidence that the supplier or contractor has engaged in criminal, fraudulent, or seriously improper conduct. (See AID Regulation 8 and AIDAR 709.4 for causes and conditions.)

b. Where a preliminary investigation discloses that there is probable cause for debarment, AID may elect to suspend the supplier or contractor pending a final determination of the debarment issue. AID has a reasonable amount of time in which to conduct further investigation to determine whether the suspension should be lifted or debarment should be instituted.

c. Federal Acquisition Regulation (FAR 9.4) provides that suspensions and debarments arising in connection with direct AID contracts under the FAR and the AIDAR be recorded in the "List of Parties Excluded from Federal Procurement Programs. On the other hand, suspensions and debarments arising from AID-financed grants, cooperative agreements, host country contracts, and commodity and commodity-related service transactions are published in the "List of Parties Excluded from Federal Nonprocurement Programs," 1/ in accordance with AID Regulation 8. AID is prohibited from financing transactions, including extending existing transactions or exercising options under them which commit additional funds, with individuals and organizations that are listed on the list which applies to the particular type of transaction.

1/ The government-wide "Lists of Parties Excluded from Federal Procurement and Nonprocurement Programs" are maintained by the U.S. General Services Administration and will be regularly distributed to USAID Missions for review. Questions concerning the listing of individuals and organizations on these lists should be directed to IG/LC and FA/PPE in AID/W.

6C1

d. Suspension and debarment determinations for AID are made by DAA/FA with concurrence of GC. It is the responsibility of all Offices, Bureaus, and Missions to report to DAA/FA, GC, and/or IG all cases where there is a reason to believe that an individual or organization should be declared ineligible to receive AID funds for the reasons stated in Section 6C1a of this Chapter.

2. Source of Policy

FAR 9.4 and Executive Order 12549

3. Implementation of the Policy

AIDAR 709.4
AID Regulation 8
Handbook 15, Chapter 2
Handbook 11
Handbook 13

4. Waivers

DAA/FA may waive the application of the suspension and debarment regulations to individual transactions based upon a written finding that such application would not be in the interest of the Government.

6D. Boycotts and Restrictive Trade Practices

1. Applicability

This Section applies to both project and nonproject assistance.

2. Policy

a. Section 3(5)(A) of the Export Administration Act of 1979 (50 U.S.C. Appendix 2401 - 2420), as amended, declares that it is the policy of the United States "to oppose restrictive trade practices or boycotts fostered or imposed by foreign countries against other countries friendly to the United States or against any United States person." The regulations issued by the Department of Commerce, 14 CFR Parts 369.2 and 369.3 define examples of restrictive trade practices and boycotts. The class of prospective suppliers protected by these regulations includes not only suppliers in a country which is the prime target of the boycott but in addition, third country suppliers who might be the target of secondary and tertiary boycotts.

b. Extension to AID-financed procurement of a boycott against a country friendly to the United States would be contrary to the policy stated above. Accordingly, AID will refuse to finance any transaction where principles of such a boycott have been applied in form or in substance.

3. Source of Policy

Regulations (15 CFR Part 369) issued originally under the Export Administration Act of 1969, as amended and reissued under other authority, and regulations issued pursuant thereto, and based more generally upon AID regulations which require competitive procurement to the maximum extent practicable

4. Implementation

Generally AID Regulation 1; 22 CFR Part 201; and AID Handbook 11).

5. Waiver

AID may not waive the policy on boycotts and restrictive trade practices.

6E. Access to AID Business

Various U.S. Government socio-economic programs impose certain conditions on eligibility for AID business. Some require compliance with provisions of U.S. statutes or policies to receive consideration; others reserve certain transactions to designated classes of offerors. The following policies apply primarily to AID direct contracts; the implementation sections following indicate when/how they apply to other types of agreements.

1. Equal Opportunity

The contractor is required not to discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin in work that is performed or recruited for in the U.S. Any prospective contractor who does so discriminate will not be awarded a contract. A contractual clause implementing this policy is required for contracts and grants over $10,000; dollar threshold not applicable to host-country contracts. Such a clause is not required for contracts performed outside the United States by employees not recruited in the United States.

Source: Executive Orders 11246, September 24, 1965; 11375, October 13, 1967, and Rules and Regulations of the Secretary of Labor (41 CFR 60), Civil Rights Act of 1964, Title VI; AID Regulation 9 (22 CFR 209), and an administrative determination by AID to extend equal opportunity provisions to as many of its operations as practicable.

Implementation: For direct contracts: FAR 22.8 and AIDAR 722.8

For grants and cooperative agreements: AID Regulation 9 and Handbook 13, paragraph 1W of Chapter 1.

For host-country contracts: AID Handbook 11, Chapters, 1, 2, and 3.

2. Hire the Handicapped

The contractor may be required to take affirmative action to employ and advance in employment qualified handicapped individuals. A contractual clause implementing this policy is required by the Federal Acquisition Regulation for direct contracts of $2,500 and over, except such a clause is not required with regard to work to be performed outside the United States by employees not recruited in the United States.

Source: Rehabilitation Act of 1973; Executive Order 11758, January 15, 1974

Regulations of the Secretary of Labor (20 CFR 741).

Implementation: FAR 22.14

3. Veterans

In order to give special emphasis to the employment of qualified disabled veterans as well as other veterans of the Vietnam era, contractors may be required to list all their suitable employment openings with the State Employment Service Systems and take affirmative action to employ and advance such veterans. A contractual clause implementing this policy is required by the Federal Acquisition Regulation for direct AID contracts of $10,000 and over, except where job openings occur and are filled outside the United States.

Source: P.L. 92-450 (38 U.S.C. 2012), October 24, 1972; Executive Order 11701 January 24, 1973

Rules and Regulations of the Secretary of Labor (41 CFR 60-250).

Implementation: FAR 22.13

4. Labor Surplus Area Concerns

It is the policy of the Government to encourage procurement in sections of concentrated unemployment and underemployment and in areas of persistent and substantial labor surplus, to the extent consistent with procurement objectives, where such procurement can be obtained at prices no higher than those obtainable elsewhere. Furthermore, it is AID policy to encourage prime contractors to place subcontracts with concerns which will perform a substantial proportion of the production in labor surplus areas. A contractual clause implementing this policy is required by the Federal Acquisition Regulation for contracts of $10,000 and over, except such a clause is not required for contracts that are to be performed entirely outside the United States and for personal services contracts.

Source: Foreign Assistance Act, Section 604(a); FAR 20;

U.S. Department of Labor Regulations, as amended, February 3, 1970 (29 CFR Part 8).

Implementation: FAR Part 20

5. Small Business

It is the policy of the U.S. Government to aid, counsel, and assist and protect, insofar as possible, the interests of small business concerns in order to preserve free competitive enterprise and to place with small business concerns a fair proportion of the total Government purchases and contracts for property and services.

Source: FAA Section 602.

Implementation: Chapter 23 of this Supplement, FAR 19.2, and AIDAR 719.2

6. Utilization of Women-Owned Business Concerns

It is the policy of the Government that the maximum practicable opportunity to participate in the performance of Government contracts be provided to women-owned business concerns as subcontractors and suppliers to prime contractors. A contractual clause implementing this policy is required by the Federal Acquisition Regulation for direct AID contracts over $10,000, except such a clause is not required either for contracts performed entirely outside the United States or for personal services contracts.

Source: Office of Federal Procurement Policy Letter 80-4,

April 29, 1980 (45 FR 31033; May 9, 1980).

Implementation: FAR 19.9

7. Utilization of Small Disadvantaged Business Concerns

It is the policy of the Government that the maximum practicable opportunity to participate in the performance of Government contracts be provided to small disadvantaged business concerns as subcontractors and suppliers to prime contractors under direct AID contracts. A contractual clause implementing this policy is required by the Federal Acquisition Regulation for direct AID contracts over $10,000, except such a clause is not required for contracts performed entirely outside the United States and for personal services contracts.

Source: P. L. 95-507

Implementation: FAR 19.7

8. Economically and Socially Disadvantaged Enterprises

(a) Since 1984, each of AID's annual appropriations has provided that not less than 10 per cent of the aggregate amount made available for development assistance and for assistance for famine recover and development in Africa shall be made available for activities of U.S. socially and economically disadvantaged enterprises and individuals. Socially and economically disadvantaged enterprises are (i) business concerns owned an controlled by socially and economically disadvantaged individuals, (ii) historically black colleges and universities, (iii) colleges and universities having a student body in which more than 40 per cent of the students are Hispanic Americans, and (iv) private voluntary organizations which are controlled by individuals who are socially and economically disadvantaged.

(b) Socially disadvantaged individuals are those who have been subjected to racial or ethnic prejudice or cultural bias because of their identity as a member of a group without regard to their qualities as individuals. Women and members of named groups as defined in FAR 19.101 (Black Americans, Hispanic Americans, Native Americans, Asian-Pacific Americans, and Subcontinent-Asian Americans) are to be considered socially disadvantaged. Economically disadvantaged individuals are those socially disadvantaged individuals whose ability to compete in the free-enterprise system is impaired due to diminished opportunities to obtain capital and credit as compared to others in the same line of business that are not socially disadvantaged. An individual shall not be considered an economically disadvantaged individual if his or her personal net worth exceeds $750,000, excluding equity in his or her primary personal residence and his or her ownership interest in the disadvantaged enterprise in question.

(c) To further the goals in this area, when funds subject to the above provisions are reserved for direct AID contracts, provisions for subcontracting to these enterprises are required or competition for contracts may be limited to small disadvantaged business concerns under certain conditions.

<u>Source</u>: Sect. 579 of the Foreign Operations, Export Financing, and Related Programs Appropriation Act, 1990 (P.L. 101-167)

<u>Implementation</u>: AIDAR 726

9. <u>Drug-Free Workplace</u>

Most direct contracts and grants (but not host-country contracts) require awardees to certify it will maintain a drug-free workplace, prohibiting the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance. The requirement is not applicable to contracts under $25,000 with organizations nor to those contracts that are not performed in the U.S. In the case of an award to an individual, certification is required that conduct of the activity will be drug-free. Sanctions for violations of the provision may include suspension of payment, termination for default, and suspension and debarment actions.

<u>Source</u>: P.L. 110-690, Drug-Free Workplace Act of 1988

<u>Implementation</u>: FAR 23.5 and Contract Information Bulletin 89-9.

10. Waivers

(a) The equal opportunity provision may be waived by the AID Administrator upon determination that such action is necessary to national security, or by the Director, Office of Federal Contract Compliance Programs (OFCCP), Department of Labor, when the national interest so requires. The AID Administrator, with the concurrence of the Director, OFCCP, may waive the hire the handicapped provision when the national interest so requires. This provision may also be waived by the AID Administrator when essential to the national security. The AID Administrator, on a nondelegatable basis, may waive the administrative sanctions under the drug-free workplace provision when the public interest so requires. DAA/FA may waive the provision for disadvantaged enterprises on a case-by-case or category of contract basis.

(b) The are no provisions for waiving the policies relating to veterans, labor surplus areas, small business, women-owned firms, and small disadvantaged business concerns.

CHAPTER 7

ELIGIBILITY OF DELIVERY SERVICES

7A. Introduction

1. This Chapter sets forth the criteria for determining the eligibility of delivery services for AID financing.

2. The effect of the delivery service on the eligibility for AID financing of the commodities themselves is covered in Chapter 4, Section 4E of this Supplement. Commodities that are otherwise eligible may be made ineligible for AID financing because of the carrier on which they were transported, whether or not the freight is financed by AID.

3. Another aspect of delivery services which concerns AID is cargo preference. The cargo preference policy applies to any ocean transportation of AID-financed commodities, whether or not the freight is financed by AID. See Chapter 10 of this Supplement for a complete statement of this policy.

7B. Source of Delivery Services - Flag Eligibility - Ocean Transportation

1. Policy

This section applies to both project and nonproject assistance.

a. The eligibility of ocean transportation services is determined by the flag registry of the vessel.

b. AID will normally authorize financing of ocean-transportation cost as follows:

(1) When the authorized source for procurement is Code 000 (U.S.), AID will finance ocean transportation only on U.S. flag vessels.

(2) When the authorized source for procurement is Code 941 (Selected Free World), AID will finance ocean transportation on vessels under flag registry of the United States, other countries in Code 941, and the cooperating country.

7B1b

(3) When commodities whose eligibility is restricted to the U.S. source are purchased under agreements which would normally authorize Code 941 procurement of commodities, AID will finance the ocean transportation in accordance with paragraph 7B1b(2) of this Chapter.

(4) 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 that is paid to a carrier for initial carriage on an eligible flag vessel which is authorized in accordance 7B1(1) or (2) above.

(5) When necessary to assure adequate competition and competitive pricing for the shipment of bulk commodities[1/], AID will authorize financing of ocean transportation on vessels under flag registry of countries included in Code 941 and the cooperating country or on vessels under flag registry of countries included in Code 935 (Special Free World). Such expanded authorization would allow the financing of ocean transportation on Code 941 or Code 935 vessels, other than U.S. flag vessels, only to the extent that U.S. flag vessels originally authorized are not available to carry the commodities for which transportation is solicited. The Office of Procurement (FA/OP) determines when it is necessary to authorize financing in accordance with this paragraph.

c. In cases where the United States owns excess local currency, AID, to the maximum extent possible, shall use the excess local currency rather than U.S. dollars to finance freight on vessels under flag registry of the cooperating country.

2. <u>Source of Policy</u>

a. The policy is based upon AID administrative determinations derived from AID experience in applying general source policies to delivery services. When Code 941 is authorized for procurement of goods and services, the cooperating country is an eligible source for dollar-financed delivery services which are largely foreign exchange costs irrespective of the currency in which payment is made.

1/ For purposes of this Section, a bulk commodity is any commodity to be financed in sufficient quantity to warrant the use of chartered shipping for delivery. See Section 7E of this Chapter.

b. The source of AID policy on use of excess local currency is Section 612(b) of the FAA.

3. Implementation of Policy

For implementation guidance see Handbook 15, Appendix A, AID Regulation 1, Section 201.13(b)(1)(i), and Chapters 2 and 7 of Handbook 15.

4. Waiver of Policy

a. Waiver Criteria

If not previously authorized under paragraph 7B1b of this Chapter, waivers to expand the flag eligibility requirements to allow use of vessels under flag registry of the cooperating country, Code 941 (Selected Free World), Code 899 (Free World), or Code 935 (Special Free World) countries may be authorized when:

(1) It is necessary to assure adequate competition in the shipping market in order to obtain competitive pricing, particularly in the case of bulk cargoes and large cargoes carried by liners;

(2) Eligible vessels can provide liner service for commodities that cannot be containerized only by transshipment, and vessels under flag registry of countries to be authorized by the waiver provide liner service without transshipment;

(3) Eligible vessels are not available, and cargo is ready and available for shipment, provided it is reasonably evident that delaying shipment would increase costs or significantly delay receipt of the cargo;

(4) Eligible vessels are found unsuitable for loading, carriage, or unloading methods required, or for the available port handling facilities;

(5) Eligible vessels do not provide liner service from the shipment's source to the destination country;

(6) Eligible vessels do not provide liner service from the port of loading stated in the procurement's port of export delivery terms, provided the port is named in a manner consistent with normal trade practices; or

(7) Eligible vessels decline to accept an offered consignment.

b. Waiver Authority

(1) Waivers may be granted by the Office of Procurement (FA/OP), acting in consultation with the concerned Geographic Bureau.

(2) Officials in the field who have authority, under a redelegation pursuant to Delegation of Authority No. 40, to waive source requirements for commodities also have a limited amount of authority to waive flag eligibility requirements. They may waive only for shipment of commodities for which the official has approved a commodity source waiver and for which the cost of shipment does not exceed 25 percent of the official's authority to waive commodity source requirements. A copy of each transportation waiver approved should be sent to FA/OP.

c. Certification

Each waiver to Code 899 or Code 935 shall contain a certification by the approving official that "The interests of the United States are best served by permitting financing of transportation services on ocean vessels under flag registry of free world countries other than the cooperating country and countries included in Code 941."

7C. Air Transportation

1. Policy

This Section applies to both project and nonproject assistance.

a. The eligibility of air transportation is determined by the flag registry of the aircraft. The term "U.S. flag air carrier" means one of a class of air carriers holding a certificate under Section 401 of the Federal Aviation Act of 1958 (49 U.S.C. 1371) authorizing operations between the United States or its territories and one or more foreign countries.

b. Grant-Financed Transactions

A U.S. Government statute requires the use of U.S. flag air carriers for all AID grant-financed international air travel and transportation unless such service is not available. Criteria for determining availability are set out in paragraph 7C1d of this Chapter. When U.S. flag air carriers are not available, any Code 935 flag air carrier may be used.

7C1

c. Loan-Financed Transactions

(1) There is no statutory requirement for use of U.S. flag air carriers under loan-financed transactions.

(2) When the authorized source under a loan is Code 000, AID's policy on financing air transportation is the same as under grant-financed transactions.

(3) When the authorized source under a loan is Code 941, AID policy requires use of cooperating country flag air carriers, U.S. flag air carriers, or other Code 941 flag air carriers for international air travel and transportation to the extent they are available in accordance with the criteria in paragraph 7C1d of this Chapter. If the supplier certifies that authorized carriers are unavailable, any Code 899 flag air carriers may be used.

d. Availability of Air Carriers

(1) The Comptroller General's memorandum (B-138942), dated March 31, 1981, entitled "Revised Guidelines for Implementation of the Fly America Act", established criteria for determining when U.S. flag air carriers are unavailable. The criteria are published in Handbooks 11, 13, and 14. It is AID's policy to use these criteria also for determining when cooperating country or Code 941 flag carriers are unavailable.

(2) The Comptroller General's memorandum does not establish specific criteria for determining when freight service is unavailable. AID has administratively determined availability criteria for freight service by an eligible flag air carrier. The criteria are published in Handbook 11 and Handbook 15.

e. Certification of Unavailability

Suppliers, contractors, or nonprofit grantees who claim payment for use of a non-U.S. flag air carrier (or when Code 941 procurement is authorized under a loan, for use of air carriers other than cooperating country or Code 941 flag carriers) must certify in writing with the claim for payment that United States and other authorized flag air carriers were unavailable.

f. Transshipment

When shipment is made under a through bill of lading issued by an eligible flag air carrier, AID will finance costs incurred on air carriers under flag registry of any free world country if the costs are part of the total cost paid to the eligible flag air carrier.

g. Air Charters

(1) Most AID-financed air charters are for disaster relief. Since major disaster relief shipments are approved and directed by AID/Washington, it is desirable that air charters be solicited and approved within AID/Washington. When commercial air carriers cannot provide the required service, it is necessary for AID/Washington to so certify to the Department of Defense, so that military aircraft can perform the service.

(2) The policy on prior approval of charters described in Section 7E of this Chapter is applicable to charters for air freight.

2. Source of Policy

Section 5 of the International Air Transportation Fair Competitive Practices Act of 1974, as amended, 49 U.S.C. 1517; Section 21 of the International Transportation Competition Act of 1979, Public Law 96-192, February 15, 1980, 94 Stat. 43; and the March 31, 1981 Comptroller General's memorandum (B-138942), entitled "Revised Guidelines for Implementation of the Fly America Act".

3. Implementation of Policy

AID Regulation 1 (Handbook 15, Appendix A); Handbook 15, Chapter 2; Handbook 11, Chapters 1, 2, and 3; Handbook 13, Chapter 4; and Handbook 14 (see 48 CFR 47.403).

4. Waivers

a. The preference for use of U.S. flag air carriers or for use of U.S., other Code 941 countries, or cooperating country flag air carriers are not subject to waiver. Other free world air carriers may be used only as provided in paragraph 7C1 of this Chapter.

b. The policy on approval of air charters may be waived in accordance with the provisions in paragraph 7E4 of this Chapter.

7D. Voluntary Agencies - Transportation Costs

1. Policy

a. Previous sections of this chapter cover eligibility of ocean and air transportation in situations in which AID is financing commodities as well as freight. However, AID also finances freight in some instances when it does not finance the commodities. AID may reimburse the American Red Cross and U.S. voluntary nonprofit relief agencies, registered with and approved by AID, for ocean transportation charges incurred and paid by them for shipments to recipient countries of donated or purchased supplies and for shipments of P.L. 480, Title II commodities. The freight charges on vessels under flag registry of any Free World country may be financed. However, at least 50 percent of the commodities must be shipped on U.S. flag vessels. AID financing shall be limited to those transportation charges assessed by the delivering carrier, either in accordance with its applicable tariff for delivery to the discharge port or in accordance with the applicable charter.

b. The transportation charges on shipments from United States ports, or in the case of excess or surplus property supplied by the United States from foreign ports, to ports of entry abroad or to points of entry abroad, in cases (1) of landlocked countries, (2) where ports cannot be used effectively because of natural or other disasters, (3) where carriers to a specific country are unavailable, or (4) where a substantial savings in cost or time can be effected by the utilization of points of entry other than the ports, are eligible for reimbursement.

2. Source of Policy

a. Section 123 of the FAA authorizes the use of AID funds for the reimbursement of voluntary agency transportation charges. In the case of Title II shipments, Commodity Credit Corporation (CCC) is the source of the funds paid out by AID.

b. The preference for U.S. flag vessels with respect to P.L. 480, Title II shipments is based on Section 901(b) of the Merchant Marine Act of 1936, as amended. Application of the policy to shipments financed under Section 123 of the FAA is based on administrative determinations by AID.

3. Implementation of Policy

See Handbook 3, AID Regulation 2, Sections 202.2 and 202.3; Handbook 9, Regulation 11, Section 211.4; Handbook 9, Chapter 7.

4. Waivers

a. AA/FHA, in consultation with FA/OP, may waive the requirements of this policy statement. See AID Regulation 2, Section 202.9 and AID Regulation 11, Section 211.12.

b. FA/OP shall be responsible for determining when carriers are "unavailable."

7E. Charters

1. Policy

a. This section applies to both project and nonproject assistance. AID will not finance the cost of any ocean or air charter, covering full or part cargo, where the charter has not received the prior approval of AID/Washington. Commodities are made ineligible for AID financing if shipped under any ocean or air charter which has not received prior approval of AID/Washington. (See Chapter 4, Section 4E, of this Supplement.)

b. The term "charter" includes charter parties, booking notes, and booking agreements when those forms of freight contracts (as defined below) incorporate provisions which are in addition to or which deviate from the terms of the carrier's standard bill of lading and tariff.

c. A charter is a contract for the hire of a ship or aircraft or a portion thereof, for one or more voyages or flights, or for a period of time. The contract may be in the form of a charter party, booking note or booking agreement.

d. A charter party is a single document incorporating the terms of the contract between the carrier and the shipper. Its clauses include provisions established by international agreements and, by reference, provisions of law. The charter party usually overrides any provisions of the carrier's bill of lading, although the charter party may provide that the bill of lading will serve as a receipt for the cargo.

e. A booking note or booking agreement is a charter which incorporates all or some of the provisions of the carrier's bill of lading by reference. The note or agreement adds provisions which stipulate the rights and responsibilities of the parties as to such things as the loading and discharging of cargo, despatch and demurrage, rates, brokerage fees, etc.

2. Source of Policy

The policy is based upon certain program implementation requirements relating to charters. Specifically, prior approval of charters is required in order to:

7E2

a. Ensure compliance with the Maritime Administration's Rule III (46 CFR 381.5) which requires that, in the case of full shiploads subject to Cargo Preference, U.S. flag tonnage is to be fixed prior to any foreign flag fixture.

b. Enable AID to review the prices offered. (See Chapter 17 of this Supplement.)

c. Preclude the carriage of AID-financed commodities on ineligible ships.

d. Discourage the inflation of shipping rates when vessels are in short supply by allowing coordination between AID/USDA/DOD and the Maritime Administration on such matters as the availability of vessels and the reasonableness of rates.

3. Implementation of Policy

See Handbook 15, Appendix A - AID Regulation 1, Sections 201.11(d)(2), 201.13(b)(3)(iv), 201.31(b)(3), 201.67(a)(2); 201.67(a)(3); Handbook 11, Chapters 1, 2, and 3; also Handbook 15, Chapters 2 and 7.

4. Waivers

FA/OP has authority to waive prior approval of charters and retroactively approve charters in appropriate cases.

7F. Freight Differential

1. Policy

a. Applicability

This section is applicable to both project and nonproject assistance.

b. General

(1) For cargoes shipped under charters and for nonconference liner shipments, the cost of ocean freight on U.S. flag vessels is usually higher than for foreign flag vessels. The cargo preference policy requires that at least 50 percent of AID-financed cargoes move on U.S. flag vessels. As a result, a portion of AID funds which might otherwise be used for the transfer of real resources to cooperating countries is in fact used to pay for this difference in cost between U.S. and foreign flag vessels.

(2) Section 640C of the FAA authorizes the use of grant funds to pay borrower/grantees for all or part of the differential between freight costs for U.S. and foreign flag vessels.

c. Application of Statutory Authority

While Section 640C permits AID to make grants to cooperating countries for U.S. flag freight differentials, AID does not receive a separate or additional appropriation for this purpose; thus funds for financing ocean freight differentials must come from the grant funds available to the Geographic Bureaus for their assistance programs. The Assistant Administrators of the Geographic Bureaus decide when and to what extent the U.S. flag differential on one or more shipments under an agreement will be financed under Section 640C authority. At the time of the decision the Geographic Bureau ensures that adequate funds are available and reserved for the purpose.

d. Determining the Differential

(1) Section 640C provides, *inter alia*, that grants may be paid for:

> "...all or any portion of such differential as is determined by the Secretary of Commerce[2/] to exist between United States and foreign-flag vessel charter or freight rates. Grants made under this Section shall be paid with United States-owned foreign currencies whenever feasible."

(2) If an Assistant Administrator of one of the Geographic Bureaus has determined that Section 640C authority is to be used for a shipment, special actions are taken at the time the charter is submitted to FA/OP for approval (See 7E of this Chapter.) FA/OP requests the Department of Transportation (MARAD) to determine the differential between the proposed U.S. flag rate and foreign flag rates. If U.S.-owned excess or near excess local currency is available for this purpose, FA/OP determines whether the carrier will accept the part of its payment corresponding to the differential in such currency.

2. Source of Policy

The policy is based upon Section 640C of the FAA and administrative determinations on the implementation of that Section.

2/ Now the Secretary of Transportation.

3. Implementation of Policy

See Handbook 15, Chapter 2.

4. Waivers

Waivers are not relevant in the case of this policy.

