M/SER/COM/SE

Audit Analysis Guidebook

A Guide to:
—Understanding A.I.D.'s Commodity Programs
—Understanding A.I.D.'s Eligibility and Price Rules
—How to Post-Audit A.I.D.-Financed Payments to Suppliers

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CHAPTER I

HOW A.I.D. FINANCES COMMODITIES UNDER HOST-COUNTRY CONTRACTS

M/SER/COM has the responsibility of reviewing A.I.D.-financed payments to suppliers under host country contracts to determine whether the transactions comply with A.I.D. rules. This overview describes the two basic ways in which suppliers participate in the A.I.D. programs and receive payment from A.I.D. funds for commodities and commodity related services.

In some countries AID provides loan or grant assistance in the form of Commodity Import Programs (CIP) which finance the procurement of a wide variety of basic commodities needed in the economy. Under a CIP, funds are allocated by the foreign government to its various ministries and to the private sector to provide the foreign exchange needed to purchase needed commodities. To participate in a CIP, suppliers submit bids or quotations in response to competitive public tenders or solicit orders from the private sector through normal commercial channels. These procurements, under CIP, are subject to the provisions of AID Regulation 1.

In many countries AID provides project loans or grants to finance specific facilities and undertakings such as construction of irrigation facilities, expansion and equipping of rural health networks, malaria control programs, equipping small farmers with appropriate tools and machinery, etc. Commodities purchased as part of these undertakings are called project procurements. The transactions are subject to provisions of Handbook 11, Chapter 3.

Under both types of programs, AID does virtually no buying itself. The public sector of AID-recipient countries purchases directly from the U.S. private sector, usually through competitive bid procedures; their private sector procures directly from U.S. firms, usually through negotiated procurement procedures.

A. Commodity Import Programs

AID Regulation 1, "Rules and Procedures Applicable to Commodity Transactions," is the governing regulation for procurement under Commodity Import Programs.

Under a CIP, the government of a developing nation allocates the foreign exchange provided by AID loans/grants among its importers in the public and private sectors to finance the purchase through regular commercial trade channels of products and equipment which it needs. AID does not participate directly in these procurements, neither determining the specific items to be purchased nor selecting the suppliers. Transactions are directly between American suppliers and foreign importers. Therefore, selling commodities under AID-financed programs is essentially the same process as selling through normal commercial channels.

Price, quality, service, and delivery terms, as in any negotiations, are important factors in the eyes of the buyer. Just as in other commercial export sales, the supplier under AID financing completes responsibility to the buyer when compliance with the terms of sale is achieved.

AID loan and grant agreements with a foreign country specify the range of commodities which can be procured, the countries from which they may be purchased, AID marking and labeling requirements, price, commission, shipping instructions, and other applicable conditions.

Pertinent details of individual proposed procurements under formal competitive bid procedures - usually required when foreign country public sector agencies are the purchasers - are announced in the AID-financed Export Opportunities publication. Negotiated procurements by the public sector are announced in the AID Procurement Information Bulletin.

As pointed out previously, in Commodity Import Programs, foreign buyers represent both the public and private sectors. The public sector buyers are generally foreign ministries that purchase for public use and not for profit or resale. The private sector buyers are either merchants, dealers, or distributors who purchase commodities for resale at a price which, they hope, will permit a reasonable profit. Private sector buyers may also be end-users importing for their own use, such as in manufacturing, assembling, etc.

B. Project Requirements

AID Handbook 11, Chapter 3, contains the regulations governing project procurements by the recipient country. Project procurements are purchases of equipment and materials for specific project undertakings financed by AID through loans or grants. An example might include construction of public facilities which require equipment.

Unlike the CIP, there is seldom any foreign country private sector involvement in project procurements. Dealings are usually with the foreign government and its ministries.

The audit function does not routinely cover payments unrelated to commodity procurement (e.g., consulting, research, architect-engineering and construction).

C. The Eligibility Rules

The AID-financed transaction is subject to certain eligibility rules governing commodities, country sources, and cargo carriers.

1. Source of Commodities

AID's policy limits the countries from which commodities may be purchased. Many AID agreements require that commodities be purchased from the United States; other AID agreements allow purchases from the United States and from selected Free World countries (excluding the developed countries).

To meet AID's source requirements, a commodity must be shipped from an elibible country; must be mined, grown or produced in an eligible country; and may not include components from non-Free World countries. Components from Free World countries are eligible within specific limits, usually up to 50% of the lowest price at which the supplier makes the commodity available for export sale.

2. Commodity Eligibility

AID's commodity eligibility policies are keyed to two basic objectives: (1) that the commodities AID finances make a positive contribution to development; and (2) that AID procurement programs are carried out in full accord with relevant policies and laws.

To promote these objectives, commodities are ineligible for AID financing if they are:

a. Unsafe or ineffective products, such as certain pesticides or pharmaceuticals.

b. Luxury goods, such as recreational supplies and equipment, alcoholic beverages and equipment for their production and use, equipment or supplies for gambling facilities, jewelry, stamps, coins, furs, and the more expensive luxury textiles. Subject to prior approval, AID may permit the financing of an item normally regarded as a luxury item if required to attain the objective of a development activity or which is clearly justified by the intended end use of the item.

c. Surplus or used items, unless inspected and approved in accordance with procedures approved by AID.

d. Items for military use.

e. Surveillance equipment, of micro-miniature design for audio surveillance activities.

f. Weather modification equipment.

g. Commodities and equipment for the purpose of inducing abortions as a method of family planning.

h. Commodities for support of police and other law enforcement activities.

3. Cargo Carriers' Eligibility

AID requires each country granted or loaned funds to ensure that at least 50% of the gross tonnage of all commodities financed with the agreement's funds and transported to the cooperating country on ocean vessels be shipped on privately owned U.S. flag commercial vessels, if available.

Additionally, all agreements provide that the funds may be used to finance transportation costs for shipping the AID-financed commodities on U.S. flag vessels or aircraft, and in some instances on certain designated foreign flag vessels or aircraft.

Buyers advise prospective suppliers as to what shipping must be used for a particular transaction when they solicit offers, and the authorized eligible shipping is included in the successful supplier's letter of credit or letter of commitment.

D. Commodity Price Limitations

AID Regulation 1 governing Commodity Import Programs, and Handbook 11, Chapter 3 governing Project Procurements specify conditions governing the eligibility of procurement transactions, including certain price requirements, and state the responsibilities of suppliers under an AID-financed transaction. The basic price requirement is that the price may not exceed the prevailing export market price.

Subject to the limitation that the price financed by AID cannot exceed the price permitted under AID Regulation 1 or Handbook 11, Chapter 3, AID will generally finance the following to the extent they are included in the purchase agreement:

1. Delivery Services including transportation. Export prices also normally include charges for related services such as forwarder's fees, export packing, freight to the port of export, or special markings required by AID.

2. Incidental Services. AID reimbursement is generally available for incidental services such as dollar costs for installation or erection of equipment, or training personnel to operate and maintain it.

3. Sales Commissions. AID generally allows suppliers to include in their price sales commissions to sales agents of the supplier.

4. Marine Insurance. AID finances the dollar costs of insurance premiums, including war risk, if placed with an

insurance company which is authorized to do business in an eligible country.

5. Inspection Services. When a buyer requires inspection services, either in accordance with the customary practices or because they are necessary to assure compliance with the purchase contract, the cost is eligible for AID financing along with the cost of the commodity.

It is also important to be familiar with charges that are not eligible for AID financing. These are detailed in AID Regulation 1 and Handbook 11, Chapter 3. Some of the ineligible charges are:

1. Services which are not related to the commodity transaction;

2. Commissions to an importer or importer's agent;

3. Unless specifically authorized, inland transportation within the cooperating country or beyond the point of entry in a land-locked country;

4. Dead freight and demurrage; and

5. Commissions to a third party in connection with a sale by a company to its dealer, distributor or agent.

In addition, trade discounts, credits and allowances to which the importer is entitled must be deducted from the amount requested from AID under either a letter of credit or commitment. Any amount by which prices exceed the price rules established in AID Regulation 1 or the Supplier's Certificate is not eligible for AID financing.

E. Types of Sales

AID-financed procurements result from sales involving formal bidding procedures or from negotiations between the seller and the foreign buyer.

Formal bidding is used primarily for procurements by foreign government ministries. AID requires that technical specifications be in English, in sufficient detail, and in U.S. standards.

The fixed price negotiated sales contract is the usual arrangement in AID-financed procurements by private sector importers. Similar to the situation faced by suppliers in privately financed business, such terms as price, quality, service and delivery dates are important factors.

Bids or quotations are normally submitted directly to the purchaser, as instructed in the Invitation for Bids or Request for Quotations.

Awards are made by the foreign buyer to the lowest responsive bidder. Notices of awards for completed transactions appear in the "AID Procurement Information Bulletin."

F. Procedures for Payment

Suppliers submit the same basic documents for payment as under normal commercial letter of credit financing. The supplier will be informed in the letter of credit of the documents required for each transaction. In addition to the normal commercial documents, others required may include:

1. Form AID 282 - "Supplier's Certificate and Agreement with the Agency for International Development." This document contains a general description of the AID-financed commodities, incidental and delivery services, and summarizes their price and payment information. By signing the certificate the supplier (whether of the commodity, transportation services or marine insurance) certifies to the correctness of the information supplied and to compliance with any AID requirement applicable to the transaction. This form is required for CIP transactions.

2. Form AID 1450.4 - "Supplier's Certificate and Agreement with the Agency for International Development for Project Commodities." The description of this document and purposes of this document are the same as Form AID 282, described above. This form is required for project commodity procurements.

3. Form AID 11 - "Application for Approval of Commodity Eligibility."

Payment is ordinarily made under Letters of Credit confirmed by U.S. commercial banks. These Letters of Credit will require evidence of compliance with all stipulated conditions to effect the payment. A.I.D. also provides payment in large public sector transactions under direct letters of commitment issued by AID/W or USAID Controller to the supplier. Payment of procurement service agent fees established under host country contracts are made under direct letters of commitment issued by the USAID Controller to the Agent. Payment to vendors supplying such agents are made under A.I.D./W issued bank letters of Commitment.

AID requires that suppliers retain complete records of each transaction for three years. The Supplier's Certificate informs suppliers that the transactions may be examined under a post-audit procedure and that suppliers may be called upon to provide additional or supporting information.

CHAPTER II

ELIGIBILITY OF COMMODITIES AND TRANSACTIONS

To qualify for A.I.D. -financing, a transaction must satisfy certain statutory, regulatory and policy requirements. The following summarizes the important A.I.D. eligibility rules and considerations.

A. Commodities Appropriate for A.I.D.-Financing

It is AID policy to finance only those commodities which it has determined are "eligible" in terms of general and specific program objectives. AID wants to assure that the commodities it finances make a positive contribution to development, so it has established broad limitations on the categories of commodities that are eligible for financing. Thus, as noted above, there are restrictions on the financing of luxury goods, unsafe or ineffective products, used equipment, etc. AID uses the U.S. Department of Commerce Schedule B numbers (seven-digit codes used for reporting exports from the United States) as a means of classifying commodities in order to define commodity eligibility and applicability of special provisions and to record commodity transactions. A specific Schedule B number and commodity description must be stated in CIP documents submitted to AID for payment.

The AID Commodity Eligibility Listing uses Schedule B numbers to indicate the eligibility or ineligibility of commodities for AID financing. In Part I of the Listing, groups of Schedule B numbers, with short commodity descriptions, are designated as eligible or ineligible, Part II provides guidance on the additional considerations and conditions applicable to certain commodities. Part III specifies certificates that are required to support eligibility for some commodities and gives detailed technical definitions of eligibility standards for some commodities. This Listing is incorporated in assistance agreements as appropriate.

Certain commodities are restricted or ineligible because of statutory and administrative determinations. Restricted commodities and those ineligible commodities for which waivers may be granted require special consideration before AID financing will be authorized. These commodities are discussed in Chapter 2 of Handbook 15 and Chapter 4 of Handbook 1B.

