

AGENCY FOR INTERNATIONAL DEVELOPMENT  
UNITED STATES A.I.D. MISSION TO PANAMA

PD-AAW-256  
52024

APO Miami 34002 - 0014  
Telephone 63-8011

July 10, 1987

The Center for Democracy  
Boston University  
118 Bay State Road  
Boston, MA 02215

Subject: Cooperative Agreement No. 520-0003-A-00-7030-00

Gentlemen:

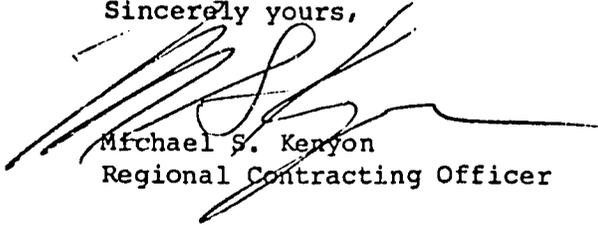
Pursuant to the authority contained in the Foreign Assistance Act of 1961, as amended, the Agency for International Development (hereinafter referred to as "A.I.D.") hereby provides to The Center for Democracy of Boston University (hereinafter referred to as the "Recipient" or "The Center") the sum of four hundred and sixty-five thousand United States dollars (\$465,000) to support the institutional and logistical development of the National Congress of Guatemala, as described in Attachment 1, the Schedule of this Agreement and Attachment 2 entitled "Program Description". Subject to availability of funds AID intends to increase the value of this cooperative agreement to one million, five hundred and two thousand, one hundred and ninety-seven United States dollars (\$1,502,197).

This Agreement is effective and obligation made as of the date of this letter and shall apply to commitments made by the recipient in furtherance of program objectives during the period beginning with the effective date and ending July 31, 1990.

This Agreement is made to The Center on the condition that the funds will be administered in accordance with the terms and conditions set forth in Attachment 1 entitled "Schedule", Attachment 2 entitled "Program Description" and Attachment 3, entitled "Standard Provisions for US, Non-Governmental Grantees" which have been agreed to by your organization.

Please sign the original and (7) copies of the letter to acknowledge your receipt of this Agreement and return the original and six (6) copies to the USAID/Panamá, Attention: Regional Contracts Office.

Sincerely yours,

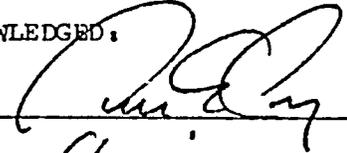


Michael S. Kenyon  
Regional Contracting Officer

ATTACHMENTS:

1. Schedule
2. Program Description
3. Standard Provisions

ACKNOWLEDGED:

By   
Title Chairman  
Date July 31, 1997

FISCAL DATA

Appropriation No. 72-117/81037  
Budget Plan Code LES7-87-25520-KG14  
PIO/T No. 597-0003.10-3-70069  
Project No. 597-0003  
Total Estimated Amount \$1,502,197  
Total Obligated Amount \$465,000

ASSURANCE OF COMPLIANCE WITH LAWS AND REGULATIONS GOVERNING NON

DISCRIMINATION IN FEDERALLY ASSISTED PROGRAMS

The Center for Democracy of Boston University (hereinafter called the "Applicant") hereby assures that no person in the United States shall, on the bases set forth below, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under, any program or activity receiving financial assistance from AID, and that with respect to the Cooperative Agreement for which application is being made, it will comply with the requirements of:

- (1) Title VI of the Civil Rights Act of 1964 (Pub. L. 88-352, 42 U.S.C. 2000-d) which prohibits discrimination on the basis of race, color or national origin, in programs and activities receiving Federal financial assistance,
- (2) Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794), which prohibits discrimination on the basis of handicap in programs and activities receiving Federal financial assistance,
- (3) The Age Discrimination Act of 1975, as amended, (Pub. L. 95-478) which prohibits discrimination based on age in the delivery of services and benefits supported with Federal funds,
- (4) Title IX of the Education Amendments of 1972 (20 U.S.C. 1681, et. seq.) which prohibits discrimination on the basis of sex in education programs and activities receiving Federal financial assistance (whether or not the programs or activities are offered or sponsored by an educational institution), and
- (5) AID regulations implementing the above non-discrimination laws, set forth in Chapter II of Title 22 of the Code of Federal Regulations.

If the Applicant is an institution of higher education, the Assurances given herein extend to admission practices and to all other practices relating to the treatment of students or clients of the institution, or relating to the opportunity to participate in the provision of services or other benefits to such individuals, and shall be applicable to the entire institution unless the Applicant establishes to the satisfaction of the AID Administrator that the institution's practices in designated part or programs of the institution will in no way affect its practices in the program of the institution for which financial assistance is sought, or the beneficiaries of or participants in such program.

This assurance is given in consideration of and for the purpose of obtaining any and all Federal grants, loans, contracts, property, discounts or other Federal financial assistance extended after the date hereof to the Applicant by the Agency, including installment payments after such date on account of applications for Federal financial assistance which were approved before such date. The Applicant recognizes and agrees that such Federal financial assistance will be extended in reliance on the representations and agreements made in this Assurance, and that the United States shall have the right to seek judicial enforcement of this Assurance. This Assurance is binding on the Applicant, its successors, transferees, and assignees, and the person or persons whose signatures appear below are authorized to sign this Assurance on behalf of the Applicant

The Center for Democracy of Boston University

By (signature) Allen Weinstein Title President

Typed name Allen Weinstein Date July 31, 1987

## SCHEDULE

A. Purpose of Agreement:

The Agreement will fund three years of legislative training and technical instruction to members of the Congress of Guatemala, including leaders of all parties represented therein.

B. Period of Agreement:

1. The effective date of this Agreement is July 10, 1987. The expiration date of this Agreement is July 31, 1990.

2. Funds obligated hereunder are available for program expenditures for the estimated period July 10, 1987 through July 31, 1988.

C. Amount of Agreement and Payment:

1. The total estimated amount of this Agreement for the period shown in B.1. above is \$1,502,197.

2. AID hereby obligates the amount \$465,000 for program expenditures during the period set forth in B.2. above.

3. Payment shall be made to the Recipient in accordance with procedures set forth in Attachment 3, Standard Provision No. 10 entitled "Payment - Letter of Credit".

D. Financial Plan:

The following is the Financial Plan for this Agreement. Revisions to this Plan shall be made in accordance with the Standard Provision of this Agreement entitled "Revision of Grant Budget".

| <u>LINE ITEM</u>           | <u>TOTAL</u>    |
|----------------------------|-----------------|
| 1. Personnel Compensation  | \$334,310       |
| 2. Fringe Benefits         | 45,308          |
| 3. Travel & Transportation | 297,160         |
| 4. Allowances              | 173,505         |
| 5. Equipment               | 27,600          |
| 6. Other Direct Costs      | 261,093         |
| 8. Overhead                | <u>363,221</u>  |
| <br>TOTAL ESTIMATED COST   | <br>\$1,502,197 |

The above Financial Plan is illustrative in nature, and the Recipient can adjust individual cost lines by a factor not to exceed 15%. Any adjustment exceeding 15%, or any increase in the total Agreement amount requires the prior written approval of the Contracting Officer.

F. Special Provisions:

1. Estimated Level of Effort

|                                   | <u>Position Description</u> |
|-----------------------------------|-----------------------------|
| a. Program Supervisor (US)        | 7.2 work-months             |
| b. Program Director (Guatemala)   | 36 work-months              |
| c. Program Assistant (Washington) | 18 work-months              |
| d. Program Assistant (Guatemala)  | 36 work-months              |
| e. Secretary (Guatemala)          | 36 work-months              |
| f. Driver (Guatemala)             | 36 work-months              |

2. The following provisions are deleted from Attachment 3, Standard Provisions:

- a. 1 - Allowable Costs and Contributions (Nonprofit Organizations - other than Educational Institutions)
- b. 6 - Negotiated Overhead Rates - Predetermined
- c. 11 - Payment - Periodic Advance
- d. 12 - Payment - Reimbursement
- e. 21 - Title to and Care of Property (Cooperating Country Title)

3. The terms "Grant" and "Grantee" are changed to "Agreement" and "Recipient", respectively wherever appearing in Attachment 3, Standard Provisions.

4. The Contracting Officer's technical representative for the performance of this Cooperative Agreement is the Director, USAID/Guatemala, or his designee. This individual shall have the following authority:

- a) Certification of work performed on all vouchers submitted.
- b) Necessary clarifications of, or minor, non-cost-related adjustments to, the program descriptions in Attachment II.
- c) Approval of all reports, plans, timetables or other such technical submissions required under the Program Description.

5. The Recipient must receive prior written authorization for short term technical assistance personnel, and their international travel from the Contracting Officer's Technical Representative (COTR). Recipient may submit to the COTR an estimated schedule on a quarterly basis. Any subsequent adjustments to the timing of this technical assistance, or minor adjustments to the length of any particular assignment, shall require the approval of the COTR.

6. Salaries or compensation of short-term Specialists require prior written approval by the COTR.

7. No non-consumable equipment will be purchased without the item-specific, prior written approval of the COTR.

G. Establishment of Overhead Rate:

1. Pursuant to the General Provision of this contract entitled "Negotiated Indirect Cost Rates - Provisional" a rate or rates shall be established for each of the Contractor's accounting periods during the term of the contract. Pending establishment of final overhead rates for the initial period, provisional payments on account of allowable indirect costs shall be made on the basis of the following delineated provisional rates applied to the base(s) which are set forth below.

| <u>Type of Rate</u> | <u>Rates(s)</u> | <u>Base</u>                | <u>Period</u> |
|---------------------|-----------------|----------------------------|---------------|
| <u>Recipient</u>    |                 |                            |               |
| Overhead:           | 43.9%           | Modified Total Direct Cost | Until Amended |
| Fringe Benefits     | 23.2%           | Salaries                   | Until Amended |

H. Authorized Geographic Code:

The authorized Geographic Code for procurement of goods and services shall be in accordance with Provision 15 of the Standard Provisions.

PROGRAM DESCRIPTION

A. Objective

The purpose of the cooperative agreement is to strengthen the institutional capacity of the National Congress of Guatemala over a three year period through the provision of training, technical assistance and related logistical support.

B. Scope of Work

Boston University's Center of Democracy (hereafter referred to as the Recipient) will undertake a comprehensive program to strengthen the institutional capacity of Guatemala's National Congress. The program will include both regularly scheduled seminars for legislators and specific technical or administrative training program and exchanges mentioned below.

1. Seminars for Legislators

The Recipient will hold seminars for legislators in Guatemala twice annually and address legislative agenda formulations and processing, administrative and technical subjects of general interest and use to the members of Congress and their staff to strengthen and consolidate Congress's structures, particularly the committee and subcommittee process. U.S., Central American and other free world experts on legislative affairs will be invited to present papers and participate in panel discussions. Subjects to be covered during the seminars will be determined from ongoing consultations, through a questionnaire system currently used by Congress, and from the results of previous seminars. Subjects discussed at the seminars would be studied in greater detail during the training programs mentioned below.

2. Skills Enhancement Programs

The Recipient will also carry out a series of skills enhancement programs for Congressmen and staffers to address specific administrative and technical problems or needs highlighted in the aforementioned seminars or identified by the leadership of Guatemala's National Congress.

These programs will be of two types, depending on the subject to be dealt with. The first will address well-defined internal or external issues to include but not be limited to the following:

- a. A review of current staff structure and a comparative study of staff structures in other countries,
- b. A study of congressional/constituent relationships, directly toward strengthening such relationships,
- c. Use of public education programs to describe the role and work of congress, and
- d. Importance of regular or special congressional publications from the whole Congress and from congressional committees.

The second type will provide the framework for dealing with more complex internal subjects, including but not limited to the following:

- a. Study of automated systems for establishment of a data base for use in office work, revision of legislation, and in legislative research.
- b. Study of other equipment needs to streamline the administrative process supportive of more effective and efficient legislative decision-making, inter alia the use of microfilm equipment and introduction of a modern telecommunications system. It should be understood here that the substantive implementation of any recommendations for the procurement of such equipment shall not be carried out under this Agreement, but will be financed from other U.S. Government and/or Guatemalan Government sources.
- c. Study the improvement of library and research facilities.
- d. Review of committee structures, covering such aspects as their responsibilities and authorities, and the need to strengthen them in terms of current operational effectiveness and future demands.
- e. Review of budgetary procedures and practices.

Under both types of training programs, the Recipient, in close collaboration with Guatemala's National Congress, will be responsible for monitoring the Congress to identify legislative experts to come to Guatemala to participate in seminars and other programs, and meet with members of Guatemala's National Congress and their staff. In addition, the Recipient is responsible for setting up related programs and

arrangements to permit members of Guatemala's National Congress, who are directly involved in establishing policies for subjects under review, to visit other countries to study and investigate such subjects. Guatemalan legislators who travel abroad for this purpose would be required to prepare and submit a written report of their findings and recommendations to the Coordinating Committee of Guatemala's National Congress.