7G. Dead Freight

1. Policy

a. This section applies to both project and nonproject assistance.

b. It is AID policy not to finance transportation costs attributable to dead freight. Dead freight is claimed by a vessel operator for chartered space unoccupied or for cargo weight shortshipped according to the terms of the charter.

2. Source of Policy

The policy is the result of administrative determinations based upon the following rationale:

> The cargo quantities stipulated in a charter are fixed by either the supplier or receiver of the cargo, and the vessel owners or operators. The theory behind AID's policy is that foreign assistance funds should not be used to compensate the vessel owner or operator for a contractual failure by the other party to the charter.

3. Implementation of Policy

See Handbook 15, Appendix A - AID Regulation 1, Section 201.13(b)(3)(iv).

4. Waivers

Determinations relating to the applicability of the policy are made by FA/OP in consultation with GC.

7H. Despatch and Demurrage

1. Policy

a. The policy applies to both project and nonproject assistance.

b. It is AID policy that the borrower/grantee or the supplier refund to AID all despatch earned at the port of unloading on C.I.F. and C&F[3/] shipments. When AID finances the transportation costs for F.O.B. or F.A.S.[4/] shipments, despatch earned at either the port of loading or unloading must be refunded to the extent that despatch exceeds demurrage incurred on the same voyage. Demurrage costs with the exception noted above, are ineligible for AID financing.

2. Source of Policy

The policy is based upon administrative determinations having the following rationale:

a. Despatch earned at the port of unloading under C&F or C.I.F. terms would be windfall benefit if retained by the importer, and would be the equivalent of an AID-financed commission to the importer. Despatch earned at the port of loading on C&F and C.I.F. shipments accrues to the supplier. Since he/she has quoted a firm price including freight it is reasonable that he/she gain the unpredictable benefit of despatch earnings when they occur just as he/she may gain other unpredictable benefits on the sale of the commodity.

3/ C.I.F. - Cost, insurance, and freight
C&F - Cost and freight

4/ F.O.B. - Free on board
F.A.S. - Free alongside

b. In the case of F.O.B. and F.A.S. shipments where there is a charter for the ocean freight, AID's policy to recover any despatch which exceeds any applicable demurrage again precludes the borrower/grantee or importer from receiving the equivalent of a commission from the transaction.

c. AID will not finance demurrage since it comes about because of circumstances over which AID has no control and if financed might act as a disincentive to borrowers/grantees to expedite the speedy discharge of cargoes.

3. Implementation of Policy

See Handbook 15, Appendix A - AID Regulation 1, Sections 201.13(b)(3)(iv) and 201.67(a)(5).

4. Waivers

Assistant Administrators of Geographic Bureaus acting in consultation with FA/OP may authorize the financing of demurrage.

7I. Inland Transportation

1. Policy

a. Applicability

(1) The policy expressed here assumes that the transportation costs in question are otherwise eligible for AID financing.

(2) This policy applies to both project and nonproject assistance, but does not apply to voluntary agencies' transportation costs which are covered in Section 7D of this Chapter.

b. General

It is the general policy of AID to finance the cost of delivery of AID-financed commodities only to the point of entry in the cooperating country. This includes financing inland transportation to * the point of entry in a landlocked country. The reason for this policy is that inland freight is not normally a foreign exchange cost. *

7I1

c. Where Intermodal Service is Available

To an increasing extent, international carriers are offering an "intermodal" transportation service covering the carriage of cargo from point of origin to destination. Where such service is available, * AID will finance the cost of transportation of AID-financed cargoes to a point of delivery beyond the point of entry in the cooperating country, as stated in the carrier's through bill of lading.

2. Source of Policy

The policy is based upon administrative determinations by AID.

3. Implementation of Policy

See Handbook 15, Chapter 2, and Appendix A - AID Regulation 1, Section 201.13(b)(3)(i).

4. Waivers

a. In addition to the exception for intermodal transportation, the general policy that AID does not finance delivery costs beyond the point of entry in the cooperating country may be waived when it is clearly inconsistent with the purposes of the program.

b. Waiver authority is delegated to the Mission Directors or other Principal AID Officers at post for activities managed in the field, and to Assistant Administrators (or their delegees) for activities managed from AID/Washington.

c. Among the considerations that may be cited in granting such a waiver are: an offset in the host country contribution to the project, inability of the host country entity to budget for inland freight, and enhanced security and timeliness of delivery. Dare should be taken to ensure that prices paid by shippers for inland freight are equivalent to those available when these services are procured locally. *

CHAPTER 8

SUPPLIER'S AND CONTRACTOR'S CERTIFICATES

8A. Policy

1. Applicability

This Chapter is applicable to all dollar procurement under project and nonproject assistance and to the procurement of commodities and services imported specifically for a project under local cost financing.

a. Expeditious payment to suppliers and contractors providing goods and services in AID programs is essential if the programs are to proceed in an efficient and orderly fashion. Rather than make a detailed review of all payment documents to determine eligibility of transactions, AID uses certificates executed by the suppliers and contractors as a basis for prompt payment. In these certificates, the supplier or contractor acknowledges that the payment requested is to be paid out of AID funds and that he/she has performed in accordance with the terms of his/her contract and AID requirements. With such a certificate in hand, AID may make payment and rely on a postaudit of the transaction. The certificate provides for refund rights from the supplier or contractor should the postaudit disclose a breach of the certifications contained in the certificate.

b. At the present time there are three such certificates in common use in the AID program. They are Supplier's Certificate and Agreement with the Agency for International Development (form AID 282), the Supplier's Certificate and Agreement with the Agency for International Development for Project Commodities (form AID 1450-4), and the Contractor's Certificate and Agreement with the Agency for International Development (form AID 1440-3).

2. Supplier's Certificate and Agreement with the Agency for International Development (Form AID 282)

a. This certificate was designed to cover AID-financed transactions for the sale of commodities and commodity-related services1/ under nonproject assistance Commodity Import Programs.

1/ Commodity-related services are delivery services and the installation or erection of AID-financed equipment or the training of personnel in the maintenance, operation, and use of such equipment.

By signing this certificate, the supplier is subjected to all those provisions of AID Regulation 1 concerned with supplier responsibilities, viz., eligible prices, rules on discounts, commissions, source and origin rules, marking, documentation, retention of records, etc.

b. The fact that a supplier executes the form AID 282 and thereby comes within the preview of AID Regulation 1 does not, in any way, associate the borrower/grantee with the provisions of AID Regulation 1. The borrower/grantee is bound by AID Regulation 1 only if the loan/grant agreement specifically so provides.

3. Contractor's Certificate and Agreement with the Agency for International Development (Form AID 1440-3)

a. This certificate is used in project assistance where payment is made for AID-financed procurement by the cooperating country or its agent of commodities and services (other than commodity-related services) or for services alone. An example of procurement which includes both commodities and services unrelated to commodities is a fixed-price turn-key construction contract in which it is not feasible to separate the cost of the commodities. In such a case, as in the case of a contract solely for services, form AID 1440-3 is used for certification purposes.

b. Situations in which the form AID 1440-3 is used are those in which AID generally plays a substantial role in the review and approval of procurement procedures and contract awards (see Chapter 12 of this Supplement.) In recognition of this fact, the form AID 1440-3 requires no certification from the contractor as to the prices charged. Other than this omission, the certifications in the form AID 1440-3 and form AID 282 are similar.

4. Supplier's Certificate and Agreement with the Agency for International Development for Project Commodities (Form AID 1450-4)

a. This certificate is used in project assistance when AID finances procurement of commodities or commodity-related services by the cooperating country or its agent. The certificate is required under the rules of Handbook 11, Chapter 3, "Procurement of Equipment and Materials," whenever the value of the transaction exceeds $2,500.

b. In the case of F.O.B. and F.A.S. shipments where there is a charter for the ocean freight, AID's policy to recover any despatch which exceeds any applicable demurrage again precludes the borrower/grantee or importer from receiving the equivalent of a commission from the transaction.

c. AID will not finance demurrage since it comes about because of circumstances over which AID has no control and if financed might act as a disincentive to borrowers/grantees to expedite the speedy discharge of cargoes.

3. Implementation of Policy

See Handbook 15, Appendix A - AID Regulation 1, Sections 201.13(b)(3)(iv) and 201.67(a)(5).

4. Waivers

Assistant Administrators of Geographic Bureaus acting in consultation with FA/OP may authorize the financing of demurrage.

7I. Inland Transportation

1. Policy

a. Applicability

(1) The policy expressed here assumes that the transportation costs in question are otherwise eligible for AID financing.

(2) This policy applies to both project and nonproject assistance, but does not apply to voluntary agencies' transportation costs which are covered in Section 7D of this Chapter.

b. General

It is the general policy of AID to finance the cost of delivery of AID-financed commodities only to the point of entry in the cooperating country. This includes financing inland transportation to the point of entry in a landlocked country.

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c. Where Intermodal Service is Available

To an increasing extent, international carriers are offering an "intermodal" transportation service covering the carriage of cargo from point of origin to destination. Where such service is available, AID will finance the cost of transportation of AID-financed cargoes to a point of delivery beyond the point of entry in the cooperating country provided the point of delivery, as stated in the carrier's bill of lading, is established in the carrier's tariff applicable to international shipment.

2. Source of Policy

The policy is based upon administrative determinations by AID.

3. Implementation of Policy

See Handbook 15, Chapter 2, and Appendix A - AID Regulation 1, Section 201.13(b)(3)(i).

4. Waivers

a. In addition to the exception for intermodal transportation, the general policy that AID does not finance delivery costs beyond the point of entry in the cooperating country may be waived when it is clearly inconsistent with the purposes of the program.

b. Waiver authority is delegated to the Assistant Administrators of Geographic Bureaus in consultation with FA/OP.

A84

b. The form AID 1450-4 does not refer to, or incorporate, the provisions of AID Regulation 1. Many of the requirements, however, are the same as those in AID Regulation 1, and many of the certifications are similar to those in the form AID 282. The form AID 1450-4 relies on the fact that most AID requirements have been specifically included in the contract. By signing the certificate, the supplier certifies, among other things, that it has complied with the terms of its contract. AID requirements which would not normally be in the contract between the supplier and the cooperating country are spelled out in detail in the certificate, e.g., special price tests (see Chapter 17 of this Supplement), commission rules, and AID audit rights.

5. Notifying Suppliers/Contractors

The Invitation for Bids, Request for Proposals or other procurement announcement shall advise prospective suppliers/contractors which certificate will be required.

6. Exceptions to the Use of the Supplier's and Contractor's Certificates

The Supplier's Certificate and the Contractor's Certificate are not required in the following instances:

a. AID-direct contracts for commodities and/or services;

b. Local cost financing of indigenous commodities or shelf items;

c. Local cost financing of services procured without international competition;

d. Fixed amount reimbursement (FAR) type projects;

e. Procurements by an Intermediate Credit Institution or its subborrower;

f. Grants and contributions to nonprofit and international organizations;

g. Procurements through other U.S. Government agencies;

8A6

h. Overseas shipments of food commodities by voluntary nonprofit relief agencies subject to AID Regulation 2 or 11 for which a Voluntary Agency and Carrier Certificate, form AID 1550-1, is required.

8B. Source of Policy

Determinations by Agency and GAO going back to 1948 on the nature and purpose of Supplier's Certificates and AID Regulation 1.

8C. Implementation of Policy

Handbooks 11 - Country Contracting, and 15 - AID-Financed Commodities

8D. Waivers

1. The requirement for a Supplier's or Contractor's Certificate may be waived by DAA/FA with concurrence of GC.

CHAPTER 9

COMMINGLING

9A. Policy

1. Applicability

This Chapter is applicable to both project and nonproject assistance.

2. General

a. Commingling, as used in this Chapter, means the use of AID assistance in a manner which, contrary to the best interests of the United States, promotes or assists the foreign aid projects or activities of Communist-bloc countries.

b. Communist-bloc countries, referred to as the "bloc" in this Chapter, mean any country not included in AID Geographic Code 935.

c. A bloc project is a project sufficiently assisted by a bloc country or countries as to be generally identified with the bloc within the cooperating country. A cooperating country project using purchased bloc materials or assisted by bloc country technicians serving with the U.N. or other international agency is not a bloc project.

d. AID assistance must come directly into a bloc project for commingling to exist. Thus, the fact that the output of a completed AID project may be used in a bloc project does not constitute commingling.

e. It is AID policy not to use foreign assistance dollars or U.S.-owned or -controlled local currencies in a manner which, contrary to the best interests of the United States, promotes or assists foreign aid projects or activities of Communist-bloc countries. The caveat "contrary to the best interests of the United States" should be noted. This phrase, taken from Section 620(h) of the FAA, means there is not absolute prohibition against commingling. Thus, commingling that serves AID's program interests and would not be contrary to the best interests of the United States is permissible, if a specific affirmative determination is made by the Administrator acting on a recommendation of the AID Mission and the American Embassy in the cooperating country.

3. Nonproject Assistance

a. In countries that are receiving or have received bloc aid and are now receiving AID-financed nonproject assistance, Missions will study the degree to which Commodity Import Program (CIP) imports would be likely to promote or assist bloc projects. To the extent feasible, the CIP program will be shaped and implemented to avoid promotion of, or assistance to, bloc projects and activities.

b. AID will not attempt to exercise commingling control over CIP commodities imported for commercial resale except through general limitations on commodities eligible for financing.

c. If an entity is known to be generally identified with the bloc by the nature of its current activities, the Mission should request the cooperating country not to permit the entity to be an importer under AID-financed nonproject assistance. A generally recognized bloc trading company operating in a cooperating country is an example of the type of entity to which reference is made.

4. Project Assistance

a. AID will not provide funds (dollars or local currencies), commodities, or personnel to bloc projects or to projects whose primary utility would be to promote or assist bloc projects.

b. AID will not normally train cooperating country technicians specifically to work on bloc projects. The policy does not preclude training technicians for cooperating country institutions or facilities established by completed bloc aid or in cooperating country agencies dealing with bloc assistance.

c. The random employment on AID projects of nationals of bloc countries who are residents of the cooperating country will not normally be considered a violation of AID's policy on commingling, provided the employment is not AID funded.

9B. Source of Policy

The basic source of AID policy on commingling is Section 620(h) of the FAA.

9C. Implementation of the Policy

For implementation guidance see: Handbook 11, Chapter 3; Handbook 4, Chapter 5; Handbook 1, Statement III-11.

9D. Waiver Authority

In countries that are receiving or have received bloc assistance, two types of situations arise which require specific AID/W determinations. These are:

1. In concrete situations, policy and implementation guidance may not lead to a clear cut decision that AID projects or programs do or do not promote or assist bloc project or activities. When such situations arise, the facts should be referred to AID/W, where such situations arise, by the Assistant Administrator who has program responsibility, acting in consultation with GC.

2. If AID projects or programs would promote or assist bloc projects or activities but the considered judgment is that this would not be contrary to the best interest of the United States, the final decision on the recommendation of the AID Mission and the American Embassy will be made by the Administrator.

CHAPTER 10

CARGO PREFERENCE

10A. Policy

1. General - The Cargo Preference Act1/ establishes requirements for the use of U.S.-flag vessels when ocean transportation service may be used to transport U.S. Government-financed commodities. The Maritime Administration (MARAD) of the U.S. Department of Transportation has statutory authority2/ to issue regulations governing how Federal Agencies are to execute their cargo preference responsibilities. AID is responsible for ensuring that commodities imported by borrowers/grantees under AID loan and grant agreements are shipped in accordance with these requirements. AID is also responsible for ensuring that ocean shipments of Title II P.L. 480 food commodities are made in compliance with the Cargo Preference Act.

2. Applicability

a. This chapter is applicable to both project and non-project assistance, subject to the following exceptions:

(1) It is not applicable to Cash Transfer Agreements.

(2) It is not applicable to grants to American Schools and Hospitals Abroad, or to Public International Organizations, except in the instances where Chapter 16 of this Supplement specifies that AID's procurement policies are applicable to these types of grants.

(3) It is not applicable to the ocean transportation between foreign countries of commodities purchased with foreign currencies, or to transfer of fresh fruits and products thereof, as provided in Section 603 of the Foreign Assistance Act (FAA).

1/ The Cargo Preference Act of 1954, Section 901(b)(1) of the Merchant Marine Act of 1936 as amended, 46 U.S.C. 1241(b)(1).

2/ The Merchant Marine Act of 1970, Section 27(c), 46 U.S.C. 1241 (b)(2).

(4) It is not applicable to supplies donated by non-U.S. Government donors to the American Red Cross or to the Private and Voluntary Organizations (PVOs) registered with AID, nor to supplies purchased by such PVOs with non-U.S. Government funds even though the transportation of such donated or purchased supplies may be financed by AID pursuant to Section 123 of the FAA.

(5) It is not applicable to property provided on an advance-of-funds or reimbursement basis under a determination made in acordance with Section 607(a) of the FAA.

b. Paragraphs 10A4, 10A6 and 10A7 are applicable only to AID-financed commodities. Paragraph 10A8 is applicable to the transportation of Title II P.L. 480 food commodities which are not financed by AID.

c. This Chapter does not apply to the transportation of commodities by aircraft. AID's policy with regard to air freight service is stated in Chapter 7.

3. Summary Requirements - The texts of the Cargo Preference Act and the applicable MARAD regulations are stated in Chapter 7 of Handbook 15. In summary, the essential provisions are:

a. At least 50 percent of the gross tonnage of all AID-financed commodities which may be transported on ocean vessels (computed separately for dry bulk carriers, dry cargo liners, and tankers), shall be transported on privately-owned U.S.-flag commercial vessels, to the extent such vessels are available at fair and reasonable rates for such vessels.

b. At least 50 percent of the gross freight revenue generated by all shipments of AID-financed commodities transported to the cooperating country on dry cargo liners shall be paid to or for the benefit of privately-owned U.S.-flag liners, to the extent such vessels are available.

c. When shipping is chartered for a quantitative unit[3/] of cargo,

3/ A quantative unit of cargo is defined by AID as the total tonnage of a commodity or commodities included in one invitation for bids or other solicitation of offers from ocean carriers for the transportation of cargo which may move in full shipload lots.

U.S.-flag vessels shall be fixed for at least 50 percent of the quantitative unit, if U.S.-flag vessels are available at fair and reasonable rates, before any fixture is made of a Non U.S.-flag vessel.

4. Determinations of Non-Availability

a. The Cargo Preference Act requires the use of U.S.-flag vessels only to the extent that they are available at fair and reasonable rates for U.S. flag vessels. AID reserves the right to determine whether a U.S.-flag vessel is available for any particular shipment of an AID-financed commodity. Such determinations are made by the AID Office of Procurement (FA/OP).

(1) A determination as to the availability of U.S. dry cargo liners will be made upon application by the borrower/grantee or his agent or supplier and shall be made in consonance with criteria established for this purpose in Chapter 7, Handbook 15. A liner's tariff rate filed with and accepted by the Federal Maritime Commission shall normally be considered by AID to be a fair and reasonable rate. A determination of liner non-availability issued by FA/OP to the applicant shall relieve the borrower/grantee of the requirement to use U.S.-flag vessels for the tonnage of commodities included in the determination.

(2) With regard to chartered vessels, FA/OP shall evaluate the availability of suitable and responsive U.S.-flag vessels, and shall evaluate whether the offered rates are fair and reasonable, prior to approving any charters for the transport of cargos. FA/OP's evaluations are made in consultation with the Maritime Administration of the Department of Transportation. A determination by FA/OP that U.S.-flag vessels are not available shall reduce the borrower/grantee's required use of U.S.-flag vessels by the tonnage included in FA/OP's determination.

(3) FA/OP may authorize omitting U.S.-flag vessel shipping requirements from a loan or grant agreement when FA/OP finds that it is impracticable for the borrower/grantee to comply because of the non-availability of suitable U.S.-flag vessels to deliver the commodities to be financed by the agreement. Such a finding constitutes a blanket determination of non-availability, making it unnecessary to issue determinations of non-availability for individual shipments.

b. A determination by FA/OP of U.S.-flag non-availability does not alter the eligibility of ocean freight for AID financing, as established in a loan or grant agreement. The eligible source of ocean delivery services established in a loan or grant agreement may be changed only by a waiver, under the provisions of Section 7B of this Supplement.

5. AID's Obligations - AID meets the obligations imposed by the Cargo Preference Act and the related MARAD regulations by:

a. Incorporating cargo preference requirements into loan and grant agreements and their implementing documents.

b. Withholding approval of the fixture of foreign-flag vessels for any portion of a quantitative unit of cargo until such U.S.-flag vessels as are available at fair and reasonable rates are fixed for at least 50 percent of the tonnage of the quantitative unit.

c. Requiring that suppliers of AID-financed commodities and shippers of Title II P.L. 480 food commodities furnish copies of applicable ocean bills of lading to AID and MARAD.

d. Monitoring the use made of U.S.-flag shipping for AID-financed and Title II P.L. 480 commodities, and initiating corrective action when necessary.

e. Furnishing MARAD data on the ocean shipment of AID-financed commodities.

f. Providing annual reports to MARAD summarizing the use made of U.S. and foreign flag shipping, by type of vessel and by selected geographic areas of destination[4/], during each calender year.

4/ The Cargo Preference Act requires that there be fair and reasonable participation of U.S.-flag vessels by geographic areas. AID's reports to MARAD therefore summarize cargo preference performance for the total tonnage of commodities shipped to the regions for which AID Geographic Bureaus have responsibility.

10A5

g. Retaining the right to claim refunds from a borrower/grantee for failure to comply with AIDs requirements.

6. Borrower/Grantee Obligations - AID incorporates requirements into loan and grant agreements that stipulate the use borrowers/grantees must make of U.S.-flag vessels when ocean transportation is used for commodities financed under the loans and grants. These requirements apply whether or not a borrower/grantee elects to finance the costs of ocean transportation from the funds provided by the loan or grant.

a. Any loan or grant agreement which is subject to the terms and conditions of AID Regulation 1 thereby incorporates AID's Cargo Preference requirements which are set forth in Section 201.15 of that Regulation. A separate statement of the cargo preference requirement in such agreements is optional, depending on whether or not it is necessary to bring the requirement to the borrower/grantee's attention directly rather than by reference. If judged necessary, language required by 10A6b below will be used.

b. Each loan or grant agreement which does not incorporate the provisions of Section 201.15 of AID Regulation 1 by reference shall include the provision set forth in Handbook 15, Chapter 7 and Handbook 3, Chapter 6. Any proposed deviation from this provision shall be cleared with FA/OP and GC prior to its use in an agreement.

c. The movement of at least 50 percent of the tonnage of a quantitative unit of cargo by U.S.-flag vessels discharges the borrower/grantee's responsibility to achieve compliance for the quantitative unit. Similarly, the borrower/grantee's obligation is discharged if FA/OP determines that U.S.-flag vessels are not available at fair and reasonable rates to carry at least 50 percent of the cargo covered by the quantitative unit. In either case, the quantitative unit stands alone for cargo preference compliance purposes, and there is no carry-forward by the host country of any deficiency or excess of U.S.-flag tonnage.5/

5/ For purposes of periodic reporting of cargo preference statistics to MARAD on an aggregate basis, AID records and cumulates the actual use of U.S.-flag and non-U.S.-flag bulk and liner tonnage. A determination of nonavailability of U.S.-flag bulk tonnage is recorded in those cases where no U.S.-flag bulk vessel tonnage is offered against a quantitative unit of cargo, even though U.S.-flag liner vessel tonnage is offered and accepted. No such determination of U.S.-flag bulk vessel nonavailability is made if U.S.-flag bulk vessels are offered, but are rejected by the shipper or importer in favor of U.S.-flag liner vessels.

7. Noncompliance

a. FA/OP shall monitor borrower/grantee cargo preference performance. FA/OP may determine that the borrower/grantee compliance with the cargo preference requirement over the life of the loan or grant agreement is in doubt. The borrower/grantee may then be required, as a corrective measure, to make all liner shipments by U.S.-flag vessels, for a specific period until compliance is reasonably assured. Such a determination and recommendation supported by the pertinent facts shall be furnished to the AID Bureau responsible for the loan or grant agreement. The Bureau shall initiate action to invoke AID's rights under the standard agreement clause to institute the modified requirement until the deficiency is corrected.

b. When a borrower/grantee fails to achieve compliance wih AID's cargo preference requirements over the life of a loan or grant, AID may claim a refund from the cooperating country in accordance with Chapter 24C of this Supplement. FA/OP shall calculate the amount of the potential refund in accordance with Chapter 7 of Handbook 15. FA/OP will also make an analysis as to whether it is feasible to offset the shortfall in performance so as to preclude any need for a refund, for example, by balancing deficient performance under one agreement with greater than the minimum required performance under current agreements with the same borrower/grantee. The refund calculations and the analysis as to whether it is feasible to offset the shortfall are submitted through DAA/FA to the concerned Bureau for appropriate action.

8. Title II P.L. 480 Food Commodities

In addition to AID, three entities are involved with the ocean shipping arrangements for Title II P.L. 480 food commodities: the Private and Voluntary Organizations (PVOs) registered with AID, the Department of Agriculture (USDA); and the United Nations' World Food Program (WFP). FA/OP monitors shipments by these organizations, to assure that in the aggregate they satisfy the requirements of the Cargo Preference Act, and initiates corrective action when deficient performance is noted.

10A8

a. PVOs are instructed that it is AID's policy that at least 50 percent of the P.L. 480 Title II commodities are to be shipped on U.S.-flag vessels. When there are equal rates and services by both U.S. and foreign vessels, PVOs are expected to use U.S.-flag vessels.

b. The USDA makes the shipping arranagements for the food commodities under "Government-to-Government" programs and ensures that the shipments are made in compliance with the Cargo Preference Act.

c. AID incorporates into agreements with the USDA and the World Food Program the requirements that the transportation of the food commodities granted to the respective programs by the U.S. Government must be made in compliance with the Cargo Preference Act.

10B. Source of Policy

1. The primary source of AID's cargo preference policy is the Cargo Preference Act. AID's policy also conforms to pertinent regulations issued by the Secretary of Transportation under authority granted by Section 27, 84 Stat. 1018, the Merchant Marine Act of 1970. Such regulations are published as Part 381, Title 46, Chapter II, Code of Federal Regulations. Refer to Chapter 7 of Handbook 15 for the texts of these statutes and regulations.

2. Cargo Preference requirements do not apply to cash transfers because in connection with such transfers, no procurement of specific commodities may be attributed, directly or indirectly, to AID financing.[6]/ Consequently, AID is neither furnishing commodities nor advancing funds in connection with the furnishing of any equipment, materials or commodities, within the scope of the Cargo Preference Act.