B. <u>Determination of Eligibility</u>

Under project assistance the selection of commodities to be authorized for financing is made during the project's formulation. Commodities which are normally ineligible may be authorized for financing if included by AID in the project approval document. Such commodities are listed in the project agreement or implementing document together with any special instructions or provisions that may be required under AID commodity eligibility policies. Subsequently, a normally ineligible commodity may be made eligible by a determination of the Geographic Bureau that such a commodity is required for the completion of the project. Such determinations are filed with the loan or grant agreements, with copies to M/SER/COM.

Commodity Import Program Agreements normally authorize AID financing of the complete range of commodities identified as being eligible in the AID Commodity Eligibility Listing. At times, however, commodity eligibility may be limited to certain selected commodity categories specified in the agreement or implementing documents. Congress requires that prior to payment, AID must determine that commodities are eligible and suitable. To enable AID to make such a determination, the supplier of a proposed AID-financed CIP transaction submits an Application for Approval of Commodity Eligibility, Form AID 11, to AID/W, the Office of Commodity Management (SER/COM/CPS). This is usually done after the supplier has received a letter of credit or direct Letter of Commitment, but before shipment of the commodity. If the supplier does not have a letter of credit, it must present other evidence that it has a firm contract to furnish the commodity for which it seeks AID approval. The Form AID 11 provides space for the commodity description, including Schedule B seven-digit cost, commodity condition, source, componentry, and other data pertinent to the review of the Application and required for certain statistical purposes. A Form AID 11 will be approved if the commodity is eligible under the implementing document and if the commodity meets the eligibility criteria established in the AID Commodity Eligibility Listing. Although the Form 11 includes an expiration date, the analyst need not be concerned with this administrative requirement in carrying out the audit and, accordingly, an "expired" Form 11 would not be the basis for finding a transaction ineligible. There is no requirement that the Form be approved prior to shipment though normally it would be.

Commodities financed by AID which are procured by Procurement Service Agents are subject to the same eligibility considerations which would apply if an agent were not involved. The commodity supplier or vendor must provide the appropriate Supplier's Certificate and the audit is based on his undertakings in the cartificate.

C. <u>Source and Origin</u>

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.

All commodities financed by AID must meet the following tests as to source/origin and componentry:

(1) "Source" means the country from which a commodity is shipped to the cooperating country (or the cooperating country itself if the commodity is located there when it is purchased). To be eligible for AID financing, a commodity must be of a source designated as eligible in the loan or grant agreement and implementing documents, and it must also have been mined, grown, and (through manufacturing, processing, or assembly) been produced in an eligible source country. A commodity is "produced" when, through manufacturing, processing or substantial and major assembling of components, a commercial recognized new commodity results that is substantially different from its components. Merely packaging various items together for a particular procurement or relabeling items does not constitute "production" of a commodity.

The part of the eligibility requirement concerning production of the commodity is often referred to as the "origin" requirement, but it should be noted that the origin requirement is included as part of the source requirement.

(2) "Components" are the goods that go directly into the production of a manufactured commodity. AID componentry rules for manufactured commodities are as follows:

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

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

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

(ii) 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 any export sale.

(iii) For the purpose of calculating eligible components, the cooperating country will be deemed to be an authorized source country whenever any geographic code other than Code 000 is authorized.

(c) AID may prescribe percentages other than 50 percent for specific commodities. Current modifications of the componentry limitations are contained in Appendix G1 of Handbook 15. The percentage of allowable foreign components may be decreased for a specific procurement by the USAID or AID/W at the request of the cooperating country. In addition, the Director of the Office of Commodity Management is authorized to modify the componentry limitations when:

(i) it is necessary to conform with established industry production practices; or

(ii) the transaction conforms to the intent of the componentry rules (i.e., the benefit of the source and origin rules accrues to authorized source countries), and it is in the best interests of the program or project to finance the transaction.

(d) Other waivers of componentry limitations are handled as source waivers under the normal procedures.

(3) The componentry rules are generally applied to each item that is sold as an independent unit or commodity. There are some special situations in which componentry rules may be applied on a different basis.

(a) When a package installation is procured as a single entity, AID may authorize the componentry rules to be applied to the installation as a whole.

(b) When the product being purchased is a kit (i.e., items such as scientific instruments, certain automotive spare parts, tools, or medical supplies packages as a single unit), the kit will be considered that produced commodity and the items included in the kit will be components. If AID decides for any reason to treat the items in a kit as separate commodities, the solicitatation document so states.

(c) For spare parts, whether they are shipped with the equipment to which they are applicable or separately, the componentry rules are applied to each separate shipment of parts as a whole, not to each individual spare or replacement part.

AID's nationality policy, implemented in Section 201.11(j)(3) of Regulation 1 and Chapter 3 of Handbook 11, requires that the supplier of an AID-financed commodity must fit one of the following:

(1) An individual who is a citizen or resident of an authorized source country;

(2) A corporation or partnership organized under the laws of an authorized source country;

(3) A controlled foreign corporation, i.e., any foreign corporation a majority of whose total voting stock is owned by the United States shareholders, within the meaning of Section 957 seq. of the Internal Revenue Code; or

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

This policy applies to suppliers of commodities, whether or not commodity-related services are included. However, it does not apply to suppliers of commodities that are procured through U.S. Government agencies.

Suppliers who furnish commodities in connection with services which are not commodity-related are subject to the nationality requirement for suppliers of services which are set forth in Chapter 5 of Handbook 1B.

D. Delivery Services

"Delivery services" means 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, local drayage in the source country (including waiting time at the dock), ocean and other freight, loading, heavy lift, wharfage, tollage, switching, dumping and trimming, lighterage, insurance, commodity inspection services, and services of a freight forwarder. "Delivery services" may also include work and materials necessary to meet AID marking requirements.

Essential delivery services as defined above may be financed under the implementing document which authorizes the purchase of the commodities. Alternatively, they may be financed under a separate implementing document. The loan or grant agreement will specify the authorized sources for procurement of delivery services. Generally, the authorized source will be the same for procurement of commodities and delivery services. However, when Code 941 is authorized for procurement of commodities, the financing of transportation services may be restricted, as specified in the implementing document.

Section 201.67 of AID Regulation 1 establishes maximum prices for freight charges, including charter shipments, liner shipments and air shipments. Section 201.68 establishes maximum prices for commodity-related services other than freight charges. The purchase price for these services, which include other delivery services, may not exceed the prevailing price or the price paid the supplier under similar circumstances by other customers. For project procurement, maximum prices for these services must be "reasonable". In addition they must not exceed the standards set forth in the applicable Supplier's Certificate.

AID will normally authorize financing of transportation costs under the following rules:

1. When the authorized source for procurement is Code 000 (United States) 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.

3. When commodities whose eligibility is restricted to 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 2 above.

4. When shipment is made under a through bill of lading issued by an eligible flag carrier AID will finance costs incurred on vessels under flag registry of any Free World country if the costs are part of the total cost paid to the eligible flag carrier.

5. When necessary to assure adequate competition and competitive pricing for shipment of bulk commodities, 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). If AID financing of transportation would normally have been limited to U.S. flag vessels, 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 are not available to carry the commodities for which transportation is solicited. The Office of Commodity Management determines when it is necessary to authorize financing in accordance with this rule.

If timely transportation is not available on a vessel under flag registry of a country eligible to provide AID-financed transportation services by the terms of a loan or grant, application may be made to AID to waive the source limitations to permit AID financing. AID would not waive retroactively the source limitation after payment has been made for the shipment on an ineligible flag.

AID will normally authorize financing of air transportation costs under the following rules:

1. Grant-financed Transactions. A U.S. Government statute requires the use of U.S. flag international air carriers for all AID grant-financed international air transportation unless such service is not available. When U.S. flag international air carriers are not available, any Code 935 (Special Free World) flag air carriers may be used.

2. Loan-financed Transactions. There is no statutory requirement for use of U.S. flag air carriers under loan-financed transactions. AID's policy on financing air transportation when the authorized source for procurement of commodities under the loan is Code 000 is the same as for grant-financed transactions. When the authorized source for procurement of commodities under a loan is Code 941, AID policy requires use of U.S. flag international air carriers, cooperating country flag air carriers, and Code 941 flag air carriers for international air transportation to the extent they are available. When eligible flag air carriers are unavailable, any Code 935 (Special Free World) flag air carriers may be used.

Suppliers, contractors, or other shippers who claim payment for use of an air carrier which is not under flag registry of an eligible source country must certify in writing with the claim for payment that eligible flag air carriers were not available in accordance with such criteria. No AID-approved waiver is required.

AID also has the following general rules which apply:

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

(b) Charters. Any ocean or air carrier for shipment of AID-financed commodities covering full or part cargo (whether for a single voyage, consecutive voyages, or a time period) must be approved by AID prior to shipment.

(c) Inland transportation. It is AID's policy not to finance shipment beyond the point of entry in the cooperating country except when intermodal transportation service covering the carriage of cargo from point of origin to destination is used and the point of destination, as stated in the carrier's through bill of lading, is established in the carrier's tariff.

(d) Dead freight and demurrage are not normally financed by AID.

As a further general rule, the entire value of transactions 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. This would normally apply under the following circumstances:

1. Commodities are ineligible if shipped on a transportation medium owned, operated, or under the control of any country not included in Code 935.

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

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

E. Shipments from Bonded Warehouses or Free Ports

Special tests of eligibility apply to these transactions. "Free ports" are ports within ports in which vessels can load or unload and where commercial or manufacturing activities may be carried on without payment of import or export duties. For the purposes of this section, free trade zones and foreign trade zones are considered free ports. "Bonded warehouses" are storage or production areas under the supervision of local customs authorities.

Goods shipped to a bonded warehouse are not subject to the payment of duty unless brought into the economy of the country in which the bonded warehouse is located.

AID may finance otherwise eligible commodities which merely pass through bonded warehouses or free ports, provided that the country from which the commodity was shipped to the free port or bonded warehouse is an eligible source country. When a commodity is merely packaged or subjected to minor assembly operations in a free port or bonded warehouse, it retains its original source as above. When a transformation in the commodity occurs, however, the commodity is considered to have been produced in the country in which the free port or bonded warehouse is located.

AID may finance an otherwise eligible commodity that is produced in a bonded warehouse or free port only if the warehouse or free port is located in an authorized country. For instance, when Code 941 is an authorized source, Australian yarn in raw form which is thrown and textured in a bonded warehouse in Indonesia would be eligible for AID financing if the delivered cost of the raw yarn was less than 50% of the sales price of the financed yarn. If the operation is performed in a bonded warehouse in Belgium, the processed yarn is considered to be a Belgian source and would be ineligible for AID financing, regardless of the country from which the raw yarn was imported. A determination of what degree of assembly, manufacture, or processing does or does not constitute production is not always readily apparent, and consultation with SER/COM/SE for guidance would be necessary.

Special price rules for shipments from free ports or bonded warehouses are set forth in AID Regulation 1. For the purpose of determining eligible prices, sales out of free ports or bonded warehouses are compared to similar sales and are not to be considered different with respect to period of delivery, supply area, or terms of sale merely because they are made out of free ports or bonded warehouses. No commodity shipped out of a free port or bonded warehouse is eligible for AID financing if the commodity was shipped to or from the free port or bonded warehouse by a carrier owned, operated, or under the control of any country not included in AID Geographic Code 935 or on a vessel which AID has designated ineligible.

F. Marine Insurance

AID may finance U.S. dollar premiums for marine insurance, including war risk, on AID-financed commodities in transit, subject to the following requirements as well as any special provisions that may be contained in the underlying agreement or relevant implementation document. The following rules apply:

1. The commodity to be insured must be eligible for AID financing.

2. The insurance must be placed either in accordance with the terms of the commodity purchase contract or by, or on the written instruction of, the importer.

3. The insurance must be placed in a country included in the geographic code authorized in the implementing document, provided that if the authorized geographic code is any other than AID Geographic Code 000, the cooperating country itself shall be recognized as an eligible source.

4. AID will not finance marine insurance placed in an otherwise eligible source country which discriminates against U.S. marine insurers when AID-financed cargo is involved.