To administer this project, the Recipient shall establish an office in Guatemala City and provide a Program Director, a Program Assistant, a Secretary and a Driver to direct its operations. The Recipient shall provide a Program Assistant at its office in Washington D.C. for up to six months annually to coordinate U.S. aspects of the program. Finally, the Recipient shall provide a Program Supervisor who will oversee overall administration of the project in Washington, D. C. and Guatemala City, including the supervision of preparation for both legislative seminars and training programs through regular visits to Guatemala.

C. Required Reports

1. The Recipient shall prepare an annual implementation plan covering all program activities, actions, budgetary resources and timing required to carry them out no later than the second week of July each year (September for the first year). This plan must be vetted with the Mission and approved by the President of Guatemala's National Congress or his/her designee prior to the use of funds for any training or seminar activities, unless otherwise agreed by the parties (Recipient and USAID/Guatemala Project Manager).

2. During the implementation of this agreement, the Recipient will also participate in two separate but interrelated evaluation activities of the project. They will be carried out by USAID/Guatemala for the purposes of measuring the progress of activities against the general implementation plan, including any changes, and measuring the impact or results of the project interventions as stated in terms of the overall project's purpose and planned outputs. The first of these evaluations, a midterm evaluation, will occur during the eighteenth month of the project and focus primarily on examining both the process and content of interventions to date. The second of these evaluations, a final evaluation, will occur within three months of the end of the project and measure the degree to which the effort produced the planned results. In both cases, external consultant services will be used and financed outside this Agreement.

3. Finally, the Recipient, in collaboration with Guatemala's National Congress, shall prepare for the Project Manager, USAID/Guatemala, quarterly and annual progress reports on all activities as well as an end-of-project report. The number of copies and the languages involved shall be established in the first annual implementation plan.

|                         |                          |                                   |                  |
|-------------------------|--------------------------|-----------------------------------|------------------|
| AID HANDBOOK 13, App 4C | TRANS. MEMO NO.<br>13:21 | EFFECTIVE DATE<br>October 1, 1981 | PAGE NO.<br>4C-1 |
|-------------------------|--------------------------|-----------------------------------|------------------|

APPENDIX 4C  
STANDARD PROVISIONS  
FOR  
U.S. GRANTEES AND U.S. SUBGRANTEES

1. ALLOWABLE COSTS AND CONTRIBUTIONS (NONPROFIT ORGANIZATIONS - OTHER THAN EDUCATIONAL INSTITUTIONS)

(This provision is applicable to nonprofit organizations other than educational institutions)

(a) The Grantee shall be reimbursed for costs incurred in carrying out the purposes of this grant which are determined by the Grant Officer to be reasonable, allocable, and allowable in accordance with the terms of (1) this grant, (2) any negotiated advance understanding on particular cost items, and (3) cost principles contained in OMB Circular A-122 entitled "Cost Principles for Nonprofit Organizations" in effect on the date of this grant (hereinafter referred to as "applicable cost principles").

(b) If Grantee contributions in the form of cost sharing/matching are required under this grant, the allowability of costs applied to the grant for such contributions shall be determined by the Grant Officer in accordance with the terms of paragraph 1K, "Cost Sharing and Matching" of Handbook 13 in effect on the date of this Grant.

(c) The requirements set forth in this provision are only applicable to costs incurred with funds provided by AID under this grant. Except for paragraph (b) above, the requirements set forth in this provision are not applicable to costs incurred by the Grantee from non-Federal funds. Such costs will be considered allowable to the extent they conform to the requirements of paragraph (b) above and are incurred for purposes of the grant.

2. ALLOWABLE COSTS AND CONTRIBUTIONS (EDUCATIONAL INSTITUTIONS)

(This provision is applicable to educational institutions)

(a) The Grantee shall be reimbursed for costs incurred in carrying out the purposes of this grant which are determined by the Grant Officer to be reasonable, allocable, and allowable in accordance with the terms of (1) this grant, (2) any negotiated advance understanding on particular cost items, and (3) OMB Circular A-21, "Principles for Determining Costs Applicable to Grants, Contracts and Other Agreements with Educational Institutions," in effect on the date of this grant (hereinafter referred to as "applicable cost principles").

(b) If Grantee contributions in the form of cost sharing/matching are required under this grant, the allowability of costs applied to the grant for such contributions shall be determined by the Grant Officer in accordance with the terms of paragraph 1K, "Cost Sharing and Matching," of Handbook 13 in effect on the date of this grant.

|                  |                                   |                          |                         |
|------------------|-----------------------------------|--------------------------|-------------------------|
| PAGE NO.<br>4C-2 | EFFECTIVE DATE<br>October 1, 1981 | TRANS. MEMO NO.<br>13:21 | AID HANDBOOK 13, App 4C |
|------------------|-----------------------------------|--------------------------|-------------------------|

2

(c) The requirements set forth in this provision are only applicable to costs incurred with funds provided by AID under this grant. Except for paragraph (b) above, the requirements set forth in this provision are not applicable to costs incurred by the Grantee from non-Federal funds. Such costs will be considered allowable to the extent they conform to the requirements of paragraph (b) above and are incurred for the purposes of the grant.

### 3. ACCOUNTING, AUDIT, AND RECORDS

(a) With respect to accounting, records and audit, the Grantee shall comply with the requirements set forth in paragraphs 1I, 1J, 1L, and 1M of Handbook 13.

(b) The AID Inspector General and the Comptroller General of the United States or their duly authorized representatives (see paragraph 1I6. of Chapter 1 of Handbook 13) reserve the right to conduct an audit of the Grantee's books and records to determine whether the Grantee has expended AID's funds in accordance with the terms and conditions of this grant. The Grantee agrees to make available any further information requested by AID with respect to any questions arising as a result of the audit.

### 4. REFUNDS

(a) If use of the AID funds provided hereunder results in accrual of interest to the Grantee or to any other person to whom Grantee makes such funds available in carrying out the purposes of the grant, the Grantee shall refund to AID an amount equivalent to the amount of interest accrued.

(b) Funds obligated by AID hereunder but not disbursed to the Grantee at the time the grant expires or is terminated, shall revert to AID, except for such funds encumbered by the Grantee by a legally binding transaction applicable to this grant. Any funds disbursed to but not expended by the Grantee at the time of expiration or termination of the Grant shall be refunded to AID.

(c) If, at any time during the life of the grant, or as a result of final audit, it is determined by AID that funds it provided under this Grant have been expended for purposes not in accordance with the terms of this grant, the Grantee shall refund such amount to AID.

### 5. NONDISCRIMINATION IN FEDERALLY ASSISTED PROGRAMS

(a) No person in the United States shall be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity receiving financial assistance from AID in accordance with:

(1) Title VI of the Civil Rights Act of 1964 (Pub. L. 88-352, 42 U.S.C. 2000-d) which prohibits discrimination on the basis of race,

12

|                         |                          |                                     |                  |
|-------------------------|--------------------------|-------------------------------------|------------------|
| AID HANDBOOK 13, App 4C | TRANS. MEMO NO.<br>13:27 | EFFECTIVE DATE<br>September 1, 1982 | PAGE NO.<br>4C-3 |
|-------------------------|--------------------------|-------------------------------------|------------------|

5(a)(1)

color or national origin, in programs and activities receiving Federal financial assistance,

(2) Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) which prohibits discrimination on the basis of handicap in programs and activities receiving Federal financial assistance,

(3) The Age Discrimination Act of 1975, as amended (Pub. L. 95-478), which prohibits discrimination based on age in the delivery of services and benefits supported with Federal funds,

(4) Title IX of the Education Amendments of 1972 (20 U.S.C. 1681, et seq.) which prohibits discrimination on the basis of sex in education programs and activities receiving Federal financial assistance (whether or not the programs or activities are offered or sponsored by an educational institution); and

(b) In accordance with its written assurance, the Grantee agrees to comply with AID regulations implementing the above nondiscrimination laws, set forth in Chapter II of Title 22 of the Code of Federal Regulations.

#### 6. NEGOTIATED OVERHEAD RATES - PREDETERMINED

(This provision is applicable to educational or other nonprofit organizations or institutions that are on a predetermined overhead rate basis)

(a) Notwithstanding the provision of this grant entitled "Allowable Costs and Contributions," the allowable indirect costs under this grant shall be obtained by applying predetermined overhead rates to the base(s) agreed upon by the parties, as specified in the Schedule of this grant.

(b) The Grantee, except for educational institutions covered by OMB Circular A-88, as soon as possible but not later than 3 months after the close of each of its accounting periods during the term of this grant, shall submit to the AID Grant Officer with copies to the cognizant audit activity, the AID Inspector General, and the AID Overhead and Special Costs Branch, Services Operations Division, Office of Contract Management, AID/Washington, D.C. 20523, a proposed predetermined overhead rate or rates based on the Grantee's actual cost experience during that fiscal year, together with supporting cost data. Negotiation of predetermined overhead rates by the Grantee and the AID Grant Officer shall be undertaken as promptly as practicable after receipt of the Grantee's proposal.

(c) Allowability of costs and acceptability of cost allocation methods shall be determined in accordance with the provisions of the applicable cost principles in effect on the date of this grant.

|                  |                                     |                          |                         |
|------------------|-------------------------------------|--------------------------|-------------------------|
| PAGE NO.<br>4C-4 | EFFECTIVE DATE<br>September 1, 1992 | TRANS. MEMO NO.<br>13:27 | AID HANDBOOK 13, App 4C |
|------------------|-------------------------------------|--------------------------|-------------------------|

6

(d) Predetermined rates appropriate for the work under this grant in effect on the effective date of this grant shall be incorporated into the grant. Rates for subsequent periods shall be negotiated and the results set forth in a written overhead rate agreement executed by both parties. Such agreement shall be automatically incorporated into this grant upon execution and shall specify (1) the agreed predetermined overhead rates, (2) the base(s) to which the rates apply, (3) the fiscal year unless the parties agree to a different period for which the rates apply, and (4) the specific items treated as direct costs or any changes in the items previously agreed to be direct costs. The overhead rate agreement shall not change any monetary ceiling, grant obligation, or specific cost allowance or disallowance provided for in this grant.

(e) Pending establishment of predetermined overhead rates for any fiscal year or different period agreed to by the parties, the Grantee shall be reimbursed either at the rates fixed for the previous fiscal year or other period or at billing rates acceptable to the AID Grant Officer subject to appropriate adjustment when the final rates for the fiscal year or other period are established.

(f) Any failure by the parties to agree on any predetermined overhead rate or rates under this provision shall not be considered a dispute within the meaning of the "Disputes" provision of this grant. If for any fiscal year or other period specified in the grant the parties fail to agree to a predetermined overhead rate or rates, it is agreed that the allowable overhead costs under this grant shall be obtained by applying negotiated final overhead rates in accordance with the terms of the applicable "Negotiated Overhead Rates" provision of this grant.

7. NEGOTIATED OVERHEAD RATES - NONPROFIT ORGANIZATIONS - OTHER THAN EDUCATIONAL INSTITUTIONS

(This provision is applicable to nonprofit organizations which do not have predetermined rates; however, it shall also be included when the NEGOTIATED OVERHEAD RATES - PREDETERMINED provision is used, under the conditions set forth therein)

(a) Pursuant to this provision, an overhead rate shall be established for each of the Grantee's accounting periods during the term of this Grant. Pending establishment of a final rate, the parties have agreed that provisional payments on account of allowable indirect costs shall be at the rate(s), on the base(s), and for the period shown in the Schedule of this grant.

(b) The Grantee, as soon as possible but not later than 90 days after the close of each of its accounting periods during the term of this grant shall submit to the Grant Officer with copies to the Overhead and Special Cost Branch, Services Operations Division, Office of Contract Management, AID, Washington, D.C., and to the Office of the Inspector General, AID/Washington, D.C., a proposed final rate or rates for the period, together with supporting cost data. Negotiation of final overhead rates by the Grantee and the Grant Officer shall be undertaken as promptly as practicable after receipt of the Grantee's proposal.

14

7

(c) Allowability of costs and acceptability of cost allocation methods shall be determined in accordance with OMB Circular A-122 (Cost Principles for Nonprofit Organizations) as in effect on the date of this grant.

(d) The results of each negotiation shall be set forth in a written overhead rate agreement executed by both parties. Such agreement shall specify (1) the agreed final rates, (2) the bases to which the rates apply, and (3) the periods for which the rates apply. The overhead rate agreement shall not change any monetary ceiling, grant obligation, or specific cost allowance or disallowance provided for in this grant.