3. See Chapter 16 of this Supplement for the source of policy with regard to the application of AID's procurement policies to grants governed by Chapter 16.

10C. Implementation of Policy

1. AID Regulation 1, Rules and Procedures Applicable to Commodity Transactions, Section 201.15 U.S.-flag Vessel Shipping Requirement.

6/ AID Office of General Counsel letter of August 8, 1979, to the Assistant General Counsel, U.S. General Accounting Office on this subject. (GC Opinion: Shipping).

2. <u>Handbook 3, Project Assistance</u>

a. Chapter 4, paragraph 4b5d, Policies Regarding AID/PVO/Shipping Lines Relationships.

b. Chapter 6, The Project Agreement.

(1) Appendix 6 A-1, Project Loan Agreement, Annex 2 Project Loan Standard Provisions Annex, Section C.6. Shipping.

(2) Appendix 6 A-2, Project Grant Agreement, Annex 2, Project Grant Standard Provisions Annex, Section C.6. Shipping.

(3) Appendix 8A, Guidance on the Preparation of Implementation Letters.

3. <u>Handbook 4, Non-project Assistance</u>

a. Chapter 5, paragraph 5C2b(5), Shipping Instructions.

b. Appendix 5A, Sample Implementation Letter, Part Two, Procurement Procedures, Paragraph F.

4. <u>Handbook 11, Country Contracting</u>

a. Chapter 2, paragraph 2.11.2, Nationality, Source, and Cargo Preference.

b. Chapter 2, Attachment 2S Clause 74, Conditions of Contract.

c. Chapter 3, paragraph 2.7, Cargo Preference.

d. Chapter 3, Attachment 3N, Conditions of Contract 10d(2).

5. <u>Handbook 13, Grants</u>

Chapter 4, Appendix 4C, Standard Provision 14.

Chapter 4, Appendix 4D, Standard Provision 16.

10C

6. Handbook 14, Procurement Regulations

a. FAR 47.5, Ocean Transportation by U.S.-Flag Vessels

b. AIDAR 752.7002, Alternate 73-Travel Expenses and Transportation and Storage Expenses

c. AIDAR 752.7004, Source and Nationality Requirements

7. Handbook 15, AID-Financed Commodities

a. Chapter 2, paragraph 2B4e, Cargo Preference Act - Applicability

b. Chapter 7, Cargo Preference

c. Appendixes D-3, D-7, D-8, E-3, and H-1 through H-6

8. Handbook 16, Excess Property

a. Chapter 5, paragraph 5C, U.S.-Flag Vessel Shipping Requirement

b. Attachment F., Sample Format, AID/W Excess Property Transfer/Trust Fund Agreement (see Ocean Transportation section)

9. AID's July 8, 1976, Letter Re: Cargo Preference Implementation for P.L. 480, Title II to USDA.

10. AID's August 30, 1976 Voluntary Agency Letter No. 3 (76), Subject: Use of U.S.-flag Liner Carriers.

11. USDA, AID and WFP approved "Memorandum of Understanding Between the United States and the World Food Program on Transportation and Related Matters with Respect to Commodities Furnished by the United States Under its 1983--84 Biennium Pledge (10th Pledge) through the World Food Program".

10D. Special Situations

1. Impracticability. The Cargo Preference Act provides that an Agency such as AID shall take such steps as may be necessary and practicable to achieve compliance with the Act. While AID may not waive the statutory requirements imposed upon it by the Act, it may find in exceptional

situations that it is not practicable to include the usual 10D1 cargo preference requirements in a particular loan or grant agreement. Such a finding enables AID to exempt a particular agreement from the requirements of 10A. Such an exemption can be approved only by the Administrator, based upon a recommendation made by a Geographic Bureau in consultation with DAA/FA and GC.

2. Intermediate Credit Institutions or Multi-Donor Funding

a. The Geographical Bureau, in consultation with FA/OP and GC, may determine not to apply the provisions of 10A6 of this Chapter for a project loan or grant agreement when:

(1) The loan or grant funds are to be made available to intermediate credit institutions for dollar (foreign exchange) procurement, or

(2) The loan or grant funds are not more than $1 million or 20 percent of the total funding of a multi-laterally funded project, whichever is less, and

b. FA/OP can determine or reasonably forecast that the current and prospective use of U.S.-flag shipping by cooperating countries within the concerned Bureau's geographic area will enable AID to comply with its statutory cargo preference requirements for the total of all AID-financed shipments to countries of this geographic area.

CHAPTER 11

INSURANCE

11A. Marine Insurance

1. Policy

This Chapter applies to both project and nonproject assistance.

a. When Marine Insurance is Financed and When Required

(1) AID will finance marine insurance on AID-financed eligible commodities if the loss payments under such insurance are payable in dollars or any other freely convertible currency, the insurance is placed by, or under the written instruction of the importer or required by the purchase contract, and the insurance is placed in an eligible source country. Where the source of procurement is not limited to the United States, the cooperating country is an eligible source for marine insurance; this is a departure from AID's general policy which excludes the cooperating country as a source under Geographic Code 941.

(2) AID requires that all project goods be insured in dollars or any other freely convertible currency unless AID agrees otherwise in writing.

(3) For nonproject assistance, the importer decides whether to secure marine insurance and whether to seek AID financing of such insurance; however, in some cases, AID may require that cargoes be insured. Cooperating countries must inform private importers under commodity import programs that AID funds may be used to finance marine insurance on AID-financed commodity imports.

(4) It is the normal practice for U.S. Government agencies to act as self-insurers; however, if such an agency is procuring for the account of an importer it will, upon instruction, buy marine insurance for the goods purchased. Such instructions must come from the importer and may require AID intervention with the procuring agency.

b. Discrimination

(1) If a cooperating country discriminates against marine insurance companies authorized to do business in any State of the United States, then all AID-financed goods for that country must be insured

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in the United States against marine risk. The term "authorized to do business in any State of the United States" (from Section 604(d) of the Act) means that foreign-owned insurance companies licensed to do business in the United States (by any State) are treated the same as comparable U.S.-owned companies.

(2) The _prima facie_ test of discrimination is that a cooperating country takes actions which hinder private importers in AID transactions from making c.i.f. or c. and i. contracts with U.S. commodity suppliers, or which hinder importers in instructing such suppliers to place marine insurance with companies authorized to do business in the United States.

(3) When discrimination is found to exist and the cooperating country fails to correct the discriminatory practice, AID requires that all commodities procured with AID funds be insured in the United States against marine loss.

c. _General Average_

(1) When part of a marine cargo or part of the ship is deliberately sacrificed in the interest of saving the whole, the owners of the sacrificed portion are entitled to contributions from the owners of the saved portion of the cargo and ship. This is called "General Average." If goods are covered by marine insurance, the insurer is liable for all general average contributions. The importer is responsible for general average contributions on uninsured goods.

(2) On uninsured shipments, AID may, at the request of the cooperating country, use program funds, to the extent available, for payment of general average contributions provided AID has financed the ocean freight on the cargo in question.

(3) AID will respond to legal and just general average claims made against uninsured shipments consigned directly to a Mission. The General Services Administration (GSA) will handle general average claims for uninsured goods procured and shipped by GSA for AID when a U.S. Government agency is the consignee. The Department of Agriculture (USDA) handles general average claims on Title II Commodities shipped under AID programs.

d. Loss Payments

(1) Project Assistance: The source of goods, financed by loss payments, which are used to repair or replace goods insured under project assistance, is limited to Geographic Code 935.

(2) Nonproject Assistance: Where AID has financed marine insurance loss payments of significant magnitude (see Handbook 15, Chapter 8) must be reported to AID by the insurer. If such loss payments are not used to procure any eligible commodities under the agreement, AID may request a refund of these payments from the borrower/grantee. Goods financed by loss payments received in connection with nonproject assistance remain tied to the geographic code as originally authorized.

e. Special Source Definition for Marine Insurance

In dealing with the procurement of marine insurance, the term "placed in" is used in referring to the place from which the insurance is purchased. Thus, marine insurance must be "placed in" an eligible source country. To be placed in an eligible source country, two conditions must be met:

(1) Payment of the premium must be made to an insurance company in an eligible source country; and

(2) The policy must be issued by an insurance company located in an eligible source country.

2. Source of Policy

The policy on discrimination is based on Section 604(d) of the FAA. The remainder of the policy statement is derived from the application of general AID programming and program implementation concepts to specific marine insurance problems and standards.

3. Implementation of Policy

For implementation guidance, see Handbook 15, Chapters 2 and 8; and Regulation 1, Sections 201.27, 201.47, 201.13(b)(3).

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4. Waivers

a. For Project Assistance: Departures from these policies may be authorized by the Geographic Assistant Administrator acting in consultation with GC.

b. For Nonproject Assistance: Departures from these policies may be authorized by FA/OP acting in consultation with GC.

11B. Defense Base Act Insurance

1. Policy

a. Applicability

This section is applicable to both project and nonproject assistance.

b. General

Every contract financed by AID (either direct or host country) involving performance outside the United States for any duration (except contracts exclusively for furnishing of materials and supplies and direct personal services contracts) must provide for worker's compensation insurance as required by the Defense Base Act, unless a waiver is obtained from the U.S. Department of Labor.

2. Source of Policy

a. Defense Base Act (42 U.S.C. 1651, et. seq.)

b. Letter to the Administrator from the Secretary of Labor dated June 7, 1982.

3. Implementation of Policy

Handbooks 11, 14, and 15.

4. Waivers

Waivers of Defense Base Act insurance requirements can be obtained from the Department of Labor for third country nationals and cooperating country nationals but cannot be obtained under any circumstances for persons hired in the United States or for persons who are citizens or residents of the United States. Blanket waivers of Defense Base Act insurance requirements for third country nationals and cooperating country nationals are in effect in most of the countries receiving AID assistance. A condition imposed by these blanket waivers, however, is that the waived employees must be provided worker's compensation coverage as prescribed in the applicable foreign laws.

CHAPTER 12

CONTRACTING FOR

PROJECT GOODS AND SERVICES

12A. Introduction

1. Contracting Mode

a. A fundamental principle of AID is that the countries it assists should themselves undertake the implementation of their own development programs, rather than use AID as an agent to do so.

b. This principle is based on a number of considerations, the first and most important of which is that the ultimate responsibility for all development projects rests with the countries whose projects they are. Moreover, the process of implementation is itself an important opportunity for development of technical, institutional, and administrative skills. To the extent AID performs as implementing agent countries forego those benefits. Finally, AID is principally a planning, financing, and monitoring organization rather than a procurement agency.

c. AID's policy on the choice of contracting mode for the procurement of the goods and services for which it provides financing, whether loan or grant, is set out in Chapter 3 of this Supplement.

2. Contracting as Preferred Means of Personnel Recruitment

a. AID has always recognized that it can best succeed in its role by mobilizing outside resources as they are needed, rather than by attempting to maintain a direct-hire staff adequate to carry out all of its programs in the developing countries.

b. Where other factors are equal, skilled program personnel by order of preference are obtained: (1) by contract with nongovernmental organizations or persons; (2) by participating agency service agreements or contracts with other governmental agencies; and, lastly, (3) by direct-hire.

c. However, legal and policy considerations require that many functions be performed only by direct-hire personnel, such as the making of policy, planning, budgeting, and programming decisions; conducting negotiations with the governments of cooperating countries; and procuring outside technical services.

12A

3. Distinction Between Acquisition and Assistance

a. Chapter 12B on direct contracts describes AID's acquisition process and the types of contracts used when AID's purpose is to procure goods and services for its program and/or administrative use.

b. When, however, AID's purpose is to support the programs of other entities, as authorized by the FAA, AID uses an assistance instrument. See Chapter 16 for a discussion on AID's policies with regard to grants and cooperative agreements, as well as Handbook 13 - Grants.

12B. Direct Contracts (Acquisition)

1. Applicability

This statement of policy applies whenever AID signs the contract. It may also apply where AID carries out all activities leading to the signing of the contract document by others. This section is applicable to project assistance only.

2. Policy

a. General Policy

(1) Direct AID contracts are signed by authorized AID personnel either in AID/W or the Missions. Authorized AID personnel are designated by written delegations of contracting authority. To the extent feasible, the cooperating country should participate in the selection of contractors.

(2) AID policy requires the application of the Federal Acquisition Regulation (FAR) and/or the supplemental AID Acquisition Regulations (AIDAR), Handbook 14 - Procurement Regulations. The policies and procedures in the AIDAR implement and complement the FAR and are authorized by the Foreign Assistance Act (FAA) to facilitate contracting in the unique circumstances found in the foreign assistance field.

(3) It is AID policy to obtain full and open competition to the maximum practical extent; this may be accomplished through the use of either sealed bidding or competitive negotiation (see FAR Part 6 for a fuller discussion of competition requirements).

(4) The majority of AID direct contracts are negotiated contracts and there are a number of procedures utilized by AID in the negotiation of contracts for supplies and services (as described in Section 12B2c).

b. Procurement by Sealed Bidding (FAR Part 14, AIDAR Part 714 and FAR 6.401(a))

Sealed bidding is a method of Competitive procurement by invitations for bids with awards based on the lowest responsive and responsible bids and involves the following basic steps:

(1) Preparation of the invitations for bids (IFB), describing AID's requirements clearly, accurately, and completely, but avoiding unnecessarily restrictive specifications or requirements which might unduly limit the number of bidders. An IFB constitutes the complete assembly of related documents (whether attached or incorporated by reference) furnished prospective bidders for the purpose of bidding.

(2) The IFB is synopsized in the U.S. Department of Commerce's Commerce Business Daily and is publicized by such other means as may be appropriate. For procurements estimated to exceed $25,000, the notice of availability of Invitations for Bids, Requests for Quotations, or if prequalification is used, prequalification questionnaires is published by the Office of Small and Disadvantaged Business Utilization in the appropriate AID (SDB) publication. Copies of the unabridged IFB are sent to all firms and institutions that request the IFB in sufficient time to enable prospective bidders to prepare and submit bids before the time set for public opening of bids.

(3) Submission of sealed bids by prospective contractors.

(4) Awarding the contract, after bids are publicly opened, to that responsible bidder whose bid, conforming to the invitation for bids, will be most advantageous to the Government considering only price and price-related factors.

c. Procurement by Negotiation (FAR Part 15, AIDAR Part 715 and FAR 6.401(b)

(1) When AID requires either supplies or services, a Request for Proposal (RFP) is synopsized in the U.S. Department of Commerce's Commerce Business Daily, and when the procurement involves supplies

12B2c(1)

estimated to exceed $25,000, the RFP is also synopsized in the appropriate AID (SDB) publication. Copies of the RFP are sent to firms and institutions considered by AID to be qualified and to all others who request it.

(2) AID's RFP contains a clear and complete statement of the work to be performed and an inventory of all specific requirements to be addressed in proposals. The submission of cost or pricing data by offerors is a specific requirement for competitive negotiation.

(3) The RFP also contains an explanation of the specific criteria AID will use in evaluating the proposals received.

(4) Once received, all proposals are evaluated by an AID evaluation panel applying the evaluation criteria previously established in the RFP. The panel then prepares a rank order listing of all offerors and documents its ranking and its evaluation of each proposal. AID then undertakes negotiations with all firms in the competitive range as determined by the contracting officer.

d. <u>Negotiations for Architect and Engineering Services (FAR Part 36, AIDAR Part 736, and FAR 6.102(d)(1))</u>

(1) When the services of architects and engineers are required, AID notifies the professions of the prospective procurement by publishing a Notice of Proposed Contract for architect and engineering services in the U.S. Department of Commerce's <u>Commerce Business Daily</u>, inviting expressions of interest from those wishing to compete.

(2) AID reviews responses to the Notice, asks for additional information as required, and reviews its file of potential architects and engineers which is maintained by AID in the AID Consultant Registry Information System (ACRIS). The names of firms responding to the Notice and those identified from the ACRIS are submitted to an evaluation panel for consideration.

(3) The AID evaluation panel considers the technical qualifications of all firms interested in providing the required services and holds preliminary discussions with not less than three firms which it judges the most highly qualified. These preliminary discussions are conducted without submission of price/cost information.

(4) The evaluation panel prepares a selection memorandum recommending not less than three firms to the head of the procuring activity in rank order and documenting the basis for the comparative ranking. The panel includes in its selection memorandum an estimate of the cost to AID, for use by AID's contracting officer in subsequent negotiations. If the proposed selection is approved by the head of the AID procuring activity, the contracting officer obtains a new or revised proposal, including cost, and negotiations begun with the firm which has received the highest ranking. If a satisfactory contract cannot be negotiated with the first firm, negotiations are terminated and the firm having the next most highly ranked proposal is called upon to negotiate, and so on through the list until a satisfactory agreement is reached.

e. Negotiations for Services of Educational Institutions under Title XII of the Foreign Assistance Act

(1) Regular Procedure (See also AIDAR 715.613-70)

When the project office acting through a duly constituted evaluation panel certifies that the activity is authorized under Title XII and that use of the Title XII procedure is appropriate, AID prepares selection criteria, and an initial source list of institutions considered qualified to do the proposed work is made. A statement of resources and expertise considered essential, a scope of work, and personnel requirements are then prepared. Requests for Technical Proposals (RFTP), based on this statement, are sent to a sufficient number of institutions on the source list to insure competition to the maximum practical extent. Responses to the RFTP are then evaluated, a selection memorandum prepared, cost and any other necessary data are obtained from the responsive and responsible institution or institutions ranked first, and negotiations are begun.

(2) Collaborative Assistance Procedure (See also AIDAR 715.613-71)

The project office, acting through a duly constituted evaluation panel, certifies that the activity is authorized under Title XII, and determines that use of the collaborative assistance method of contracting is essential. The panel then prepares selection and evaluation criteria, and an initial source list of eligible, qualified institutions. Competition is sought to the maximum practical extent among Title XII institutions. A request for expression of interest is sent to those eligible institutions determined qualified by the panel.

Expressions of interest received are evaluated by the panel, and a selection memorandum is prepared. The Contracting Officer will obtain necessary cost and other data from the recommended institution or institutions and start negotiations.

f. Negotiation of Unsolicited Research and Analysis Proposals (FAR 15.5, AIDAR 715.5 and FAR 6.302-1(b)(3)

(1) AID encourages outside organizations and individuals to submit unsolicited proposals which may contribute new ideas useful to AID's research and analysis programs.

(2) A contract may be awarded to an offeror without consideration of other competitive sources, if an unsolicited proposal is the product of original thinking, has significant scientific merit, and contributes to AID's research program.

g. Procurement by Other Than Full and Open Competition ("Noncompetitive Procurement")

The Competition in Contracting Act of 1984 (CICA) established the following seven statutory circumstances that permit procurement by other than full and open competition (formerly referred to as "noncompetitive procurement"):

(1) Only one responsible source (FAR 6.302-1). This circumstance permits the use of other than full and open competition when the supplies or services are available from only one responsible source and no other type of supplies or services will satisfy agency requirements. This circumstance applies in part to sole source procurements, follow-on contracts, unsolicited research proposals and standardization program purchases.

(2) Unusual and compelling urgency (FAR 6.302-2). This circumstance permits the use of other than full and open competition when the agency's need for the supplies or services is of such an unusual and compelling urgency that time precludes full and open competition and that the Government would be seriously injured, financially or otherwise, unless the agency is permitted to limit the number of sources from which it solicits.

(3) Industrial mobilization; or engineering, developmental, or research work (FAR 6.302-3). This circumstance permits other than full and open competition when it is necessary to award the contract to

12B2g(3)

a particular source or sources in order (a) to maintain a facility, producer, manufacturer, or other supplier available for furnishing supplies or services in case of a national emergency or to achieve industrial mobilization, or (b) to establish or maintain an essential engineering, research, or development capability to be provided by an educational or other nonprofit institution or a federally funded research and development center.

(4) International agreement (FAR 6.302-4). This circumstance permits the use of other than full and open competition when required by the terms of an international agreement (e.g., bilateral project loan or grant agreement) or a treaty between the United States and a foreign government or international organization, or by the written directions of a foreign government reimbursing the agency for the cost of the acquisition of the supplies or services for such government.

(5) Authorized or required by statute (FAR 6.302-5). This circumstance permits other than full and open competition when (a) a statute expressly authorizes or requires that the acquisition be made through another agency or a specified source, or (b) the agency's need is for a brand name commercial item for authorized resale.

(6) National security (FAR 6.302-6). This circumstance permits other than full and open competition when the disclosure of the agency's needs would compromise the national security unless the agency is permitted to limit the number of sources from which it solicits bids or proposals.

(7) Public interest (FAR 6.302-7). This circumstance permits other than full and open competition when the agency head determines that it is not in the public interest in the particular acquisition concerned. However, the authority to make the determination may not be redelegated and the Congress must be notified of the determination not less than 30 days before award of the contract.

h. Types of Contracts

(1) AID uses several types of contracts for acquiring supplies and services. The most commonly used are fixed price and cost reimbursement. Fixed-price-type contracts are preferred when it is possible to define the requirement either by specification or in-depth description in order that potential contractors may be able to

12B2h(1)

effectively respond to requests for proposal. A second presumption in fixed-price contracting is that multiple sources are available to assure adequate competition.

(2) Cost-reimbursement-type contracts are used when it is impossible to describe precisely either by specification or detailed description the supplies or services required. Cost-reimbursement contracts may be straight cost without fee or may be cost-plus-fixed fee. In cost contracts, since price competition is not present, it is necessary to select contractors on the basis of the most advantageous technical proposal with all factors including cost considered prior to final award of contract.

(3) Further, the type of contract will determine the degree of risk and responsibility to be divided between AID and the contractor. The fixed-price contract, after signature, places all of the risk on the contractor whereas the cost-type contract places most of the risk for cost escalation on AID. Therefore, the degree of risk assumed by the contractor should be reflected in the negotiated profit or fee to be included in the contract. The higher the risk the higher the profit or fee and the lower the risk the lower the profit or fee.

(4) In no circumstances may AID enter into a cost plus percentage of cost contract.

(a) <u>Fixed-Price Contracts (FAR 16.2)</u>

The firm-fixed-price contract is not subject to any adjustment by reason of cost experience by the contractor in the performance of the contract except where the contract contains escalation provisions. Once the contract award is made, all risk or gain or loss is placed on the contractor. If used when adequate design or performance specifications are available, the fixed-price contract enables both the government and the contractor to assess risk. It is particularly useful in the purchase of standard commodity items or services of a general commercial nature.

(b) <u>Cost-Plus-Fixed-Fee (CPFF) Contracts (FAR 16.306)</u>

Cost-plus-fixed-fee contracts provide for the payment of a fixed-fee to the contractor based on the estimated cost of performing the work described in the contract. The CPFF contract is used when the supplies or services cannot be defined sufficiently to

12B2h(4)(b)

permit the use of a fixed-price contract. Because the fixed fee does not vary in relation to the contractor's ability to control costs, the CPFF contract does not provide an incentive for effective contractor control of costs. The CPFF contract is normally used to acquire research and development and technical services when it is not possible to draft definitive specifications for the scope of work.

(c) Cost-Reimbursement Contracts (FAR 16.302)

Cost-reimbursement contracts provide only for the reimbursement of costs and no fixed fee. Such contracts are used with educational and nonprofit organizations whose charters do not provide for receiving profit from work carried out by them.

(d) Time and Materials, and Labor-Hour Contracts (FAR 16.6)

This type contract provides for procurement of supplies or services on the basis of fixed-direct-labor rates, such as worker-days or worker-months. The fixed rates include all labor costs, overhead costs, and profit. Any material, equipment, and transportation, etc., is at cost. This type of contract, since it is open ended with respect to the amount of time required, does not provide the contractor with profit incentive to control cost and, therefore, requires proportionately more AID administrative supervision to assure that the services called for are closely monitored.

(e) Indefinite Delivery or Multiple-Orders-Type Contracts (FAR 16.5 and AIDAR 716.5)

There are several multiple-order-type contracts which AID uses to acquire supplies and services where the exact time or amount of supplies or services is not known at the time the contract must be awarded. Such contracts are competitively placed and authorize the use of task orders for actual purchases. The most frequently used of such contracts are described below:

1. Requirements Contract (FAR 16.503)

This type contract provides for filling all AID requirements for supplies or services during a specified period with the contractor engaged. The services of the different engineering specialties are examples of this type contract.

2. Indefinite Quantity Contract (FAR 16.504)

This type contract provides for the furnishing of indefinite quantities, within established minimum or maximum limits, of supplies and services during the contract period. Task orders are placed as requirements for supplies or services arise. Such contracts are funded to provide that a minimum quantity of supplies and services will be ordered. A maximum funding ceiling on orders is also included. Examples of this type contract are the services for packing, handling, and shipping of excess property acquired by AID and services for evaluation, identification, and development of projects.

i. Basic Agreements and Basic Ordering Agreements (FAR 16.7)

Basic Agreements and Basic Ordering Agreements are not contracts and do not obligate funds.

(1) Basic Agreements (FAR 16.702)

Basic agreements provide for understandings with contractors on specific provisions which can be referred to in other contracts with the same entity which obligate funds. Basic agreements are normally used with educational and other nonprofit organizations with which AID has extensive contracting.

(2) Basic Ordering Agreements (FAR 16.703)

Basic ordering agreements are similar to basic agreements except that basic ordering agreements contain a mechanism by which prices of commodities or services ordered are determined. Such agreements are normally used with a single contractor when multiple orders from different agency organizations will occur and where prices or price mechanisms can be fixed for a specified period of time.

3. Source of Policy

a. The procurement practices and procedures for direct contracting established under the Federal Property and Administrative Services Act of 1949, and the Office of Federal Procurement Policy Act, and the ensuing FAR and AIDAR are followed by AID except for those sections of that Act that have been specifically waived by other authority. In the opinion of the AID General Counsel, the legislation and the FAR apply as a matter of law, except for those provisions

* specifically waived. AID retains the right to deviate from other provisions, as authorized under the FAA, in order to carry out its functions. The Federal Property and Administrative Services Act itself provides that AID, to the maximum extent practicable, coordinate its operations with the requirements of that Act. Moreover, President Truman issued a statement to this effect at the time of enactment of this legislation. AIDAR Section 701.372 states that the FAR and AIDAR apply to all procurements to which AID is a direct party, unless a deviation is specifically authorized in accordance with AIDAR Subpart 701.4 or unless otherwise provided.

b. The policy that all qualified U.S. suppliers are entitled to an opportunity to compete for AID-financed business and that professional and technical services be obtained through process of competitive selection based primarily on the quality of services offered is in accordance with Section 601 of the FAA and reflects basic U.S. Government principles, as set forth in the FAR.

c. The policy relating to those circumstances permitting direct noncompetitive selection is authorized in the FAR/AIDAR.