5. Insurance coverage must relate only to the period during which the commodities are in transit to the cooperating country, except that it may include coverage under a so-called "warehouse-to-warehouse" clause.

6. The insurance must be placed on a competitive basis. Insurance is considered to have been placed on a competitive basis if the purchaser has taken due care and diligence to canvass the insurance market to obtain the desired coverage at the best rate offered. This can be presumed to have been accomplished in most instances if insurance has been placed through a broker who represents several insurers and is, therefore, in a position to know the trends of the market and, thus, able to place the insurance where the best terms prevail. In some cases, solicitation of additional brokers may secure more advantageous rates, but such solicitation

is not mandatory. The statutory reference to "placed on a competitive basis in accordance with normal trade practice prior to World War II" is not interpreted as requiring more than what is described.

7. The rate financed by AID may not exceed the prevailing rate for the same or similar insurance service, or the rate paid to the insurer under similar circumstances by other customers.

8. The insurance must provide that loss payment proceeds will be paid in U.S. dollars or other freely convertible currency.

9. 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.

When AID finds that a cooperating country discriminates against any marine insurance company authorized to do business in any state of the United States and that cooperating country, contrary to AID policy, fails to insure all AID-financed commodities with U.S. insurance companies, then those commodities are ineligible for AID financing.

G. Incidental Services

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 export 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 $50,000 or 25 percent of the total purchase contract, whichever is less. (Note, however, that AID has established higher limits for the Egypt CIP Program.)

The cost of incidental services in excess of $50,000 or 25 percent of total purchase contract, whichever is less, 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.

AID's source and nationality requirements do not apply to suppliers of incidental services, except that such suppliers must be citizens or legal residents of Code 935 countries.

H. Inspection

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

I. Commodity Prices

The price rules are discussed in detail in Chapters IV and V, below. The following summarizes the applicable tests and the documents which implement the tests.

A. Under AID Regulation 1 and Form 282:

(1) Sections 201.63(a) and 201.63(b) implement the provisions of Sections 604(a) and 604(b) of the FAA.

(2) Section 201.63(c) states that the purchase price shall not exceed prices generally charged by the supplier in comparable export sales.

(3) Section 201.63(d) states that purchase price for a non-U.S. source commodity may not exceed the prevailing export market price in comparable export sales in the source country at the time of purchase.

(4) Section 201.63(e) is a price test applied only in the absence of comparable sales and is based upon a supplier's cost plus customary pricing practices.

(5) Sections 201.63(f) and 201.63(g) establish additional price tests for sugar, crude oil, petroleum fuels, and lubricants.

(6) Section 201.63(h) establishes an additional price test for sales out of free ports or bonded warehouses. This price rule is designed to permit financing such sales without permitting higher prices than had the goods moved directly from source country to destination country.

(7) Section 201.67 establishes maximum prices for freight charges, including charter shipments, liner shipments, and air shipments.

(8) Section 201.68 establishes maximum prices for commodity-related services other than freight charges. The purchase price for these services, which include incidental services and other delivery services, may not exceed the prevailing price or the price paid the supplier under similar circumstances by other customers.

(9) In addition to the above price rules, Section 201.65 provides for rules on commissions and discounts. The former are eligible if paid to bona fide sales agents of the supplier. Discounts to the importer must be deducted from the price financed by AID. Unless otherwise authorized, AID will not finance any payments to the importer or to the importing interests.

B. Under Project Procurement (Chapter 3 of Handbook 11) and Form 1450-4.

The price, excluding transportation costs, of a commodity may not exceed the lower of (a) the market price prevailing for comparable sales in the source country at the time of purchase, or (b) the price generally charged by the contractor for comparable sales in the source country at the time of purchase. A comparable sale is one which is sufficiently similar to the present sale, with respect to quantity, quality, and conditions of sale that the price would not customarily be different from the price which the contractor is charging. Time of purchase means that period encompassing the date the purchase price is fixed during which prices in comparable sales remain substantially constant.

J. Commissions, Discounts, and Side Payments

All trade discounts, credits, and allowances to the purchaser must be deducted from the amount claimed from AID.

Commissions paid by the supplier to its agent if authorized for AID financing in the contract, may not exceed the amount customarily paid by the supplier for similar transactions or the amount customary in the trade, whichever is less.

Brokerage commissions for chartered shipments may not exceed 2½ percent of the ocean freight charge.

The supplier may not give or receive any side payment, kickback, commission or any other benefit from, to, or for the benefit of the purchaser, the purchaser's agent or the borrower/grantee.

CHAPTER III

EXAMINING THE VOUCHER

PREVIEWING AND ANALYZING THE TRANSACTION

Audit analysis usually requires two types of reviews. The first involves a "voucher examination" check for documentary completeness and would address, additionally, the basic eligibility of a transaction in terms of the commodity, transportation services, and other commodity-related services. The second involves the more complex review of prices and commissions. After obtaining the voucher and commitment documents, the transaction detail should permit the analyst to form a preliminary impression as to what is involved in performing the analysis. Based on the preview, the analyst will decide whether only the "voucher examination" is sufficient or whether further review is necessary under the price tests.

In addition to the voucher, this preview, as well as more complete analysis, will normally require the analyst to obtain the applicable letter of commitment (or be otherwise satisfied as to its standard substantive content) from AID (COM/SE or FM/BFD) files. Appendix B of this Manual sets forth the model language for CIP bank Letters of Commitment. Analysts may assume that such language will govern in most CIP transactions. Aside from information as to eligible source and specifically eligible commodities, CIP

L/Com language is relatively standard. Initially, the analyst will review the documents submitted to be certain that under the commitment they are sufficient, complete and arithmetically accurate. The analysis would then proceed to consider the following matters in determining whether the transaction complied with AID requirements.

A. Which Certificate: Is It C.I.P. or Project?

Note which Supplier's Certificate is furnished and, consequently, the A.I.D. rules which apply. If the Certificate is a Form 282, it will normally be a C.I.P. transaction under AID Regulation 1. If the Certificate is a Form 1450-4, it will normally be a project transaction under Chapter 3 of Handbook 11. If the Certificate is a 1440-3 it will normally be a services contract and not subject to audit by the contractor.

A.I.D. does not require Supplier's or Contractor's Certificates (and the audit analyst does not audit) in the following instances:

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

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

3. Local cost financing of services procured without

international competition;

4. Fixed amount reimbursement (FAR) type projects;

5. Grants and contributions to nonprofit and international organizations;

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

7. 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 1550-1, is required.

B. Eligibility of Commodity

Check the commodity and indicated geographic source for any signs, under the L/Com requirements, of possible commodity or geographic source ineligibility. If ineligibility is confirmed, the analyst should report the finding without proceeding further. Documentary discrepancies should be reported but will not necessarily make a transaction ineligible.

C. Debarred Supplier

Check the name of the supplier against the list of companies suspended or debarred from participation in the

A.I.D. program under A.I.D. Regulation 8. If the supplier's name appears on this list, report the finding without proceeding further.

D. Prior Review Required

Check the supplier's name against the list of companies required to submit their proposed transactions for prior review by A.I.D. under the provisions of Section 201.33 of A.I.D. Regulation 1. If the supplier is on the list, ascertain whether he has, in fact, submitted the transaction and complied with any requirements or conditions imposed on him.

E. Formal Procurement

Note whether the transaction is obviously one which resulted from formal procurement procedures or, if not obvious, whether the buyer appears to be a public or parastatal agency which would be expected to use formal procurement procedures. If it is formal check SER/COM files to see whether an abstract of bids covering the procurement is at hand. If there is no such abstract on file, the A.I.D. Mission in the recipient country should be asked (by COM/SE) to obtain the abstract which the buyer is required to furnish by Section 201.22(e) of

Regulation 1. Also check to see whether the CIP transaction is under formal procurement and requring less complex review of the prices under Section 201.63 price rules. If it is a project transaction where you have access to bid and award information, consider whether the review is simplified by A.I.D.'s requirement that it approve in advance project contract awards of over $100,000.

Many of the commodities formally procured under AID-financing are bulk commodities but the analysis procedure is not dependent on the type of commodity. If would vary, as discussed, by the type of solicitation and competition.

F. Seller Affiliated With Buyer

Note whether there is any apparent affiliation between buyer and Seller in a private sector transaction. Such an affiliation is a warning that arms-length dealing may not be involved. On occasion, such affiliated supplier of record acts in fact as a purchasing agent for the buyer, and puts a mark-up on top of the prevailing price at which the customer should be buying.

G. Source/Origin Rules Satisfied

Determine authorized source for nationality, commodities and commodity-related services. Check all relevant information on the Form 11, Supplier's Certificate, Bill of Lading, Certificate of Origin (if required), invoice, etc. which might relate to compliance.

H. Ocean/Air Transport Rules Satisfied

Determine authorized source for transportation. Check all relevant information on Supplier's Certificate and Bill of Lading which might relate to compliance particularly flag of vessel or airline. For ocean transport, where such analysis indicated, determine from AID whether a source waiver authorized or a non-availability determination made. For air transport, where such analysis indicated, note whether a self-certified non-availability determination made and, if considered possibly improper, seek further factual verification. Make certain that bills of lading are rated. While the supplier cannot finance a freight rate which exceeds the established rate for comparable shipments on file at Federal Maritime Commission or the Civil Aeronautics Board, analysis for compliance with this requirement will be separately audited by AID.

I. Whether Prices for Other Delivery Services and for Incidental Services are Reasonable and Whether the Services are Ordered Under the Contract

Check to see whether the services are provided at cost. Compare the prices for the services with other suppliers' prices. Look particularly at charges for packing, crating, handling, forwarding and inspection services. Frequently over-pricing takes the form of padding such charges rather than the commodity itself. When the charges are important, make certain that the services are wanted by the buyer and, accordingly, included in the purchase contract. Similar considerations apply in reviewing incidental services - installation and training. Check lump-sum amounts against the contract authorization. Where a formula is provided determine whether it is properly applied at verified cost. Be certain that the services have in fact been rendered.

J. Incomplete Information

Check the Supplier's Certificate for completeness of the required information. The most frequent omission will be the commission information. If this or other information essential to price analysis is missing from the Supplier's Certificate, and is not shown elsewhere in the voucher (e.g., on the bill of lading or invoice), it will have to be obtained from the supplier. The analyst also should be alert to any requirements for special certificates for certain commodities, e.g., pharmaceuticals, steel, textiles, etc.

K. Partial Shipments or Payments under a Contract

Note whether the transaction involves a partial shipment, by comparing the invoice amount with the contract amount. Consider whether the audit of the transaction should proceed logically in conjunction with other transaction vouchers. No audit under the price tests is required for a fixed price contract for a combination of commodities and services which are not commodity related. This exemption is based on the fact that under such contracts an amalgam of commodities and services is being procured, so it is impossible to segregate the commodity element of the total price. Some vouchers will reflect advance, mobilization, or progress payments. The terms under which such payments may be made by AID are set forth in the contract and should follow from those approved by AID in issuing the solicitation document. Normally the audit of such vouchers would await completion of payment under contract.

L. Special Supplier/Importer Relationship

Section 201.23 of AID Regulation 1, if applicable, permits non-competitive procurement when suppliers are selling to their distributors or dealers. The price may not exceed the customary dealer net and no commission payments are eligible. Check routinely to be certain that commissions are not declared and that dealer net prices do not vary without rationale by destination.

M. Commissions

Check commissions declared in Box 14 of the Invoice-and-Contract Abstract to see whether they appear in excess of that which might be customary or whether they obviously represent payments back to or for the benefit of the purchaser.

N. Special Features Such as a Bonded Warehouse Transaction

Note should be taken of any clues indicating anything out of the ordinary about the transaction. For instance, if the source of the commodity is shown as the U.S., but shipment is from a foreign port, a bonded warehouse transaction (to which special rules apply) is probable. Any unusual relationship between contract date and shipping date may point to a problem. Block 15 of the Form A.I.D. Form 282 may contain information inserted by the supplier to explain some unusual aspect of the transaction, and any such information should, of course, be considered critically by the analyst.