(e) Pending establishment of final overhead rates for any period, the Grantee shall be reimbursed either at negotiated provisional rates as provided above or at billing rates acceptable to the Grant Officer, subject to appropriate adjustment when the final rates for that period are established. To prevent substantial over or under payment, the provisional or billing rates may, at the request of either party, be revised by mutual agreement, either retroactively or prospectively. Any such revision of negotiated provisional rates provided in this provision shall be set forth in a modification to this grant.

(f) Any failure by the parties to agree on any final rate or rates under this provision shall be considered a dispute within the meaning of the Standard Provision of this Grant, entitled "Disputes," and shall be disposed of in accordance therewith.

#### 8. NEGOTIATED OVERHEAD RATES - EDUCATIONAL INSTITUTIONS

(This provision is applicable to educational institutions which do not have predetermined rates; however, it shall also be included when the NEGOTIATED OVERHEAD RATES - PREDETERMINED provision is used, under the conditions set forth therein)

(a) Pursuant to this provision, an overhead rate shall be established for each of the Grantee's accounting periods during the term of this grant. Pending establishment of a final rate, the parties have agreed that provisional payments on account of allowable *indirect* costs shall be at the rate(s), on the base(s), and for the period shown in the Schedule of this grant.

(b) The Grantee, except educational institutions covered by OMB Circular A-88, as soon as possible but not later than 90 days after the close of each of its accounting periods during the term of this grant, shall submit to the Grant Officer with copies to the Overhead and Special Cost Branch, *Services* Operations Division, Office of Contract Management, AID/Washington, D.C. 20523 and to the Office of the Inspector General, AID/Washington, D.C. 20523, a proposed final rate or rates for the period, together with supporting cost data. Negotiation of final overhead

|                  |                                   |                          |                         |
|------------------|-----------------------------------|--------------------------|-------------------------|
| PAGE NO.<br>4C-5 | EFFECTIVE DATE<br>October 1, 1981 | TRANS. MEMO NO.<br>13:21 | AID HANDBOOK 13, App 4C |
|------------------|-----------------------------------|--------------------------|-------------------------|

8(b)

rates by the Grantee and the Grant Officer shall be undertaken as promptly as practicable after receipt of the Grantee's proposal.

(c) Allowability of costs and acceptability of cost allocation methods shall be determined in accordance with OMB Circular A-21 (Principles for Determining Costs Applicable to Grants, Contracts and other Agreements with Educational Institutions) as in effect on the date of this grant.

(d) The results of each negotiation shall be set forth in a written overhead rate agreement executed by both parties. Such agreement shall specify (1) the agreed final rates, (2) the bases to which the rates apply, and (3) the periods for which the rates apply. The overhead rate agreement shall not change any monetary ceiling, grant obligation, or specific cost allowance or disallowance provided for in this grant.

(e) Pending establishment of final overhead rates for any period, the Grantee shall be reimbursed either at negotiated provisional rates as provided above or at billing rates acceptable to the Grant Officer, subject to appropriate adjustment when the final rates for that period are established. To prevent substantial over or under payment, the provisional or billing rates may, at the request of either party, be revised by mutual agreement, either retroactively or prospectively. Any such revision of negotiated provisional rates provided in this provision shall be set forth in a modification to this grant.

(f) Any failure by the parties to agree on any final rate or rates under this provision shall be considered a dispute within the meaning of the Standard Provision of the Grant, entitled "Disputes" and shall be disposed of in accordance therewith.

## 9. REVISION OF FINANCIAL PLANS

(a) The Financial Plan, i.e., grant budget, is the financial expression of the project or program as approved during the application and/or award process.

(b) The Grantee shall immediately request approval from the Grant Officer when there is reason to believe that within the next 30 calendar days a revision of the approved Financial Plan will be necessary for any of the following reasons:

1. To change the scope or the objectives of the project or program.
2. Additional funding is needed.
3. The Grantee expects the amount of AID authorized funds will exceed its needs by more than \$5,000 or five percent of the AID award, whichever is greater.

|                         |                          |                                   |                  |
|-------------------------|--------------------------|-----------------------------------|------------------|
| AID HANDBOOK 13, App 4C | TRANS. MEMO NO.<br>13:33 | EFFECTIVE DATE<br>October 1, 1984 | PAGE NO.<br>4C-7 |
|-------------------------|--------------------------|-----------------------------------|------------------|

9(b)

4. The Grantee plans to transfer amounts budgeted for indirect costs to absorb increases in direct costs or vice versa.

5. The Grantee plans to transfer funds budgeted for training allowances (direct payments to trainees) to other categories of expense.

6. The Grantee plans to incur an expenditure which would require approval under the terms of this grant, and was not included in the approved Financial Plan.

7. The Grantee intends to subcontract or subgrant any of the substantive programmatic work under this grant, and such subcontracts or subgrants were not included in the approved Financial Plan.

(c) When requesting approval for budget revisions, the Grantee shall use the budget forms that were used in the application unless a letter request will suffice.

(d) Within 30 calendar days from the date of the receipt of the request for budget revisions, the Grant Officer shall review the request and notify the Grantee whether the budget revisions have been approved. If the revisions are still under consideration at the end of 30 calendar days, the Grant Officer shall inform the Grantee in writing of the date when the Grantee may expect the decision. The Grant Officer shall obtain the Project Officer's clearance on all such requests prior to communication with the Grantee.

(e) If the requested budget revision requires the obligation of additional funding, and, if after notification pursuant to this Standard Provision, AID determines not to provide additional funds, the AID Grant Officer will, upon written request of the Grantee, terminate this grant pursuant to the Standard Provision of this grant, entitled "Termination."

(f) Except as required by other provisions of this grant specifically citing and stated to be an exception from this provision, the Government shall not be obligated to reimburse the Grantee for costs incurred in excess of the total amount obligated under the grant, and the Grantee shall not be obligated to continue performance under the grant (including actions under the "Termination" provision) or otherwise to incur costs in excess of the amount obligated under the grant, unless and until the Grant Officer has notified the Grantee in writing that such obligated amount has been increased and has specified in such notice an increased amount constituting the total amount then obligated under the grant.

|                  |                                   |                         |                         |
|------------------|-----------------------------------|-------------------------|-------------------------|
| PAGE NO.<br>4C-8 | EFFECTIVE DATE<br>October 1, 1984 | TRANS MEMO NO.<br>13:33 | AID HANDBOOK 13, App 4C |
|------------------|-----------------------------------|-------------------------|-------------------------|

10. Payment - Letter of Credit (AUGUST 1984)

(This provision is applicable only when the following conditions are met: (i) the total advances under all the grantee's cost-reimbursement contracts and assistance instruments with AID exceed \$120,000 per annum, (ii) AID has, or expects to have, a continuing relationship with the grantee for at least one year; (iii) the grantee has the ability to maintain procedures that will minimize the time elapsing between the transfer of funds and the disbursement thereof; (iv) the grantee's financial management system meets the standards for fund control and accountability required under the standard provision of this grant, entitled "Accounting, Audit, and Records" and, either (v) the foreign currency portion of the total advance under this grant is less than 50% or (vi) the foreign currency portion of the total advance under this grant is more than 50% but more than one foreign currency country is involved.)

(a) Payment under this grant shall be by means of a Letter of Credit (LOC) in accordance with the terms and conditions of the LOC and any instructions issued by AID's Office of Financial Management, Program Accounting and Finance Division (M/FM/PAFD).

(b) As long as the LOC is in effect, the terms and conditions of the LOC and any instructions issued by M/FM/PAFD constitute payment conditions of this grant, superseding and taking precedence over any other provision of this grant concerning payment.

(c) Reporting:

(1) A "Financial Status Report" SF-269, shall be prepared on an accrual basis and submitted quarterly no later than 30 days after the end of the period, in an original and two copies to AID/M/FM/PAFD, Washington, D.C. 20523. If the grantee's accounting records are not normally kept on the accrual basis, the grantee shall not be required to convert its accounting system, but shall develop such accrual information through best estimates based on an analysis of the documentation on hand. The final report must be submitted within 90 days after the conclusion of the grant to M/FM/PAFD. In cases where grants are Mission funded, the Grantee will forward an information copy to the AID Mission accounting station at the same time the original and one copy are mailed to M/FM/PAFD, AID/Washington.

(2) The grantee shall submit an original and one copy of SF-272, "Federal Cash Transactions Report," within 15 working days following the end of each quarter to M/FM/PAFD. Grantees receiving advances totaling more than \$1 million per year shall submit the SF-272 on a monthly basis within 15 working days following the close of the month. Grantees shall report all cash advances in the Remarks section of SF-272. Those cash advances in excess of immediate disbursement requirements in the hands of subrecipients or the grantee's field organizations shall be supported by short narrative explanations of action taken by the grantee to reduce the excess balances.

(d) Revocation of the LOC is at the discretion of the authorized LOC certifying officer of M/FM/PAFD after consultation with the grant officer. Notification of revocation must be in writing and must specify the reason for revocation. FM/PAFD shall provide the grant officer a copy of the revocation notice and a recommendation for an alternative method of payment (periodic advance or cost reimbursement) based upon the reasons for the revocation. The grant officer shall immediately amend this agreement to provide for an appropriate alternative method of payment. The recipient may appeal any such revocation to the grant officer.

#### 11. PAYMENT - PERIODIC ADVANCE (OCTOBER 1984)

(This provision is applicable when the conditions for use of letter of credit cannot be met (including those pertaining to mixed dollar and local currency advances) and when the grantee meets the requirements of Paragraph 1.0.6 of Handbook 13).

(a) Periodic advances shall be limited to the minimum amounts needed to meet current disbursement needs and shall be scheduled so that the funds are available to the grantee as close as is administratively feasible to the actual disbursements by the grantee for program costs. Cash advances made by the grantee to secondary recipient organizations or the grantee's field organizations shall conform substantially to the same standards of timing and amount as apply to cash advances by AID to the grantee.

(b) Grantees shall submit requests for advances at least monthly on SF-270, "Request for Advances or Reimbursement," in an original and two copies, to the address specified in the Schedule of this grant.

|                   |                                   |                          |                            |
|-------------------|-----------------------------------|--------------------------|----------------------------|
| PAGE NO.<br>4C-10 | EFFECTIVE DATE<br>October 1, 1984 | TRANS MEMO NO.<br>-13:33 | AID HANDBOOK<br>13, App 4C |
|-------------------|-----------------------------------|--------------------------|----------------------------|

(c) The grantee shall submit one copy of SF-272, "Federal Cash Transactions Report," 15 working days following the end of each quarter to the address specified in the Schedule. Grantees receiving advances totaling more than \$1 million per year shall submit SF-272 on a monthly basis within 15 working days following the close of the month. Grantees shall report in the Remarks section of SF-272 the amount of cash advances in excess of thirty days requirement in the hands of subrecipients or the grantee's overseas field organizations and shall provide short narrative explanations of actions taken by the grantee to reduce the excess balances.

(d) A "Financial Status Report," SF-269, shall be prepared on an accrual basis by the grantee and submitted quarterly no later than 30 days after the end of the period in an original and two copies. If the grantee's accounting records are not normally kept on the accrual basis, the grantee shall not be required to convert its accounting system, but shall develop such accrual information through best estimates based on an analysis of the documentation on hand. The final SF-269 must be submitted within 90 days after the conclusion of the grant.

(e) If at any time, the AID Controller determines that the grantee has demonstrated an unwillingness or inability to: (1) establish procedures that will minimize the time elapsing between cash advances and the disbursement thereof, (2) timely report cash disbursements and balances as required by the terms of the grant, and (3) impose the same standards of timing of advances and reporting on any subrecipient or any of the grantee's overseas field organizations; the AID Controller shall advise the grant officer who may suspend or revoke the advance payment procedure.

## 12. PAYMENT - REIMBURSEMENT (OCTOBER 1984)

(This provision is applicable to grants for construction, or to grants where the grantee does not meet the conditions for either a letter of credit or periodic advance payment.)

(a) Each month, the grantee shall submit an original and two copies of SF-270, "Request for Advance or Reimbursement," to the address specified in the schedule of this grant.

(b) A "Financial Status Report," SF-269, shall be submitted quarterly no later than 30 days after the end of the period in an original and two copies. The final Financial Status Report must be submitted within 90 days after the conclusion of the grant.

(c) Both reports will be prepared on a cash basis, however, if the grantee's accounting records are not normally kept on a cash basis, the grantee shall not be required to convert its accounting system to meet this requirement.

|                         |                          |                                   |                   |
|-------------------------|--------------------------|-----------------------------------|-------------------|
| AID HANDBOOK 13, App 4C | TRANS. MEMO NO.<br>13:33 | EFFECTIVE DATE<br>October 1, 1984 | PAGE NO.<br>4C-11 |
|-------------------------|--------------------------|-----------------------------------|-------------------|

13. AIR TRAVEL AND TRANSPORTATION (OCTOBER 1984)

(This provision is applicable when any costs for air travel or transportation are included in the budget).