4. Implementation

Handbook 14 (48 CFR 1 and 48 CFR 7, the FAR and AIDAR, respectively).

5. Waivers

Deviations from requirements of AIDAR/FAR may be authorized by the head of the Contracting activity (HCA) in accordance with the FAR 1.4 and AIDAR 701.4.

12C. Cooperating Country Contracts

1. Policy

This section is applicable to project assistance. However, see Chapter 18, "Local Procurement," Chapter 19, "Intermediate Credit Institutions," and Chapter 20, "Fixed Amount Reimbursement," of this Handbook for policies applicable in those circumstances. *

a. Cooperating country contracts for the procurement of AID-financed goods and services are awarded on the basis of competitive procedures. The type of transaction involved (i.e., procurement of technical or professional services, construction services, or project goods) determines the procedures to be used in obtaining competition, such as advertising and the basis of competition (i.e., technical qualifications or price).

b. As financier of country procurement transactions, AID reserves in its loan and grant agreements the right of prior approval of such procurements in order to assure that they will be undertaken in compliance with specific provisions of the FAA and AID policies governing AID-financed project procurement. It is, however, AID policy to be as sparing in its exercise of its rights of prior approval as sound management of its interest permits. The exercise of AID approval rights is not be construed in any case as making AID a party to a contract (see Section 12C3c of this Chapter, "Implementation of Policy," for guidance as to AID's exercise of its prior approval rights).

c. It is AID policy not to finance a contract in which the fee or profit (however described) increases without limitation as the cost of the contract increases (cost-plus-percentage-of-cost contract); AID does not finance engineering services contracts, if the price is set as a percentage of the actual construction cost of the related facility. This policy is not subject to waiver.

2. Source of Policy

a. The policy stated in paragraph 12C1a of this Chapter is grounded on the principles that:

(1) The best price for goods and services is obtained through competition.

(2) In procuring professional and technical services, comparison of the technical quality of proposals is the principal basis for competitive selection.

(3) Prudent management of public funds requires use of sound judgment and fair procedures.

12C2

b. The policy stated in paragraph 12C1b of this Chapter is based on the principle that AID as financier has the right and obligation to monitor the use of funds it has provided to assure they are spent soundly and in accordance with the project agreement the country has entered into with AID.

3. Implementation of Policy

Handbook 11 - Country Contracting, sets forth the rules and guidance implementing AID policy regarding country contracts. For specific projects, procedures other than those set forth in Handbook 11 may be used as agreed in the Project Agreement or Project Implementation Letters. The policies relating to competition (including advertising) and AID approval of country contracts are set forth below. They are also contained in the appropriate chapters of Handbook 11.

a. Competition

(1) Technical and Professional Services

(a) Competitive, technical selection among qualified prospective contractors is employed in procuring technical and professional services. Such selection is based upon evaluation of the relative merits of technical proposals.

(b) If the services are to be performed personally by an individual, consideration of a reasonable number of candidates is recommended.

(c) If the estimated contract value does not exceed $100,000 negotiation may be undertaken without formal solicitation of proposals. However, informal solicitation of several sources is required unless a waiver of competition has been approved pursuant to paragraph 12C4 of this Chapter.

(d) If the borrower/grantee wishes to employ, for work related to project implementation, a contractor who has satisfactorily performed work in connection with the identification, development, or study of a project, competitive selection need not be used provided that (1) the contractor was initially selected on a competitive basis, and (2) all competing firms were advised in the Notice announcing the availability of prequalifications questionnaires, if any, and in the Request for Technical Proposals that the borrower/grantee would, in the contract for the initial work, reserve the right to contract with the selected contractor for specified subsequent work. Work performed under the initial contract might be a sector assessment, project design, social studies, or a feasibility study covering technical, economic, financial, or environmental aspects of a defined project. Subsequent work might be engineering design, construction supervision, the provision of advisors needed for the execution of a project, or a combination of such services.

(e) Negotiations for services of educational institutions and international research centers shall follow the procedures described in paragraph 12B2e of this Chapter.

(2) Construction Services

(a) Formal competitive bidding among qualified bidders is the normal procedure for awarding contracts for construction services. Formal competitive bid procedures include public advertising, issuance of invitations for bids, public opening of sealed bids, evaluation of bids, and award of a contract to the lowest responsive and responsible bidder.

(b) Contracts for construction services may be awarded on the basis of competitive negotiation if the borrower/grantee has failed, after diligent efforts, to secure a contract through formal competitive bid procedures and further use of formal competitive bid procedures clearly would not be productive. The Regional Assistant Administrator must approve the use of competitive negotiation, including the procedures to be followed.

(3) Project goods

(a) Formal competitive bidding is the normal procedure
* for awarding contracts for project goods when the estimated cost exceeds $100,000. Formal competitive bid procedures include public advertising, issuance of invitations for bids, public opening of sealed bids, evaluation of bids, and award of a contract to the lowest responsive and responsible bidder. *

12C3a(3)

* (b) "Small value" procurement procedures may be used when the estimated cost of the procurement does not exceed $100,000. Formal bidding procedures are not required; however, a reasonable number of potential suppliers must be solicited for procurements expected to exceed $2,500, and the procurement must be awarded at a reasonable price. In procurements for equipment and materials that do not exceed $2,500, awards may be made without obtaining competitive quotations so long as:

1. The Contracting Agency/Procurement Services Agent considers the price reasonable;

2. Such purchases are distributed equitably between qualified suppliers; and

3. The awarding official documents these conclusions in the Contracting Agency/Procurement Services Agent's records of the procurement.

A procurement action may not be broken down into two or more smaller dollar value actions in order to avoid the requirements for competitive procurement. *

(c) If approved by the Mission Director, an informal competitive procedure (sometimes known as competitive negotiation) may be used. Informal competitive procedures include advertising the availability of Requests for Quotations (RFQ), issuance of the RFQ, receipt and evaluation of offers, negotiation when appropriate, and award of the contract to the offeror submitting the most advantageous procedures may be authorized when:

1. It is impossible to develop adequate specifications for use in an Invitation for Bids;

2. Proprietary procurement is justified;

3. Adherence to formal competitive procedures would impair project objectives.

(d) If formal competitive bidding procedures have failed and further use of such procedures would clearly not be productive, a <u>modified</u> informal competitive procedure may be approved by the Mission Director. This <u>modified</u> procedure does not require readvertising the procurement and the RFQ normally incorporates the unsuccessful IFB by reference.

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b. Advertising

* In order to obtain competition, it is necessary to notify potential contractors or suppliers of forthcoming procurements. This is accomplished by issuing notices of proposed procurements in the appropriate publications. The notices generally concern individual proposed procurements, but for project goods, when circumstances permit (i.e., when total quantity, type and size requirements are identified early in the project life), a "blanket" or "consolidated" type notice may be published. In addition to advertising in the AID Procurement Information Bulletin and/or the Commerce Business Daily of the U.S. Department of Commerce as set forth in paragraphs 12C3b(1), (2), and (3) of this Chapter, the Contracting Agency may advertise in local, regional, or international journals, newspapers, etc., and otherwise in accordance with local practice. *

(1) Technical and Professional Services

(a) The notice of availability of prequalification questionnaires or if prequalification is not used, Requests for Technical Proposals, is published in the Commerce Business Daily unless:

1. The services are to be performed personally by a single individual;

2. The contract value is estimated to be under $100,000; or

3. Competition has been waived (see paragraph 12C4a of this Chapter.

(b) For procurement services contracts when the fee for the services is expected to be in excess of $25,000, notice of the proposed procurement is published in the AID Procurement Information Bulletin.

(2) Construction Services

The notice of availability of prequalification questionnaires or, if prequalification is not used, Invitations for Bids is published in the Commerce Business Daily unless:

(a) The contract value is under $500,000, in which case publication in the Commerce Business Daily is not required, but other advertising in local, regional, or international journals, newspapers, etc., and otherwise in accordance with local practice must be used;

12C3b(2)

* (b) Competitive negotiation has been authorized (see paragraph 12C3a(2)(b) of this Chapter; or

(c) Competition has been waived (see paragraph 12C4a of this Chapter).

(3) Project Goods

For procurements estimated to exceed $25,000, the notice of availability of Invitations for Bids, Requests for Quotations, or if prequalification is used, prequalification questionnaires is published by the Office of Procurement in the AID Procurement Information Bulletin. If the estimated value of the contract exceeds $100,000, the notice is also published in the Commerce Business Daily, unless:

(a) The modified informal competitive procedure has been approved pursuant to paragraph 12C3a(3)(d) of this Chapter; or

(b) Competition has been waived (see paragraph 12C4a of this Chapter).

c. AID Reviews and Approvals

(1) When any AID financing is involved and the total contract amount is expected to exceed $250,000 or the local currency equivalent, the Mission Director must review and approve all country contract awards and the significant intermediate steps in the contracting process, as specified in Handbook 11, Country Contracting, Chaps 1 (Sect 2.1), 2 (Sect 2.2), and 3 (Sect 2.1).

(2) For AID-financed contracts not expected to exceed $250,000 or equivalent, the question of whether, and the extent to which, AID shall impose its right of prior approval is discussed in the Implementation Section, and if appropriate, the Issues Section of each Project Paper and reflected in the Project Agreement and Project Implementation Letters. The question turns on the Mission's appraisal of the borrower/grantee's contracting experience and procedures. When approvals of contracting steps are required for contracts not anticipated to exceed $250,000, the Mission Director may delegate this approval authority to a senior Mission officer.

(3) AID may also require that contracts not funded by AID but having a substantial impact on the project be approved by AID. The Implementation Section of each Project Paper, the Project Agreement, and Project Implementation Letters specify the entities to be involved in contract preparation and administration, and the review and approval procedures.

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4. Waivers

a. Waiver of Competition - Negotiation With a Single Source 1/

(1) Authority

* (a) AID/W Approval

A single source, negotiated procurement estimated to exceed $10 million in value may be authorized by the Associate Administrator for Operations. If the estimated cost is less than $10 million, the procurement may also be authorized by the cognizant Regional Assistant Administrator. In either case, prior clearance by the Agency Competition Advocate (FA/PPE) is required for procurements in excess of $5 million.

(b) Mission Approval

A single source, negotiated procurement estimated to cost $5 million or less may be approved by the Mission Director. The Mission Director may delegate this approval authority to the Deputy Mission Director only for procurements that are estimated not to exceed $250,000. For procurements estimated to be in excess of $250,000, such approval must be based upon the recommendation of the Mission Noncompetitive Review Board, which is composed of at least three senior officers other than the approving officer, e.g., the Deputy Mission Director, the Mission or Regional Legal Advisor, a Contracting Officer, and a senior Project Officer not otherwise involved with the procurement under consideration. *

1/ If only one firm responds to a solicitation for technical or professional services, technical and cost negotiations may be conducted with that firm without a waiver. When formal competitive procedures are used and only one responsive, responsible bid is received and the price is reasonable, award is made in accordance with the Invitation for Bids. When competitive procedures other than formal competitive procedures are used for the procurement of construction services or equipment and materials and only one offer has been submitted which is fully able to meet project needs, and the price is reasonable, award may be made without further negotiation and no waiver is necessary. In other circumstances, see the policies concerning competitive negotiation in paragraphs 12C3a(2)(b) and 12C3a(3)(d) or negotiation with a single source in paragraph 12C4a of this Chapter.

12C4

(2) Criteria

Waivers may be authorized only in one of the following situations and must be supported by a written record of the reasons for negotiation with only the single source.

(a) Technical or Professional Services

1. The borrower/grantee can demonstrate the existence of any emergency situation in which the requirement for competition would result in unacceptable project delay.

* 2. Special design or operational requirements require services available from only one source. *

3. The borrower/grantee desires to utilize a contractor previously engaged in the project for follow-on work and the contractor clearly has special capability by virtue of previous experience in the work but the contractor was either not selected on a competitive basis or the borrower/grantee did not advise all competing firms that a follow-on contract might result. A waiver on these grounds should be granted only after careful review of all pertinent facts. If the contract for the initial work specified that follow-on work might result, see paragraph 12C3a(1)(d) of this Chapter.

4. One institution or firm can be demonstrated to have the unique capability by reason of special experience or facilities, or specialized personnel who are recognized as predominant experts in the particular field to perform the services required for the project.

5. Adherence to competitive procedures would result in the impairment of the objectives of the United States foreign assistance program or would not be in the best interest of the United States.

(b) Construction Services

1. The borrower/grantee wishes to utilize the contractor for additional work outside the scope of the original contract and the contractor is still mobilized at the site or for some other reason the contractor is so closely related to the project that utilization of that contractor would effect a substantial saving of time or money.

2. Only one bid has been received pursuant to an IFB and the bid is not fully responsive, but the borrower/grantee wishes to negotiate only with that bidder.

3. Adherence to competitive procedures would result in the impairment of the objectives of the United States foreign assistance program or would not be in the best interest of the United States.

(c) Project Goods

1. The borrower/grantee can demonstrate the existence of an emergency situation in which the requirement of competition would result in unacceptable project delay.

2. When proprietary procurement is justified and the necessary equipment, materials, or spare parts are available from only one source taking into account any special requirements such as warranty coverage and the need for in-country service capability;

3. Adherence to competitive procedures would result in the impairment of the objectives of the United States foreign assistance program or would not be in the best interest of the United States.

(3) Amendments to Existing Contracts

Approval of an amendment to an existing contract which increases the scope of work or level of effort (i.e., a "new procurement amendment") is also required. Negotiation with the single source to amend the contract must be justified under one of the criteria in paragraph 12C4a(2) of the Chapter and approved by the official who has the authority under paragraph 12C4a(1) of this Chapter for the estimated amount of the amendment.

b. Waivers of Advertisement of Invitations for Bids or Requests for Proposals

* The requirement that a notice of availability of an IFB, RFTP, RFQ, or prequalification questionnaire be publicized in the Commerce Business Daily or the AID Procurement Information Bulletin may be waived by the Mission Director to avoid serious delay in project implementation, provided that efforts shall in any event be made to secure proposals, bids, or offers from a reasonable number of potential contractors or suppliers.

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CHAPTER 13

NONPROJECT PROCUREMENT

13A. Procurement Under Commodity Import Programs

1. Policy

a. General

(1) This Section pertains to nonproject assistance only.

(2) Nonproject assistance provided in the form of a commodity import program makes funds available to finance eligible commodities and commodity-related services for the cooperating country's private and public sectors. To the maximum extent practicable, consistent with legislative direction, it is AID Policy to encourage the financing of commodity imports by the private sector in the cooperating country. To ensure that appropriated funds are used prudently and in a manner consistent with program objectives, it is AID policy to require competition in the procurement of AID-financed commodities, as set forth in the following paragraphs.

(3) It is also AID policy to encourage the borrower/grantee receiving nonproject assistance to finance low value purchases with its own resources when this can be done without jeopardizing program objectives. This will increase efficiency and reduce program administrative costs. The standard minimum value for each individual AID-financed transaction is $5,000. However, when feasible, this minimum should be raised during the agreement authorization process by the responsible Assistant Administrator for programs up to $20,000,000 or by the Administrator for program over $20,000,000.

(4) AID Regulation 1 is the basic legal document setting forth the rules and procedures under which AID finances the procurement of commodities and commodity-related services under Commodity Import Programs (CIPs). AID Regulation 1 is applicable to borrowers/grantees and suppliers under CIP's.

b. Public Sector Procurement

Procurement of commodities by an entity in the public sector is subject to the same rules on competition and advertising as project procurement of commodities by the cooperating country. The rules are explained in Chapter 12C of this supplement and are implemented in Chapter 3 of Handbook 11, Sections 2.2 and 2.3.

c. Private Sector Procurement

Importers in the private sector are expected to procure commodities using good commercial practice in accordance with the requirements in AID Regulation 1, Section 201.23, that the importer solicit quotations or offers from a reasonable number of prospective suppliers and give consideration to all quotations and offers received. Solicitation of offers if not required when there is only one reasonable source of supply, or when a special supplier-importer relationship (as described in Section 201.23(e) of AID Regulation 1) exists.

d. Eligible Price

For both public sector and private sector procurement, the procurement price must meet AID's price requirements as set forth in AID Regulation 1. An award made under a formal competitive bid procedure will normally satisfy the commodity price requirements if AID determines that the formal bid procedure attracted a sufficient number of independent, responsive bids to assure that competition was achieved. For a summary of the price rules see Chapter 17 of the Supplement.

e. Publicity

AID periodically publishes for each cooperating country with an AID-financed commodity import program, a list of commodities which may be expected to be imported, and the names and addresses of the importers who have traditionally purchased those commodities. The list is made available to all subscribers to the AID (SDB) publications. In addition, AID issues an AID Procurement Information Bulletin announcing each new commodity import loan or grant agreement. The announcement contains a list of authorized commodities, delivery and contract periods, and the AID organizational unit to be contacted for additional information. See Chapter 23 of this Supplement for additional information on publicity.

13A

2. Source of Policy

Section 102 (Eight Principle), Section 601(a), and Section 601(b)(5) of the Foreign Assistance Act and AID administrative decisions.

3. Implementation of Policy

AID Regulation 1, Subpart C; Handbook 4, Chapter 5; Handbook 11, Chapter 3; Handbook 15, Chapter 3.

4. Waivers

A waiver of AID Regulation 1, in whole or in part, for a CIP may be justified either in the Program Assistance Approval Document (PAAD), or subsequently if the circumstances necessitating the waiver are not known at that time, and may be approved by DAA/FA.

13B. Eligibility of Incidental Services

1. Policy

a. This section is applicable to nonproject assistance only. Incidental services are those services related to the installation or erection of AID-financed equipment, or the training of personnel in the operation and use of such equipment. Incidental services are eligible for AID financing as commodity-related services when:

(1) such services are specified in the purchase contract relating to the equipment; and

(2) the price does not exceed the prevailing price, if any, for the same or similar services or the price paid to the supplier under similar circumstances by other customers; and

(3) the portion of the total purchase contract price attributable to such services does not exceed 25 percent of the total purchase contract.

b. The cost of incidental services in excess of 25 percent of total purchase contract is not considered a cost of commodity related services for the purpose of determining eligibility for AID financing.

Such incidental services are subject to review and determination of eligibility under the rules established for borrower/grantee procurement of services in 12C.

2. Source of Policy

An administrative determination, based on the recognition that: certain types of sophisticated equipment require installation and training services; the purchase of such equipment must of necessity include the cost of such services and the application of the rules set forth in 12C is not practicable for all such transactions.

3. Implementation of Policy

a. Handbook 15, Chapter 2.

b. AID Regulation 1, Section 201.12.

4. Waivers

Waivers or determinations affecting the eligibility of incidental services are made by the Director, FA/OP.

CHAPTER 14

BONDS AND GUARANTIES

14A. Policy

1. General

This Chapter is applicable to project and nonproject assistance.

a. AID or the borrower/grantee may require the posting of suitable bid, payment, or performance bonds or guaranties with respect to the procurement of commodities and services. The amount of the bond or guaranty will vary depending upon the amount of the contract, the complexity, hazardous nature or other characteristics of the services or the nature of the commodities, equipment, and material being procured.

b. Where AID signs the contract the proceeds of bonds or guaranties shall be payable to AID and shall generally be denominated in dollars. If dollar denominated bonds are unavailable, the bond may be in any currency acceptable to AID. In all other cases the bonds may be denominated in any currency acceptable to the borrower/grantee and payable to or for the account of the borrower/grantee. The solicitation for goods or services shall specify the acceptable currencies for bonds and guaranties.

2. Selection of Bonds or Guaranties

AID prefers the use of surety bonds rather than bank guaranties as they are generally less costly to obtain, and they place the responsibility for completion of contractual requirements on the surety. Solicitations for contractual requirements to be financed by AID will provide for either a bond or guaranty at the option of the supplier or contractor unless surety bonding is not available or local law requires a guaranty.

A bond is an instrument executed by a supplier or contractor, as the principal, with a surety who, in the event the principal fails to satisfy his/her obligations, will either assume the obligations of the principal or assure payment of any losses sustained to the extent specified in the bond.

A guaranty is an instrument (generally a letter of credit) issued by a banking institution at the request of a supplier or contractor which provides for payment up to a specified amount to a designated

14A

party upon presentation of prescribed documents indicating an unfulfilled obligation on the part of the supplier or contractor. A guaranty, unlike a bond, normally encumbers the assets of the supplier or contractor.

3. Types of Bonds and Guaranties

A bid bond or guaranty is a third-party commitment that accompanies a bid when invitations for bids so require. It assures that the bidder will, if his/her bid is accepted, execute the contract.

A performance bond or guaranty is a commitment from the surety or guarantor ensuring satisfactory completion of all contract requirements. It is typically used for construction services, custom-made equipment, and bulk commodities. It may also be required in other instances depending on the nature of the services or the equipment and material involved.

A payment bond or guaranty is a commitment furnished a contractor or supplier to assure payment to all persons supplying labor and material in performance of the work under a contract. It is normally required only for construction service contracts.

Other types of bonds or guaranties may be appropriate for protection in other situations; e.g., where an advance of funds is made.

14B. Source of Policy

The policy is based upon a fundamental principle of good commercial practice designed to provide adequate safeguards in the procurement of goods and services.

14C. Implementation of Policy

AID Regulation 1, Sections 201.14, 201.25, and 201.26; and Handbooks 11, 13, 14, and 15.

14D. Waivers

A waiver provision is not applicable since the requirement for a bond or quaranty is discretionary with AID or the borrower/grantee.

CHAPTER 15

METHODS OF PAYMENT TO SUPPLIERS, CONTRACTORS, AND GRANTEES

15A. General

1. This policy is applicable to project and nonproject assistance.

2. AID has a variety of procedures by which suppliers, contractors, or grantees are paid. The Project Paper (PP) or the Program Assistance Approval Document (PAAD) for each AID project or nonproject loan or grant should discuss the considerations on which the selection of the financing method (or methods) to be applied has been based. The payment procedure chosen for a particular procurement, grant, or cooperative agreement should be the one which is

-- best suited to facilitate execution of the program in the most practical and prudent manner, and

-- in accordance with AID's Cash Management policies as set forth in this Chapter.

15B. Host Country Contracts and Commodity Import Programs

1. Policy

a. General

AID's policy is to pay AID-financed contractors, suppliers, and other recipients on the basis of goods delivered, services performed, or to cover costs already incurred. Since many host country programs require contractors participating in the program or project to have large amounts of working capital, Government financing aid is often made available to help meet this need. The contractor or supplier may use its right to payment to obtain private financing when AID issues a direct letter of commitment. Financial assistance may also be provided by progress payments or advance payments when necessary to obtain performance or to avoid restricting competition. Advance payments, however, are the least preferred method of financing since they involve greater risk to the U.S. Government, require close supervision, and entail additional administrative cost. Advances, if required, may be authorized in accordance with Section 15B1c(6) of this Chapter.

b. Financing Methods

Listed below are the various financing methods used by AID in the implementation of Host Country Contracts and Commodity Import Programs. Nothing contained herein shall preclude AID from developing, within existing legal and policy guidelines, new methods of financing that are better suited to particular situations or that help to meet AID's evolving development role and mode of operation.

(1) Direct Reimbursement to Host Country

Under this financing method, AID reimburses the host country upon submission of documentation called for in the underlying project agreement or project implementation letter(s) for eligible payments to contractors or suppliers that the host country has already made from its resources. The direct reimbursement method should be used only when the host country possesses the managerial and financial capability to operate under that procedure. The direct reimbursement method of financing increases the responsibilities of the borrower/grantee to implement its development programs. The use of this method gives AID an opportunity for full review of the transaction before USG funds are disbursed.

(2) Direct Letters of Commitment to Supplier/Contractor

The Direct Letter of Commitment is a financial arrangement between AID and a supplier or contractor, under which AID makes payment directly to the supplier or contractor for eligible commodities and services furnished pursuant to a specific contract. The Direct Letter of Commitment is assignable under the Assignment of Claims Act, by the supplier or contractor to a banking institution and thus may serve as collateral for credit which may be required to provide working capital.

This financing method may be used under most host country contracts and is generally preferable to bank letters of commitment for host country contracts for services, high value commodity shipments, and for any type of transaction when it is necessary or advisable for AID to verify the documentation before making payments. AID assumes a limited additional administration burden by performing the documentation verification and payment functions but eliminates banking charges otherwise paid out of program funds.

15B1b

(3) Letter of Commitment to U.S. Bank

The Bank Letter of Commitment is a financial arrangement between AID and a U.S. Bank, under which the bank is authorized to make payments to contractors or suppliers for eligible commodities and services. The bank is reimbursed by AID for payments to suppliers or contractors made in accordance with the conditions set forth in the Letter of Commitment and for bank charges.

The financing method utilizes established commercial banking channels to make payments to suppliers or contractors. Under this payment arrangement, a party ("approved applicant") designated by the borrower/grantee may request the letter of commitment bank to issue commercial letters of credit to suppliers or contractors, or commercial banks in the cooperating country may issue letters of credit to suppliers or contractor and request the letter of commitment bank to advise or confirm such letters of credit. Financing for such letters of credit is provided by the Letter of Commitment. The documentation submitted to the bank is not examined by AID before payment except to ensure that all required documents are presented. However, like all AID-financed transactions, it is subject to post payment examination.

The Bank Letter of Commitment is the usual method of payment under commodity import programs except in the case of large-volume purchases from a single supplier. Bank Letters of Commitment should be used for commodity procurements which are likely to produce a profusion of invoices.

(4) Special Letter of Credit (SLC)

The SLC is a procedure available for use for financing commodities and commodity-related services through commercial banks. As an alternative to financing under a letter of commitment to a U.S. bank, the SLC may offer certain advantages to the host country, primarily by its immediate impact on foreign exchange reserves as well as the rapid generation of local currency. In effect, the SLC becomes a foreign exchange asset which is immediately available for sale or use by the host country.

Upon application of the host country entity, AID requests a U.S. bank to open a SLC, revocable or irrevocable, for a designated beneficiary, usually the host country central monetary authority. The beneficiary of the SLC may instruct the U.S. bank to issue subsidiary letters of credit, or to make payments at sight to designated parties. Alternatively, the beneficiary of the SLC may claim reimbursement from the U.S. bank for payments which it (the beneficiary) has made to suppliers. All payments by the U.S. bank require submission of documents specified by AID, and reimbursement of the U.S. bank by AID follows procedures similar to those applicable to a bank letter of commitment.