O. Compliance with Contract

Consider whether the supplier has complied with his undertaking in the Supplier's Certificate to perform under his contract with the importer. The terms of the sale provided in the invoice and the contract should agree. Pay particular attention to quantity, quality, description and unit prices. If the contract is not true C&F or C.I.F. and freight has been contracted at a fixed cost, make certain that the freight invoiced is not in excess of the contract amount for freight.

P. Any Incongruity in Documents

Finally, an experienced analyst will develop a "feel" for the consistency and validity of the picture presented by documents covering a transaction in a commodity with which the analyst is familiar, and will sense incongruous aspects in the documentation for further detailed check.

Q. Queries to Suppliers

Requests for supplementary documents, information and explanations should be tailored to your exact need. Documents are often missing, incorrect or require a signature. If appropriate seek new submissions. Your request, as previously discussed, may be for the contract and the letter of credit.

You may need commission information or when querying resellers, acquisition invoices. You may wish to cite a regulatory or Supplier's Certificate requirement and ask for an explanation or evidence relating to the supplier's compliance. Your initial letter should be certified and ask for response within 30 days. If no answer is received, prepare a follow-up. If possible, non-responsive suppliers should also be contacted by phone.

CHAPTER IV

PREPARING FOR PRICE COMPARISONS

A. Identification of Commodity

The commodity must be identified to whatever degree of refinement is necessary in view of industry pricing practices, i.e., to the extent that different grades or specifications customarily involve price difference, the precise grades or specifications financed must be determined. If the documents submitted by the supplier contain product specifications, the analyst should check the L/Com, L/Cr, the Supplier's Certificate, invoice, and bill of lading for internal consistency. If the documents at hand do not provide adequate description of the commodity, additional information will be needed from the supplier. In any event, for transactions not patently routine, the supplier should usually be asked to furnish a copy of his contract with the importer to assure that the transaction conforms in all respects (specifications and terms and conditions) with the contract. Additionally, the analyst should usually obtain a copy of the L/Com and L/Cr (when under a bank L/Com) to assure compliance with their terms.

B. Identification of Terms of Sale

The contract data and other relevant terms of sale must be identified. The information supplied in the payment documents usually can be accepted in the absence of any reason to doubt its accuracy. Experience has shown, however, that the contract date entered on the Supplier's Certificate frequently is incorrect, and this item is likely to require verification in cases where a price violation hinges upon the exact contract date.

C. Adjusting for Incidental and Delivery Services

In order to arrive at the unit price of the commodity for price test purposes, adjustments must be made for any incidental services or delivery services included in the total price. In this connection, see Section 201.01(l) and Section 201.01(o) of Regulation 1 for the definitions in CIP transactions of incidental services and delivery services; and see Section 201.64 for a description of the procedures for (a) converting a price quoted at an internal point in the source country to a price on the basis of delivery alongside or on board the vessel, and (b) deducting transportation cost from C&F price to arrive at a price for the commodity alone. If the documents in the voucher do not identify incidental services and delivery services in sufficient detail to permit deriving the FOB or

FAS price of the commodity with sufficient accuracy for price review purposes, the analyst will need additional information from the supplier.

D. Noting Ineligible Components of the Price

If the total price financed includes any element which is ineligible for financing (e.g., consular fees or foreign flag freight), it should be reported as a discrepancy after completion of the rest of the price analysis procedure.

E. Verifying Freight Rate

Note that, in taking the transportation cost out of a C&F price to arrive at the commodity price, the actual cost of the ocean freight is presumed to be the prevailing freight rate on the date the purchase price was fixed. This is only a presumption, however, and in appropriate instances the analyst may ask COM/TS to verify the correct prevailing freight rate to be deducted from the C&F price.

F. Treatment of Any Non-A.I.D.-Financed Portion of Price

The total consideration paid by the buyer constitutes the price which must meet AID's price tests. Therefore, if there is any non-AID-financed portion of this price, this must be ascertained and added to the AID-financed portion. For instance, any commission paid to a sales agent of the supplier is part of the price, even if paid in local currency by the importer directly to an agent in the importing country.

G. Adjusting Commodity Units

The unit in which the commodity is expressed on the documents may need to be converted to a unit more generally used in the industry, before price comparisons can be made. For instance, short tons may need to be converted to metric tons, tons to barrels for some POL products, etc.

H. Verifying Number of Units

The documents should be checked for internal consistency as to the number of units shipped. The invoice quantity should be compared with the bill of lading. Even if the bill of lading does not show number of units shipped, the weight figures on the bill of lading may reveal a short shipment if the weight shipped is obviously inconsistent with the number of units shown on the Supplier's Certificate and invoice.

I. Computing Unit Price

Unit price of the commodity is, of course, computed by dividing the (adjusted) total commodity cost, FOB or FAS, by the number of units actually shipped. This may or may not agree with the unit price reported on the Supplier's Certificate.

J. Rough Price Check

At this point it may be possible to form a preliminary impression as to whether the price is out of line. Check against information already available as to prices previously charged in AID financed transactions and prices listed in catalog/price lists in your library. Where appropriate, discuss the price with SER/COM technical personnel familiar with the commodity and industry.

K. Necessity for Adequate Preparation for Price Analysis

As a practical matter, some of preliminary steps outlined above may be intermingled with other aspects of price analysis. Logically, however, the complete price comparisons required by AID's price rules can hardly begin until there has been a careful determination of the FOB or FAS price per unit actually shipped of a commodity, the specifications of which are known in adequate detail. Logically also the complete price comparisons would follow after assembling all documentary information necessary to consider all aspects of transaction eligibility including the price.

CHAPTER V

APPLYING A.I.D.'S PRICE TESTS IN CIP TRANSACTIONS

AID financed expenditures for commodities, whether grant or loan, are subject to certain basic price requirements under the Foreign Assistance Act, Sections 604(a) and 604(b). Those general price requirements are:

Section 604(a): Funds made available under this Act may be used for procurement outside the U.S. only if the price of any commodity procured in bulk is lower than the market price prevailing in the U.S., at the time of procurement, adjusted for differences in the cost of transportation to destination, quality and terms of payment; and

Section 604(b): No funds shall be used for the purchase in bulk of any commodities at prices higher than the market price prevailing in the U.S. at the time of purchase, adjusted for differences in the cost of transportation to destination, quality and terms of payment.

A. A.I.D. Regulation 1

AID Regulation 1 provides for the implementation in CIP transactions of the price requirements of the Foreign Assistance Act. It clearly identifies specific tests which a supplier's price must meet if a transaction is to be eligible for AID financing, and imposes a requirement upon the borrower/grantee to ensure that the importer procures in accordance with AID rules. In short, a price violation on the part of a supplier may provide the basis for recourse by AID against the supplier (or, alternatively, the borrower/grantee) because the importer has not procured at the lowest available competitive price.

The following discussion will be in terms of the specific price rules set forth in AID Regulation 1. The analysis required in project procurement not subject to Regulation 1 will be virtually the same (see Chapter VI below).

B. Apply All Relevant Tests

All of the price tests applicable to an AID-financed transaction must be met. If a transaction violates more than one price rule, AID is entitled to base a refund claim on whichever price test shows the largest overcharge. Therefore, a price analyst should routinely apply, if practicable, all of the price tests in turn, even though violation of some one price rule is readily apparent. For instance, a transaction which shows an ineligible commission may very well - when subjected to full price analysis - involve overpricing in excess of the ineligible commission. Furthermore, since AID is prohibited by law from financing prices which violate Sections 604(a) and (b) of the Foreign Assistance Act, there is a special requirement to apply those tests to every transaction. A recovery under one of the other price tests would not necessarily correct a statutory violation. Moreover, once having asserted a claim, under one price test, AID would find it difficult to later assert a larger claim under a different test.

C. Definitions

1. General

Note that a number of the terms appearing in the price rules are given special definitions in Section 201.61. These definitions are obviously of key importance, since they attach specific meanings - binding upon A.I.D., suppliers, and cooperating countries alike - to words otherwise susceptible to a wide range of interpretations. Analysts should accordingly become thoroughly familiar with, and used to thinking within the context of, these specialized definitions. Certain of these definitions are discussed below.

2. Purchase Price

Section 201.61(d) is not limited to the AID-financed amount, nor to the amount received directly by the seller. It includes ". . . the total amount which the purchaser agrees to pay or make available to or for the benefit of the supplier . . ." or the supplier's designee, in any transaction which is "wholly or partly" financed by A.I.D.

3. <u>Comparable Sale</u>

The definition of this term in Section 201.61(e) sets forth the factors - all of the factors - which are relevant in determining whether sales are comparable within the context of any of AID's price tests. These factors are: quantity, quality, grade, period of delivery, supply area, terms of sale, and class of purchaser. (Note that some of these words have their own definitions in Section 201.61.) Absent from this list of relevant factors is "country of destination" - an intentional omission, to reflect AID's long-established position that sales which are comparable in other respects remain comparable even if made to buyers in different countries. Absent also is class of seller which AID does not recognize as a factor in comparability. Note, in addition, that the circumstances that sales are, or are not, AID-financed is not a factor affecting comparability. There are a number of other aspects of this definition which should be borne in mind. In identifying "comparable sales," the analyst is not limited to transactions in precisely the same commodity as that involved in the transaction being reviewed. He may turn to transactions in "similar" commodities which customarily sell at the same price as the commodity in the sale under review, or which sell at a "customary price differential". The analyst should make maximum use of the opportunities to establish comparable sales, and before concluding that no comparable sales can be found should investigate the possibility that "similar" products of somewhat different technical specifications may customarily sell at the same price, or at a customary price differential; or that customary price differentials exist between grade or qualities, between different supply areas (e.g., U.S. east, gulf, and west coasts), or between different classes of customers. Another important aspect of the definition of "comparable sale" is that it includes _offers_ to sell. This permits AID to rely upon prices in supplier's catalogs or price lists as evidence of the prices in comparable sales (if, in fact, those are the prices regularly charged by the suppliers, or the prices at which the suppliers stand ready to sell) without having to identify actual sales which are comparable in all relevant respects to the transaction under review.

4. _Same Commodity_

An important and rather difficult problem arises in connection with the meaning to be attached to the words "same commodity" in the definition of "comparable sales." A steel ingot of given specifications is the same commodity as another ingot of like specifications, but is a Ford truck the same commodity as a metals) the prices charged are customarily those in effect at time of shipment. The analyst will need to know, or find out, whether in a transaction under review there is a difference between the contract date and "the date the purchase price is fixed."

D. The Price Tests

1. "U.S. Prevailing Market Price - U.S. Source" Test

> Section 201.63(a): "The purchase price for a commodity the source of which is the United States shall not exceed the market price prevailing in comparable export sales in the United States at time of purchase adjusted for differences in the transportation cost. . ."

Note that Section 201.63(a) says that prices shall be adjusted for differences in transportation cost. Guidance on how this is to be done is found in Section 201.64. Prices being compared ". . . are calculated on the basis of delivery alongside or on board the vessel or other export conveyance. . ." This permits, by proper adjustment, the inclusion in the universe of comparable sales of transactions which may have been on an FOB or FAS basis, or on the basis of C&F different destinations.

Once it has been decided which types of sales make up the universe of comparable transactions for purpose of applying this price test, it becomes necessary to determine the "market price prevailing."

The sources of, and procedures for obtaining, market price information vary from commodity to commodity; and proficiency in getting this information is one of the most important skills necessary for an analyst's work. Development of familiarity with, and making maximum use of, all possible sources of relevant price information should be a major concern of the auditor.

As a practical matter, the analyst will seldom have complete information about prices charged in all transactions making up the relevant market. In the simplest situation, it may be possible to ascertain from authoritative sources that most suppliers of a commodity charged uniform, or nearly uniform, prices during the relevant time period. More typically, it will be possible to obtain information about only a portion of the transactions which took place; but to be useful for price analysis purposes, there must be a reason to suppose that the prices available are representative of all prices charged in comparable sales. The prices obtained will in most cases not be uniform, but will extend over a range. It then becomes necessary to decide which price within this range is the "price prevailing" within the meaning of the price test. This can be one of the most difficult problems encountered by an analyst.