(a) The grantee is required to present to the project officer for written approval an itinerary for each planned international trip financed by this grant, which shows the name of the traveler, purpose of the trip, origin/destination (and intervening stops), and dates of travel, as far in advance of the proposed travel as possible, not in no event at least three weeks before travel is planned to commence. At least one week prior to commencement of approved international travel, the grantee shall notify the cognizant U.S. Mission or Embassy, with a copy to the project officer, of planned travel, identifying the travelers and the dates and times of arrival.

(b) Travel to certain countries shall, at AID's option, be funded from U.S.-owned local currency. When AID intends to exercise this option, AID will, after receipt of advice of intent to travel required above, either issue a U.S. Government S.F. 1169, Transportation Request (GTR) which the grantee may exchange for tickets, or AID will issue the tickets directly. Use of such U.S.-owned currencies will constitute a dollar charge to this grant.

(c) All air travel and shipments under this grant are required to be made on United States flag air carriers to the extent service by such carriers is available. A U.S. flag air carrier is defined as an air carrier which has a certificate of public convenience and necessity issued by the U.S. Civil Aeronautics Board authorizing operations between the United States and/or its territories and one or more foreign countries.

(d) Use of foreign air carrier service may be deemed necessary if a U.S. flag air carrier otherwise available cannot provide the foreign air transportation needed, or if use of such service will not accomplish the agency's mission. Travel and transportation on non-free world air carriers are not reimbursable under this grant.

(e) U.S. flag air carrier service is considered available even though:

1. Comparable or a different kind of service can be provided at less cost by a foreign air carrier;
2. Foreign air carrier service is preferred by or is more convenient for the agency or traveler; or

|                   |                                   |                         |                         |
|-------------------|-----------------------------------|-------------------------|-------------------------|
| PAGE NO.<br>4C-12 | EFFECTIVE DATE<br>October 1, 1984 | TRANS MEMO NO.<br>13:33 | AID HANDBOOK 13, App 4C |
|-------------------|-----------------------------------|-------------------------|-------------------------|

3. Service by a foreign air carrier can be paid for in excess foreign currency, unless U.S. flag air carriers decline to accept excess or near excess foreign currencies for transportation payable only out of such monies.

(f) Except as provided in paragraph (b) of this section, U.S. flag air carrier service must be used for all Government-financed commercial foreign air travel if service provided by such carriers is available. In determining availability of a U.S. flag air carrier, the following scheduling principles should be followed unless their application results in the last or first leg of travel to or from the United States being performed by foreign air carrier:

1. U.S. flag air carrier service available at point of origin should be used to destination or in the absence of direct or through service to the farthest interchange point on a usually traveled route;

2. Where an origin or interchange point is not served by U.S. flag air carrier, foreign air carrier service should be used only to the nearest interchange point on a usually traveled route to connect with U.S. flag air carrier service; or

3. Where a U.S. flag air carrier involuntarily reroutes the traveler via a foreign air carrier the foreign air carrier may be used notwithstanding the availability of alternative U.S. flag air carrier service.

(g) For travel between a gateway airport in the United States (the last U.S. airport from which the traveler's flight departs or the first U.S. airport at which the traveler's flight arrives) and a gateway airport abroad (that airport from which the traveler last embarks enroute to the U.S. or at which he first debarks incident to travel from the U.S.), passenger service by U.S. flag air carrier will not be considered available:

1. Where the gateway airport abroad is the traveler's origin or destination airport, and the use of U.S. flag air carrier service would extend the time in a travel status, including delay at origin and accelerated arrival at destination, by at least 24 hours more than travel by foreign air carrier:

2. Where the gateway airport abroad is an interchange point, and the use of U.S. flag air carrier service would require the traveler to wait six hours or more to make connections at that point, or delayed departure from or accelerated arrival at the gateway airport in the United States would extend the time in a travel status by at least six hours more than travel by foreign air carrier.

(h) For travel between two points outside the United States the rules in paragraphs (d) through (f) of this section will be applicable, but passenger service by U.S. flag air carrier will not be considered to be reasonably available:

1. If travel by foreign air carrier would eliminate two or more aircraft changes enroute;

2. Where one of the two points abroad is the gateway airport (as defined in paragraph (g) of this section) enroute to or from the United States, if the use of a U.S. flag air carrier would extend the time in a travel status by at least six hours more than travel by foreign air carrier including accelerated arrival at the overseas destination or delayed departure from the overseas origin as well as delay at the gateway airport or other interchange point abroad; or

3. Where the travel is not part of a trip to or from the United States, if the use of a U.S. flag air carrier would extend the time in a travel status by at least six hours more than travel by foreign air carrier including delay at origin, delay enroute and accelerated arrival at destination.

(i) When travel under either paragraph (g) or (h) of this section involves three hours or less between origin and destination by a foreign air carrier, U.S. flag air carrier service will not be considered available when it involves twice such travel time or more.

(j) Nothing in the above guidelines shall preclude and no penalty shall attend the use of a foreign air carrier which provides transportation under an air transport agreement between the United States and a foreign government, the terms of which are consistent with the international aviation policy goals set forth at 49 U.S.C. 1502(b) and provide reciprocal rights and benefits.

(k) Where U.S. Government funds are used to reimburse the grantee's use of other than U.S. flag carriers for international transportation, the grantee will include a certification on vouchers involving such transportation which is essentially as follows:

#### CERTIFICATION OF UNAVAILABILITY OF U.S. FLAG AIR CARRIERS

I hereby certify that the transportation service for personnel (and their personal effects) or property by certificated air carrier was unavailable for the following reason(s): (State appropriate reason(s) as set forth above).

|                   |                                   |                          |                         |
|-------------------|-----------------------------------|--------------------------|-------------------------|
| PAGE NO.<br>4C-14 | EFFECTIVE DATE<br>October 1, 1984 | TRANS. MEMO NO.<br>13:33 | AID HANDBOOK 13, App 4C |
|-------------------|-----------------------------------|--------------------------|-------------------------|

(1) International Travel

(i) As used herein, the term "international travel" includes travel to all countries other than those within the home country of the grantee.

(ii) The grantee will be reimbursed for travel and the reasonable cost of subsistence, post differentials and other allowances paid to employees in an international travel status in accordance with the grantee's established policies and practices which are uniformly applied to federally financed and other activities of the grantee. The standard for determining the reasonableness of reimbursement for overseas allowance is the Standardized Regulations (Government Civilians, Foreign Areas), published by the U.S. Department of State, as from time to time amended. The most current subsistence, post differentials, and other allowances may be obtained from the grant officer.

(m) This provision will be included in all subgrants and contracts which require air travel and transportation under this grant.

14. OCEAN SHIPMENT OF GOODS (OCTOBER 1984)

(This provision is applicable when goods purchased with funds provided under this grant are transported to cooperating countries on ocean vessels).

(a) At least 50% of the gross tonnage of all goods purchased under this grant and transported to the cooperating countries shall be made on privately owned U.S. flag commercial ocean vessels, to the extent such vessels are available at fair and reasonable rates for such vessels.

(b) At least 50% of the gross freight revenue generated by shipments of goods purchased under this grant and transported to the cooperating countries on dry cargo liners shall be paid to or for the benefit of privately owned U.S. flag commercial ocean vessels to the extent such vessels are available at fair and reasonable rates for such vessels.

(c) When U.S. flag vessels are not available, or their use would result in a significant delay, the grantee may request a determination of non-availability from the AID Transportation Support Division, Office of Commodity Management, Washington, D.C. 20523, giving the basis for the request which will relieve the grantee of the requirement to use U.S. flag vessels for the amount of tonnage included in the determination. Shipments made on non-free world ocean vessels are not reimburseable under this grant.

24

(d) Vouchers submitted for reimbursement which include ocean shipment costs shall contain a certification essentially as follows:

"I hereby certify that a copy of each ocean bill of lading concerned has been submitted to the U.S. Department of Transportation, Maritime Administration, Division of National Cargo, 400 7th Street, S.W., Washington, D.C. 20590, and that such bills of lading state all of the carrier's charges including the basis for calculation such as weight or cubic measurement."

(e) Shipments by voluntary nonprofit relief agencies (i.e., PVOs) shall be governed by this standard provision and by AID Regulation 2, "Overseas Shipments of Supplies by Voluntary Nonprofit Relief Agencies (22 CFR 202).

15. PROCUREMENT OF GOODS AND SERVICES UNDER \$250,000

(This provision is applicable when the total procurement element (i.e., the sum of all purchase orders and contracts for goods and services) of this grant does not exceed \$250,000)

(a) Ineligible Goods and Services

Under no circumstances shall the Grantee procure any of the following under this grant:

- (1) military equipment,
- (2) surveillance equipment,
- (3) commodities and services for support of police or other law enforcement activities,
- (4) abortion equipment and services,
- (5) luxury goods and gambling equipment, or
- (6) weather modification equipment.

If AID determines that the Grantee has procured any of the ineligible goods and services specified above under this grant, and has received reimbursement for such purposes, the Grantee agrees to refund to AID the entire amount of the reimbursement.

25

|                   |                                |                          |                         |
|-------------------|--------------------------------|--------------------------|-------------------------|
| PAGE NO.<br>4C-16 | EFFECTIVE DATE<br>July 1, 1983 | TRANS. MEMO NO.<br>13:33 | AID HANDBOOK 13, App 4C |
|-------------------|--------------------------------|--------------------------|-------------------------|

15

(b) Restricted Goods

The Grantee shall not procure any of the following goods and services without the prior written authorization of the Grant Officer:

- (1) agricultural commodities,
- (2) motor vehicles,
- (3) pharmaceuticals,
- (4) pesticides,
- (5) rubber compounding chemicals and plasticizers,
- (6) used equipment,
- (7) U.S. Government-owned excess property, or
- (8) fertilizer.

If AID determines that the Grantee has procured any of the restricted goods specified above under this grant, without the prior written authorization of the Grant Officer, and has received reimbursement for such purpose, the Grantee agrees to refund to AID the entire amount of the reimbursement.

(c) Geographic Source and Order of Preference

All goods (e.g., equipment, materials, and supplies) and services, the costs of which are to be reimbursed under this grant, and which will be financed with United States dollars, shall be purchased in and shipped from only "Special Free World" countries (i.e., AID Geographic Code 935) in accordance with the following order of preference:

- (1) the United States (AID Geographic Code 000),
- (2) the Cooperating Country,
- (3) "Selected Free World" countries (AID Geographic Code 941),
- (4) "Special Free World" countries (AID Geographic Code 935).

(d) Application of Order of Preference

When the Grantee procures goods and services from other than U.S. sources, under the order of preference in 15(c) above, it shall document its files to justify each such instance. The documentation shall set forth the circumstances surrounding the procurement and shall be based on one or more of the following reasons, which will be set forth in the Grantee's documentation:

---

26

|                         |                          |                                |                   |
|-------------------------|--------------------------|--------------------------------|-------------------|
| AID HANDBOOK 13, App 4C | TRANS. MEMO NO.<br>13:30 | EFFECTIVE DATE<br>July 1, 1983 | PAGE NO.<br>4C-17 |
|-------------------------|--------------------------|--------------------------------|-------------------|

15(d)

(1) the procurement was of an emergency nature, which would not allow for the delay attendant to soliciting U.S. sources,

(2) the price differential for procurement from U.S. sources exceeded by 50% or more the delivered price from the non-U.S. source,

(3) impelling local political considerations precluded consideration of U.S. sources,

(4) the goods or service were not available from U.S. sources, or

(5) procurement of locally available goods or services, as opposed to procurement of U.S. goods and services, would best promote the objectives of the Foreign Assistance program under the grant.

(e) The Grantee's Procurement System

The Grantee may use its own procurement policies and procedures provided they conform to the geographic source and order of *preference* requirements of this provision and the standards set forth in paragraph 1U of AID Handbook 13, "Grants."

(f) Small Business

To permit AID, in accordance with the small business provisions of the Foreign Assistance Act of 1961, as amended, to give United States small business firms an opportunity to participate in supplying commodities and services procured under this grant, the Grantee, shall, to the maximum extent possible, provide the following information to the Office of Small and Disadvantaged Business Utilization, AID/ Washington, D.C. 20523, at least 45 days prior (except where a shorter time is requested of, and granted by, the Office of Small and Disadvantaged Business Utilization) to placing any order or contract in excess of \$25,000.