When the SLC will be used as the means for financing local costs, the Regional Assistant Administrator must approve, at the project paper stage, the justification for its use. The justification will include an explanation of the considerations supporting the choice of the SLC method of financing.

c. Payment Options

Listed below are the various payment options available for use under AID-financed host country contracts and their appropriate uses. See Attachment A for the appropriate financing methods (Section 15B1b) available for each payment option.

(1) Payment Upon Completion

Payment upon full completion of the terms and conditions of the contract or procurement is the preferred payment option for AID-financed contracts. However, the payment options set forth in the following paragraphs may also be used under the appropriate circumstances.

(2) Partial Payments

(a) Definition

Partial payments are payments made under a contract or procurement for goods actually delivered, or for services actually rendered, where such goods or services represent complete performance of an identifiable part of the total contract or procurement requirement.

(b) Condition for Use

Partial payments must be authorized in the contract or agreement. They may be used when delivery of goods or services can be identified as full and complete performance of a part of the total contract requirement.

(3) Progress Payments

(a) Definition

Progress payments are payments made under a fixed-price contract or procurement on the basis of (1) actual costs incurred, (2) an actual percentage of completion accomplished, or (3) an actual stage of completion reached. This term does not include payments for partial shipments.

(b) Condition for Use

Provision for progress payments may be included in the solicitation when the host country requests and AID determines that (a) the period between the beginning of work and the first required delivery will exceed 4 months, (b) there will be substantial predelivery costs that may have a material impact on a contractor's working capital and, (c) the contract or procurement will involve $200,000 or more. The solicitation shall state whether progress payments will be allowed and, if so, that a request for progress payments will not be considered an adverse factor in the award of the contract.

(c) Security

The contract must contain a security provision which allows the host country to obtain a lien or title to work in progress or materials allocated to the contract or the contractor may furnish a bank guaranty or performance bond.

(d) Amount

Progress payments shall not exceed 95% of total costs. In order to minimize administrative effort and expense, progress payments are not authorized under contracts of less than $200,000.

(e) Approval

(1) Progress payments based on actual cost incurred in an amount not exceeding 95% of the total cost may be authorized by the Mission Director or his/her designee, with the concurrence of the Mission Controller, if the contractor's accounting system and controls have been found by audit or experience to be sufficient and reliable for segregation and accumulation of contract costs.

(2) Progress payments based on a percentage or stage of completion for construction contracts only may be authorized by the AID official who will approve the contract. An examination of the contractor's accounting system is not required.

(3) Progress payments based on a percentage or stage of completion for other than construction contracts may be authorized by the Mission Director if he/she has determined that progress payments based on cost cannot be practically employed. An examination of the contractor's accounting system is not required.

(4) Progress payments not within the scope of the above paragraphs may be authorized by the Mission Director, with Mission Controller concurrence, for project funded host country contracts or by the Director of FA/OP, with AID/W Controller concurrence, for non-project assistance.

(4) Interim Payments

(a) Definition

Interim payments means payments of cost and fee (if any) under a cost reimbursement contract as the contractor incurs costs. They serve the same purpose as partial and progress payments on fixed- price contracts.

(b) Condition for Use

Interim payments must be authorized in the contract or agreement. The contractor/supplier must have an acceptable cost accounting system for identifying the cost actually incurred before interim payments may be authorized.

(5) Mobilization Payments

(a) Definition

Mobilization payments are payments provided to a construction contractor or a supplier of specially constructed equipment to assist in meeting extraordinary start-up costs incurred to promptly perform under the contract (e.g., purchase of specialized equipment and shipment to the host country).

15B1c(5)(a)

For construction contracts, mobilization payments are normally included as a line item in the bid schedule. The Instructions to Bidders will state that the amount to be entered for mobilization is not to exceed a certain percentage--usually 10 to 20 percent of the total bid price. The contractor is permitted to receive limited mobilization payments after expenditures are incurred for purchase of equipment, materials, etc., rather than having to wait for progress payments which are not made until actual work items are completed.

(b) Condition for Use

AID considers mobilization payments to contractors selected in accordance with competitive bidding as advantageous since they enhance competition and reduce contract costs. The Treasury Department has agreed that mobilization advances may be provided without interest so long as there is true competition in the bidding process and AID obtains the advantage of reduced contract costs as a consequence of providing the advances.

(c) Approval

The AID official who approves host country contracting solicitations must consider the reasonableness of proposed mobilization payments and determine before publication of the solici- tation that (1) a mobilization payment in the amount proposed is necessary to avoid restricting competition and (2) it may be reasonably assumed that a compensating financial benefit will accrue to AID and the host country as a consequence of providing the payment. This written determination will become part of the the official project file.

(6) Advance Payments

(a) Definition

Advance payments are payments of monies to a prime contractor or supplier prior to or in anticipation of future performance under a contract or procurement arrangement. They differ from partial, progress, and interim payments because they are not based on actual performance or actual costs incurred.

(b) Condition for Use

(1) Nonprofit Contractors

Contractors or suppliers which are nonprofit organizations (including international research centers and educational institutions) and which do not charge a fee are authorized advance payments. This policy assures that nonprofit organizations will not be forced to utilize their own working capital or earmarked funds to finance work carried out under agreements funded by AID. However, before AID may finance contracts which provide for advance payments, the recipient organization must have a financial management system which has been found by USG audit or other acceptable audit to be adequate for controlling and accounting for USG funds. If the contractor or supplier does not have an acceptable financial management system, payment shall be on a reimbursement, not advance, basis.

For nonprofit organizations that charge a fee, the policy in paragraph 15B1c6(b)(2) of this chapter.

(2) Profit Making Contractors

Advance payments to profit making contractors or suppliers, or nonprofit organizations which charge a fee may only be authorized when the approving official (paragraph 15B1c(6)(d) of this chapter) has made a positive determination in writing that AID will benefit in terms of increased competition and/or lower prices. This determination must be made prior to the issuance of the solicitation so that all prospective contractors or suppliers are made aware of the availability of advance payments. The contractor or supplier must post adequate security for the advance (e.g. advance payment bond or guaranty).

The requirement for an acceptable financial management system determined by USG audit or other acceptable audit described in paragraph 15B1c(6)(b)(1) of this chapter also applies to profit-making organizations.

(c) Amount of the Advance

The amount of the advance payment, whether in dollars or local currency, is to be based on an analysis of the working capital required under the contract, taking into consideration the reimbursement cycle and in the case of profit making firms the availability of their own working capital. The advance shall be limited to the minimum amount needed for immediate disbursing needs (i.e. up to 30 days from date received until expended). The advance period may be extended up to 90 days when the approving official (paragraph 15B1c(6)(d) of this chapter) with the concurrence of the Controller servicing that official has made a written determination that implementation will be interrupted or impeded by applying the 30-day maximum.

(d) Approvals

(1) Advances to nonprofit organizations are authorized, subject to the concurrence of the AID Controller serving that Mission, when the organization has an acceptable financial management system.

(2) Advances of $100,000 or less to profit making firms, regardless of the percentage of the contract value, may be approved by the Mission Director with the concurrence of AID Controller serving that Mission.

(3) Advances to profit making firms of up to 10% of the contract value with a maximum of $1 million may be approved by the Mission Director with the concurrence of the AID Controller serving that Mission for project assistance activity or by the Director of FA/OP with the concurrence of the AID/W Controller for procurement subject to AID Regulation 1.

(4) Advances to profit making firms in excess of 10% of the contract value or $1 million, whichever is less, must be approved by the Assistant Administrator of the appropriate bureau with the concurrence of the AID/W Controller (FM).

2. Source of Policy

a. Section 635(b) of the FAA, and Executive Order 11223, May 11, 1965 (30 FR 6635), with respect to advance payments.

b. The Assignment of Claims Act of 1940, as amended, 54 Stat. 1029, 65 Stat. 41 (31 U.S.C. 203, 41 U.S.C. 15).

c. Title 31, Code of Federal Regulations, Part 205 (31 CFR 205).

d. Treasury Fiscal Requirements Manual (TFRM) Vol. 1, Part 4 and Part 6.

e. "AID Cash Management Policy Guidelines" approved by the Deputy Administrator on November 21, 1978.

3. Implementation of Policy

Implementing policies are set out in Handbooks 11, 15, and 19 and AID Regulation 1.

4. Waivers

Waivers of or modifications to the methods of financing or payment options, not otherwise provided for in this part of Chapter 15, may be made by the responsible program Assistant Administrator, with the concurrence of the AID/W Controller.

ATTACHMENT A

FINANCING METHODS AVAILABLE UNDER
HOST COUNTRY CONTRACTS
BY PAYMENT OPTION

1.	Payment Upon Completion	Direct Reimbursement Direct Letter of Commitment to Supplier/Contractor Letter of Commitment to U.S. Bank Special Letter of Credit
2.	Partial Payment	Direct Reimbursement Direct Letter of Commitment to Supplier/Contractor Letter of Commitment to U.S. Bank Special Letter of Credit
3.	Progress Payments	Direct Reimbursement Direct Letter of Commitment to Supplier/Contractor Letter of Commitment to U.S. Bank
4.	Interim Payments	Direct Reimbursement Direct Letter of Commitment to Supplier/Contractor Letter of Commitment to U.S. Bank
5.	Mobilization Payments	Direct Reimbursement Direct Letter of Commitment to Supplier/Contractor Letter of Commitment to U.S. Bank (when payment is a partial payment)
6.	Advance Payment	Direct Reimbursement Direct Letter of Commitment to Supplier/Contractor

15C. Grants and Cooperative Agreements to Nonprofit Organizations

1. Policy

This section is applicable to project and nonproject assistance.

a. Federal policy endorses extending advances in reasonable amounts to nonprofit educational or research institutions for experimental, developmental or research work. AID extends this policy to all nonprofit organizations, including U.S. or international private voluntary organizations, domestic American educational and research institutions, and international research institutions. This policy assures that nonprofit organizations will not be forced to utilize their own working capital or earmarked funds to finance work carried out under agreements with AID. Department of the Treasury policy, however, requires AID to monitor the cash management practices of these institutions to ensure that Federal cash is not maintained in excess of that required for their immediate disbursement needs.

b. Advance payments should be based upon an analysis of the working capital (e.g., cash) required under the grant or cooperative agreement taking into consideration the reimbursement cycle. Advances to a nonprofit organization shall be limited to the minimum amounts needed at any given time. The timing and amount of cash advances shall be as close as is administratively feasible to the actual disbursements by the recipient organization for direct program costs and the proportionate share of any allowable indirect costs.

c. It is AID policy not to charge interest on advances to nonprofit organizations.

d. The preferred methods of financing nonprofit recipients, in order of declining priority are:

* (1) Letter of Credit - (LOC) -- A LOC is an instrument certified by an authorized official of AID's Office of the Controller that authorizes a recipient to electronically draw funds, subject to FM/CMP approval, when needed from the Treasury, through recipient's commercial bank.

The LOC is an instrument used in connection with AID direct assistance agreements with educational and nonprofit organizations, including international organizations, and state and local governments. Its purpose is to permit advances to qualified organizations in such a way as to minimize the amount of cash withdrawals from the Treasury in advance of specific operating needs while providing flexibility and independence in withdrawing cash. *

15C1d(1)

* An LOC drawdown is to be for the "immediate disbursing needs" of the recipient. Cash drawdowns should not be made more frequently than daily. There is a two day time lag between the request for drawdown and receipt of the cash for disbursement, therefore, recipient organizations do not have to maintain balances of Federal cash other than the small balances necessary to accommodate the minimum limitation on the individual drawdowns as noted above. This method of financing is required for advance payments where (1) the amount required for advance financing equals or exceeds $50,000 per year; (2) there will be a continuing relationship with the institution for at least 1 year; (3) the recipient has the ability to maintain procedures that will minimize the time elapsing between the transfer of funds and their disbursement; and (4) the recipient's financial management system meets Federal standards for fund control and accountability in Chapter 1 of Handbook 13.

The LOC method of financing is not generally authorized for use with non-U.S. organizations organized, located, and operated outside the United States; when such an organization operates under an individual grant or cooperative agreement in more than one foreign country, an advance by Treasury check shall be used and it shall be administered out of AID/W by FA/FM/CMP.

(2) <u>Advance by Treasury Check</u> -- An advance by Treasury check is a payment made to a recipient upon its request before disbursements are made by the recipient, or through the use of predetermined payment schedules; it is used when an advance is justified but the conditions for a LOC cannot be met. The method of periodically advancing funds by Treasury check may be used under both grants and cooperative agreements. Advances by Treasury check are generally to be no more than the recipient's cash requirements for a 30-day period measured from date of receipt until the advance is expended. *

Advances by Treasury check are to be based upon an analysis of the working capital (e.g., cash) requirements of the recipient and made only in amounts necessary to meet immediate disbursement needs. AID expects that judgement will be applied by USAID controllers, grant officers, and others in determining the immediate disbursing needs of specific recipients.

(3) <u>Reimbursement by Treasury Check</u> -- A reimbursement by Treasury check is a Treasury check paid to a recipient upon request for reimbursement from the recipient.

Reimbursement is based upon submission of documentation, supporting the request for payment, specified in the grant or cooperative agreement.

15C1

* e. Advances shall not be made to any nonprofit recipient that does not have an acceptable financial management system for controlling and accounting for such funds. If a recipient does not have an acceptable system, only the reimbursement method shall be used.

2. Source of Policy

a. Section 635(b) of the Foreign Assistance Act of 1961, as amended, and Executive Order 11223, May 12, 1965 (30 F.R. 6635), with respect to advance payments.

b. OMB Circular No. A-110 (41 F.R. 32016), as amended.

3. Implementation of Policy

Implementing procedures are set out in Handbooks 13 and 19.

4. Approvals and Waivers

a. Advance payments must comply with AID's cash management policies as set forth in this section of Chapter 15 of this Supplement. AID cash management guidelines and procedures are applicable to U.S. dollars and foreign currencies available to or held by or for the credit of AID to finance programs, operations and activities, regardless of how implemented, except where precluded by law or waived by the Administrator, the Deputy Administrator, or the AID Controller.

b. The requirement (in paragraph 15C1e of this Chapter) for a recipient to have an acceptable financial management system in order to receive an advance may not be waived.

c. The requirements of paragraph 15C1f of this Chapter with respect to mixed currency advances, may be waived by the AID/W Controller subject to prior consultation with DA/FA and the AA responsible for the program. *

15D. Grants and Cooperative Agreements to Profit Making Organizations

(RESERVED)

15E. AID-Direct Contracts

1. Policy

This Section is applicable to project and nonproject assistance.

a. Definitions

(1) "Partial payment" means payments made under a contract, upon the submission of proper invoices or vouchers, for supplies delivered and accepted, or services rendered and accepted, where such supplies or services are only a part of the total contract requirements.

(2) "Progress payments" means payments made as work progresses under a contract, upon the basis of costs incurred, of percentage of completion accomplished, or of a particular stage of completion. The term does not include payments for partial deliveries accepted by the Government under a contract, or partial payments on contract termination claims.

(3) "Interim payments" means payments of costs and fee (if any) under cost reimbursement contracts as the contractor incurs costs. They serve much the same purpose as partial and progress payments on fixed-price contracts.

(4) "Assignment of Claims" means the contractor's assignment to a bank, trust company, or other financial institution of moneys due or to become due from the Government under a contract providing for payments aggregating $1,000 or more.

(5) "Advance payments" means advances of money, made by the Government to a contractor prior to, in anticipation of, and for the purpose of complete performance under a contract or contracts. Since they are not measured by performance, they differ from partial, progress, or other payments made because of and on the basis of performance or part performance of a contract.

b. Financing order of preference

In determining what form of financing shall be recommended or made available to contractors, the following order of preference generally should be observed, recognizing that there may be valid exceptions in specific cases or classes of cases (especially foreign contractors or contracts performed wholly or partially in foreign countries): *

15E1b

* (1) Private financing it is Federal policy that profit making organizations finance contract working capital requirements with their own resources, or arrange to obtain appropriate financing through commercial channels, including the Assignment of Claims procedure.

(2) Customary progress payments, or progress payments based on percentage or stage of completion, confined to contracts for construction, alteration, or repair.

(3) All unusual progress payments, not including contracts involving advance payments.

(4) Advance payments, by either LOC or Treasury Check; however, with respect to nonprofit contractors, the advance payment method is the preferred method of financing (see section 15C of this Chapter). Advance payments to profit making organizations should be authorized only if no other means of adequate financing is available to the contractor, and the amount of the authorization is predicated upon the use of the contractor's own working capital to the extent possible.

c. Partial and interim payments, including payments under Assignment of Claims

The contracting officer is authorized to approve partial or interim payments; however, the Government must consent to an Assignment of Claims. No interest is charged on such payments and no security is required.

d. Progress payments

While interest is not charged on progress payments, the contract must contain a progress payments clause which gives the Government title to all materials, work-in-progress, finished goods, etc. allocated to the contract.

e. Advances

(1) For-profit organizations

All advances to for-profit making organizations require approval by the Procurement Executive (DAA/FA); all such approvals are subject to prior consultation with the AID/W Controller. In addition, interest is charged on such advances at the rate established by the Secretary of the Treasury under P.L. 92-41, unless waived (see paragraph 15E4 of this Chapter). *

15E1e

*

(2) Nonprofit organizations

Advance to nonprofit organizations do not require special approval; the contracting officer may approve such advances in consultation with the AID Controller serving the procuring activity. No interest is charged on such advances.

(3) Advances under contracts with individuals

(a) Advances under a nonpersonal services contract with an individual require the approval of the Head of the Contracting Activity (AIDAR 702.170-10) or his/her designee. Advances will be for international travel* and per diem costs and will be based upon a percentage of an estimate of these costs. Salary or other compensation related advances are not authorized.

(b) Advances to a personal services contractor (PSC) may be approved by the contracting officer and will be for international travel* and per diem costs. Salary or other compensation related advances are not authorized.

(4) Use of a Letter of Credit (LOC)

Once the contracting officer has determined that an advance is appropriate and any necessary approvals have been obtained, an LOC shall be used if:

(a) AID has, or expects to have, a continuous relationship of at least one year with the organization;

(b) The annual amount required for advance financing will be at least $50,000; and

(c) The Cash Management Division of the Office of Financial Management agrees the LOC method is appropriate.

(5) Advances shall only be in amounts to meet the contractor's "immediate disbursing needs" (see paragraphs 15C1g and 15C1h of this Chapter for the definition of "immediate disbursing needs" for an LOC and an advance by Treasury check).

* The use of GTRs is preferable to cash advances.

*

15E

2. Source of Policy

a. Section 635(b) of the Foreign Assistance Act of 1961, as amended and Executive Order 11223, May 12, 1965 (30 F.R. 6635), with respect to advance payments.

b. The Assignment of Claims Act of 1940, as amended, 54 Stat. 1029, 65 Stat. 41 (31 U.S.C. 203, 41 U.S.C. 15).

* c. Title 48, Code of Federal Regulations, Subpart 32.1 (48 CFR 32.1), "Contract Financing-General."

3. Implementation of Policy

a. Advances by Treasury Check

Implementing procedures are set out in Handbooks 14 (48 CFR 32.4), and 19.

b. Letter of Credit

Implementing procedures are set out in Handbooks 14 (48 CFR 32.406 and 48 CFR 732.406), and 19.

c. Progress Payments

Implementing procedures are set out in Handbooks 14 (48 CFR 32.5), and 19.

d. Assignment of Claims

Implementing procedures are set out in Handbooks 14 (48 CFR 32.8), and 19.

4. Approvals and Waiver

a. All advances to profit making organizations, including the waiver of interest on such advances, under AID direct contracts, must have the prior approval of the Procurement Executive, DAA/FA. *

b. Advances under a nonpersonal services contract with an individual must have the approval of the Head of the Contracting Activity (AIDAR 702.170-10) or his/her designee.

15E4

c. Only the Head of the Contracting Activity may approve "unusual" progress payments.

d. Waivers to the requirements of the Treasury Department Circular No. 1075 (31 CFR 205) are to be submitted through the AID/W Controller, under 31 CFR 205.10, to the Treasury Department.

e. Advance payments must comply with AID's Cash Management policies as set forth in this section of Chapter 15. AID Cash Management guidelines and procedures are applicable to U.S. dollars and foreign currencies available to or held by or for the credit of AID to finance programs, operations and activities, regardless of how implemented, except where precluded by law or waived by the Administrator, the Deputy Administrator, or the AID Controller.

f. The requirements for a contractor to have an acceptable financial management system in order to be given an advance, may not be waived.

* *

* REMOVED

CHAPTER 16

GRANTS AND COOPERATIVE AGREEMENTS

16A. Section 214 Grants - American Schools and Hospitals Abroad (ASHA)

1. Policy

This Section applies only to project assistance.

a. ASHA grants furnish assistance to schools, libraries, and medical centers for medical education and research which are located outside the United States and have been founded or sponsored by United States citizens as study and demonstration centers for American techniques and practices. The grants are made principally to provide material things such as buildings or laboratories and the equipment and supplies used in them, although in a few cases funds are made available to provide general financial support to a grantee's operation.

b. Except for this last category of general financial support, the source of all procurement of goods and services under ASHA grants is limited to the United States or, if local cost financing has been authorized[1/] the country in which the grantee's institution is located, except insofar as it is Agency policy to limit procurement of certain commodities to the United States.

c. The grantee undertakes all procurement under ASHA grants. The country contracting policies set forth in Chapter 12 of this Supplement are the guidelines to be followed in contracting for project goods and construction services and technical or professional services. The eligibility policies governing procurement of goods and services under ASHA grants are to be found in:

(1) Chapter 4, "Eligibility of Commodities," which contains among other policy considerations, the requirement that certain commodities be procured only in the United States;

1/ A blanket waiver, authorizing local cost financing for each grantee's country, was approved by the Assistant Administrator for Administration on February 3, 1971; the waiver terms govern in case of any conflict with Chapter 18 of this Supplement.

(2) Chapter 5B, "Source and Origin of Commodities and Commodity-Related Services," which contains the rules on componentry for commodities;

(3) Chapter 5C, "Nationality of Suppliers of Commodities," and Chapter 5D, "Nationality of Suppliers of Services," which contain the rules on eligibility of suppliers of goods and services;

(4) Chapter 7, "Eligibility of Delivery Services";

(5) Chapter 18, "Local Cost Financing," which contains policy guidance on the procurement of goods in the country in which the grantee's institution is located; and

(6) Other relevant Chapters of this Supplement.

d. In addition, adequate publicity of AID grants to ASHA institutions is required. An appropriate sign, readable at a reasonable distance is required to be displayed at the construction site indicating that the facility is being constructed with AID financing. Upon completion of construction, a plaque would be affixed to the facility crediting the American people with providing the resources to construct it. The form and wording of the plaque should be approved by AID.

e. ASHA grants are not subject to the requirements of OMB Circular A-110, in accordance with GC/CCM's memorandum of June 17, 1982, Subject: Applicability of OMB Circular A110 to ASHA Grants.

f. In cases where general financial support is provided, AID satisfies itself that the grantee: follows good commercial procurement practices; does not permit discrimination in procurement or employment against firms or persons because of race, color, sex, or national origin and restricts procurement to free world sources.

2. Source of Policy

Section 214 of the FAA provides the authority for grants to American Schools and Hospitals Abroad. The sources of contracting and eligibility policies governing procurement under ASHA grants are set forth in 16A1.

16A

3. Implementation of Policy

See Chapter 12C of this Supplement and Handbook 11 for guidance on implementation of country contracting policy and procedures. See Handbook 15 for implementation of policy regarding procurement of commodities and commodity-related services.

4. Waivers

The relevant waiver provisions of the chapters in this Supplement apply to procurement under ASHA grants. Waivers calling for Assistant Administrator approval shall be submitted to AA/FHA, rather than any other Assistant Administrator, since AA/FHA has ASHA program responsibility.

16B. Grants and Cooperative Agreements to Private, Nonprofit Organizations, Including Educational Institutions

1. Policy

a. General

(1) This section applies to project and nonproject assistance provided by grants1/, and cooperative agreements2/ from AID to U.S. or foreign private nonprofit organizations, including educational institutions, U.S. or international private voluntary organizations, and U.S. or international research institutions, whose programs complement or supplement the programs of AID.

(2) This section does not cover grants and cooperative agreements to foreign governments, or to public international organizations having memberships consisting primarily of foreign governments (see 16C of this Chapter) or to American Schools and Hospitals Abroad (see 16A of this Chapter).

1/ However they are labeled in operational terminology; e.g., Title XII, PVO Matching Grants, Institutional Grants, Operational Program Grants, etc.

2/For definitions of grants and cooperative agreements and the criteria for choice of implementation instrument for AID programs or projects under AID-direct contract/grant procedures, see Chapter 25 of this Supplement.

(3) Grants and cooperative agreements may be used to support all of or a portion of an identifiable recipient program or project which meets AID's development assistance objectives. Requirements pertaining to cost-sharing/matching are set forth in Attachment E of OMB Circular A-110.3/

(4) Grants and cooperative agreements may be <u>in kind</u> as well as in cash. For example, AID arranges with the Department of Agriculture for grants of food to private American voluntary agencies for their use in conducting humanitarian and development programs abroad4/ or in emergency, disaster relief activities.5/ AID also grants commodities and supplies to private organizations engaged in family-planning programs abroad.6/

(5) Unrestricted grants in which it is the intention to commingle the funds and to delete the provisions making applicable the statutory and regulatory requirements, in effect a cash transfer, must be considered and approved on a case-by-case basis, and necessary waivers must be obtained, to the extent the requirements are waivable.

b. <u>Procurement Policy - Grants and Cooperative Agreements</u>

It is AID policy to provide U.S. and foreign private nonprofit organizations including educational institutions, maximum flexibility in their operations by limiting requirements for AID approval on their AID-financed procurements under the grant or cooperative agreement. The recipient's procurement system shall be based on the standards set forth in Attachment O to OMB Circular A-110 and will be reviewed and approved in accordance with the terms of the Attachment. Accordingly, after a U.S. recipient's procurement system has been reviewed and approved in accordance with paragraphs 3. and 4. of Attachment O of OMB Circular No. A-110, by either AID or another Federal department or agency, AID will not require the prior review and approval of any of the recipient's

3/ OMB Circular No. A-110, "Grants and Agreements With Institutions of Higher Education, Hospitals, and Other Nonprofit Organizations - Uniform Administrative Standards" (41 F.R. 32016; July 30, 1976).

4/ See Chapter 21D, Food for Peace, of this Supplement.