The meanings of "prevailing" which are most relevant in this context are: predominant; widely existing; prevalent. A meaning of "predominant" is "most frequent," and this is perhaps the most useful concept in determining the "price prevailing". In statistical terms, it is the modal value in an array of data. In many actual situations, where markets are characterized by competitive forces, prices will be found to cluster around a central figure which is the price charged in a substantial percentage of cases. In this type of market, identification of a price as the prevailing price may not be difficult. That situations of this sort are rather common is not only fortunate, from an audit standpoint, but also to be expected: the various buyers and sellers in a market at a given time are exposed to roughly similar supply and demand conditions, and the prices which emerge will naturally tend toward a level which all market participants are more or less subject.

In some cases, however, available prices will be so scattered over the range that no one price is clearly "most frequent." One possible solution in this situation is to compute an average (mean) price as the prevailing price but this is open to the objection that the computed price may not be the same as any price actually charged. A more serious objection is that the supplier is presumed to know, or to be able to ascertain, the prevailing market price; and he could hardly find out, at the time of his transaction, the arithmetic average of all prices which would be chaged in comparable sales during the relevant time period. Perhaps the most reasonable and defensible procedure in cases where there is no clearly most-frequent price is to array the price data from lowest to highest in a type of frequency distribution (an ogive, in statistical terms) which will permit conclusions such as "X percent of the transactions took place at a price of Y or less". If the transactions differ considerably in size, proper weighting is appropriate, and conclusions will take the form of "X percent of the commodity was sold at a price of Y or less". Selecting a suitable value for "X" is a problem which requires careful judgment in light of all of the facts of a particular situation. Obviously the higher the percentage figure selected for "X", the stronger is AID's position in contending that the prevailing price must have been "Y" or less. Obviously also "X" must be at least more than 50%.

Determining the prevailing market price for purposes of Section 201.63(a) calls for further steps if there are, at time of purchase, no export sales comparable to the one being tested. The second part of that Section reads as follows:

> <u>Provided, however,</u> that if there are no such comparable export sales, then the purchase price, excluding transportation cost, may not exceed the market price prevailing in comparable domestic sales in the United States at the time of purchase, adjusted upward or downward by the appropriate export differential.

Reference to the definition of "export differential" in Section 201.61(n) shows that it is ". . . the customary difference in price between domestic sales and otherwise comparable export sales." This requires turning to domestic prices, and, possibly, somewhat different sources of price information. It contemplates that even though there were no comparable export sales during the "time of purchase", there were such sales during other periods; and that it will be possible to establish an export differential (positive, negative, or zero) which has been customary during periods when both domestic and export sales have been made. Note that the definitions provide a basis for looking to the export differential prevailing for a "similar commodity" (as defined in Section 201.61(l)) if none can be found for the commodity involved in the transaction being tested.

Analysis under the Section 201.63(a) price test is relatively least complex in the case of formal procurement. When an IFB is widely disseminated and formal offers received, there is an assumption that the lowest responsive price establishes the prevailing export market price. The assumption would be faulty, however, if the solicitation was in any way flawed or, for some reason, was not designed or implemented so as to competitively probe the market. The analyst should also note that the exemption of formal procurement from the price test under Section 201.63(c) does not exempt such procurement from the test under Section 201.63(a).

In summary, the language of Section 201.63(a), together with the associated definitions, gives AID a strong basis for enforcing the requirement of the Foreign Assistance Act that "No funds made available under this Act shall be used for the purchase . . .of any commodites at prices higher than the market price prevailing in the United States. . ." Before this requirement, the analyst should ensure that he has considered all of the procedures and types of information which are available for use under Section 201.63(a).

2. <u>"U.S. Prevailing Market Price - Non-U.S. Source" Test</u>

"Section 201.63(b): "The purchase price, including transportation cost, for a commodity the source of which is not the United States shall be lower than the market price prevailing in comparable export sales in the United States at the time of purchase including transportation cost. . ."

This section of Regulation 1 reflects Section 604(a) of the FAA which requires, in substance, that AID-financed goods from eligible foreign sources must cost less, delivered, than the cost would have been if the goods had come from the United States. Note that this delivered price test does not require the FOB or FAS price of the commodity in the source country to be lower than the commodity price in the U.S. - the foreign source may benefit from lower ocean freight cost. If U.S. flag was used in moving the commodity from its foreign source to destination, then the test price includes U.S. flag freight from the U.S. If foreign flag freight was used from the foreign source, then the delivered cost of the commodity from the U.S. for price test purposes is based upon either foreign or U.S. flag freight, whichever is lower. (See Section 201.64(b)(2).)

A major practical problem in applying this test may arise in determining the precise grades or specifications of products provided by the foreign supplier, and then finding the equivalent U.S. products. Requests for information should not be discouraged by the fact that a foreign supplier is involved; if essential information cannot be obtained from the supplier, the assistance of the U.S. AID Mission in the source country may be sought. If it clearly established that the product sold by the foreign supplier is one which, although produced in the U.S., has not been exported by U.S. suppliers, then language in Section 201.63(b) following the language quoted above permits the analyst to look to the domestic price adjusted by an appropriate export differential, which may be derived from exports of similar commodities. (Of course, the price may be tested against the price - properly adjusted - of exports of "similar commodities" if there have been such exports during the time of purchase.)

3. <u>"Supplier's Comparable Export Price - U.S. and Non-U.S. Sources" Test</u>

Section 201.63(c): "The purchase price, excluding transportation cost, shall not exceed prices generally charged by the supplier in comparable export sales from the source country at the time of purchase. . ."

This test looks only to the supplier's own pricing practices, regardless of what other suppliers may be charging. The test has the effect of denying a supplier the right to charge more in an AID-financed transaction - where competition may be very limited or where the importer may not be subject to the usual commercial motivations to keep the cost down - than the supplier generally charges in other transactions at least some of which will presumably be subject to normal competitive pressures. The reference to prices "generally" charged was inserted in the Regulation to give suppliers some room to set unusually low prices in a limited number of their sales (possibly for the purpose of breaking into new markets, or in distress situations of one sort or another) without being bound to those abnormally low prices in AID-financed transactions. The concept presents no particular problem where the supplier's usual practice is, in fact, to adhere to a rather uniform price from which he deviates downward only infrequently. While this pattern of behavior is not unusual among suppliers, neither is it unusual for other suppliers to charge a whole range of prices, tailored to what the traffic will bear. In the latter type of situation, it requires careful analysis and judgement to determine whether a particular price exceeds the price "generally" charged. A first step, obviously, is to find out what prices the supplier did, in fact, charge in comparable sales during the time of purchase. While maximum use should be made of information already available in AID or contractor files, such review usually can proceed only under a request that the supplier furnish information about his prices in comparable non-AID-financed sales made in the relevant period. The supplier is required by paragraph 10 of the Form AID 282 to give this information, and should have no great difficulty in doing so once he understands his obligation to furnish it. AID attaches high importance to its rights to obtain information from suppliers under paragraph 10. When the analyst, after an initial letter and follow-up effort receives no or inadequate information from a supplier, COM/SE should consult with GC on the proper remedy. Non-response from a supplier should not, however, be the basis for the analyst's determination that the transaction is ineligible.

When the necessary information has been assembled and arranged, the analyst will have to make a preliminary judgment as to how the AID-financed price stands in a relation to the other prices, whether it permits a reasonable conclusion that the AID price exceeds the prices generally charged. Any AID-financed price which stands in the "upper half" - whatever statistical measure is used to measure the center point - is suspect. The procedures for determining the price "generally" charged, for purposes of computing the amount of the overcharge, are similar to the steps described earlier in arriving at the "market price prevailing." However, AID is probably justified in taking a harder line where the comparable sales test is involved. A supplier may have only imperfect knowledge of what the "prevailing market price" is if there are numerous competitors, and this appears to make it appropriate for AID in applying that test to permit some amount of leeway before finding that the supplier's price falls outside of an acceptable range. Where only the supplier's own sales are involved in the price test, however, AID is justified in assuming that the supplier had available all necessary information at the time he made his certification of compliance with the price test.

The "prevailing market price" test and the "comparable sales" test tend to merge if a branded (proprietary) item, characterized by its own price pattern, is involved. In this situation, careful consideration of all the facts will be necessary before deciding which of the tests to rely upon in developing a refund claim.

There are some exceptions and qualifications to the comparable sales test which should be noted. The test does not apply to any sale under formal competitive bid procedures, nor do prices arrived at under formal bid procedures enter the "comparable sales" which are considered in applying the comparable sales test to other (non-formal-procurement) transactions. The test does not apply to any sale of a commodity generally traded on an organized commodity exchange. If a supplier as a general practice sells a commodity to affiliates at prices lower than the prices he charges to non-affiliated buyers, the prices in the sales to affiliates do not enter the group of "comparable sales" considered in applying the test.

4. <u>"Source Country Prevailing Market Price - Non-U.S. Source" Test</u>

Section 201.63(d): "The purchase price, excluding transportation cost, shall not exceed the market price prevail-in the source country in comparable export sales at time of purchase. . ."

This test poses no new conceptual problems, but as a practical matter it may present serious difficulties in obtaining information about commodity prices in the foreign source country. Further guidance from COM/SE should be sought. Note that in analyzing off-shore source transactions that it is necessary to be alert to the possibility that foreign suppliers have raised their prices in AID-financed sales to the point where they are just under prices out of the U.S. on a delivered basis. If there are no export sales from the foreign source country comparable to the AID-financed sale being reviewed, reference may be made to domestic prices for the commodity adjusted by an appropriate export differential.

5. "Price Test in the Absence of a Comparable Sale at the Time of Purchase - U.S. and Non-U.S. Sources" (Section 201.63(e))

This price test, with its separate rules for suppliers who are producers and suppliers who are not producers, was designed to ensure, insofar as could be anticipated, that no situation would arise which left AID without an effective price rule. The test will not be reached except in the "absence of a comparable sale at time of purchase", after full consideration has been given to relying upon (adjusted) prices for "similar" commodities. It is the only price test which is concerned explicitly with the mark-up of a supplier. Some of the concepts involved in the test (e.g., customary mark-up, most nearly similar sale, most nearly similar commodity, customary pricing practices, products of the same general class) might involve difficult problems of proof in a disputed case, but the possibility of using the Section should nevertheless be considered carefully as a last resort particularly in cases where re-sale margins are inordinately high and no other AID price rules provide a basis for challenging the price charged by the supplier.

6. Other Price Tests Applicable to Suppliers

Additional price tests (Sections 201.63(f) and (g)) apply to suppliers of sugar and petroleum products. When these specialized tests appear applicable, bring the transactions to the attention of COM/SE for further guidance.

7. Commission Rules

Sales agent commissions are eligible (unless otherwise provided in the authorization) in all AID financed transactions and may be paid in dollars to an agent performing a bona fide service in any free world source country providing the commissions do not exceed the lesser of either the amount customarily paid by the supplier in connection with similar transactions or the amount customary in the trade. All commissions must be declared on the Supplier's Certificate. The analyst should check any which appear to be out-of-line either because the rate is high or the amount is greater than that normally observed in the course of comparable analysis. Note that some "high" rates on equipment sales merely reflect the difference between the distributor net price and the list price when the supplier sells to a third party at the list price.

The analyst should be especially concerned with payments back to the importer. The supplier or supplier's agent cannot give or receive a side payment, "kickback", commission, any other payment, credit allowance or benefit which is to or for the benefit of purchaser, the purchaser's agent or the borrower/grantee.

8. Price Tests Applicable to Borrower/Grantee

Section 201.81 sets forth AID's right to require a borrower/grantee to refund any amount attributable to a violation of Regulation 1. This includes price violations which may have been committed by suppliers, although AID would normally seek to obtain refunds for such violations from suppliers. In addition, Section 201.62 contains special requirements related to prices which are applicable to the borrower/grantee.