(1) Brief general description and quantity of goods or services;

(2) Closing date for receiving quotations, proposals, or bids; and

(3) Address where invitations or specifications can be obtained.

(g) Ineligible Suppliers

Funds provided under this grant shall not be used to procure any commodity or commodity-related services furnished by any supplier whose name appears on the List of Ineligible Suppliers under AID

21

|                   |                                |                          |                         |
|-------------------|--------------------------------|--------------------------|-------------------------|
| PAGE NO.<br>4C-18 | EFFECTIVE DATE<br>July 1, 1983 | TRANS. MEMO NO.<br>13:30 | AID HANDBOOK 13, App 4C |
|-------------------|--------------------------------|--------------------------|-------------------------|

15(g)

Regulation 8, "Suppliers of Commodities and Commodity-Related Services Ineligible for AID Financing" (22 CFR 208). The Grantee agrees to review said list prior to undertaking any procurement the cost of which is to be reimbursable under this grant. AID will provide the Grantee with this list.

(h) Ocean and Air Transportation

For requirements relating to transportation by ocean vessel of commodities purchased under this grant, see the Standard Provision entitled "Ocean Shipment of Goods." For requirements relating to transportation of commodities by air, see the Standard Provision entitled "Travel and Transportation."

16. PROCUREMENT OF GOODS AND SERVICES OVER \$250,000

(This provision is applicable when the total procurement element, i.e., the sum of all purchase orders and contracts for goods and services, of this grant will be greater than \$250,000 over the life of the grant)

(a) General. Except as may be specifically approved or directed in advance by the Grant Officer, all goods (e.g., equipment, vehicles, materials, and supplies) and services which will be financed under this grant with United States dollars shall be procured in and shipped from the United States (Code 000) and from any other countries within the authorized geographic code specified in the Schedule of this grant.

(b) Procurement of goods. In order to be eligible under this grant, goods purchased under this grant must be of eligible source and origin, and must satisfy AID's componentry requirements set forth below. In addition, the supplier of commodities must meet the nationality requirements specified in paragraph (d)(1) of this provision.

(1) Source. Source means the country from which a commodity is shipped to the Cooperating Country or the Cooperating Country itself if the commodity is located therein at the time of purchase. However, where a commodity is shipped from a free port or bonded warehouse in the form in which received therein, source means the country from which the commodity was shipped to the free port or bonded warehouse.

(2) Origin. The origin of a commodity is the country or area in which a commodity is mined, grown, or produced. A commodity is produced when through manufacturing, processing, or substantial and major assembling of components, a commercially recognized new commodity results that is substantially different in basic characteristics, or in purpose or utility, from its components.

(3) Componentry. Components are the goods that go directly into the production of a produced commodity. AID componentry rules are as follows:

## 16(b)(3)

(i) If a commodity produced in an eligible source country contains no imported component, it is eligible for AID financing.

(ii) Unless otherwise specified by the Grant Officer, components from the United States, the Cooperating Country, and any other countries included in Geographic Code 941 may always be utilized in unlimited amounts regardless of the geographic code authorized.

(iii) Unless procurement is authorized from countries included in Code 899, components from free world countries not included in Code 941 are limited according to the following rules:

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

(B) The total cost to the producer of such components (delivered at the point of production) may not exceed 50 percent of the lowest price (excluding the cost of ocean transportation and marine insurance) at which the supplier makes the commodity available for export sale (whether or not financed by AID).

(C) AID may prescribe percentages other than 50 percent for specific commodities.

(iv) Any component from a non-free world country makes the commodity ineligible for AID financing.

(4) Supplier Nationality. (See paragraph (d) of this provision.)

(c) Eligibility of commodity-related services.

(1) Incidental services. Nationality rules are applied to the contractor supplying equipment under this grant and not separately to any contractor that may supply commodity-related incidental services. Such services, defined as the installation or erection of AID-financed equipment, or the training of personnel in the maintenance, operation, and use of such equipment, are eligible if specified in the equipment contract and performed by citizens of countries included in AID Geographic Code 935, or non-United States citizens lawfully admitted for permanent residence in the United States.

(2) Ocean and air transportation.

(i) Except as otherwise approved in writing by the Grant Officer, AID will finance only those ocean transportation costs:

(A) Incurred on vessels under U.S. flag registry, when Geographic Code 000 is authorized for procurement of goods or services;

|                   |                                   |                          |                         |
|-------------------|-----------------------------------|--------------------------|-------------------------|
| PAGE NO.<br>4C-20 | EFFECTIVE DATE<br>October 1, 1981 | TRANS. MEMO NO.<br>13:21 | AID HANDBOOK 13, App 4C |
|-------------------|-----------------------------------|--------------------------|-------------------------|

16(c)(2)(i)

(B) Incurred on vessels under U.S., Cooperating Country, or other countries included in Geographic Code 941 flag registry, when Geographic Code 941 is authorized for procurement of goods or services; or

(C) Incurred on vessels under flag registry of any free world country, if the costs are part of the total cost on a through bill of lading paid to a carrier for initial carriage on a vessel which is authorized in accordance with paragraphs (c)(2)(i)(A) and (B), above.

(ii) Any ocean or air charter, covering full or part cargo, for the transportation of goods purchased under this grant must be approved by the AID Transportation Support Division, Office of Commodity Management, Washington, D.C. 20523, prior to shipment.

(iii) When use of non-U.S. flag vessels has been authorized, the following requirements still apply:

(A) At least 50% of the gross tonnage of all goods purchased under this grant and transported to the Cooperating Country on ocean vessels, shall be transported on privately owned U.S. flag commercial vessels, to the extent such vessels are available at fair and reasonable rates for such vessels; and

(B) At least 50% of the gross freight revenue generated by shipments of goods purchased under this grant and transported to the Cooperating Country on dry cargo liners shall be paid to or for the benefit of privately owned U.S. flag commercial vessels to the extent such vessels are available at fair and reasonable rates for such vessels.

(iv) When U.S. flag vessels are not available, or their use would result in a significant delay, the Grantee may request a certificate of nonavailability from the AID Transportation Support Division, Office of Commodity Management, Washington, D.C. 20523, giving the basis for the request. Such a determination of nonavailability will relieve the Grantee of the requirement to use U.S. flag vessels for the tonnage of goods included in the determination.

(v) Vouchers submitted for reimbursement which include ocean shipment costs shall contain a certification essentially as follows: "I hereby certify that a copy of each ocean bill of lading concerned has been submitted to the Maritime Administration, Cargo Preference Control Center, Commerce Building, Washington, D.C. 20235, and that such bills of lading state all of the carrier's charges including the basis for calculation such as weight or cubic measurement."

(vi) For use of U.S. flag air carriers, see the Standard Provision, entitled "Travel and Transportation."

|                         |                          |                                 |                   |
|-------------------------|--------------------------|---------------------------------|-------------------|
| AID HANDBOOK 13, App 4C | TRANS. MEMO NO.<br>13:25 | EFFECTIVE DATE<br>June 30, 1982 | PAGE NO.<br>4C-21 |
|-------------------------|--------------------------|---------------------------------|-------------------|

16(c)

(3) Marine insurance. The eligibility of marine insurance is determined by the country in which it is "placed." Insurance is "placed" in a country if payment of the insurance premium is made to, and the insurance policy is issued by, an insurance company located in that country. Eligible countries for placement are governed by the authorized geographic code, except that if Code 941 is authorized, the Cooperating Country is also eligible. Section 604(d) of the Foreign Assistance Act requires that if a recipient country discriminates by statute, decree, rule, or practice with respect to AID-financed procurement against any marine insurance company authorized to do business in any State of the United States, then any AID-financed commodity shipped to that country shall be insured against marine risk and the insurance shall be placed in the United States with a company or companies authorized to do a marine insurance business in any State of the United States.

\* (d) Nationality. Except as specified in paragraph (c) of this provision, in order to be eligible for AID financing under this grant, suppliers, contractors, or subcontractors must fit one of the following categories:

(1) Suppliers of commodities. A supplier providing goods under this grant must fit one of the following categories for the costs of such goods to be eligible for AID financing:

(i) An individual who is a citizen or, except as provided in paragraph (d)(7) of this clause, a legal resident of a country or area included in the authorized geographic code;

(ii) A corporation or partnership organized under the laws of a country or area included in the authorized geographic code;

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

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

(2) Privately owned commercial suppliers of services. An individual or a privately owned commercial firm is eligible for financing by AID under this grant as a contractor providing services only if the criteria in paragraphs (d)(2)(i), (ii), or (iii) of this provision are met and, in the case of the categories described in paragraphs (d)(2)(ii) and (iii), the certification requirements in paragraph (d)(2)(iv) are met.

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

\* Revised and/or New Material

|                   |                                 |                          |                         |
|-------------------|---------------------------------|--------------------------|-------------------------|
| PAGE NO.<br>4C-22 | EFFECTIVE DATE<br>June 30, 1982 | TRANS. MEMO NO.<br>13:25 | AID HANDBOOK 13, App 4C |
|-------------------|---------------------------------|--------------------------|-------------------------|

16(d)(2)

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

(A) The corporation or partnership is more than 50% beneficially owned by individuals who are citizens of a country or area included in the authorized geographic code. In the case of corporations, "more than 50% beneficially owned" means that more than 50% of each class of stock is owned by such individuals; in the case of partnerships, "more than 50% beneficially owned" means that more than 50% of each category of partnership interest (e.g., general, limited) is owned by such individuals. (With respect to stock or interest held by companies, funds or institutions, the ultimate beneficial ownership by individuals is controlling.)

(B) The corporation or partnership:

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

(2) has performed within the United States similar administrative and technical, professional, or construction services under a contract or contracts for services and derived revenue therefrom in each of the 3 years prior to the issuance date of the invitation for bids or request for proposals, and

(3) employs United States citizens in more than half its permanent full-time positions in the United States, and

(4) has the existing capability in the United States to perform the contract.

(iii) The supplier is a joint venture or unincorporated association consisting entirely of individuals, corporations, partnerships, or nonprofit organizations which are eligible under paragraphs (d)(2)(i), (d)(2)(ii), or (d)(3) of this provision.

(iv) A duly authorized officer of a firm or nonprofit organization shall certify that the participating firm or nonprofit organization meets either the requirements of paragraphs (d)(2)(ii)(A) or (d)(2)(ii)(B), or (d)(3) of this clause. In the case of corporations, the certifying officer shall be the corporate secretary. With respect to the requirements of paragraph (d)(2)(ii)(A), the certifying officer may presume citizenship on the basis of the stockholder's record address, provided the certifying officer certifies, regarding any stockholder (including any corporate fund or institutional stockholder) whose holdings are material to the corporation's eligibility, that the certifying officer knows of no fact which might rebut that presumption.

\*

|                         |                          |                                 |                   |
|-------------------------|--------------------------|---------------------------------|-------------------|
| AID HANDBOOK 13, App 4C | TRANS. MEMO NO.<br>13:25 | EFFECTIVE DATE<br>June 30, 1982 | PAGE NO.<br>4C-23 |
|-------------------------|--------------------------|---------------------------------|-------------------|

16(d)

\*

(3) Nonprofit organizations. Nonprofit organizations, such as educational institutions, foundations, and associations, are eligible for financing by AID under this grant as contractors for services if they meet all of the criteria listed in paragraphs (d)(3)(i), (ii), and (iii) below, and the certification requirement in paragraph (d)(2)(iv) of this clause is met. (International agricultural research centers and such other international research centers as may be, from time to time, formally listed as such by the Senior Assistant Administrator, Bureau for Science and Technology, are considered to be of U.S. nationality for purposes of this provision.) Any such organizations must:

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

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

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

(4) Government-owned organizations. Except as may be specifically approved in advance by the Grant Officer, firms operated as commercial companies or other organizations (including nonprofit organizations other than public educational institutions) which are wholly or partially owned by governments or agencies thereof are not eligible for financing by AID under this grant as contractors.

(5) Joint ventures. A joint venture or unincorporated association is eligible only if each of its members is eligible in accordance with paragraphs (d)(2), (3), or (4) of this clause.

(6) Construction services from local firms. When the host country is an authorized source for services, and the estimated cost of the construction services is \$5 million or less, a corporation or partnership may be determined by AID to be an integral part of the local economy in accordance with AID Handbook 1B, Chapter 5, paragraph 5D5, is eligible.

(7) Ineligible suppliers. Citizens of any country or area, and firms and organizations located in or organized under the laws of any country or area, which is not included in Geographic Code 935 are ineligible for financing by AID as suppliers of services or of commodities, or as agents acting in connection with the supply of services or of commodities, except that non-U.S. citizens lawfully admitted for permanent residence in the United States are eligible regardless of such citizenship.