5/ See Chapter 21A, Foreign Disaster Relief, of this Supplement.

6/ See Section 291, FAA.

16B1b

contracts. The same flexibility will be accorded a foreign recipient once its procurement system has been reviewed and approved against paragraph 3 of Attachment O of OMB Circular No. A-110; however, paragraph 4 of Attachment O is not applicable to foreign recipients.

Before entering into a grant or cooperative agreement, AID reviews the applicant's project or activity proposal for reasonableness and allowability of cost in light of relevant Federal cost principles. AID also prescribes the necessary and applicable Standard Provisions in the document; these will consist routinely of the first six provisions listed below, most of which derive from statutory requirements, plus a seventh category of other provisions, whether derived from statute or policy, such as clearance of international travel, which are necessary for the particular grant or cooperative agreement.

(1) Where the total procurement element (i.e., including all purchase orders and contracts for both goods and services) of the grant or cooperative agreement is $250,000 or less, the recipient shall procure all goods and services necessary for the activity, in the following order of preference: in the United States, in the country in which the activity is to be performed, or in Geographic Code 941 countries; or elsewhere, but not from sources other than Code 935. (For grants or cooperative agreements having total procurement element of more than $250,000, source is limited to the United States unless waived under Chapter 5 of this Supplement.)

(2) To the extent feasible under paragraph 16B1b(1) of this Chapter, the recipient shall procure locally only goods produced indigenously or imported from Code 935 countries for general use.

(3) The recipient shall make reasonable efforts to solicit the interest of U.S. suppliers by providing information through the AID Office of Small and Disadvantaged Business Utilization (SDB) about commodities it intends to procure when valued at $25,000 or more per contract, unless doing so would seriously preclude successful and timely completion of the activity for which the procurement is to be made.

(4) The recipient shall make all international AID shipments and air travel on U.S. flag carriers unless they are unavailable when needed. (See Chapter 7 of this Supplement.)

(5) The recipient shall ship at least 50 percent of ocean shipments on U.S. flag carriers to the extent available. (See Chapter 10 of this Supplement.)

(6) With respect to all procurements of goods and services under a grant or cooperative agreement, the recipient shall observe the policies set forth in Chapter 4, (i.e., 4C1 to 4C8 and 4D1 to 4D6), with regard to restricted and ineligible commodities and services.

(7) The recipient shall observe any other policies stated in the Standard Provisions of the grant or cooperative agreement, which are necessary for the particular grant or cooperative agreement.

2. Source of Policy

The sources of the policy on grants and cooperative agreements are the general mandate and authority in Sections 102(b)(8) and 106(d) of the FAA, and the specific authority in Section 122 of the FAA.

3. Implementation of the Policy

AID shall reach an understanding with the recipient prior to grant or cooperative agreement approval, as to what is expected in terms of procurement performance from the recipient (see paragraph 16B1b of this Chapter). The understanding will incorporate basic admonitions concerning procurement: to meet OMB procurement standards; not to discriminate against firms and individuals on the basis of race, color, sex, religion, or national origin. Also, the understanding will record the expectation that the recipient will observe the procurement restraints listed in paragraphs 16B1b(1) through 16B1b(7) of this Chapter (source, air, and sea shipment rules, etc.). These understandings will be incorporated in the grant or cooperative agreement document in the recommended Standard Provisions attachment. Once the recipient's procurement system has been reviewed and approved, AID will not interject itself into the day-to-day procurement decisions of the recipient.

4. Waivers

The procurement policies for grants and cooperative agreements set forth herein provide the recipient with the discretion to make most procurement decisions without prior approval from AID. The exceptions to the discretion given to the recipient include:

16B4

a. Source of commodities and services - The recipient may not procure in countries other than in Code 935. AID does not grant waivers to this policy. (See paragraph 16B1b(1) of this Chapter.)

b. Procurement of restricted and ineligible commodities and services set forth in Chapter 4, 4C1 to 4D8 and 4D1 to 4D6 of this Supplement. Available waiver authority for these commodities and services may be found in the various sections of Chapter 4 of this Supplement.

c. Restrictions regarding air and ocean transportation are based upon statutory requirements and may be waived only as provided in Chapters 7 and 10 of this Supplement.

d. With respect to policies determined to be relevant to a particular grant or cooperative agreement (see paragraph 16B1b(7) of this Chapter), the waiver of these policies will be determined by the waiver provisions of this Supplement and Chapter 1 of Handbook 13. For example, if these policies derive from Federal uniform administrative requirements governing grants and cooperative agreements, the Federal agency promulgating the requirements must review the waiver request. If the policies derive from AID administrative determinations, waiver requests may be directed to the office responsible for the policy. (See Chapter 1E of Handbook 13 and relevant chapters of this Supplement.)

16C. Grants to Public International Organizations

1. Policy

a. General

This section applies to project and nonproject assistance to international organizations.

(1) For the purposes of this Chapter, the term international organization means a public international organization created by international agreement and having membership consisting primarily of national governments or public agencies thereof, and in which the United States participates pursuant to any treaty or under the authority of an Act of Congress authorizing such participation or making an appropriation for such participation.

(2) The status of such organizations requires that their independence and the integrity of their operations, within the framework of their charters, be respected by member states. It is a general policy principle that international organizations, composed of many member nations, cannot be expected to subject their books and records to inspection by officials of each country participating in the organization. Accordingly, AID generally relies on the international organization's management, including internal auditing and procurement policies and procedures.

b. Grants to international organizations are subject to the requirements of the Case-Zablocki Act (1 U.S.C. 112b). See Appendix 6G, Chapter 6, Handbook 3, for reporting details and procedures.

2. Source of Policy

a. Section 301 Grants - Section 301(a) of the FAA and, with respect to grants for which the United States is the sole contributor to a fund administered by an international organization, Section 301(d) of the FAA.

b. Non-Section 301 Grants - Section 103-107, especially 106(d)(1); 209; and 491 of the FAA.

c. 22 U.S.C. 288, The International Organizations Immunities Act, as amended.

d. GC's memorandum of June 30, 1969, Subject: "AID's Responsibility for Audit of Contributions to International Organizations."

e. GC's memorandum of August 18, 1981, Subject: "The Applicability of 22 CFR 181 Regulations, 'Coordination and Reporting of International Agreements,' to AID's Regulations on Contracts and Assistance Instruments."

3. Implementation of Policy

a. FAA funds that go to international organizations can be divided into two categories:

16C3a

(1) Section 301 Contributions

Such contributions usually go to international organizations for development or development-related programs; such as the U.N. Development Program, UNICEF, etc. These are called "voluntary" contributions to distinguish them from "assessed" contributions which the United States may owe by virtue of its membership in such organizations. Funds appropriated for these contributions are limited, and the responsible Congressional committees indicate how much is to be contributed under this authority to each of these organizations in any year. AID is under strong injunction not to supplement Section 301 appropriation with non-Section 301 funds. This injunction is based on Congressional Committee guidance and the principle that "special" funds cannot be supplemented by "general" funds.

(a) Contributions under Section 301 are effected by a transfer of funds from AID to the Department of State which makes them available to an international organization.

(b) In keeping with the policy in paragraph 16C1a(2) of this Chapter and with the exception of Section 301(d) contributions, AID procurement policies (as set forth in Handbook 1, Supplement B) and GAO and AID audit rights are not applicable to these contributions; instead, the auditing and procurement policies and procedures of the international organization are relied upon.

(c) Contributions under Section 301(d), involve funds for specific activities that are solely funded by U.S. contributions, are subject to AID's procurement policies and GAO audit rights, unless waived.

(2) Non-Section 301 Contributions

Grants made pursuant to Sections 103-107, especially 106(d)(1); Section 209; and Section 491 for development assistance, disaster assistance, security supporting assistance, etc., are programmed according to the criteria established in the relevant section of the FAA. AID may not supplement the voluntary contribution category of Section 301 with grants made pursuant to these other authorities. However, AID may use these authorities to initiate a new project or activity or expand an ongoing one in which it has a special interest and a preference that it be handled by an international organization rather than by AID directly. Contributions under one or more of the FAA sections (other than Section 301) mentioned are made available from AID directly to an international organization.

(a) When AID is the sole contributor to a project or activity to be carried out by an international organization, then GAO and AID audit rights and AID procurement policies and procedures are applicable, unless waived.

(b) When AID is not the sole contributor to an international organization(s) special project or activity, AID relies on the international organization's auditing and procurement policies and procedures, in keeping with the policy in paragraph 16C1a(2) of this Chapter.

(c) When AID is a major (i.e., largest) contributor, AID, with the concurrence of the Department of State (IO), may elect to negotiate the application of selected procurement and audit policies with the international organization to protect U.S. interests.

b. When AID procurement requirements apply, as in the case of Section 301(d) grants and non-Section 301 grants that involve AID as a sole contributor, the applicable procurement policy requirements are to be specified in the grant agreement, together with applicable GAO or AID audit requirements, as applicable.

c. Occasionally, AID may, after consultation with the international organization in question, arrange to provide part or all of its grant in kind. In such an event, AID procures the goods or services directly pursuant to AID's procurement policies.

d. Chapter 5, Handbook 13.

4. Waivers

a. Since AID relies on the auditing and procurement policies and procedures of an international organization for Section 301 grants, except Section 301(d), and non-Section 301 grants where AID is not the sole contributor, waivers of the procurement policies in this Supplement are not required.

b. With respect to Section 301(d) grants and non-Section 301 grants where AID is the sole contributor, waivers of AID procurement policies and GAO or AID audit rights will be considered on a case-by-case basis.

CHAPTER 17

ELIGIBLE PRICES OF COMMODITIES AND SERVICES

17A. Policy

1. General

a. This Chapter applies to both project and nonproject assistance.

b. This Chapter discusses AID rules relating to the prices charged for AID-financed commodities, commodity-related services, and other services. The purpose of these rules is to promote the prudent use of AID funds. There are two statutory price limitations and several other price requirements which AID has developed to apply to borrower/grantees and to suppliers of commodities and commodity-related services.

2. Statutory Price Limitations

a. The Foreign Assistance Act contains two direct limitations on the prices of commodities procured with AID funds. Section 604(b) of the Act states that no funds:

> "...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, quality, and terms of payment."

Section 604(a) states that funds may be used for procurement outside the United States only if the price of the commodity purchased "in bulk" is lower than the price prevailing in the United States, with adjustments for the cost of transportation, quality and terms of payment.

b. GAO has interpreted the term "in bulk" to mean purchases in large quantities and not as a reference to types of commodities usually sold in bulk such as grain, fertilizer or coal.

c. The legislative history of the 1961 Foreign Assistance Act makes clear that the statutory price tests were not intended to apply to project assistance. As a practical matter, however, AID has imposed similar price limitations on project procurement in order to assure prudent use of AID funds.

3. Price Tests Applicable to Borrower/Grantees

a. Project Procurement

(1) The standard provisions of AID project loan and grant agreements include a requirement that no more than reasonable prices be paid for any commodities or services financed, in whole or in part, under the agreement. The term "reasonable price" means the price which meets the appropriate requirements in the following paragraphs.

(2) For commodities and construction services - Borrower/grantee shall pay no more than the lowest available price, including any transportation costs. This requirement will be satisfied if the borrower/grantee or its agent has used procurement procedures required by AID or, if none are required, has followed sound procurement practice and accepts the most advantageous competitive offer,1/ price and other pertinent factors considered such as quality, delivery time, transportation costs, payment terms, availability of spare parts, installation and repair services. For procurement through formal competitive bidding, the lowest responsive and responsible bid will normally be accepted as meaning the lowest available price.

(3) For technical and professional services - Since the procurement of these services is based on technical competition rather than price competition, the reasonableness of price should be determined through some form of cost analysis.

b. Nonproject Procurement

Nonproject assistance loan and grant agreements require borrower/grantees to follow the provisions of AID Regulation 1. A price test applicable to borrower/grantees is included in Section 201.62(a) of the Regulation which is similar to the test for project commodities and construction services given above. Under AID Regulation 1, it is the responsibility of the borrower/grantee to ensure that the importer procures in accordance with the procedures specified in the Regulation and that it accepts the lowest available competitive offer,1/ price and other pertinent factors considered. As with project procurement, the

1/ When competitive offers are not available as in the case of sole-source procurement, some form of cost or price analysis should be used to establish the reasonableness of price.

lowest responsive and responsible bid under a formal competitive bidding procedure normally will be accepted as meaning the lowest available price.

4. Price Tests Applicable to Suppliers under Country Contracting Arrangements

a. General

The most detailed price provisions are those which a supplier of commodities or commodity-related services is required to meet. Suppliers are made subject to the price tests through the requirement to sign a Supplier's Certificate and Agreement with AID (form AID 282 or form AID 1450-4) prior to receiving payment. See Chapter 8 for a discussion of when the Certificates are required.

b. Project Procurement

(1) Price rules generally applicable to suppliers of commodities and commodity-related services under project assistance are included in the Supplier's Certificate and Agreement With AID for Project Commodities, AID 1450-4. When a supplier signs a form AID 1450-4, it certifies, among other things, that it has met the price requirements in the Certificate relating to maximum price of commodities and delivery services and has complied with the rules applicable to commissions, discounts and side payments.

(2) There are no price requirements applicable to contractors providing services other than commodity-related services. In addition, there are no price requirements applicable to a contractor, such as a construction contractor, who provides commodities under a fixed price contract for a combination of commodities and services which are not commodity-related. Under such contracts, a finished job which is an amalgamation of commodities and services is being procured, and it is inappropriate after the price is established to segregate the commodity element of the total price for separate price consideration.

c. Nonproject Procurement

Nonproject procurement involves only commodities and commodity-related services. The price rules which are applicable to suppliers under project assistance are given in AID Regulation 1.

17A4c

A supplier is subject to these rules when it signs a Supplier's Certificate and Agreement with the Agency for International Development (form AID 282), which incorporates AID Regulation 1 by reference. AID Regulation 1 includes the statutory price tests and several other commodity price tests for various circumstances. It also contains pricing provisions for freight charges and incidental services and rules applicable to commissions, discounts, side payments, etc. The pricing provisions are in Subpart G of AID Regulation 1. Additional price rules for pharmaceutical procurements under nonproject assistance are in Appendix B, Part II D of Handbook 15.

5. Procurement by AID or Other USG Agencies

When procurement takes place under the Federal Acquisition Regulations or AID Acquisition Regulations, compliance with those regulations will satisfy all the provisions of this Chapter.

17B. Source of Policy

1. The policies expressed in the rules on prices in AID-financed transactions are based partly upon statutory requirements and partly upon AID determinations. Section 604(a) of the Act provides, *inter alia*, the funds may be used for procurement ("in bulk") outside the United States only if the price of the commodity is lower than the prevailing U.S. market price. Section 604(b) states that funds must not be used for the procurement ("in bulk") at prices higher than the U.S. market price. In the interest of related AID policies and of simplicity of operation, the statutory restrictions are applied to all nonproject transactions without regard to the quantities of commodities included in a transaction.

2. The effective implementation of the statutory price provisions would not be enough in itself to assure AID that its funds were being prudently used for commodity procurement. For this reason, AID has adopted common sense standards derived from commercial practices and the experience of this and other government and nongovernmental procurement and financing entities. The rules that a supplier must not charge a higher price in an AID transaction than in other comparable transactions, that there be no kickbacks or side payments, that the purchaser buy at the lowest available price, etc., are all examples of these nonstatutory common sense rules.

17C. Implementation of Policy

Implementation guidance will be found in Handbook 15, Chapter 2; AID Regulation 1, Subpart G; Handbooks 11 and 14.

17D. Waivers

The requirement that AID finance commodities and commodity-related services in accordance with the price limitations set forth in this Chapter may not be waived.

CHAPTER 18

LOCAL PROCUREMENT

18A. Policy

1. General

a. This chapter applies to project assistance only.

b. Financing local procurement involves the use of appropriated funds to finance the procurement of goods and services supplied by local businesses, dealers or producers, with payment normally being in the currency of the cooperating country.

c. All locally financed procurements must be covered by source/and nationality waivers as set forth in Chapter 5 of this Supplement, with the following exceptions:

(1) Commodities and services financed under the Development Fund for Africa (DFA), unless otherwise specified in the Project Agreement. (See Chapter 21E of this Supplement concerning the source requirements for the DFA.)

(2) Locally available commodities of U.S. origin, which are otherwise eligible for financing, if the value of the transaction is estimated not to exceed the local currency equivalent of $100,000 (exclusive of transportation costs.)

(3) Commodities of geographic code 935 origin if the value of the transaction does not exceed $5,000 (see Chapter 5, paragraph 5B4c(2) of this Supplement.)

(4) Professional services contracts estimated not to exceed $250,000.

(5) Construction services contracts estimated not to exceed $5,000,000.

(6) The following commodities and services which are available only locally:

(a) Utilities including fuel for heating and cooking, waste disposal and trash collection;

(b) Communications -- telephone, telex, fax, postal and courier services;

18A1c(6)

(c) Rental costs for housing and office space;

(d) Petroleum, oils and lubricants for operating vehicles and equipment;

(e) Newspapers, periodicals and books published in the cooperating country;

(f) Other commodities and services (and related expenses) that, by their nature or as a practical matter, can only be acquired, performed, or incurred in the cooperating country, e.g., vehicle maintenance, hotel accommodations, etc.

d. Although waivers are not necessary for procurements in accordance with paragraph c above, Missions are responsible for keeping records on how much is spent for items which do not meet U.S. source or nationality requirements.

e. Programming Determinations

(1) It is AID's policy not to finance customs duties associated with the local procurement of imported items, to the extent practicable. When it has been determined that certain imported items can be procured locally under a project, it should also be determined what methods can be used to assure that AID does not finance identifiable customs duties, either by avoiding payment entirely or by being reimbursed for the amount attributable to customs duties. Two ways in which this might be accomplished are (a) to arrange for the local supplier to receive an exemption from the cooperating country government covering the supplier's next import of the same item and to sell the item in stock without including the duties, or (b) to require the cooperating country to contribute an appropriate amount of local currency to the project or in support of AID activities to offset the amount of customs duties. This policy does not apply to procurements by non-governmental organizations receiving assistance.

(2) When local procurement of U.S. origin commodities is planned under a project, such a decision should be supported by an analysis of the prices of goods expected to be procured, and a determination that the prices are reasonable, taking into account comparable delivery terms and prices from the United States, and the implementation schedule of the project.

f. This chapter does not cover local procurement under fixed amount reimbursement (FAR) financing; see Chapter 20 of this Supplement for a statement of such policies. For special applications to Intermediate Credit Institutions, including competitive procedures, see Chapter 19 of this Supplement.

18A

2. Procurement Procedures

a. Procurements of commodities and services within the cooperating country which are undertaken directly by AID or its contractors will be in accordance with the requirements of the FAR/AIDAR. Handbook 13 grants and cooperative agreements are subject to the procurement standards in the handbook.

b. Procurements of commodities and services within the cooperating country by cooperating country agencies or host country contractors are the carried out under the competitive principles set forth in Chapter 12, paragraphs 12C3a and 12C3c.

(1) When solicitations under host country contracting procedures for technical or professional services are made solely within the cooperating country, the contract approval requirements as set forth in Section 2.2, the competitive principle in Section 2.4.1, the nationality requirements in Section 2.6, and the appropriate mandatory contract clauses discussed in Section 2.12, of Handbook 11, Chapter 1, are applicable.

(2) When solicitations under host country contracting procedures for construction services are made solely within the cooperating country, the contract approval requirements as set forth in Section 2.2, the nationality and source requirements in Section 2.5, the applicable mandatory contract clauses in Section 2.11, and the competitive principle in Section 2.3.1a, of Handbook 11, Chapter 2, are applicable.

(3) When solicitations under host country contracting procedures for equipment of materials are made solely within the cooperating country, the contract approval requirements as set forth in Section 2.1, the contracting method in Section 2.2, eligibility of commodities in Section 2.5, source of commodities and commodity related services and nationality of suppliers in Section 2.6, and the applicable mandatory contract clauses in Section 2.13, of Handbook 11, Chapter 3, are applicable.

(4) While it is not necessary to publicize such procurements in the United States, all requirements should be publicized locally to the extent practicable.

(5) In those cases where a host country procurement is estimated to exceed $250,000, or the equivalent in local currency, AID's policy on assessing and certifying the capability of the host country contracting agency to undertake the procurement is applicable.

3. Price Requirement

a. The buyer shall pay no more than the lowest available price, including transportation. The term "reasonable price" as used in project agreements means the price which satisfies this test.

b. The requirement that the buyer pay no more than the lowest available price will be satisfied if the buyer has followed sound procurement practice and accepts the most advantageous offer, price and other pertinent factors considered, such as quality of the goods and services, delivery time, transportation costs, payment terms, availability of spare parts, installation and repair services. When competitive offers are not available, as in the case of sole-source procurements, some form of cost or price analysis should be used to establish the reasonableness of price.

c. For procurements through formal competitive bidding procedures, the lowest responsive bid normally will be accepted as meaning the lowest available price.

4. Payment Methods

The implementing documents should specify the applicable method of payment for locally procured commodities and services. The usual methods for making payment are direct reimbursement to the Borrower/Grantee on the basis of documentation specified by AID, or direct payment by AID to the supplier on behalf of the B/G. Other methods which are acceptable to the Mission Controller and consistent with AID's policy on cash management also may be utilized.

5. Applicability of Statutory Restrictions

The various provisions of the FAA which pertain to procurement are applicable to local cost financing; however, the impact of these provisions is generally minimal. Although the price provisions (Sections 604(a) and (b) do not apply to project assistance, AID applies a reasonable price test because of its concern that funds be spent prudently. The cargo preference and marine insurance restrictions do not apply since the commodities are procured within the cooperating country. The Small Business provision of the FAA also has no meaningful application since purchases are made within the cooperating country. The restrictions on commodity eligibility described in Chapter 4, of this Supplement, whether having their source in the FAA or in AID policy, are applicable to local procurement.

18B. Source of Policy

The policies is AID administrative determinations, set forth in the telegrams 90 State 265071, 90 State 276461 and 90 State 410442.

18C. Implementation of Policy

1. In those cases where U.S. origin commodities are procured locally, the supplier's invoice shall include a certification that the commodities are of U.S. origin and comply with the AID componentry requirements.

2. Additional implementation guidance can be found in Handbooks 3, 11, and 15.

18D. Waivers

1. Any waivers of the policies set forth in Section A1c of this Chapter which would loosen restrictions on local procurement, may be authorized only on a case-by-case basis under the authorities for source and nationality waivers provided by Delegation of Authority 405 and subsequent redelegations.

2. The Assistant Administrators who have program responsibility, acting in consultation with GC, have authority to waive other policies peculiar to local procurement described in this Chapter.

CHAPTER 19

INTERMEDIATE CREDIT INSTITUTIONS

19A. Policy

1. General

a. This Chapter pertains to project assistance only.

b. This Chapter states the policies applicable to the procurement of goods and services with AID funds made available to intermediate credit institutions (ICI's). The goods and services in question are procured by the individuals or entities that borrow from an ICI. When the ICI uses AID funds to purchase goods or services for its own account Handbook 11 shall apply to such procurements.

c. The degree of control which AID may exercise over this type of procurement is, as a practical matter, limited by the fact that the subborrower may be separated from the AID borrower by one or more intermediaries and, in addition, the subborrowers frequently are small businessmen or farmers unaccustomed and frequently incapable of responding to many of the conditions normally laid down by an international financing agency.

2. Dollar Procurement

When an ICI or a subborrower uses AID funds to pay for the procurement of goods and services with dollars (foreign exchange), certain procurement policies for projects described elsewhere are applicable. Please refer to Chapter 4, Chapter 5, Chapter 7, Chapter 10, Chapter 11, Chapter 17, Chapter 22, and Chapter 23, of this Supplement. (Under a special rule for ICI's, the small business notification requirement; i.e., publication in "AID Financed Export Opportunities," is applicable only to procurement under formal competitive procedures.)

3. Local Cost Procurement

There is a wide variation in the capacity of ICI subborrowers to respond in an effective manner to the array of conditions which AID usually applies to the procurement of goods and services. Equally important is the fact that the efficiency with which AID can use its limited implementation guidance and monitoring resources also varies widely as between different classes of subborrowers. For these reasons, policies for local cost procurement are established according to the class of subborrowers. It is understood that the dollar amounts used to define categories of subloans will be converted into reasonably equivalent local currency sums.

a. Subloans the Equivalent of $5,000 or less

(1) AID does not require adherence to any special procurement policies when the ICI subloan to the ultimate borrower is the equivalent of $5,000 or less. Prior to authorizing a loan to an ICI, AID will have assured itself of the soundness and adequacy of the ICI's operational plans and procedures, lending criteria, guidelines, and credit manuals. Moreover, AID will have determined that the ICI can be expected to lend to eligible subborrowers possessing the necessary capabilities to utilize the subloan for the productive purposes intended.

(2) These considerations, plus recognition of the improbability that AID could monitor compliance with procurement policies applied to small subloans, have determined AID policy for this class of subborrowers.

b. Subloans Approved by AID and ICI Procurement

The policies expressed in 19A3c of this Chapter are applicable when AID's prior approval of subloans, in any amount, is required in accordance with the terms of the loan agreement, or where an ICI is effecting local cost procurement for its own account.

c. Subloans the Equivalent of More than $5,000

(1) Where a cooperative or another analogous institution is procuring local cost goods or services to satisfy the requirements of subloans made to its members, the combined amount of such subloans will determine whether the provisions of 19A3a or 19A3c of this Chapter will apply.

(2) The policies as they apply to ICI local cost financing of subloans (referred to in 19A of this Chapter) are similar to those policies prescribed in Chapter 18 of this Supplement and are as follows:

(a) Eligibility of Commodities

To the extent they are relevant, the policies described in Chapter 4 of this Supplement are applicable to local cost financing under ICI's. It should be noted, however, that the Commodity

Eligibility List may not specifically apply to projects, and that some goods ineligible for importation under the Commodity Eligibility List could be eligible for local cost financing. Sand, gravel, and limestone are examples. Needless to say, however, statutory restrictions on certain commodities as described in Chapter 4 of this Supplement are applicable to local cost financing of projects; e.g., abortion equipment, motor vehicles, etc.

(b) Indigenous Goods

1. Indigenous goods are those of local source and origin that have been mined, grown, or produced in the cooperating country through manufacture, processing, or assembly. If the locally produced goods contain imported components, a commercially recognized new commodity should result that is substantially different in basic characteristics or in purpose or utility from its components. Such goods may be financed by AID without limitation.