Section 201.62(a)(1) requires the borrower/grantee to ensure that importers comply with AID's rules for procurement as set forth in Section 201.22. Failure to follow the required procedures raises a presumption that the importer has paid more than the ". . .lowest available price. . .", and that there has accordingly been a violation of Section 201.62(a)(2). Note that this is, or may be, a more stringent price test that the "prevailing market price test", since the importer is expected to take advantage of any opportunity which he may have to buy at prices "below market." Where formal procurement procedures are involved, the buyer is expected to accept the lowest responsive offer even though there are other offers which do not exceed the "market price prevailing." In non-formal, commercial type procurement, the buyer has somewhat more leeway providing he conforms to good commercial practice. Nevertheless, Section 201.62(a)(2) gives AID a basis for action which may be invoked in any case in which a buyer acts imprudently by failing to take advantage of the best prices available.

CHAPTER VI

APPLYING AID's PRICE TESTS IN PROJECT TRANSACTIONS

Project procurement price rules are set forth in Chapter 3 of AID Handbook 11 governing Host Country Contracting which requires a Supplier's Certificate in such contracting and follows from the Project Agreement provision that prices for commodities be reasonable. In paragraph 3 of the Project Supplier's Certificate (Form 1450-4), the supplier certifies, on the basis of such sources as are available to it and to the best of its information and belief that:

"The price, excluding transportation, of any commodity for which payment is requested on the accompanying invoice does not exceed the lower of (i) the market price prevailing for comparable sales in the source country at the time of purchase, or (ii) the price generally charged by the seller for comparable sales in the source country at the time of purchase. A comparable sale is one which is sufficiently similar to the present sale, with respect to quantity, quality, and conditions of sale that the price would not customarily be different from said contract price. Time of purchase means that period encompassing the date the purchase price is fixed during which prices in comparable sales remain substantially constant."

The project commodity price tests in the Supplier's Certificate substantially summarize the price tests which apply under AID Regulation 1. The analysis procedures are, accordingly, largely the same as those which are set forth above for the rules under Section 201.63(a) through (d) of the Regulation. The tests for eligibility and maximum rates for commissions in projects are also similar and are set forth in the Supplier's Certificate.

The project price test for commodity related services follows from a supplier's certification in the Certificate that:

> "The price of any other commodity-related services does not exceed the lower of (i) the prevailing price for the same or similar service or (ii) the price paid to the supplier under similar circumstances by other customers."

Again the test is substantially the same which would apply under Regulation 1 and the procedure in auditing is largely the same.

CHAPTER VII

DOCUMENTING THE ANALYSIS

The analyst's report should completely document the analysis including:

1. Control information (e.g., case number, opening date, name of analyst, etc).

2. Voucher information (e.g., voucher number, date paid, AID loan or grant number, the schedule B, the country involved, the voucher amount, etc.).

3. Transaction information (e.g., supplier's name and address, transaction amount, terms of sale, importer's name, etc.).

4. Transportation information (e.g., freight cost, B/L No., name and flag of vessel, charter party detail).

5. A list of commodity related services included in transportation.

The analysis should further detail any documentary or other discrepancy. The case summary should then summarize the issues involved and the facts uncovered in reaching any finding or conclusion as to non-compliance.

As a general matter, the analysis should be sensitive to the assigned task which consists of carrying out the review, establishing the facts and describing any short-comings in the documentation submitted by a supplier, or monetary discrepancies found, in such detail that AID can decide whether it needs to take action without having to conduct additional inquiries. After receiving the analysis, the Chief of COM/SE together with GC reviews the findings submitted, decides whether there are sufficient grounds for issuing a Bill-for-Collection, whether the size of the discrepancy warrants pursuit of the case and whether any irregularities in the documentation warrant any action, either in a particular case or, if a pattern of irregularities emerges, by amending or clarifying AID's own regulations.

The discrepancy analysis should carefully distinguish between documentary short-comings and over-payments. Note that AID can recover only over-payments to suppliers since only then can there be a demonstration that the Agency has been damaged. The analyst is not expected to lump together an imputed value of documentary discrepancies and over-payments in order to provide a total discrepancy value.

Analysis should be completed promptly though progress may necessarily depend upon the availability of needed supplementary information. The final report of the analyst should be made not later than one hundred twenty (120) days after the analysis of the transaction commenced. If not completed at this point, the transaction should be cleared out of the analyst's system with appropriate explanation.

Appendix A

ANALYZING THE TRANSACTION

WHAT YOU NEED TO DO

Verify that the voucher is one appropriate for audit and the voucher documents are sufficient, complete and correct.

A. The voucher would normally include:

1. Voucher SF 1034 - check "Request for Reimbursement" - approval, signature.

2. Supplier's Invoice (under AID Regulation 1, see Section 201.52).

3. Supplier's Certificate (Invoice and Contract Abstract - AID Form 282 or 1450-4).

   a. Commodity supplier
   b. Carrier
   c. Insurance (Marine) unless insurance is less than $50; then, name and address of insurance company (only) is to be shown on Invoice.

4. AID Form 11, if under AID Regulation 1.

5. Evidence of Shipment (B/L, etc.).

6. Certain other documentation may be required, as set forth in implementing documentation (see Letter of Commitment and PIO/C).

B. To begin you will also need a copy of the Letter of Commitment (or knowledge as to its substantive content particularly with respect to source and eligibility). Where applicable you may need the PIO/C. You may find, depending on the type of transaction, that you will also require other documents including the IFB or RFQ, the bid abstract, the contract and the letter of credit.

C. Procedural Steps

1. If the transaction is a partial shipment, determine whether the audit should proceed in conjunction with other transactions.

2. Check all documentation for verification of correct L/Commitment Number and commodities listed in L/Com and PIO/C.

3. Determine whether transaction is under CIP or Project.

4. Review CIP transaction to determine whether or not supplier is subject to Prior Review procedures of Section 201.33 of AID Regulation 1, Suspension/Debarment procedures of AID Regulation 8, offset procedures of AID Regulation 13.

5. Check the following considerations and verify documents:

a. AID Form 11, if required (only under AID Reg. 1).

(i) Signed by COM/CPS as approved.

(ii) Signed by supplier (if partial shipment, check for certification to a true copy of original, which is to be manually signed).

(iii) Source country.

(iv) Numbered, upper right corner.

(v) Check commodity against Schedule B No. on invoice and B/L.

(vi) Check eligibility of Supplier under nationality rules.

(vii) Check source/origin eligibility - cross checking against Bill of Lading, Supplier's Certificate and Insurance.

b. AID Supplier's Certificate (Form 282 or 1450-4) For Commodity Supplier and Commodity Related Services (Transportation and Insurance) Suppliers

(i) Filled in correctly and manually signed.

(ii) Contract date.

(iii) Delivery date.

(iv) Compare unit price with that on AID Form 11. If expressed in different units, check arithmetic.

(v) Agent's commission.

c. Bill of Lading or other Evidence of Shipment (frequently a dock or warehouse receipt).

(i) Transshipment.

(ii) Eligibility of vessel if foreign flag is used.

(iii) Consul or Bill of Lading Fees.

(iv) Check Lloyd's Shipping Indexes to idenfity vessel.

(v) Airway Bill.

(vi) Parcel Post Receipt.

(vii) Charter Party.

(viii) Bill of Lading must be rated.

(ix) Waiver or non-availability determination by SER/COM.

d. Invoice

(i) Verify arithmetic entries and extension. Compare units and weights with B/L and Supplier's

Certificate.

(ii) Verify eligibility other than price of all charges for commodity and for commodity related services (e.g., freight as it may conform to rated B/L, insurance, forwarding, packing, commission, etc.).

6. Check all documents for internal consistency.

7. Determine whether transaction proceeded under formal procurement procedures or informal, negotiated procedures (particularly differentiate between public sector and private sector procurement in CIP).

a. If formal, obtain IFB (which may indicate content of contract) and bid abstract if available.

b. With documentation available or by request to supplier for copy of contract (and L/C), verify that items invoiced and terms of sale for commodities and each of commodity related services agree with the contract (e.g., quantity, quality, description, and unit prices).

c. If informal or private sector, obtain contract (often the supplier's proforma offer) and L/C and proceed with verification as in b. above.

Verify that the prices charged in the transaction for the commodity and the commodity related services meet statutory, regulatory, and contractual requirements.

A. Prepare for the commodity price comparison by:

1. Fully identifying the commodity.

2. Fully identifying all terms of sale.

3. Adjusting for incidental and delivery services to convert the price to an FOB vessel or FAS basis.

4. Noting any ineligible components of price.

5. Verifying, if practical, the prevailing freight rate.

6. Considering whether the total price includes any non-AID financed portion.

7. Adjusting commodity units to a common basis.

8. Verifying the number of units.

9. Computing the unit price.

B. Applying AID's Commodity and Commodity Related Services Price Tests:

1. Determine rules which apply based on applicable Supplier's Certificate.

2. Make effort to apply all relevant tests.

3. Determine following in verifying commodity prices:

(a) The purchase price in the AID transactions.
(b) The time of purchase (the contract date).
(c) The price prevailing in comparable export sales in the U.S. at the time of purchase or, if none, in comparable domestic sales.
(d) For non-U.S. source transactions, the price prevailing in comparable export sales in the U.S. plus transportation cost to the source country.
(e) The price generally charged by the supplier in his own comparable export sales from the source country at the time of purchase.
(f) For non-U.S. source transactions, the price prevailing in comparable export sales in the source country at time of purchase.

(g) In the absence of comparable sales at the time of purchase, determine cost and mark-up on sale being tested and, as appropriate, mark-ups in most nearly similar sale, most nearly similar commodity or mark-up that is usual or customary in sales by competitors of the supplier.

4. Verify that the price paid by AID does not exceed the eligible price under the price tests in AID Regulation 1 and/or the appropriate Supplier's Certificate.

5. Verify that the price paid by AID does not exceed the price agreed upon in the supplier's contract with the purchaser.

6. Verify that price tests for all commodity related services (delivery and incidental) are satisfied.

Consult AID Resource Materials

This manual summarizes the important AID rules and policies you need to know. You may occasionally need access to more basic materials. The following operting guidelines, procedures and authorities are used, as appropriate, in evaluating and assuring that commodity transactions financed by AID have met all statutory, regulatory and contractual requirements, and are consistent with the terms of loan and grant agreements.

A. AID Regulations

No.

1 Rules and Procedures Applicable to Commodity Transactions

8 Suppliers of Commodity and Commodity-Related Services Ineligible for AID-Financing

13 Collection of Civil Claims by Agency for International Development

B. Delegations of Authority

No.

40 Regional Assistant Administration, et al; Delegation of Authority Regarding Source, Origin and Nationality for Procurement

C. A.I.D. Handbooks

No.	
1	Policy: Supplement A - Policy Determinations Supplement B - Procurement Policies
3	Project Assistance
4	Non-Project Assistance
11	Country Contracting
14	Procurement Regulations
15	A.I.D.-Financed Commodities
19	Financial Management

D. Reference Materials

Export/Import Traffic Management and Forwarding (sixth edition) by Alfred Murr.

The Business of Shipping (third edition) by Lane C. Kendall.

Chartering and Charter Parties by Henry B. Cooley

Export and Import Procedures Morgan Guaranty Trust Company of New York

DEPARTMENT OF STATE
AGENCY FOR INTERNATIONAL DEVELOPMENT
WASHINGTON, D.C. 20523

LETTER OF COMMITMENT

Page 1 of ____

1. TO	4. NUMBER
	5. DATE
2. BORROWER/GRANTEE	6. AMOUNT
	7. SOURCE AREA AUTHORIZED
3. APPROVED APPLICANT	8. EXPIRATION DATE

9. FR NO.	10. APPROPRIATION	11. ALLOTMENT

Gentlemen:

In accordance with provisions of the Foreign Assistance Act of 1961, as amended, the Administrator of the Agency for International Development has entered into an agreement with the borrower/grantee named in block 2 above; and this letter of commitment is delivered to you at the request of said borrower/grantee or its authorized agent. The Administrator has agreed to reimburse the approved applicant as named in block 3 above (upon the authorities and signatures of which as designated and identified to you by the Administrator, or known by you from your own records, you may fully rely in any action taken by you hereunder) for monies expended by or for the account of such approved applicant in accordance with the terms and provisions set forth herein or stated in attachments hereto as identified below and incorporated herein by reference.