(8) Special restrictions on procurement of construction or engineering services. Section 604(g) of the Foreign Assistance Act provides that AID funds may not be used for "procurement of construction \*

\* Revised and/or New Material

2/1

|                   |                                 |                          |                         |
|-------------------|---------------------------------|--------------------------|-------------------------|
| PAGE NO.<br>4C-24 | EFFECTIVE DATE<br>June 30, 1982 | TRANS. MEMO NO.<br>13:25 | AID HANDBOOK 13, App 4C |
|-------------------|---------------------------------|--------------------------|-------------------------|

16(d)(8)

\* or engineering services from advanced developing countries, eligible under the Geographic Code 941, which have attained a competitive capability in international markets for construction services or engineering services." In order to insure eligibility of a Code 941 contractor for construction or engineering services, obtain the AID Grant Officer's approval for any such contract. \*

(e) Nationality of employees under contracts and subcontracts for services. The nationality policy of subparagraph (d)(2) of this provision does not apply to the employees of contractors or subcontractors whose services will be reimbursed under this grant, but all contractor and subcontractor employees engaged in providing services under AID-financed grants must be citizens of countries included in AID Geographic Code 935 or non-U.S. citizens lawfully admitted for permanent residence in the United States.

(f) The Cooperating Country as a source. With certain exceptions, the Cooperating Country is not normally an eligible source for procurement to be paid in U.S. dollars. The exceptions are for ocean freight and marine insurance (see paragraphs (c)(1) and (c)(2) of this provision). The Cooperating Country may be an eligible source if local cost financing is approved either by specific action of the Grant Officer or in the Schedule of the grant. In such cases, the Standard Provision entitled "Local Cost Financing with U.S. Dollars," will apply.

(g) Ineligible goods and services. Under no circumstances shall the Grantee procure any of the following under this grant:

- (1) military equipment,
- (2) surveillance equipment,
- (3) commodities and services for support of police or other law enforcement activities,
- (4) abortion equipment and services.
- (5) luxury goods and gambling equipment, or
- (6) weather modification equipment.

If AID determines that the Grantee has procured any of the ineligible goods and services specified above under this grant, and has received reimbursement for such purpose, the Grantee agrees to refund to AID the entire amount of the reimbursement.

(h) Restricted goods. The Grantee shall not procure any of the following goods or services without the prior written authorization of the Grant Officer:

- (1) agricultural commodities,

\* Revised and/or New Material

16(h)

- (2) motor vehicles,
- (3) pharmaceuticals,
- (4) pesticides,
- (5) rubber compounding chemicals and plasticizers,
- (6) used equipment,
- (7) U.S. Government-owned excess property, or
- (8) fertilizer.

If AID determines that the Grantee has procured any of the restricted goods specified above under this grant, without the prior written authorization of the Grant Officer, and has received reimbursement for such purpose, the Grantee agrees to refund to AID the entire amount of the reimbursement.

(i) Printed or audio-visual teaching materials. If the effective use of printed or audio-visual teaching materials depends upon their being in the local language and if such materials are intended for technical assistance projects or activities financed by AID in whole or in part and if other funds including U.S.-owned or U.S.-controlled local currencies are not *readily* available to finance the procurement of such materials, local language versions may be procured from the following sources, in order of preference:

- (1) Code 000, United States,
- (2) the Cooperating Country,
- (3) Code 941, Selected Free World,
- (4) Code 899, Free World.

(j) Ineligible suppliers. Funds provided under this grant shall not be used to procure any commodity or commodity-related services furnished by any supplier whose name appears on the List of Ineligible Suppliers under AID Regulation 8, "Suppliers of Commodities and Commodity-Related Services Ineligible for AID Financing" (22 CFR 208). The Grantee agrees to review said list prior to undertaking any procurement the cost of which is to be reimbursable under this grant. AID will provide the Grantee with this list.

(k) The Grantee's procurement system. The Grantee may use its own procurement policies and procedures provided they conform to the geographic source and nationality requirements of this provision and the standards set forth in paragraph 1U of AID Handbook 13, "Grants."

## 17. LOCAL COST FINANCING WITH U.S. DOLLARS

(This provision is applicable whenever local cost financing has been specifically authorized in the Schedule of this grant regardless of dollar amount)

(a) Local cost financing is the use of U.S. dollars to obtain local currency for the procurement of goods and services in the Cooperating Country in furtherance of the purpose of the grant. Local cost financing must be specifically authorized in the Schedule of the grant. The amount of U.S. dollars which may be used must be specified in the authorization, together with any special restrictions on their use.

(b) Procurement of goods and services under local cost financing is subject to the following restrictions:

### (1) Ineligible goods and services

Under no circumstances shall the Grantee procure any of the following under this grant:

- (i) military equipment,
- (ii) surveillance equipment,
- (iii) commodities and services for support of police or other law enforcement activities,
- (iv) abortion equipment and services,
- (v) luxury goods and gambling equipment, or
- (vi) weather modification equipment.

If AID determines that the Grantee has procured any of the ineligible goods and services specified above under this grant, and has received reimbursement for such purpose, the Grantee agrees to refund to AID the entire amount of the reimbursement.

### (2) Restricted goods

The Grantee shall not procure any of the following goods or services without the prior written authorization of the Grant Officer:

- (i) agricultural commodities,
  - (ii) motor vehicles,
  - (iii) pharmaceuticals,
-

|                   |                                   |                          |                         |
|-------------------|-----------------------------------|--------------------------|-------------------------|
| PAGE NO.<br>4C-26 | EFFECTIVE DATE<br>October 1, 1981 | TRANS. MEMO NO.<br>13-21 | AID HANDBOOK 13, App 4C |
|-------------------|-----------------------------------|--------------------------|-------------------------|

17(b)(2)

- (iv) pesticides,
- (v) rubber compounding chemicals and plasticizers,
- (vi) used equipment,
- (vii) U.S. Government-owned excess property, or
- (viii) fertilizer.

If AID determines that the Grantee has procured any of the restricted goods specified above under this grant, without the prior written authorization of the Grant Officer, and has received reimbursement for such purpose, the Grantee agrees to refund to AID the entire amount of the reimbursement.

(3) Any component from a non-free world country makes a commodity ineligible for AID financing.

(4) Nationality

(i) Citizens or firms of any country not included in AID Geographic Code 935 are ineligible as suppliers, contractors, subcontractors, or agents for goods and services the costs of which will be reimbursed under this grant.

(ii) Local cost financing is the use of appropriated U.S. dollars to obtain local currency for the payment for goods and services purchased in the Cooperating Country. Authorization of local cost financing makes the Cooperating Country, in addition to the United States and any other country included in the authorized geographic code for the project, an eligible source for the purchase of goods or services in the Cooperating Country. Goods or services purchased under local cost financing must be located in the Cooperating Country at the time they are purchased; they cannot be imported specifically for the project being implemented by this grant. The supplier from which goods or services are purchased under local cost financing must also be in the Cooperating Country. Suppliers of goods or services under local cost financing must meet the nationality eligibility tests prescribed in paragraph (d) of the provision of this grant entitled "Procurement of Goods and Services over \$250,000." When local cost financing has been authorized, the Cooperating Country is deemed to be included in the "authorized geographic code" for purposes of determining nationality eligibility pursuant to paragraph (d) of the provision, entitled "Procurement of Goods and Services over \$250,000."

(c) General principles. Under local cost financing, the Grantee shall follow sound procurement policies, utilizing competition to the maximum practical extent, obtaining the lowest available price, and documenting such procurements to justify the method used and the price established.

|                         |                          |                                   |                   |
|-------------------------|--------------------------|-----------------------------------|-------------------|
| AID HANDBOOK 13, App 4C | TRANS. MEMO NO.<br>13:33 | EFFECTIVE DATE<br>October 1, 1981 | PAGE NO.<br>4C-27 |
|-------------------------|--------------------------|-----------------------------------|-------------------|

17

(d) Procurement of goods. In order to be eligible under local cost financing, goods are subject to the following specific requirements:

(1) Indigenous goods. Goods which have been mined, grown, or produced in the Cooperating Country through manufacture, processing, or assembly are eligible for local cost financing under this grant. Goods produced with imported components must result in a commercially recognized new commodity that is substantially different in basic characteristics or in purpose or utility from its components in order to qualify as indigenous; such goods may not contain components from any nonfree world country.

(2) Imported shelf items. Imported shelf items are goods that are normally imported and kept in stock, in the form in which imported, for sale to meet a general demand in the country for the item; they are not goods which have been specifically imported for use in an AID-financed project.

(i) Shelf items are eligible for local cost financing in unlimited quantities up to the total amount available for local cost financing if they have their source in the Cooperating Country and their origin in a country included in AID Geographic Code 941.

(ii) Shelf items having their origin in any country included in Code 899 but not in Code 941 are eligible if the price of one unit does not exceed \$5,000. For goods sold by units of quantity; e.g., tons, barrels, etc., the unit to which the local currency equivalent of \$5,000 is applied is that which is customarily used in quoting prices. The total amount of imported shelf item purchases from countries included in Code 899 but not in Code 941 may not exceed \$25,000 or 10% of the total local costs financed by AID for the project whichever is higher; however, in no case may the total amount of such purchases exceed \$250,000 without first obtaining a specific geographic source waiver.

(3) Goods imported specifically for the project. Goods imported specifically for the project being implemented by this grant are not eligible for local cost financing; they are subject to the requirements of the provision entitled "Procurement of Goods and Services over \$250,000."

18. GOVERNMENT FURNISHED EXCESS PERSONAL PROPERTY

(This provision applies when personal property is furnished under the grant)

The policies and procedures of Handbook 16, "Excess Property," and the appropriate provisions of 41 CFR 101-43 apply to the Government furnished excess property under this grant.

38

|                   |                                   |                          |                         |
|-------------------|-----------------------------------|--------------------------|-------------------------|
| PAGE NO.<br>4C-28 | EFFECTIVE DATE<br>October 1, 1984 | TRANS. MEMO NO.<br>13:33 | AID HANDBOOK 13, App 4C |
|-------------------|-----------------------------------|--------------------------|-------------------------|

19. TITLE TO AND USE OF PROPERTY (GRANTEE TITLE) (October 1984)

(This provision is applicable when the Government vests title in the grantee only)

Title to all property financed under this grant shall vest in the grantee, subject to the following conditions:

(a) The grantee shall not charge for any depreciation, amortization, or use of any property, title to which remains in the grantee under this provision under this grant or any other U.S. Government grant, subgrant, contract or subcontract.

(b) The grantee agrees to use and maintain the property for the purpose of the grant in accordance with the requirements of paragraph 1T of Chapter 1, Handbook 13.

(c) With respect to nonexpendable property having an acquisition cost of \$1,000 or more, title to which vests in the grantee, the grantee agrees to report such items to the grant officer from time to time as they are acquired and to maintain a control system which will permit their ready identification and location.

20. TITLE TO AND CARE OF PROPERTY (U.S. GOVERNMENT TITLE)

(This provision is applicable when title to property is vested in the U.S. Government)

(a) Property, title to which vests in the Government under this grant, whether furnished by the Government or acquired by the Grantee, is subject to this provision and is hereinafter collectively referred to as "Government property." Title to Government property shall not be affected by the incorporation or attachment thereof to any property not owned by the Government, nor shall such Government property, or any part thereof, be or become a fixture or lose its identity as personalty by reason of affixation to any realty.

(b) Use of Government Property

Government property shall, unless otherwise provided herein or approved by the Grant Officer, be used only for the performance of this grant.

(c) Control, Maintenance and Repair of Government Property

The Grantee shall maintain and administer in accordance with sound business practice a program for the maintenance, repair, protection, and

|                         |                          |                                |                   |
|-------------------------|--------------------------|--------------------------------|-------------------|
| AID HANDBOOK 13, App 4C | TRANS. MEMO NO.<br>13:30 | EFFECTIVE DATE<br>July 1, 1983 | PAGE NO.<br>4C-29 |
|-------------------------|--------------------------|--------------------------------|-------------------|

20(c)

preservation of Government property so as to assure its full availability and usefulness for the performance of this grant. The Grantee shall take all reasonable steps to comply with all appropriate directions or instructions which the Grant Officer may prescribe as reasonably necessary for the protection of the Government property.

The Grantee shall submit, for review and written approval of the Grant Officer, a records system for property control and a program for orderly maintenance of Government property; however, if the Grantee's property control and maintenance system has been reviewed and approved by another Federal department or agency pursuant to Attachment N of OMB Circular No. A-110 (see paragraph 1T of Chapter 1, Handbook 13), the Grantee shall furnish the Grant Officer proof of such approval in lieu of another approval submission.

(1) Property Control

The property control system shall include but not be limited to the following:

(A) Identification of each item of Government property acquired or furnished under the grant by a serially controlled identification number and by description of item. Each item must be clearly marked "Property of U.S. Government."