2. However, caution should be exercised in financing produced goods using components imported from other than Code 899 countries, in order to avoid the unintended association of AID funds with products directly identifiable with nonfree world sources.

(c) Imported Items

1. Imported items available in the cooperating country which otherwise meet the source/origin requirements of the project agreement may be financed in unlimited quantities, regardless of dollar value, up to the total amount available for local procurement under the terms of the project agreement.

2. Imported items from Geographic Code 941 countries which are available in the cooperating country can be funded in unlimited quantities, regardless of dollar value, up to the total amount available for local procurement under the terms of the project agreement.

3. Imported items from any Free World country which are available locally, or imported specifically for the project, may be financed if the cost of the transaction, excluding the cost of transportation, does not exceed the local currency equivalent of $5,000.

19A3

4. Any component from a non-Free World country makes the item ineligible for AID financing.

5. Transactions not meeting these provisions may be financed only in accordance with the relevant policies for dollar financed procurements in Chapter 5, "Source and Nationality."

6. The ICI shall transmit the foregoing rules applicable to the local procurement of imported items to subborrowers. Overall compliance for each project will be monitored, and any country refund claims in accordance with the loan agreements will be made as necessary.

(d) Competition

1. ICI subborrowers are expected to follow the general principle of competitive procurement which is applicable to all AID-financed transactions. The pertinent expression of this principle is given in Section 17A of Chapter 17 of this Supplement which states, "The buyer shall pay no more than the lowest available competitive price including transportation costs. The term 'reasonable price' as used in loan, grant, and project agreements means the price which satisfies this test."

2. "The requirement that the buyer pay no more than the lowest available competitive price will be satisfied if the buyer has followed good commerical practices and accepts the most advantageous competitive offer1/, price and other pertinent factors considered such as quality of the goods and services, delivery time, transportation costs, payment terms, availability of spare parts, and installation and repair services."

3. "For procurement through formal competitive bidding procedures, the lowest responsive bid will be accepted as meaning the lowest competitive price."

4. It is anticipated that private subborrowers under ICI loans will normally follow negotiated procurement procedures.

1/ In the case of sole source procurement, competitive offers are not required.

(e) ICI Financing of Contracts for Services

The principles set forth in Chapter 12 of this Supplement are applicable to service contracts financed by ICI's for their subborrowers.

(f) The Applicability of Statutory Restrictions to ICI Local Cost Financing

The various provisions of the FAA which pertain to procurement are applicable to local cost financing by ICI's. However, the impact of these provisions is generally minimal. The price provisions (Sections 604(a) and (b) of the FAA) do not apply to project assistance although this does not lessen AID's concern that reasonable prices prevail in all transactions that it finances. Cargo preference and the marine insurance restrictions are irrelevant since the commodities are procured within the cooperating country. The Small Business provision has no meaningful application since U.S. small businessmen normally do not accept payment in foreign currencies. To the extent they are relevant, the restrictions on commodity eligibility described in Chapter 4 of this Supplement, whether having their source in the FAA or in AID policy, are applicable to local cost financing.

19B. Source of Policy

1. In a large measure, the policies stated in this chapter have the same sources as those applicable to local cost financing. See the "Source of Policy" section of Chapter 18 of this Supplement. The remainder of the policies are based on an administrative determination of AID taking into account the nature of ICI lending operations and AID's experience, primarily in the Latin American region, with those operations.

2. The source of the policy on Small Business is Handbook 1, Supplement B, Chapter 23.

19C. Implementation of Policy

See Handbooks 3 and 11.

19D. Waivers

1. Where this Chapter refers to policies that have their primary statements in other chapters of this Supplement, the waiver sections of these other chapters are applicable; e.g., for waiver of commodity eligibility, see Chapter 4 of this Supplement. For policies that are peculiar to ICI's; e.g., the application of requirements to subloans of a certain size, the Geographic Assistant Administrators have waiver authority.

2. Procurement of imported items from the developed free world sources in excess of the limits specified in 19A3c(2)(c)3 may be authorized only by source waivers in accordance with the provisions of Delegation of Authority No. 405 and any redelegations thereunder.

CHAPTER 20

FIXED AMOUNT REIMBURSEMENT (FAR)

20A. Policy

1. General

a. This Chapter applies only to project assistance.

b. This Chapter covers the policies applicable to the procurement of goods and services under fixed amount reimbursement (FAR) projects and subprojects. FAR is a form of project assistance under which the amount of reimbursement is fixed in advance based upon cost estimates reviewed and approved by AID Reimbursement is made upon the physical completion of a project, subproject, or quantifiable element within a project. The emphasis is upon reimbursement based on outputs rather than inputs or costs.

c. Before undertaking financing under a FAR project or subproject, the Mission Director should review the procurement policies and procedures of the agency of the cooperating country responsible for implementation and satisfy himself/herself as to the soundness of those policies and procedures.

2. Procurement of Goods

Goods procured for FAR projects or subprojects may be divided into three categories:

a. Indigenous Goods

Indigenous goods, which are defined in Chapter 18 of this Supplement, may be financed by AID without limitation.

b. Imported Items

(1) Imported items which are available locally may be financed irrespective of origin, subject only to the limitation that estimated procurement of such items shall not constitute more than 25 percent of the estimated total cost of the commodity element of the FAR project or subproject, unless a higher percentage is justified and approved at the PP stage.

20A2b

(2) Based on the assumption that FAR projects are relatively small, include a large service element, and that no FAR project or subproject is made up exclusively or largely of commodities, it has been determined that the statutory requirements (see Source of Policy section) applicable to commodities are satisfied for imported shelf items located in the cooperating country at the time of purchase.

c. <u>Goods Imported Specifically for the Project or Subproject</u>

Imported items from any Free World country, which are imported specifically for the project or subproject, may be financed if the cost of the transaction does not exceed $5,000, exclusive of transport costs.

3. <u>Procurement of Services</u>

The customary procurement practices of the implementing agency of the cooperating government, subject to the Mission Director's review referred to above, will be applicable for contracting. AID policies on cooperating country contracts and nationality (Chapters 12C and 5 of this Supplement, respectively) need not be followed for procurement under FAR-type projects and subprojects.

20B. Source of Policy

This policy is based upon an AID administrative decision to obtain the most effective utilization of FAR financing for program implementation, consistent with statutory requirements and sound management principles. See also Memorandum of Law entitled "Applicability of Statutory Procurement Restrictions to Local Currency Financing" from GC, Charles Gladson, dated August 6, 1975 (GC opinions: Commodities and Procurement No. 171).

20C. Implementation of Policy

Handbook 3, Appendix 3J.

20D. Waivers

1. Policies that pertain to Section 20A2b of this Chapter are subject to waiver by the Geographic Assistant Administrator, acting in consultation with GC.

2. For waiver authority respecting policies cited in 20A2c of this Chapter, see Chapter 5, "Source and Nationality."

CHAPTER 21

SPECIAL PROGRAMS

21A. Foreign Disaster Assistance

1. Policy

a. Foreign Disaster Assistance is not readily categorized as either project or nonproject assistance.

b. AID has special organizational arrangements for administering foreign disaster assistance and a pattern of operating procedures and delegations of authority established to assure virtually immediate delivery of emergency, humanitarian assistance to victims of natural or other calamities abroad. Critical supplies are stockpiled in a number of strategic locations in readiness for instant draw-down when disaster strikes. Chiefs of U.S. Missions are vested with authority to expend up to $25,000 for initial local purchases immediately upon their declaration of the existence of a disaster. The Office of U.S. Foreign Disaster Assistance (OFDA) has standby authority to act swiftly in arranging for the additional procurement of goods and services to meet emergency needs for food, medical care, shelter, and other requirements.

c. It is AID policy to effect procurement as expeditiously as possible in response to disaster situations. In the initial emergency phase of disaster assistance, OFDA has authority (Delegation of Authority No. 1300 to the Director, Office of Foreign Disaster Assistance, as Amended) to procure without regard to certain standard AID procurement policies, especially those entailing time-consuming compliance such as security clearance, small business notification, equal employment opportunity and geographic source limitations.

d. To the extent that they will not adversely affect the success of emergency relief efforts, normal procurement policies are observed. There are provisions, however, permitting rapid emergency procurement without the requirement for the immediate submission of documentation usually prescribed.

e. Resort to exceptions from standard AID procurement policies is normally made only in the emergency phase of a disaster situation. Normal procurement policies are usually applied to the procurement of commodities and services for subsequent rehabilitation and reconstruction phases of disaster assistance, as well as to the routine procurement of stockpiled commodities.

2. Source of the Policy

Section 491(b) of the FAA, which states: "...notwithstanding any other provision of this or any other Act, the President is authorized to furnish assistance to any foreign country or international organization on such terms and conditions as he may determine, for international disaster relief and rehabilitation, including assistance relating to disaster preparedness, and to the prediction of, and contingency planning for, natural disasters abroad." Uniform State/AID Regulations (2 FAM 060) and Handbook 8, both Chapter 1 and Appendix A, contain additional policy guidance relating to the provision of foreign disaster assistance.

3. Implementation of Policy

See Handbook 8, especially Chapter 5, "Disaster Relief Procurement Authorities and Procedures," for a full description of the organization, methods of operation, and authorities established to assure rapid response to foreign disaster situations.

4. Waivers

See Handbook 8, especially Chapter 5, "Disaster Relief Procurement Authorities and Procedures."

21B. Reserved

21C. Reimbursable Development Program

1. Policy

a. Under the authority provided in Section 607 of the FAA, AID and other U.S. agencies may furnish services and commodities to friendly countries, international organizations, the American Red Cross, and certain voluntary nonprofit relief agencies on an advance of funds or reimbursement basis, provided that a determination has been made that the furnishing of such assistance is consistent with and in furtherance of Part I of the FAA and within the limitations of that Act. The preferred method of financing is by funds advanced to AID. AID and other U.S. agencies receive fees covering the costs they incur in providing such services.

21C1

b. U.S. facilitation of self-financed contracting (by entities eligible under Section 607) may range, on the one hand, from the limited task of identifying suitable U.S. firms with which the requesting entity may then proceed to negotiate and contract to, on the other hand, an undertaking in which the U.S. agency itself negotiates and contracts on the requesting entity's behalf.

c. The authority to determine that the furnishing of such services is consistent with and in furtherance of Part I of the FAA has been redelegated to AID's Geographic Assistant Administrators who make such determinations in their respective areas for all such requests whether AID or other U.S. Departments or agencies are to fulfill them. Following such a determination, AID has no further responsibility for implementation of procurement when undertaken by other U.S. agencies whose own procurement policies govern -- except that, if U.S. Government-owned excess properties are to be furnished by other U.S. agencies, they may not be shipped without AID's prior approval based on AID's having determined: (1) that the requesting entity has a need for such properties; (2) that the ultimate end-user has the capability to use and maintain them; and (3) that the quality of such properties would not reflect unfavorably on the U.S. nor the costs of providing them exceed their residual value.

d. As a matter of law, very few of the limitations of U.S. statutes apply to AID's facilitation of procurement for self-financed contracts, and those that do are only tangentially related to the procurement function.[1] AID does, however, apply rules, standards, and procedures that have proven useful under AID concessional assistance activities in carrying out responsibilities it assumes under Section 607.

1/ These are, principally: Section 601 which requires participation of private enterprise to the extent practicable in achieving the purposes of the FAA; Section 625(h) which prohibits Federal employees from accepting compensation or other benefits from any foreign country; Section 626 which places certain restrictions on the use of consultants; Section 608 which requires reimbursement for all costs incurred in furnishing excess property pursuant to Section 607. Additionally, Executive Order 11246 of September 24, 1965, requiring U.S. Government contracts to contain certain clauses prescribing nondiscriminatory hiring practices, does apply to contracts executed by AID when recruitment of workers by the contractor takes place in the United States.

e. AID has formulated guidelines concerning country-financed contracts when AID is involved in the contracting process. These guidelines suggest contract provisions to be considered by AID in negotiation irrespective of whether AID or the host government signs the contract. These guidelines are intended to achieve simplicity in the implementation of Section 607 programs as well as to assure sound business practices and to assure that AID does not participate under Section 607 authority in procurements it would not finance under concessional assistance programs without the specific approval of the Deputy Administrator.

f. Such additional terms and conditions as the policies of the financing country may require and as are mutually acceptable are also incorporated in self-financed contracts on a case-by-case basis.

g. In facilitating these self-financed projects, AID favors the United States as the source of the services and goods being procured. Implicit in these requests to AID is the desire of the financing entity to secure U.S. services and goods. Procurement of some services and commodities from other free world sources is not, however, precluded.

As one example, AID might, on behalf of a self-financing country client, contract with a U.S. consulting engineer who would thereafter assist the client in contracting with other contractors. The latter contractors would be predominantly but need not be exclusively U.S. contractors. AID would not normally, however, undertake negotiations with a non-U.S. contractor on behalf of the requesting entity.

h. In some circumstances, AID may elect to make use of its appropriated funds to initiate requested procurements for which it is later reimbursed. As AID proceeds in such cases only on the basis of binding, bilateral agreements assuring full reimbursement to AID, however, the same rules apply to these initial expenditures as would have, had they been financed with funds advanced by the requesting entity.

2. <u>Source of Policy</u>

See Information Memorandum for the Deputy Administrator from GC, June 4, 1976, "Legal Requirements for Country-Financed Contracts"; Action Memorandum for the Deputy Administrator from DAA/FA containing guidelines as to contract provisions suitable for use in Section 607-financed contracts, approved September 28, 1976 (with accompanying provision); and regulations issued pursuant to the Export Administration Act of 1969, as amended, with respect to boycotts and restrictive trade practices.

3. Implementation of Policy

Handbook 16 - Excess Property.

4. Waiver

It is AID policy not to waive any of the few statutorily derived procurement restrictions (see Footnote 1 to 21C1 of this Chapter) which apply to procurements under Section 607 of the FAA.

21D. Food For Peace, P.L. 480 - Title II

By delegation of authority, AID plays the paramount role in the planning, programming, and oversight of Food for Peace activities authorized by Public Law 480 - Title II. The actual procurement of commodities financed with appropriations authorized by that Act, however, is the responsibility of the U.S. Department of Agriculture. Transportation services are procured by the Department of Agriculture and private voluntary agencies engaged in P.L. 480, Title II programs, following policies established by AID to implement the requirements of the Cargo Preference Act (see Chapter 10 of this Supplement). The private voluntary agencies obtain reimbursement of their ocean transportation charges as stipulated in Chapter 7 of this Supplement.

21E. Development Fund for Africa

1. Policy

a. This omnibus FY 1988 Continuing Resolution established a new, separate appropriation account entitled "Sub-Saharan Africa, Development Assistance", normally referred to as the Development Fund for Africa, or "DFA". The DFA granted special authority to exempt the DFA program from Section 604(a) of the FAA and similar statutory prohibitions and restrictions.

b. Under this authority, AID has decided to make exceptions to its normal policies and procedures only in the area of source, origin, and nationality. In this regard, AID has determined that Geographic Code 935 is the authorized source for procurement of goods and services under the DFA within certain guidelines as detailed in paragraph 21E3 below.

2. Source of the Policy

The omnibus FY 1988 Continuing Resolution appropriation entitled "Sub-Saharan Africa, Development Assistance", and a April 1, 1988 Action Memorandum for AA/AFR, approved April 4, 1988, and State 105351 April 15,1988), Subject: Revision of AA/AFR DOA 551: Implementing Special Procurement Policy Rules Governing the Development Fund for Africa (DFA), * and the December 18, 1992, Action Memorandum for AA/AFR approved January 24, 1993.

3. Implementation of the Policy

a. General.

(1) U.S. procurement. Although AID Geographic Code 935 is the authorized source code for DFA-funded procurement, U.S. procurement is to be maximized to the extent practicable. Except in emergencies, timing shall not be deemed a factor to justify non-U.S. procurement.

(2) Mission procurement plans. Mission-wide procurement plans are required for all major programs, including Missions' suggestions on ways to involve U.S. suppliers in the program and, for non-project activities, best estimates of the imports likely to be financed. The plans are to be updated annually and submitted to AFR/Washington for screening. Specific procurement plans are required for each project and must be approved by the Mission Director or other authorizing officer.

(3) $5 million limit. Mission approval of any procurement transaction for which the non-U.S. portion exceeds $5 million, requires AFR/Washington concurrence.

(4) General limitations. Missions are authorized to restrict procurement only to the U.S., the host country, or AID Government Code 941 countries if consistent with program objectives. Codes 935 will apply to DFA grants to PVOs, however, the language on the source order of preference should be included (i.e., U.S., then host country, then Code 941 and then Code 935).

b. Application for non-project assistance.

(1) Cash disbursing NPA should be used selectively, preferable (i) where host country foreign exchange allocation systems are reasonably transparent and market-determined, (ii) when dollars can be used appropriately for repayment of eligible debts.

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21E3b
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(2) Whenever a Mission determines that imported commodities are critical to achievement of a sectorial assistance objectives or when host country foreign exchange allocations lack a transparent, market-determined mechanism, the assistance vehicles should be a project of CIP.

(3) When a Mission uses cash disbursing NPA in a case where foreign exchange allocations lack a transparent, market-determined mechanism, the Mission must include measures in the program to assure that such dollars are restricted from financing imports from any donors that are tying their cash assistance.

c. Special Cases.

(1) Motor vehicles. Procurement of motor vehicles from Code 935 is authorized, no further determination of special circumstances as specified in Section 636 (i) of the FAA is required. However, procurement of non-U.S. vehicles should be held to an absolute minimum. Moreover, safeguards are required to ensure that any DFA funds used in non-project activities are not used for financing large amounts of Non-U.S. motor vehicles.

(2) Fertilizer. Large volume procurement of fertilizer (e.g., over 5,000 tons) shall be limited to U.S. sources.

(3) Construction and Engineering. Construction services estimated to be in excess of $5, million shall generally be limited to Code 000. All engineering services will generally be limited to Code 000. When U.S. firms implement a DFA-funded construction activity, the requirement that at least 50% of the supervisors and other specified personnel working at the project site must be U.S. citizens or legal residents of the U.S. is applicable, subject to documented exceptions by the principal AID officer.

(4) Air travel and transportation to and from the United States shall generally be on certified U.S. flag carriers.

(5) Agricultural commodities generally may not be procured outside the U. S. when the domestic price of the commodity is less than parity, unless the commodity cannot reasonably be procured in the U.S. in order to meet the needs of the particular assistance activity.

(6) Notwithstanding the general DFA source authorization to Code 935, AID will apply its normal rules and restrictions regarding cargo preference (Chapter 10), marine insurance (Chapter 11A), pharmaceuticals (Chapter 4C3), and pesticides (Chapter 4C4 and AID Regulation 16).

4. Waiver

a. Waivers are not required under the DFA.

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21E4

* b. Exceptions to DFA procurement policy limitations specified in 21E3c(2) through (5) above may be approved in writing on an ad hoc basis by the Principal AID officer at post in the interest of effective and expeditious implementation of the DFA program. The Principal AID officer may make no exceptions to the procurement policies set forth in paragraph 21E3c(6).

21F. Housing Guaranty Programs

1. Policy

a. This Section applies to project assistance only.

b. Under tne AID Housing Guaranties that AID issues for private loan investments for housing projects. These fees are used for the procurement of goods and series needed for the operation of the program.

c. The use of the aforementioned fee funds is subject to normal AID policies and procedures governing direct AID administrative procurement of commodities and services which the director or Deputy Director of the Officer of Housing (PRE/H) has authorized to be procured.

2. Source of Policy

Section 221, 222, and 223 (b) of the FAA and redelegation of authority from AA/PRE to Director PRE/H.

3. Implementation of the Policy

Procurement of services and commodities financed with housing guaranty fee income is undertaken by appropriate staff offices of AID pursuant to procedures set forth in the AIDAR.

4. Waiver

There are no special waiver procedures. *

CHAPTER 22

MARKING

22A. Policy

This Chapter applies to project and nonproject assistance.

1. General

a. It is AID policy that projects and imported commodities financed under the AID program be suitably marked to identify them as U.S. foreign assistance. This policy does not apply to shipments of PVO-donated supplies, which are not financed by AID but for which AID reimburses PVO's for the ocean transportation costs.

* b. The term "suitably marked" used in this statement means marking with the USAID red, white, and blue emblem, and for shipping containers, marking in addition with the AID financing document number. (See Section 22C of this Chapter for more specific guidance.)

c. All the references in this statement on marking are additional to markings required for commercial identification or other AID requirements.

d. Information on marking of shipments and imported commodities financed by AID should be obtained by the contractors from the Regional Assistant Administrator with program responsibility, the Mission Director, or the Office of Procurement (FA/OP), AID/Washington, prior to procurement. *

2. Project Assistance

a. All AID-financed equipment and materials and their shipping containers must be suitably marked.

b. Project construction sites and other project locations must display signs suitably marked and indicating participation by the United States in the project. These signs should be erected at an early date in the construction or implementation phase and be replaced by permanent signs, plates, or plaques, suitably marked, at the end of this phase.

3. Nonproject Assistance

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a. Public Sector Imports

All AID-financed goods imported by public sector entities must be suitably marked. In addition, all export containers of such goods must be suitably marked and bear the AID financing document number.

b. Private Sector Imports

Export containers for AID-financed goods imported by the private sector must be suitably marked and, in addition, bear the AID financing document number.

*

c. P.L. 480 - Title II Commodities

(1) The containers of commodities furnished under P.L. 480 - Title II programs must bear the statement in English and, insofar as practical, in the language of the recipient country, "Furnished by the people of the United States of America: not to be sold or exchanged."

(2) When possible and appropriate, commodities that have been borrowed from non-U.S. sources for emergency requirements under Title II are to be identified as having been made available by the people of the United States.

d. General Marking Exception

Suitable marking is not required for raw materials shipped in bulk, e.g., coal, grain, for semifinished products which are not packaged in any way or for items too small or otherwise unsuited for individual marking. Where relevant, the requirement for marking export containers is applicable.

22B. Source of Policy

1. The primary source of AID marking requirements is Section 641 of the FAA which states: "Programs under this Act shall be identified appropriately overseas as 'American Aid'."

2. Section 202 of P.L. 480 states: "Insofar as practicable, all commodities furnished hereunder shall be clearly identified by appropriate marking on each package or container in the language of the locality where they are distributed as being furnished by the people of the United States of America."

22C. Implementation

1. Project Assistance

Handbook 11, Handbook 14, and Handbook 15, Chapter 9

2. Nonproject Assistance

Detailed guidance on the implementation and responsibilities is contained in Handbook 15, Chapter 9. Further guidance is in Regulation 1, Section 201.31(d).

3. P.L. 480 - Title II

Handbook 9, Part III, Chapter 7, gives information on the implementation of the marking requirements for title II commodities (see Appendix C to Handbook 9 (22 CFR 211.6(c)).

22D. Waivers

* 1. If compliance with marking requirements is considered to be impractical, the Assistant Administrator with program responsibility or his/her designee may, after consultation with the Office of Procurement (FA/OP), grant a waiver on request of the borrower/grantee or the supplier. A copy of the waiver shall be retained in the project file. *

2. Mission Directors may waive the marking requirements on a finding that the appearance of emblems on commodities or project sites would produce adverse reactions in the recipient country. On the same basis, Mission Directors may authorize the removal of emblems already affixed to equipment or signs on project sites should conditions justifying such actions develop after receipt of commodities or the erection of signs.

3. Mission Directors may also waive the marking requirement for technical support commodities when title to and use of such commodities stays with the Mission.

CHAPTER 23

SMALL BUSINESS

23A. Policy

1. General

a. This Chapter applies to both project and nonproject assistance.

b. It is AID policy to assist U.S. business to participate equitably in furnishing the goods and services financed with funds made available under the FAA and to provide special aids to U.S. small business.

2. Forms of Assistance to Small Business

Section 602(a)(1) of the Act stipulates three ways in which small business shall be assisted. These are:

a. Prior Information on AID-Financed Procurement

Section 602 of the FAA states that small business shall be assisted:

> "...by causing to be made available to suppliers in the United States, and particularly to small independent enterprises, information, as far in advance as possible, with respect to purchases proposed to be financed..."

AID meets the prior information requirement in the following manner:

(1) Importer Listings

AID periodically publishes, for each cooperating country receiving nonproject assistance in the form of a commodity import program, a list of commodities which may be expected to be imported and the names and addresses of the importers who have traditionally purchased these commodities. This list, which is normally updated approximately once every 24 months during the life of the program, is sent to all subscribers to the AID Small Business publications. These listings enable interested U.S. suppliers to communicate directly with importers who have been identified as having procured the products which the U.S. suppliers wish to sell.

(2) Announcements of Loans and Grants

The Office of Small and Disadvantaged Business Utilization (SDB) issues AID Procurement Information Bulletins to announce new commodity import loan or grant agreements. These announcements include a statement of the general conditions of the loan or grant, a list of authorized commodities, delivery and contract periods and the AID organizational unit to be contacted for additional information.

(3) Procurement Under Country Contracts

(a) For equipment and material contracts in excess of $100,000 a synopsis briefly describing the nature and destination of equipment and material to be purchased is published in the AID-Financed Export Opportunities circular, and in the Commerce Business Daily. Specifications and other data on "small value" procurement in excess of $25,000 are published in the AID-Financed Export Opportunities circular or in the AID Procurement Information Bulletin.

(b) For technical and professional services of $100,000 or more which are not to be performed by a single individual, notice of availability of prequalification questionnaires or of Requests for Technical Proposals, if prequalification is not used, is published in the Commerce Business Daily. In addition, whenever procurement services are being contracted for and the fee for the services is expected to be in excess of $25,000, notice of the proposed procurement is published in the AID Procurement Information Bulletin or the AID-Financed Export Opportunities.

(c) For construction contracts of $500,000 or more under formal competitive procedures, notice of availability of prequalification questionnaires or of Invitations for Bids, if prequalification is not used, is published in the Commerce Business Daily.

b. Informing Prospective Buyers About the Goods and Services Sold by U.S. Small Business

Section 602(a)(2) of the FAA states that small business shall also be assisted:

"...by causing to be made available to prospective purchasers in the countries and areas receiving assistance under this Act

> information as to such commodities, articles and services produced by small independent enterprises in the United States..."

AID meets the requirement for informing prospective overseas purchasers of the capabilities of small independent enterprises in the United States by publishing the U.S. Small Supplier List. This publication makes available to importers of commodities from the United States a listing of small U.S. Suppliers who are interested in exporting, with their products identified by U.S. Department of Commerce Schedule B numbers.

c. Additional Services to Give Small Business Better Opportunities to Furnish AID-Financed Commodities, Articles, and Services.