In consideration of your advising, issuing, or confirming at your option of one or more commercial letters of credit or making at your option payments to suppliers or to the approved applicant and/or the borrower/grantee (no such letter of credit to have a maturity, and no such payment to be made, later than the date cited in block 8 above) in accordance with application or request therefor by the approved applicant, the Administrator agrees with, and guarantees to you that, in accordance with the said Act, he will make reimbursement to the approved applicant, in the manner and subject to the terms and provisions set forth herein, of all amounts paid by you at sight under any such commercial letter of credit for the account of the approved applicant and the amount of all payments made by you at sight to or for the account of the approved applicant and/or the borrower/grantee and bank charges to the extent authorized for reimbursement hereunder, up to but not exceeding the respective dollar amounts for the procurement of commodities or services as authorized below and in accordance with the conditions stated below.

PROVISIONS OF THE FOLLOWING ATTACHMENTS ARE APPLICABLE TO AND A PART OF THIS LETTER OF COMMITMENT:

You are hereby approved as an assignee of the monies due and to become due under this letter of commitment.

The making of reimbursement hereunder shall be governed solely by the terms and provisions set forth herein and shall not be affected by any rights that the Administrator or the United States Government may have against the borrower/grantee, the approved applicant, or third parties.

If this letter of commitment is satisfactory to you, please sign and return the enclosed copy hereof promptly.

Yours very truly,

Administrator, Agency for International Development
under Foreign Assistance Act of 1961, as amended

by ______________________
AUTHORIZED REPRESENTATIVE

ACCEPTED

BANK	BY	DATE

AID 7-226 (7-72)

ATTACHMENT 1

GENERAL TERMS AND PROVISIONS APPLICABLE TO, AND RIGHTS AND RESPONSIBILITIES OF BANK UNDER, THIS LETTER OF COMMITMENT

GENERAL TERMS AND PROVISIONS

1. **Payments prior to receipt of letter of commitment.** Any payments made at sight in anticipation of receipt of this letter of commitment and falling within the scope of payments authorized by this letter when issued will be deemed to be a payment to be reimbursed by A.I.D. hereunder.

2. **Approved applicant's request to bank**

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

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

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

3. **Letters of credit under this latter of commitment.** Any letter of credit issued, confirmed, or advised under this letter of commitment and any agreement relating to such letter of credit or to the instructions for payment issued by an approved applicant may not be inconsistent with or contrary to the terms of this letter of commitment. In particular, the description of commodities or services in any such letter of credit or agreement may not be inconsistent with the Schedule B identification or other description set forth in this letter of commitment. Any such letter of credit or agreement may be modified or extended at any time in such manner and to such extent as is acceptable to the approved applicant and the bank; provided, that such modification or extension may not be inconsistent with or contrary to the terms of this letter of commitment. In the case of any inconsistency or conflict between the terms and conditions of this letter of commitment and the instructions of the approved applicant, the terms and conditions of this letter of commitment shall control. In any event every application for a letter of credit and every request for payment shall include the substance of the directions as to documents required for reimbursement set forth in this letter of commitment. In addition, unless instructed by A.I.D. to the contrary, the bank shall not open, confirm, or advise any letter of credit and shall not issue or make payment under any payment instruction to a beneficiary or payee with a payment address (as provided by the importer or by the approved applicant to the opening or paying bank or by the opening bank to the confirming or advising bank) outside a country included in the authorized geographic source code.

4. **Reimbursement of bank.** Upon presentation to A.I.D. of the documents prescribed for reimbursement in this letter of commitment, A.I.D. will reimburse the bank for any amounts paid by it in dollars to or on behalf of the approved applicant pursuant to this letter of commitment, subject, however, to compliance by the bank with the requirements as to the rights and responsibilities of banks as set forth below. Such documents in the normal course should be presented to A.I.D. promptly. Bank charges will be eligible for reimbursement if authorized in this letter of commitment. Reimbursement will be made by check within 30 days.

5. **Final date for presentation of documents.** The documents prescribed for reimbursement in this letter of commitment shall be presented by the bank to A.I.D. and shall cover (a) payments or negotiations made under letters of credit expiring no later than the expiration date stated in this letter of commitment, or (b) payments to a supplier, the approved applicant, or at the request of the approved applicant, to a person other than the supplier, made no latter than such expiration date.

6. **Fees and charges.** Fees and charges for the issuance or legalization of consular invoices shall not be paid from funds provided by this letter of commitment.

7. **Successors and assignees.** This letter of commitment shall inure to the benefit of the bank's legal successors and assignees.

8. **Termination or modification.** A.I.D. reserves the right at any time and from time to time, and for any reason or cause whatsoever, to supplement, modify, or revoke this letter of commitment to the extent and in such manner as it deems necessary; provided, however, that no supplement, modification, or revocation shall become effective as to the bank until the receipt by it from A.I.D. of written notice of such supplement, modification, or revocation, and such supplement, modification, or revocation shall in noevent affect or impair the right of reimbursement to the extent of any payment made prior to receipt of such notice, or any obligation incurred under an irrevocable letter of credit issued or confirmed prior to receipt of such notice, for which the bank has not been repaid by the approved applicant (without, however, any obligation on its part to obtain such repayment). The term "letter of commitment" shall be deemed to include

each such supplement or modification from and after receipt by the bank from A.I.D. of written notice of the same, subject always, however, to the foregoing terms and provisions preserving right of reimbursement in its behalf. In the event the bank shall incur any costs, expenses, or liabilities, including any liability to the approved applicant, in effecting compliance with such supplement or modification, it shall be repaid and reimbursed by A.I.D. in respect thereof.

RIGHTS AND RESPONSIBILITIES OF THE BANK UNDER THIS LETTER OF COMMITMENT

1. Making payments

a. **Collection of documents.** The bank shall be responsible for obtaining the documents specified in this letter of commitment when making payment under a letter of credit or pursuant to instructions of an approved applicant.

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

(1) **Shipment.** The documents submitted as evidence of the shipment of commodities shall be dated within the shipping period, if any, specified in this letter of commitment.

(2) **Source of commodities.** The documents submitted in connection with the claim for reimbursement of commodities may not indicate that the source of the commodities is inconsistent with the A.I.D. geographic code designation contained in this letter of commitment.

(3) **Destination.** The documents submitted shall indicate that the destination of the commodities, by shipment, transshipment, or reshipment, is the country of the borrower/grantee named in this letter of commitment.

(4) **Description.** The documents shall describe and identify the commodities of services in a manner which, according to good commercial practice, is not inconsistent with the description contained in the letter of credit or payment instructions issued under this letter of commitment. The bank shall not be required to determine whether the supplier's invoice meets the detailed requirements set forth in an attachment to this letter of commitment or whether the carrier statement of charges is indicated on the bill of lading.

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

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

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

c. **Acceptance of certificates.** A bank shall not accept for submission to A.I.D. the original of the Supplier's Certificate, or the Contractor's Certificate, unless, to the best knowledge and belief of the bank, each such original has been signed by hand by the supplier.

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

a. **Sufficiency and completeness of documents.** Any document, including the Supplier's Certificate and the Contractor's Certificate, submitted by a bank to A.I.D. in support of a claim for reimbursement, shall be sufficient if it purports to be the sort required to be delivered and if it has been accepted by the bank in the ordinary course of business in good faith. Except as may be required in discharge of its responsibilities under subparagraphs 1.b. and 1.c. above the bank's right of reimbursement shall not be affected by the fact that any document required to be submitted by it is incomplete or may indicate noncompliance with any provision of this letter of commitment.

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

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

d. **Protection of bank making payment.** Acceptance by the bank of any document in the ordinary course of business in good faith as being a genuine and valid document and sufficient in the premises, and the delivery thereof to A.I.D., shall constitute full compliance by the bank with any provision of this letter of commitment requiring delivery of a document of the sort that the document actually so delivered purports to be. The bank shall be entitled to receive and retain reimbursement of the amount of all payments made by it against documents so accepted.

e. **Payment to third persons.** The bank's right of reimbursement shall not be affected by the fact that payment is made to the approved applicant or at the request of the approved applicant to a person other than the supplier under the contract to which such payment relates, if the bank has complied with all other requirements of this letter of commitment and has satisified itself in good faith that the person to whom it makes payment has, in turn, made payment to the supplier.

f. **Bank procedures with regard to certain suppliers.** In the event a bank receives written advice from A.I.D. concerning special conditions which are applicable to transactions of particular suppliers, such bank will use reasonable care to maintain procedures designed to ensure that accommodations thereafter furnished by it with respect to such suppliers by means of the issuance, confirmation, advising or transfer of letters of credit, or the making of payments not under letters of credit shall reflect such special conditions. While banks are expected to comply with the foregoing obligation, a bank which has used reasonable care to establish and maintain such procedures will not be responsible for any inadvertent furnishing of any such accommodation not containing applicable special conditions or the making of payment thereunder. For the purpose of ascertaining whether the supplier is a person or organization subject to an A.I.D. advice concerning special conditions applicable to its transactions under this paragraph, a bank, in making payment under a letter of credit or otherwise, may consider as supplier the person or organization issuing the invoice.

g. **Provision of implementing documents.** A bank shall not be responsible for compliance with any provision of an implementing document other than this letter of commitment.

3. **Additional documents for A.I.D.** In addition to the documents required for reimbursement a bank shall retain in its files for a period of at least 5 years and shall make available to A.I.D. promptly upon request a copy of any of the following documents which may pertain to an A.I.D.-financed transaction:

a. Each letter of credit issued, confirmed, or advised by it, together with any extension or modification thereof.

b. Payment instructions received from the approved applicant.

c. Each application and agreement relating to such letter of credit or instructions for payment, together with any extension or modification thereof.

d. A detailed advice of the interest, commissions, expenses, or other items charged by it in connection with each such letter of credit or payment instructions.

4. **Reports for A.I.D.**

a. **Letters of credit.** As of the close of business the last day of each month prior to the expiration date hereof, a report is to be furnished to A.I.D. giving the following information concerning this letter of commitment:

(1) Letter of commitment serial number;

(2) Dollar value of letter of commitment as issued or amended;

(3) Total value of letters of credit advised, issued, or confirmed, including amendments as to value, to date;

(4) Total amount disbursed as of the end of the month.

This information is to be furnished to A.I.D. as soon as possible, hopefully within 5 days, after the end of each month. These reports, which may be prepared in a format most convenient to the bank, are to be forwarded to: Chief, Banking Division, SER/FM, A.I.D., Washington, D.C. 20523.

b. **Expenditures.** As of 30 days after the expiration date of this letter of commitment, the bank is to furnish to A.I.D. a report of its total expenditures hereunder. This report need state only the total dollar amount of disbursements made by it during the effective period of the document, and the amount reimbursed to it by A.I.D. The report is to be forwarded to: Chief, Banking Division, SER/FM, A.I.D., Washington, D.C. 20523, as soon as practicable after the expiration of the 30-day period.

ATTACHMENT 6

DOCUMENTS REQUIRED FOR REIMBURSEMENT BY A.I.D. FOR COMMODITIES AND COMMODITY-RELATED SERVICES (NOT INCLUDING PROGRESS PAYMENTS)

Claims for reimbursement under the letter of commitment in respect to procurement of commodities and commodity-related services by a borrower/grantee, or by a contractor or agent acting for a borrower/grantee, shall be supported by the documents listed below, each of which must cite the A.I.D. serial number under which the letter of commitment was issued.

1. **Voucher, SF 1034.** Original and three copies, prepared by the bank as assignee or as agent for and in behalf of the approved applicant.