(B) The price of each item of property acquired or furnished under the grant.

(C) The location of each item of property acquired or furnished under the grant.

(D) A record of any usable components which are permanently removed from items of Government property as a result of modification or otherwise.

(E) A record of disposition of each item acquired or furnished under the grant.

(F) Date of order and receipt of any item acquired or furnished under the grant.

The official property control records shall be kept in such condition that at any stage of completion of the work under this grant, the status of property acquired or furnished under this grant may be readily ascertained. A report of current status of all items of property acquired or furnished under the grant shall be submitted yearly concurrently with the annual report.

---

|                   |                                |                          |                         |
|-------------------|--------------------------------|--------------------------|-------------------------|
| PAGE NO.<br>4C-30 | EFFECTIVE DATE<br>July 1, 1983 | TRANS. MEMO NO.<br>13:30 | AID HANDBOOK 13, App 4C |
|-------------------|--------------------------------|--------------------------|-------------------------|

20(c)

(2) Maintenance Program

The Grantee's maintenance program shall be consistent with sound business practice, the terms of the Grant and provide for:

(i) disclosure of need for and the performance of preventive maintenance.

(ii) disclosure and reporting of need for capital type rehabilitation, and

(iii) recording of work accomplished under the program.

(A) Preventive maintenance - Preventive maintenance is maintenance generally performed on a regularly scheduled basis to prevent the occurrence of defects and to detect and correct minor defects before they result in serious consequences.

(B) Records of maintenance The Grantee's maintenance program shall provide for records sufficient to disclose the maintenance actions performed and deficiencies discovered as a result of inspections.

A report of status of maintenance of Government property shall be submitted annually concurrently with the annual report.

(d) Risk of Loss

(1) The Grantee shall not be liable for any loss of or damage to the Government property, or for expenses incidental to such loss or damage except that the Grantee shall be responsible for any such loss or damage (including expenses incidental thereto):

(i) Which results from willful misconduct or lack of good faith on the part of any of the Grantee's directors or officers, or on the part of any of its managers, superintendents, or other equivalent representatives, who have supervision or direction of all or substantially all of the Grantee's business, or all or substantially all of the Grantee's operation at any one plant, laboratory, or separate location in which this grant is being performed.

(ii) Which results from a failure on the part of the Grantee, due to the willful misconduct or lack of good faith on the part of any of its directors, officers, or other representatives mentioned in (i) above,

(A) to maintain and administer, in accordance with sound business practice, the program for maintenance, repair, protection, and preservation of Government property as required by (i) above, or (B) to take all reasonable steps to comply with any appropriate written directions of the Grant Officer under (c) above;

4/1

|                         |                          |                                   |                   |
|-------------------------|--------------------------|-----------------------------------|-------------------|
| AID HANDBOOK 13, App 4C | TRANS. MEMO NO.<br>13:21 | EFFECTIVE DATE<br>October 1, 1981 | PAGE NO.<br>4C-31 |
|-------------------------|--------------------------|-----------------------------------|-------------------|

20(d)(1)

(iii) For which the Grantee is otherwise responsible under the express terms of the article or articles designated in the Schedule of this grant.

(iv) Which results from a risk expressly required to be insured under some other provision of this grant, but only to the extent of the insurance so required to be procured and maintained, or to the extent of insurance actually procured and maintained, whichever is greater; or

(v) Which results from a risk which is in fact covered by insurance or for which the Grantee is otherwise reimbursed, but only to the extent of such insurance or reimbursement;

Provided, that, if more than one of the above exceptions shall be applicable in any case, the Grantee's liability under any one exception shall not be limited by any other exception.

(2) The Grantee shall not be reimbursed for, and shall not include as an item of overhead, the cost of insurance, or any provision for a reserve, covering the risk of loss of or damage to the Government property, except to the extent that the Government may have required the Grantee to carry such insurance under any other provision of this grant.

(3) Upon the happening of loss or destruction of or damage to the Government property, the Grantee shall notify the Grant Officer thereof, shall take all reasonable steps to protect the Government property from further damage, separate the damaged and undamaged Government property, put all the Government property in the best possible order, and furnish to the Grant Officer a statement of:

(i) The lost, destroyed, and damaged Government property;

(ii) The time and origin of the loss, destruction, or damage;

(iii) All known interests in commingled property of which the Government property is a part; and

(iv) The insurance, if any, covering any part of or interest in such commingled property.

The Grantee shall make repairs and renovations of the damaged Government property or take such other action as the Grant Officer directs.

(4) In the event the Grantee is indemnified, reimbursed, or otherwise compensated for any loss or destruction of or damage to the Government property, it shall use the proceeds to repair, renovate or

|                   |                                   |                          |                         |
|-------------------|-----------------------------------|--------------------------|-------------------------|
| PAGE NO.<br>4C-32 | EFFECTIVE DATE<br>October 1, 1981 | TRANS. MEMO NO.<br>13:21 | AID HANDBOOK 13, App 4C |
|-------------------|-----------------------------------|--------------------------|-------------------------|

20(d)(4)

replace the Government property involved, or shall credit such proceeds against the cost of the work covered by the grant, or shall otherwise reimburse the Government, as directed by the Grant Officer. The Grantee shall do nothing to prejudice the Government's right to recover against third parties for any such loss, destruction, or damage, and upon the request of the Grant Officer, shall, at the Government's expense, furnish to the Government all reasonable assistance and cooperation (including assistance in the prosecution of suit and the execution of instruments of assignments in favor of the Government) in obtaining recovery.

(e) Access

The Government, and any persons designated by it, shall at all reasonable times have access to the premises wherein any Government property is located, for the purpose of inspecting the Government property.

(f) Final Accounting and Disposition of Government Property

Upon completion of this grant, or at such earlier dates as may be fixed by the Grant Officer, the Grantee shall submit, in a form acceptable to the Grant Officer, inventory schedules covering all items of Government property not consumed in the performance of this grant or not theretofore delivered to the Government, and shall prepare, deliver, or make such other disposal of the Government property as may be directed or authorized by the Grant Officer.

(g) Communications

All communications issued pursuant to this provision shall be in writing.

21. TITLE TO AND CARE OF PROPERTY (COOPERATING COUNTRY TITLE)

(This provision is applicable to property titled in the name of the cooperating country or such public or private agency as the cooperating government may designate)

(a) Except as modified by *the Schedule* of this grant, title to all equipment, materials and supplies, the cost of which is reimbursable to the Grantee by AID or by the Cooperating Government, shall at all times be in the name of the Cooperating Government or such public or private agency as the Cooperating Government may designate, unless title to specified types or classes of equipment is reserved to AID under provisions set forth in the *Schedule* of this grant; but all such property shall be under the custody and control of Grantee until the owner of title directs otherwise or completion of work under this grant or its termination, at which time custody and control shall be turned over to the owner of title or disposed of in accordance with its instructions. All performance guarantees and warranties obtained from suppliers shall be taken in the name of the title owner.

|                         |                          |                                |                   |
|-------------------------|--------------------------|--------------------------------|-------------------|
| AID HANDBOOK 13, App 4C | TRANS. MEMO NO.<br>13:30 | EFFECTIVE DATE<br>July 1, 1983 | PAGE NO.<br>4C-33 |
|-------------------------|--------------------------|--------------------------------|-------------------|

21.

(b) The Grantee shall prepare and establish a program, to be approved by the Mission, for the receipt, use, maintenance, protection, custody and care of equipment, materials and supplies for which it has custodial responsibility, including the establishment of reasonable controls to enforce such program. The Grantee shall be guided by the requirements of paragraph 1T of Chapter 1, Handbook 13.

(c) Within 90 days after completion of this grant, or at such other date as may be fixed by the Grant Officer, the Grantee shall submit an inventory schedule covering all items of equipment, materials and supplies under his/her custody, title to which is in the Cooperating Government or public or private agency designated by the Cooperating Government, which have not been consumed in the performance of this grant. The Grantee shall also indicate what disposition has been made of such property.

22. CONVERSION OF UNITED STATES DOLLARS TO LOCAL CURRENCY

Upon arrival in the Cooperating Country, and from time to time as appropriate, the Grantee's Chief of Party shall consult with the Mission Director who shall provide, in writing, the procedure the Grantee and its employees shall follow in the conversion of United States dollars to local currency. This may include, but is not limited to, the conversion of said currency through the cognizant United States Disbursing Officer or Mission Controller, as appropriate.

23. TERMINATION AND SUSPENSION

(a) For Cause. This grant may be terminated for cause at any time, in whole or in part, by the Grant Officer upon written notice to the Grantee, whenever it is determined that the Grantee has failed to comply with the conditions of the grant.

(b) For Convenience. This grant may be terminated for convenience at any time by either party, in whole or in part, if both parties agree that the continuation of the grant would not produce beneficial results commensurate with the further expenditure of funds. Both parties shall agree upon termination conditions, including the effective date and, in the case of partial terminations, the portion to be terminated. The agreement to terminate shall be set forth in a letter from the Grant Officer to the Grantee.

(c) Termination Procedures. Upon receipt of and in accordance with a termination notice as specified in either paragraph (a) or (b) above, the Grantee shall forthwith take immediate action to minimize all expenditures and obligations financed by this grant, and shall cancel such unliquidated obligations whenever possible. Except as provided below, no further reimbursement shall be made after the effective date of termination, and the Grantee shall within 30 calendar days after the effective date of such termination repay to the Government all unexpended

|                   |                                |                          |                         |
|-------------------|--------------------------------|--------------------------|-------------------------|
| PAGE NO.<br>4C-34 | EFFECTIVE DATE<br>July 1, 1983 | TRANS. MEMO NO.<br>13:30 | AID HANDBOOK 13, App 4C |
|-------------------|--------------------------------|--------------------------|-------------------------|

23(c)

portions of funds theretofore paid by the Government to the Grantee which are not otherwise obligated by a legally binding transaction applicable to this grant. Should the funds paid by the Government to the Grantee prior to effective date of the termination of this grant, be insufficient to cover the Grantee's obligations pursuant to the aforementioned legally binding transaction, the Grantee may submit to the Government within 90 calendar days after the effective date of such termination a written claim covering such obligations, and, subject to the limitations contained in this grant, the Grant Officer shall determine the amount or amounts to be paid by the Government to the Grantee under such claim in accordance with the applicable Federal cost principles.

(d) Suspension: Termination for Changed Circumstances. If at any time AID determines (1) that disbursement by AID would be in violation of applicable laws or (2) that continuation of funding for a program should be suspended or terminated because such assistance is not in the national interest of the United States, then AID may, following notice to the Grantee, suspend this grant and prohibit the Grantee from incurring additional obligations chargeable to this grant other than necessary and proper costs in accordance with the terms of this grant during the period of suspension. If the situation causing the suspension continues to pertain for 60 days or more, then AID may terminate this grant on written notice to the Grantee and cancel that portion of this grant which has not been disbursed or irrevocably committed to third parties. Financial settlement of this grant shall be governed by the termination procedures specified in paragraph (c) above.

#### 24. VOLUNTARY PARTICIPATION

(This provision is applicable to all grants involving any aspect of family planning or population assistance activities.)

(a) The Grantee agrees to take any steps necessary to ensure that funds made available under this grant will not be used to coerce any individual to practice methods of family planning inconsistent with such individuals' moral, philosophical, or religious beliefs. Further, the Grantee agrees to conduct its activities in a manner which safeguards the rights, health and welfare of all individuals who take part in the program.

(b) The Grantee shall insert paragraphs (a) and (b) of this provision in all subgrants, subcontracts, purchase orders, and any other subordinate agreements hereunder.

#### 25. PROHIBITION ON ABORTION-RELATED ACTIVITIES

(This provision is applicable to all grants involving any aspect of family planning or population assistance activities.)

|                 |                          |                                  |                    |
|-----------------|--------------------------|----------------------------------|--------------------|
| AID HANDBOOK 13 | TRANS. MEMO NO.<br>13:23 | EFFECTIVE DATE<br>April 30, 1982 | PAGE NO.<br>4C-34a |
|-----------------|--------------------------|----------------------------------|--------------------|

(a) No funds made available under this grant will be used to finance, support, or be attributed to the following activities: (1) procurement or distribution of equipment intended to be used for the purpose of inducing abortions as a method of family planning; (2) special fees or incentives to women to coerce or motivate them to have abortions; (3) payments to persons to perform abortions or to solicit persons to undergo abortions; (4) information, education, training, or communication programs that seek to promote abortion as a method of family planning; (5) *lobbying for abortion.*

\* \* (b) No funds made available under this agreement will be used to pay for any biomedical research which relates, in whole or in part, to methods of, or the performance of, abortions or involuntary sterilization as a means of family planning. Epidemiologic or descriptive research to assess the incidence, extent or consequences of abortion is not precluded. \* \*

(c) The Grantee shall insert paragraphs (a), (b), and (c) of this provision in all subgrants, subcontracts, purchase orders, and any other subordinate agreements hereunder.