Section 602(a)(3) of the FAA states that small business shall also be assisted:

> "...by providing for additional services to give small gusiness better opportunities to participate in the furnishing of... commodities, articles, and services..."

In addition to informing small business of potential AID-financed business opportunities and informing cooperating country importers about the goods and services that U.S. small business can supply, AID makes further efforts to increase the participation of U.S. small business firms in the program.

(1) Set-Asides Under AID/Washington Direct Contracts

(a) The Office of Small and Disadvantaged Business Utilization (SDB) screens contract requirements estimated to exceed $5,000 to identify requirements appropriate for execution by:

1. Small Business firms as defined by the Small Business Administration. Requirements identified for contracting in whole or in part exclusively with small business firms are publicized in the Commerce Business Daily as "small business set-asides."

2. Economically or socially disadvantaged firms certified under Section 8(a) of the Small Business Act. Requirements identified for award to a certified Section 8(a) firm are contracted to the Small Business Administration for subcontracting to a disadvantaged firm.

(b) The following categories of procurement are exempted from the screening requirement described above:

1. Class set-asides and those unilaterally set-aside by Contracting Officers (AIDAR 719.271-3(f));

2. Those where the Contracting Officer certifies in writing that the public exigency will not permit the delay incident to screening (AIDAR 719.271-7(b));

3. Contracts with educational or nonprofit institutions, the object of which is "institution building"; i.e., the development of a counterpart capability in the host country by the educational or nonprofit institution, or collaborative assistance contracts with educational institutions; international research centers, or cooperative development organizations pursuant to AIDAR 715.613-7 and AIDAR Appendix F.

4. Those involving the payment of tuition and fees for participant training at academic institutions; and

5. Personal services contract requirements (see AIDAR 719.270).

(2) Information on Awards

The publication of information on awards is one way of making small business aware of the opportunities under AID financing. The availability of commodity award information on formal competitive bidding under AID-financed procurement normally is announced in the AID Procurement Information Bulletin.

Notice of procurement awards for goods or services exceeding $25,000 under AID-direct contracts is published in the Commerce Business Daily and/or the AID Procurement Information Bulletin.

(3) Special Services

The Office of Small and Disadvantaged Business Utilization (SDB) provides counseling, advice, and guidance to the U.S. business and professional community on how to participate in the AID program. One form of this guidance is given through SDB's participation in export conferences, workshops, seminars, and meetings sponsored by members of the Congress, the Department of Commerce, the Small Business Administration, and others.

23B. Source of Policy

The principal source of the policy described in this Chapter is Section 602 of the FAA which deals with the participation of U.S. small business firms as suppliers under the AID program. There are other more general references to U.S. business participation on other sections of the Act; e.g., Sections 102 and 601.

23C. Implementation of Policy

See Handbook 15, Chapter 10; Handbook 14, AIDAR 719.2 and FAR 19.2.

23D. Waivers

Waivers of the policies described in this Chapter must be approved by the Deputy Associate Administrator for Finance & Administration (DAA/FA), in consultation with Regional Assistant Administrators and the Office of Small and Disadvantaged Business Utilization.

CHAPTER 24

POST PROCUREMENT POLICIES

24A. Commodity Utilization and Disposition Requirements

1. Policy

a. This Section as indicated below, applies to project and nonproject assistance.

b. For AID assistance to be used effectively, commodities financed by AID must reach the ultimate user on time, in a usable condition, and must be used for the purposes intended. To this end, AID assistance agreements should provide that the borrower/grantee will ensure that commodities are effectively used for the purpose for which they were made available, and will prohibit reexport or other unauthorized use of commodities without prior approval of AID.

(1) Timely and Appropriate Use

(a) Timely and appropriate use of project assistance commodities means delivery and use of the commodities in accordance with the purpose of the project and the project implementation plans.

(b) Timely and appropriate use of nonproject assistance commodities means processing of commodity imports through customs (and removal from customs by the importer) within 90 days from the date of unloading, unless a longer period is approved by AID, and consumption, use, sale, or offering for sale of the commodities within a reasonable period of time after removal from customs.

(2) Borrower/Grantee Record System

The borrower/grantee shall maintain a system of records documenting the arrival and disposition of commodities financed by AID. The system must:

(a) Identify the parties to the transaction and provide other data necessary for end-use investigations; and

(b) Provide evidence whether commodities are received in the quantity and condition for which payment was made; and

(c) Provide a record of adjustments resulting from importers' claims for loss, shortages, or damage to commodities. The Mission will periodically evaluate the system maintained by the borrower/grantee to verify the arrival, disposition, and utilization of commodities. If there is evidence of problems with the system, the Mission should consult with the borrower/grantee.

(3) Reexport or Other Unauthorized Use of Commodities

(a) AID-financed commodities may not be reexported in the same, or substantially the same, form in which they were imported unless authorized by AID.

(b) Under project assistance, authorization to reexport, or use a commodity for purposes not authorized in the governing project agreement, may be given only when the AID-financed commodity is determined by AID to be no longer required for the AID-financed project. If a commodity is reexported or otherwise used for unauthorized purposes, the borrower/grantee may be required to refund to AID the entire amount reimbursed for the transaction.

(c) Under nonproject assistance, authorization to reexport a commodity may be given only when the commodity can no longer be used in the country or can be sold locally only at a considerable loss, due to market conditions or other circumstances. If a commodity is reexported without AID approval, the borrower/grantee will be required to refund to AID whatever amount AID may deem appropriate. The amount refunded will not exceed either the amount reimbursed, or the amount realized from the reexport, whichever is greater.

2. Commingling

Commingling, as defined in Chapter 9 of this Supplement, is prohibited.

3. Implementation of Policy

For nonproject assistance: AID Regulation 1, Sections 201.41 and 201.42; and Handbook 15, Chapter 12. For project assistance: Handbook 3, Chapter 6, the Project Agreement, Section B.2, B.3, B.5 of Standard Provisions Annex (i.e., Appendix 6A-3).

24A

4. Waivers

a. The requirements for timely and appropriate use of commodities are not subject to waiver.

b. The Geographic Bureaus, in consultation with DAA/FA, may authorize the reexport of commodities in accordance with Section 24A1b(3) of this Chapter.

24B. Records, Retention of Records, and Audit Rights

1. Policy

a. This policy is applicable to project and nonproject assistance. It is not applicable to agreements with other U.S. Government agencies, or to grants and contributions to international organizations where AID funds are commingled with those from other sources (see Chapter 16C of this Supplement).

(1) Except as noted in Section 24B1a of this Chapter, it is AID policy that all agreements, bilateral and AID direct, financed in whole or in part by AID, shall contain appropriate provisions requiring maintenance and retention of records and shall provide for audit rights for AID.

(2) AID-direct contracts and nongovernmental grants.1/ When AID is a party to an implementing agreement, i.e., either an AID-direct contract or nongovernmental grant, the implementing agreement shall contain audit access rights for both AID and the Comptroller General unless there is a principal agreement, i.e., a bilateral grant or loan, which has different provisions, in which case the provisions of the principal agreement shall govern. AID also requires that any subagreement under any implementing agreement provide for the same audit access rights.

1/ These documents are covered by Handbooks 14 and 13, respectively.

(3) Host country contracts and nonproject assistance. When AID is not a party to an implementing agreement, AID's right to audit records is based on a certificate and agreement with AID (forms AID 282, AID 1440-3, or AID 1450-4) that the supplier/contractor must sign prior to receipt of payment. In signing one of the certificates, the supplier/contractor agrees that AID may audit its records and documents concerning the transaction for which payment is requested.

b. Recipients will normally be required to maintain records for a minimum of 3 years after the date of the last disbursement by AID.

2. Source of Policy

Title I, Part II of Public Law 81-784 (i.e., The Accounting and Auditing Act of 1950).

3. Implementation of Policy

Handbooks 3, 11, 13, 14. Section 201.41 of AID Regulation 1.

4. Waivers

The requirement for provisions on records, retention of records, and audit rights are generally not waived. However, if the Assistant Administrator who has program responsibility, acting in consultation with IG and GC, decides there is compelling reason, the requirements may be waived or modified.

24C. Claims and Refunds

1. Policy

This Section is applicable to nonproject and project assistance.

a. Refund claims - It is AID policy to claim a refund from a supplier, contractor, nonprofit grantee, or cooperating country when audits or other sources show that AID funds have been used to finance a transaction which is not in compliance with AID's rules and regulations as required in the underlying agreement or which is ineligible for other reasons, such as fraud. The claim may be limited to the cost of that portion of a transaction found to be ineligible or, for bilateral assistance projects, the claim may be for the entire amount of the procurement if AID chooses to disassociate itself entirely from the transaction.

24C1a

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

b. Claims Against Suppliers, Contractors, and Nonprofit Grantees - Claims may be issued against a supplier, contractor, or nonprofit grantee, who has violated the terms of a contract, a certificate and agreement with AID (form AID 282, form AID 1450-4, or form AID 1440-3) or a grant.

c. Claims Against Borrower/Grantee - There are generally three situations in which a country claim is appropriate:

(1) Where a transaction violates the terms of the loan or grant agreement; e.g., importation of ineligible commodities, source and origin violations, nonutilization of commodities in accordance with conditions outlined in the agreement under which commodities were provided, shipments on ineligible flag vessels, failure to meet cargo preference requirements. The refund requested in these cases is the entire amount of the transaction. Such transactions are ineligible for AID financing and the only satisfactory resolution is AID's disassociation from them.

(2) When payment in violation of AID rules and regulations accrues to the benefit of the importer, when no fraud is imputed. The choice whether to proceed against the supplier or the country will depend on the facts of the case.

(3) When the supplier or contractor cannot be reached because of disappearance, bankruptcy, or other reasons.

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

d. Interest on Claims Against Suppliers and Contractors - Under Form AID 282, Form AID 1450-4, and Form AID 1440-3

(1) Suppliers or contractors, by signing a certificate and agreement with AID (form AID 282, form 1450-4, or form 1440-3, certify that they will, upon request of AID, promptly make appropriate refund to AID, plus interest from the time of payment to the supplier or contractor, in event of violations of any of the terms of the certificate.

(2) Interest charged by AID against a supplier or contractor, who has signed form AID 282, form AID 1450-4, or form AID 1440-3, shall be at the rate established by the Secretary of Treasury in accordance with the Internal Revenue Code 26 U.S.C. 6621(b). FM/FPS advises AID paying offices of the new rate each time it is changed. The rate will be reconsidered by the Secretary of the Treasury periodically and, if appropriate, adjusted accordingly.

(3) The interest rate established in Section 24C1d(2) of this Chapter does not apply to:

(a) AID-direct contracts for commodities and/or services (see Handbook 14, 48 CFR 1 to 2 and 48 CFR 7, for interest rate coverage on claims);

(b) Local cost financing of commodities and/or services;

(c) Fixed amount reimbursement (FAR) type projects;

(d) Grants and contributions to nonprofit and international organizations;

(e) Procurements through other U.S. Government agencies:

(f) Overseas shipments of food commodities by voluntary non-profit relief agencies subject to AID Regulation 2 or 11 for which a Voluntary Agency and Carrier Certificate, for AID 1550-1, is required.

e. Pursuit of Claims - Depending on the circumstances, refund claims against suppliers/contractors/nonprofit grantees which remain outstanding despite persistent followup shall be: (i) converted to claims for refund against the borrower/grantee (under bilateral assistance); (ii) considered for inclusion on the Department of the Army Hold-Up List of Indebted Contractors; (iii) compromised, suspended, or terminated; or (iv) referred for collection to either the General Accounting Office or Department of Justice, as appropriate.

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

f. Refund Utilization

(1) Nonproject Assistance - Refunds received reduce disbursements under agreements and are available for reuse by the borrower/grantee, subject to Geographic Bureau concurrence, provided that the refund is received and utilized before the final date on which disbursements may be made under the agreement. The final date for disbursements will not be extended solely for the purpose of permitting use of refunds.

(2) Project Assistance - Refunds received reduce disbursements under agreements, and are available for reuse by the borrower/grantee if they are needed for completion of the project.

2. Source of Policy

The Federal Claims Collection Act of 1966, as amended (31 U.S.C. 3711) and the Debt Collection Act of 1982 (31 U.S.C. 3716).

3. Implementation of Policy

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

4. Waivers

a. It is AID policy not to waive claims against suppliers.

b. Claims against cooperating countries may be waived by the Administrator, acting with the advice of the General Counsel, if such a waiver is in the foreign policy interest of the United States.

24D. Suspension or Termination of Assistance

1. Policy

This Section is applicable to project and nonproject assistance.

a. AID assistance agreements provide for suspension or termination of assistance under specified circumstances such as: (1) default by the borrower/grantee; (2) changed conditions which make attainment of assistance objectives improbable; (3) when disbursements would violate legislation governing AID. Assistance agreements typically state that, if assistance is suspended, AID may: (i) suspend or cancel outstanding commitment documents to the extent that they have not been utilized through irrevocable commitments to third parties; (ii) decline to issue additional commitment documents; and (iii) at AID's expense, direct that title to goods financed under the agreement be transferred to AID if the goods are from a source outside the cooperating country, are in a deliverable state, and have not been off-loaded in ports of entry of the cooperating country.

b. The nature and urgency of the action to be taken following suspension of assistance will depend upon the circumstances which gave rise to the suspension. U.S. Government policy objectives may require use of all available means to cut off commodity deliveries as completely and as promptly as possible and termination of all direct AID contracts or other agreements for the convenience of the Government (for example if the U.S. Government invokes the provisions of the Trading with the Enemy Act). Under other circumstances, AID might permit delivery of commodities already in the pipeline, while blocking any new procurement actions, or might permit the financing of certain additional items in order to terminate a project at a sensible point short of completion.

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

d. For commodities, the range of actions available to AID in suspending assistance are:

(1) Vesting title in AID to all goods in the custody of ocean carriers, and directing the carriers to divert the goods to a specified port;

(2) Instructing banks not to issue or confirm any letters of credit or other payment instruments;

(3) Negotiating fair and equitable settlements with suppliers of commodities and commodity-related services who hold AID-financed irrevocable letters of credit;

(4) Negotiating appropriate settlements with AID contractors.

e. Following suspension of assistance, AID may also have to dispose of vested commodities, and obtain refunds from any carriers or insurers who, having been paid to move commodities to the cooperating country, may have realized windfalls as a result of diversion of cargoes to destination involving lower costs.

2. Source of Policy

FAA Section 605.

3. Implementation of Policy

Sections 201.43 through 201.46 of AID Regulation 1; Handbooks 11, 13, 14, and 15.

4. Waivers

Not applicable.

CHAPTER 25

CRITERIA FOR CHOICE OF IMPLEMENTATION INSTRUMENT FOR AID PROGRAMS OR PROJECTS UNDER AID-DIRECT CONTRACT/GRANT PROCEDURES

25A. Policy

This Chapter prescribes:

1. Criteria for choosing the instrument by which the Agency and non-Federal parties define and formalize their arrangements for accomplishing a program or project under AID-direct contract, cooperative agreement, or grant procedures.

2. Establishes the policy review level where the choice of instrument is made.

25B. Source of Policy

The source of this policy is Public Law 95-224, "Federal Grant and Cooperative Agreement Act of 1977"; OMB Final Guidance, "Implementation of Federal Grant and Cooperative Agreement Act of 1977" (43 FR 36860, August 18, 1978); and paragraph 1B3 of Chapter 1 of AID Handbook 13 (Policy Determination 53).

25C. Purpose

Reliance on non-Federal resources to implement Agency programs or projects requires the use of an instrument to formally set forth and define the nature, term, and conditions of the agreement between the parties. The criteria set forth in this Chapter are provided for determining which instrument to use.

25D. Applicability

The criteria in this Chapter apply to all programs or projects implemented under provisions of Handbooks 13 and 14.

25E. Selection Criteria

Selection of the appropriate instrument shall be based on the following criteria:

1. A type of contract will be used when:

a. The principal purpose of the instrument is the acquisition, by purchase, lease, or barter of property or services for the direct benefit, or use of the Federal Government; or

b. The Agency determines in a specific instance that the use of a type of contract is appropriate.

Examples of circumstances in which a type of contract would be used include, but are not limited to:

(1) Where the Agency intends to retain the right to exercise greater administrative, contractual or legal remedies for breach of the terms and conditions than would be appropriate under a grant or a cooperative agreement; or

(2) Where the Agency intends to specify an identifiable and measurable input/output objective and retain the rights set forth in (1) above.

2. A type of Grant will be used when:

a. The principal purpose of the relationship is the transfer of money, property, services, or anything of value to the recipient in order to accomplish a public purpose of support or stimulation authorized by Federal statute, rather than acquisition, by purchase, lease, or barter, or property or services for the direct benefit or use of the Federal Government.

b. The recipient is to have substantial freedom to pursue its stated program or project purpose.

c. Substantial involvement between the Agency and the recipient is not anticipated during performance of the proposed activity.

When the terms of an assistance instrument indicate the recipient can expect to run the project without Agency collaboration, participation or intervention as long as it is run in accordance with the terms of the assistance instrument, substantial involvement is not anticipated. Anticipated substantial involvement does not include, for example:

- approval of plans prior to award;

- normal exercise of Federal stewardship such as site visits, performance or financial reporting, and audit;

25E2c

- unanticipated involvement to correct deficiencies in project or financial performance;

- general statutory requirements such as civil rights, environmental protection, etc.;

- Agency review of performance after completion;

- general administrative requirements such as those included in OMB Circular A-110, Handbook 13, etc.

3. A type of Cooperative Agreement will be used when:

a. The principal purpose of the relationship is the transfer of money, property, services, or anything of value to the recipient in order to accomplish a public purpose of support or stimulation authorized by Federal statute, rather than acquisition, by purchase, lease, or barter, of property or services for the direct benefit or use of the Federal Government, and

b. A grant would be appropriate except that substantial involvement is anticipated between the Agency and the recipient during the performance of the proposed activity.

When the instrument indicates the recipient can expect Agency collaboration or participation in the management of the project, substantial Federal involvement is anticipated. Anticipated substantial involvement during performance would exist and will be presumed to be substantial where the relationship includes one or more of the following.

- review and approval of one stage before work can begin on a subsequent stage during the period of the agreement;

- review and approval of the substantive provisions of subordinate agreements or contracts;

- involvement in the selection of key recipient personnel;

- Agency and recipient collaboration or joint participation;

- monitoring to permit specified kinds of direction or redirection of the work because of interrelationships with other projects.

25F. Selection of Instrument

Selection of the appropriate implementing instrument depends initially upon a determination of whether the action is principally one of acquisition or assistance and, if assistance, a determination of whether substantial Agency involvement in performance is anticipated. OMB guidance requires that these determinations be made or reviewed at a policy level. If there is disagreement between the program office and the contract/assistance office on the choice of instrument, the final determination will rest with the Deputy Associate Administrator for Finance and Administration (DAA/FA).

CHAPTER 26

ADMINISTRATIVE PROCUREMENT

26A. Policy

1. Applicability

This Chapter applies only to the procurement of goods or services with Operating Expense Appropriation monies for the administrative support of AID offices in the United States and abroad. The Chapter does not apply to any project or nonproject assistance procurement for the benefit of third parties.

2. General

Except for motor vehicles governed by the Foreign Assistance Act, the Agency's procurement of goods and services for the administrative support to AID Offices in the United States and abroad is subject to either the Balance of Payments restrictions of FAR Subpart 25.3 for any commodity procurement transaction valued at less than 150,000 Special Drawing Rights* and all procurements of services, or to the Trade Agreements Act of 1979 restrictions of FAR Subpart 25.4 for any commodity procurement transaction valued at 150,000 Special Drawing Rights*, or more, for countries subject to the Act.** The Agency's source and origin requirements do not apply to such administrative commodity procurements, which are governed by FAR Subpart 25.4.

3. Specific

For the procurement of motor vehicles valued at less than 150,000 Special Drawing Rights*, see Chapter 4 of this Supplement; Handbook 15, Chapter 2; and Delegation of Authority No. 405.

* International Monetary Fund (IMF) 150,000 Special Drawing Rights are currently valued at $171,000 (50 F.R. 53034, and 53035, January 1, 1986).

** For a listing of countries covered by the Act, see FAR 25.401.

26B. Source of Policy

1. Individual Commodity Procurements Valued at Less Than 150,000 Special Drawing Rights* and All Procurements of Services

The policy stems from the recommendation of the President's Cabinet Committee on Balance of Payments and is reflected in the March 3, 1964 letter to the GSA Administrator from Mr. Kermit Gordon, Director of the Bureau of the Budget, Executive Office of the President.

2. Individual Commodity Procurements Valued at 150,000 Special Drawing Rights* or More

The policy stems from the Agreement on Government Procurement, which was part of the Tokyo Round of Multilateral Trade Negotiation. The "Agreement" was implemented by the Trade Agreements Act of 1979 (Public Law 96-39) and Executive Order 12260 (46 FR 1658, January 6, 1981). The U.S. Trade Representative makes the determination on the value of commodity procurements subject to the Act. The "Agreement" applies only to commodity procurements and not to procurement of services.

3. Special Items

The policy for motor vehicles stems from FAA Section 636(i).

26C. Implementation of Policy

The policy is implemented in Handbook 14 (FAR Subpart 25.3, FAR Subpart 25.4 and AIDAR Subpart 725.4); and Chapter 14 of Handbook 23.

26D. Waiver Authority

1. General

The Deputy Associate Administrator for Finance and Administration or his/her designee, for AID/W procurements, or the Mission Director or his/her designee, for USAID procurements, may make the determinations provided for in FAR 25.302(b)(2), 25.302(b)(3), 25.302(c) and 25.304(c).

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* International Monetary Fund (IMF) 150,000 Special Drawing Rights are currently valued at $171,000 (50 F.R. 53034, and 53035, 1/1/86).

26D

2. Exceptions

Notwithstanding 26D.1, only the Deputy Associate Administrator for Finance and Administration or his/her designee may authorize the selected administrative procurement of airplanes, boats, or furniture manufactured in other than the host country or any Limited Free World country (AID Geographic Code 941). In such instances, the procuring activity (i.e., either the USAID or AID/W) shall submit its request to the Assistant to the Administrator for Management or his/her designee for approval.

3. Ineligibility to Participate in U.S. Procurement Under the Trade Agreements Act of 1979

With respect to products from ineligible countries, waivers may be granted by the U.S. Trade Representative under Section 1-201 of E. O. 12260.

AID HANDBOOK INDEX

Preface

This index is derived from the Master Index to the AID Handbook Series issued under TM HI:9.

The underlying approach to the Master Index is one of unity, with series of AID Handbooks considered as a single entity whose topics may appear in one, or more than one, of the component volumes. Synonyms, near synonyms, and other ambiguities are avoided and the topical entry words and phrases have meaning for users who may not be intimately acquainted with the content of specific handbooks.

Each entry in the Master Index that includes a reference to this Handbook is reproduced here in its entirety, thus providing both a guide to this Handbook and useful references to other Handbooks.

The formats for location citations are intended to match their appearance on the Handbook pages. Beyond the Standardized Handbook number with its following colon, the Citations used in the index reflect the different formats used in the individual Handbooks themselves

UNDERSTANDING THE CITATIONS

The standard codes and messages that appear throughout the index, and their exceptions, are defined in this section. It is recommended that all users read this section before using the index.

LOCATION CITATIONS

The location citations are grouped in the following patterns:

Handbook number, colon, Chapter number, Paragraph letter, and further breakdown where needed.

The abbreviations such as App. for Appendix; Att. for Attachment; and Supp. for Supplement are also included in the citations wherever necessary.

Special cases and cross reference messages are described below. An example of the format used is as following:

AID Financed Export Opportunities 1B:23A2a(3); 15:10C1a(1)

"AID Financed Export Opportunities" is located in Handbook No. 1B, Chapter 23, Section A2a(3); and Handbook 15, Chapter 10, Section C1a(1).

SPECIAL CASES

Although majority of the location citations follow the pattern described above, there are these exceptions:

- o In some of the Handbooks, a majority of the text is reprinted from the Foreign Affairs Manual (FAM). All FAM citations are marked by a '#' sign before the section number.
- o In Handbook 22, citations from the Federal Travel Regulations within Chapter 10, will be preceeded by a '§' sign before the section number.
- o All citations to the Federal Acquisition Regulation (FAR) are listed as FAR (section number).
- o Handbook supplements that are basically separate volumes are cited as, 1B: (Procurement Policy) and 3S: (Project Officer's Guidebooks and AID Evaluation Handbook).
- o In Handbooks which contain both parts as well as chapters, the Roman numeral Part number is separated from the Arabic Chapter number by a dash (-). For example: 21-I:2A8, a citation to Chapter 2 of Part I of Handbook 21.

CROSS REFERENCES

These references provide direction for selection of index terms:-

A '<u>see</u>' reference points from an unused term to the one that is used.

'x' is the reverse of <u>see</u> (do not bother to look) and provides a guide to terms that are <u>not</u> used in the index.

'<u>see also</u>' points to the terms that are closely related.

- A -

- B -

- C -

-L -

- M -

TRANSMITTAL MEMORANDUM CHECKSHEET FOR HANDBOOK 1, SUPPLEMENT B

1B:73	______	1B:98	______	1B:123	______
1B:74	______	1B:99	______	1B:124	______
1B:75	______	1B:100	______	1B:125	______
1B:76	______	1B:101	______	1B:126	______
1B:77	______	1B:102	______	1B:127	______
1B:78	______	1B:103	______	1B:128	______
1B:79	______	1B:104	______	1B:129	______
1B:80	______	1B:105	______	1B:130	______
1B:81	______	1B:106	______	1B:131	______
1B:82	______	1B:107	______	1B:132	______
1B:83	______	1B:108	______	1B:133	______
1B:84	______	1B:109	______	1B:134	______
1B:85	______	1B:110	______	1B:135	______
1B:86	______	1B:111	______	1B:136	______
1B:87	______	1B:112	______	1B:137	______
1B:88	______	1B:113	______	1B:138	______
1B:89	______	1B:114	______	1B:139	______
1B:90	______	1B:115	______	1B:140	______
1B:91	______	1B:116	______	1B:141	______
1B:92	______	1B:117	______	1B:142	______
1B:93	______	1B:118	______	1B:143	______
1B:94	______	1B:119	______	1B:144	______
1B:95	______	1B:120	______	1B:145	______
1B:96	______	1B:121	______	1B:146	______
1B:97	______	1B:122	______	1B:147	______