2. **Supplier's invoice**

a. One copy of the supplier's detailed invoice showing the quantity and description of each item, gross sales price, net sales price (after deducting discounts, purchasing agents' commissions, and, as the case may be, ineligible supplier's agents' commissions), name and address of the importer, and basis of delivery (e.g.; f.o.b., c.& f., c.& i., c.i.f., f.a.s.) of the commodities, or details of the freight and/or marine insurance services. When marine insurance costs are $50 or less, the name and address of the insurer and the amount of insurance must be shown. The invoice either shall be marked "Paid" by the supplier or shall be accompanied by a certificate from a bank indicating that payment has been made. In addition, there must appear on or be attached to each invoice a certification by the supplier stating that a copy of the bill of lading required under paragraph 4 below has been mailed to the Maritime Administration, Cargo Preference Control Center, Commerce Building, Washington, D.C. 20235.

b. When the invoice covers commodities shipped from a free port or bonded warehouse, it shall include an endorsement so indicating, and designating also the country or area from which shipment was made to the free port or bonded warehouse.

c. When an invoice covering costs of freight or marine insurance is rendered separately (i.e., when these costs are not billed on the invoice covering the costs of the commodities), an appropriate reference must be furnished to the voucher, SF 1034, and invoice under which the cost of the commodities was paid.

3. **Supplier's Certificate and Agreement.** Manually signed original and one copy of the Supplier's Certificate and Agreement with the Agency for International Development, including the related Invoice-and-Contract Abstract, executed by the supplier in accordance with the instructions thereon covering the following:

a. The cost of the commodity and any commodity-related services, including the cost of ocean freight and/or marine insurance (including war-risk insurance) when such costs are paid by the supplier for his own or the buyer's account, to be executed by the supplier of the commodity.

b. The cost of ocean or air transportation, to be executed by each carrier or, in the case of a through bill of lading, the issuing carrier.

c. The cost of marine insurance (including war-risk insurance) if such costs exceed $50, to be executed by the insurer or by an insurance broker on behalf of the insurer.

4. **Evidence of shipment.** One copy of the bill of lading or substitute as follows:

a. One copy or photostat of the bill of lading (ocean, charter party, airway, railway, barge, or truck) or parcel post receipt evidencing shipment from the point of export in the source country or a free port or bonded warehouse to the importing country. The bill of lading shall indicate the carrier's complete statement of charges including all relevant weights, cubic measurements, rates, and additional charges, whether or not freight is financed by A.I.D. Any bills of lading submitted for reimbursement of ocean freight on shipments from other than U.S. ports shall bear the following manually signed carrier's certification:

> The applicable ocean freight tariff rates have been filed with Transportation Division, SER/COM, A.I.D., Washington, D.C. 20523. The freight charges shown hereon identify the rate and weight or measurement basis by which the ocean freight amount collected for the commodity shipped hereunder was calculated; such charges are exclusive of all credits, allowances, discounts, rebates, and other payments of any kind given or to be given by the carrier to or for the account of the commodity supplier, importer, or their agents.

b. When the commodity is transported to the importing country under its own power (e.g.; as in the case of a fishing vessel, aircraft, etc.) a certificate signed by the importer (or his authorized agent), submitted in lieu of a bill of lading, certifying that the commodity has been received in satisfactory condition and has been accepted by the importer.

c. Where shipment is effected from a free port or bonded warehouse, a copy of the bill of lading, bearing a notation of the freight costs, covering shipment from the source to the free port or bonded warehouse and, if the free port or bonded warehouse is located within the importing country, accompanied by a delivery receipt evidencing release from the free port or bonded warehouse to the importer. The date of the delivery receipt will be considered as the shipment date for the transaction and therefore must be dated within such delivery period as may be specified in the letter of commitment.

5. **Additional or substitute documentation.** Such additional or substitute documentation as may be specified in the letter of commitment.

ATTACHMENT 7

DOCUMENTS REQUIRED FOR REIMBURSEMENT BY A.I.D. FOR PROCUREMENT OF COMMODITIES UNDER CONTRACTS PROVIDING FOR PROGRESS AND/OR FINAL ACCEPTANCE PAYMENTS

Under a letter of commitment issued to finance a contract identified to the supplier named in the letter of commitment, such contract providing for progress payments prior to shipment and/or final acceptance payments in respect to procurement of the commodities authorized in the letter of commitment, claims for reimbursement shall be supported by the documents listed below, each of which must cite the A.I.D. serial number under which the letter of commitment was issued.

1. **Voucher, SF 1034.** Original and three copies, prepared by the bank as assignee or as agent for and in behalf of the approved applicant.

2. **Supplier's invoice.** One copy of the supplier's invoice, which invoice shall cite the pertinent article or section of the contract under which the invoice is drawn. The invoice either shall be marked "Paid" by the supplier or shall be accompanied by a certificate from a bank indicating that payment has been made. In addition, there must appear on or be attached to each invoice a certification by the supplier stating that a copy of the bill of lading required under paragraph 4 below has been mailed to the Maritime Administration, Cargo Preference Control Center, Commerce Building, Washington, D.C. 20235.

3. **Works progress certificate.** Four progress or final payments, for partial or final shipment, or for final contract completion, a manually signed certification by the supplier endorsed on or attached to the invoice as follows:

> The undersigned certifies that (a) the sales value of the equipment covered by this invoice; plus the value of equipment already delivered; plus the sales value of engineering services, labor, and purchased material for which expenditures have been made; plus the amount expended on account of commitments for equipment remaining to be supplied under the subject contract, are not less than the total payment already received or claimed against this contract, including payments claimed under this invoice; and (b) it is complying with the terms and conditions of the subject contract.

4. **Evidence of shipment.** For all commodities and commodity-related services, whether invoiced under a progress payment or a final acceptance payment, one copy of the bill of lading or substitute as follows:

a. One copy or photostat of the bill of lading (ocean, charter party, airway, railway, barge, or truck) or parcel post receipt evidencing shipment from the point of export in the source country or a free point or bonded warehouse to the importing country. The bill of lading shall indicate the carrier's complete statement of charges including all relevant weights, cubic measurements, rates, and additional charges, whether or not freight is financed by A.I.D. Any bills of lading submitted for reimbursement of ocean freight on shipments from other than U.S. ports shall bear the following manually signed carrier's certification:

> The applicable ocean freight tariff rates have been filed with Transportation Division, SER/COM, A.I.D. Washington, D.C. 20523. The freight charges shown hereon identify the rate and weight or measurement basis by which the ocean freight amount collected for the commodity shipped hereunder was calculated; such charges are exclusive of all credits, allowances, discounts, rebates, and other payments of any kind given by the carrier to or for the account of the commodity supplier, importer, or their agents.

b. When the commodity is transported to the importing country under its own power (e.g.; as in the case of a fishing vessel, aircraft, etc.) a certificate signed by the importer (or his authorized agent), submitted in lieu of a bill of lading, certifying that the commodity has been received in satisfactory condition and has been accepted by the importer.

c. Where shipment is effected from a free port or bonded warehouse, copy of the bill of lading, bearing a notation of the freight costs, covering shipment from the source to the free port or bonded warehouse and, if the free port or bonded warehouse is located within the importing country, accompanied by a delivery receipt evidencing release from the free port or bonded warehouse to the importer. The date of the delivery receipt will be considered as the shipment date for the transaction and therefore must be dated within such delivery period as may be specified in the letter of commitment.

5. **Contractor's Certificate and Agreement.** Manually signed original and one copy of the Contractor's Certificate and Agreement with the Agency for International Development, including the related Contractor's Invoice-and-Contract Abstract, executed by the supplier in accordance with the instructions thereon. However, this document is not required from the carrier or the insurer notwithstanding that the costs of freight and insurance are included in the price of the commodity.

6. **Cancellation charge** (if authorized in the letter of commitment). In lieu of the invoice and evidence of shipment specified under paragraphs 2 and 4 above, the following documents will be required:

a. One copy of the invoice setting forth the amount claimed as cancellation charge, citing the covering contract and the section or paragraph providing for such payment and the terms of payment;

b. A sealed envelope said to contain a written justification by the supplier supporting in detail the claimed charge;

c. One of the following:

(1) Written concurrence by the borrower/grantee to the supplier's claim; or

(2) A certified copy of an arbitration award, together with a certification by the supplier that such award has not been disputed by the borrower/grantee in a court of law; or

(3) A final decree of the court showing the amount of the award.

7. Additional or substitute documentation. Such additional or substitute documentation as may be specified in the letter of commitment.

ATTACHMENT 2

DEFINITIONS OF TERMS USED IN THIS LETTER OF COMMITMENT

As used in this letter of commitment, the following terms shall have the meanings indicated below.

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

"A.I.D." means the Agency for International Development or any successor agency, including, when applicable, each A.I.D. mission or representative abroad.

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

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

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

"Commodity" means any material, article, supply, goods, or equipment.

"Commodity-related services" means delivery services and/or incidental services.

"Contractor's Certificate" means form AID 1440-3, "Contractor's Certificate and Agreement with the Agency for International Development," including the "Contractor's Invoice-and-Contract Abstract," or any substitute form which may be prescribed in this letter of commitment.

"Cooperating country" means the country receiving the A.I.D. assistance.

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

"Delivery services" means 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 the following: export packing, local drayage in the source country (including waiting time at the dock), ocean and other freight, loading, heavy lift, wharfage, tollage, switching, dumping and trimming, lighterage, insurance, commodity inspection services, and services of a freight forwarder.

"Implementing document" means any document issued by A.I.D. which authorizes the use of A.I.D. funds for the procurement of commodities, commodity-related services, or engineering and other professional services and which specifies conditions which will apply to such procurement.

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

"Letter of commitment" means this A.I.D. letter of commitment and each supplement to or modification hereof which is accepted by the bank.

"Mobilization payment" means any payment due a contractor for costs incurred or to be incurred by the contractor in the procurement and delivery to the construction site of equipment and materials required to perform the work but which will not be incorporated in the project and title to which will be retained by the contractor after completion of the work.

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

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

"Supplier" means any person or organization, governmental or otherwise, who furnishes commodities, commodity-related services, engineering and other professional services or construction services.

"Supplier's Certificate" means form AID 282, "Supplier's Certificate and Agreement with the Agency for International Development," including the "Invoice-and-Contract Abstract" on the reverse of such form, or any substitute form which may be prescribed in this letter of commitment.

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

ATTACHMENT 3

A.I.D. GEOGRAPHIC CODES

The A.I.D. Geographic Code Book sets forth the official description of all geographic codes used by A.I.D. in authorizing or implementing documents to designate authorized source countries or areas. The following are summaries of the principal codes:

Code 000—The States of the United States, the District of Columbia, areas of U.S.-associated sovereignty (including trust territories), and the Ryukyu Islands under U.S. control.

Code 940—"The Americas": The United States and areas of U.S.-sovereignty (excluding the Ryukyu Islands) and all independent countries in the Americas south of the United States, except the cooperating country itself and Cuba.

Code 901—"Limited Free World": Any area or country in the Free World, excluding the cooperating country itself and the following developed countries: Australia, Austria, Belgium, Canada, Denmark, France, Germany (Fed. Rep.), Italy, Japan, Luxembourg, Monaco, Netherlands, New Zealand, Norway, South Africa, Spain, Sweden, Switzerland, and the United Kingdom.

Code 899—"Free World": Any area or country excluding the cooperating country itself and the following countries: Albania, Bulgaria, China (Mainland) and other Chinese Communist-controlled Areas, Cuba, Czechoslovakia, Estonia, East Germany, Hungary, North Korea, Latvia, Lithuania, Outer Mongolia, Poland, Romania, North Vietnam, and the Union of Soviet Socialist Republics (USSR).

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

Code 941—"Selected Free World": Any independent country in the Free World, except Algeria, Andorra, Australia, Austria, Belgium, West Berlin, Canada, Cyprus, Denmark, Finland, France, West Germany, Greece, Hong Kong, Iceland, Iraq, Ireland, Israel, Italy, Japan, Kuwait, Liechtenstein, Luxembourg, Malta, Monaco, Netherlands, New Zealand, Norway, Portugal, Southern Rhodesia, San Marino, Somali Republic, South Africa, Spain, Sudan, Syria, Sweden, Switzerland, United Arab Republic, United Kingdom, Vatican City, Yemen, Yugoslavia, and the cooperating country itself.

Code 910—"Selected Less Developed Countries": India, Morocco, Pakistan, the Philippines, Taiwan, South Korea, Singapore, Thailand and Tunisia. Code 000 shall also be included within this Code.