\* \* New Material

---

4/8

## 26. VOLUNTARY PARTICIPATION REQUIREMENTS FOR STERILIZATION PROGRAMS

(This provision is applicable when any surgical sterilization will be supported in whole or in part from funds under this grant)

(a) None of the funds made available under this grant shall be used to pay for the performance of involuntary sterilization as a method of family planning or to coerce or provide any financial incentive to any person to practice sterilization.

(b) The Grantee shall insure that any surgical sterilization procedures supported in whole or in part by funds from this grant are performed only after the individual has voluntarily presented himself or herself at the treatment facility and has given his or her informed consent to the sterilization procedure. Informed consent means the voluntary, knowing assent from the individual after he or she has been advised of the surgical procedures to be followed, the attendant discomforts and risks, the benefits to be expected, the availability of alternative methods of family planning, the purpose of the operation and its irreversibility, and his or her option to withdraw consent anytime prior to the operation. An individual's consent is considered voluntary if it is based upon the exercise of free choice and is not obtained by any special inducement or any element of force, fraud, deceit, duress or other forms of coercion or misrepresentation.

(c) Further, the Grantee shall document the patient's informed consent by (1) a written consent document in a language the patient understands and speaks, which explains the basic elements of informed consent, as set out above, and which is signed by the individual and by the attending physician or by the authorized assistant of the attending physician; or (2) when a patient is unable to read adequately a written certification by the attending physician or by the authorized assistant of the attending physician that the basic elements of informed consent above were orally presented to the patient, and that the patient thereafter consented to the performance of the operation. The receipt of the oral explanation shall be acknowledged by the patient's mark on the certification and by the signature or mark of a witness who shall be of the same sex and speak the same language as the patient.

(d) Copies of informed consent forms and certification documents for each voluntary sterilization (VS) procedure must be retained by the Grantee for a period of three years after performance of the sterilization procedure.

(e) The Grantee shall insert paragraphs (a), (b), (c), (d) and (e) of this provision in all subgrants, subcontracts, purchase orders, and any other subordinate agreements hereunder involving the performance of any sterilization which will be supported in whole or in part from funds under this grant.

|                   |                                   |                          |                            |
|-------------------|-----------------------------------|--------------------------|----------------------------|
| PAGE NO.<br>4C-36 | EFFECTIVE DATE<br>October 1, 1984 | TRANS. MEMO NO.<br>13:33 | AID HANDBOOK<br>13, App 4C |
|-------------------|-----------------------------------|--------------------------|----------------------------|

## 27. PUBLICATIONS

(This provision is applicable to any grant which produces any book, publication, or other copyrightable materials)

(a) If it is the Grantee's intention to identify AID's contribution to any publication resulting from this grant, the Grantee shall consult with AID on the nature of the acknowledgement prior to publication.

(b) The Grantee shall provide the Project Manager with one copy of all published works developed under the grant. The Grantee shall provide the Project Manager with lists of other written work produced under the grant.

(c) In the event grant funds are used to underwrite the cost of publishing, in lieu of the publisher assuming this cost as is the normal practice, any profits or royalties up to the amount of such cost shall be credited to the grant.

(d) The Grantee is permitted to secure copyright to any publication produced or composed under the grant in accordance with paragraph 1T8.b. of Chapter 1, Handbook 13. Provided, the Grantee agrees to and does hereby grant to the Government a royalty-free, nonexclusive, and irrevocable license throughout the world to use, duplicate, disclose, or dispose of such publications in any manner and for any purpose and to permit others to do so.

## 28. PATENT RIGHTS (OCTOBER 1984)

(This provision is applicable whenever patentable processes or practices are financed by the grant).

### a. Definitions.

(1) "Invention" means any invention or discovery which is or may be patentable or otherwise protectable under Title 35 of the United States Code.

(2) "Subject Invention", means any invention of the recipient conceived or first actually reduced to practice in the performance of work under this agreement.

(3) "Practical Application" means to manufacture in the case of a composition or product, to practice in the case of a process or method, or to operate in the case of a machine or system; and, in each case, under such conditions as to establish that the invention is being utilized and that its benefits are, to the extent permitted by law or Government regulations, available to the public on reasonable terms.

(4) "Made" when used in relation to any invention means the conception or first actual reduction to practice of such invention.

48

(5) "Small Business Firm" means a domestic small business concern as defined at Section 2 of Public Law 85-536 (15 U.S.C. 632) and implementing regulations of the Administrator of the Small Business Administration. For the purpose of this clause, the size standards for small business concerns involved in Government procurement and subcontracting at 13 CFR 121.3-8 and 13 CFR 121.3-12, respectively, shall be used.

(6) "Nonprofit Organization" means a domestic university or other institution of higher education or an organization of the type described in Section 501(c)(3) of the Internal Revenue Code of 1954 (26 U.S.C. 501(c)) and exempt from taxation under Section 501(a) of the Internal Revenue Code (26 U.S.C. 501(a) or any domestic nonprofit scientific or any educational organization qualified under a state nonprofit organization statute.

b. Allocation of Principal Rights.

The recipient may retain the entire right, title, and interest throughout the world to each subject invention subject to the provisions of this clause and 35 U.S.C. 203. With respect to any subject invention in which the recipient retains title, the Federal Government shall have a non-exclusive, non-transferable, irrevocable, paid-up license to practice or have practiced for or on behalf of the United States the subject invention throughout the world.

c. Invention Disclosure, Election of Title and Filing of Patent Applications by Recipient.

(1) The recipient shall disclose each subject invention to AID within two months after the inventor discloses it in writing to recipient personnel responsible for patent matters. The disclosure to AID shall be in the form of a written report and shall identify the agreement under which the invention was made and the inventor(s). It shall be sufficiently complete in technical detail to convey a clear understanding, to the extent known at the time of the disclosure, of the nature, purpose, operation, and physical, chemical, biological or electrical characteristics of the invention. The disclosure shall also identify any publication, on sale or public use of the invention and whether a manuscript describing the invention has been submitted for publication and, if so, whether it has been accepted for publication at the time of disclosure. In addition, after disclosure to AID the recipient shall promptly notify AID of the acceptance of any manuscript describing the invention for publication or of any on sale or public use planned by the recipient.

|                   |                                   |                          |                         |
|-------------------|-----------------------------------|--------------------------|-------------------------|
| PAGE NO.<br>4C-38 | EFFECTIVE DATE<br>October 1, 1984 | TRANS. MEMO NO.<br>13:33 | AID HANDBOOK 13, App 4C |
|-------------------|-----------------------------------|--------------------------|-------------------------|

(2) The recipient shall elect in writing whether or not to retain title to any such invention by notifying AID within twelve months of disclosure to the recipient, provided that in any case where publication, on sale, or public use has initiated the one-year statutory period wherein valid patent protection can still be obtained in the United States, the period of election of title may be shortened by AID to a date that is no more than 60 days prior to the end of the statutory period.

(3) The recipient shall file its initial patent application on an elected invention within two years after election or, if earlier, prior to the end of any statutory period wherein valid patent protection can be obtained in the United States after a publication, on sale, or public use. The recipient shall file patent applications in additional countries within either ten months of the corresponding initial patent application or six months from the date permission is granted by the Commissioner of Patents and Trademarks to file foreign patent applications where such filing has been prohibited by a Secrecy Order.

(4) Requests for extension of the time for disclosure to AID, election, and filing may, at the discretion of AID be granted.

d. Conditions When the Government May Obtain Title.

The recipient shall convey to AID upon written request, title to any subject invention:

(1) If the recipient fails to disclose or elect the subject invention within the times specified in c. above, or elects not to retain title. AID may only request title within sixty days after learning of the recipient's failure to report or elect within the specified times.

(2) In those countries in which the recipient fails to file patent applications within the times specified in c. above; provided, however, that if the recipient has filed a patent application in a country after the times specified in c., above, but prior to its receipt of the written request of AID the recipient shall continue to retain title in that country.

(3) In any country in which the recipient decides not to continue the prosecution of any application for, to pay the maintenance fees on, or defend in reexamination or opposition proceeding, on, a patent on a subject invention.

|                         |                          |                                   |                   |
|-------------------------|--------------------------|-----------------------------------|-------------------|
| AID HANDBOOK 13, App 4C | TRANS. MEMO NO.<br>13:33 | EFFECTIVE DATE<br>October 1, 1984 | PAGE NO.<br>4C-39 |
|-------------------------|--------------------------|-----------------------------------|-------------------|

e. Minimum Rights to Recipient.

(1) The recipient shall retain a nonexclusive, royalty-free license throughout the world in each subject invention to which the Government obtains title except if the recipient fails to disclose the subject invention within the times specified in c., above. The recipient's license extends to its domestic subsidiaries and affiliates, if any, within the corporate structure of which the recipient is a party and includes the right to grant sublicenses of the same scope to the extent the recipient was legally obligated to do so at the time the agreement was awarded. The license is transferable only with the approval of AID except when transferred to the successor of that party of the recipient's business to which the invention pertains.

(2) The recipient's domestic license may be revoked or modified by AID to the extent necessary to achieve expeditious practical application of the subject invention pursuant to an application for an exclusive license submitted in accordance with applicable provisions in the Federal Property Management Regulations and agency licensing regulations (if any). This license shall not be revoked in that field of use or the geographical areas in which the recipient has achieved practical application and continues to make the benefits of the invention reasonably accessible to the public. The license in any foreign country may be revoked or modified at the discretion of AID to the extent the recipient, its licensees, or its domestic subsidiaries or affiliates have failed to achieve practical application in that foreign country.

(3) Before revocation or modification of the license, AID shall furnish the recipient written notice of its intention to revoke or modify the license, and the recipient shall be allowed thirty days (or such other time as may be authorized by AID for good cause shown by the recipient) after the notice to show cause why the license should not be revoked or modified. The recipient has the right to appeal, in accordance with applicable agency licensing regulations (if any) and the Federal Property Management Regulations concerning the licensing of Government-owned inventions, any decision concerning the revocation or modification of its license.

f. Recipient Action to Protect the Government's Interest.

(1) The recipient agrees to execute or to have executed and promptly deliver to AID all instruments necessary to (i) establish or conform the rights the Government has throughout the world in those subject inventions to which the recipient elects to retain title, and (ii) convey title to AID when requested under paragraph d. above, and to enable the Government to obtain patent protection throughout the world in that subject invention.

---

|                   |                                   |                          |                         |
|-------------------|-----------------------------------|--------------------------|-------------------------|
| PAGE NO.<br>4C-40 | EFFECTIVE DATE<br>October 1, 1984 | TRANS. MEMO NO.<br>13:33 | AID HANDBOOK 13, App 4C |
|-------------------|-----------------------------------|--------------------------|-------------------------|

(2) The recipient agrees to require, by written agreement, its employees, other than clerical and nontechnical employees, to disclose promptly in writing to personnel identified as responsible for the administration of patent matters and in a format suggested by the recipient each subject invention made under agreement in order that the recipient can comply with the disclosure provisions of paragraph c. above, and to execute all papers necessary to file patent applications on subject inventions and to establish the Government's rights in the subject inventions. This disclosure format should require, as a minimum, the information required by c. (1) above. The recipient shall instruct such employees through employee agreements or other suitable educational programs on the importance of reporting inventions in sufficient time to permit the filing of patent applications prior to U.S. or foreign statutory bars.

(3) The recipient shall notify AID of any decision not to continue the prosecution of a patent application, pay maintenance fees, or defend in a reexamination or opposition proceeding on a patent, in any country, not less than 30 days before the expiration of the response period required by the relevant patent office.

(4) The recipient agrees to include, within the specification of any United States patent application and any patent issuing thereon covering a subject invention, the following statement: "This invention was made with Government support under (identify the agreement awarded by AID). The Government has certain rights in this invention."

g. Subagreements and Contracts.

The recipient shall include this clause suitably modified to identify the parties, in all subagreements and contracts, regardless of tier, for experimental, developmental, or research work to be performed by a small business firm or nonprofit organization. The subrecipient or contractor shall retain all rights provided for the recipient in this clause, and the recipient shall not, as part of the consideration for awarding the contract or subagreement obtain rights in the contractor's or subrecipient's subject inventions.

|              |            |                          |                                   |                   |
|--------------|------------|--------------------------|-----------------------------------|-------------------|
| AID HANDBOOK | 13, App 4C | TRANS. MEMO NO.<br>13:33 | EFFECTIVE DATE<br>October 1, 1984 | PAGE NO.<br>4C-41 |
|--------------|------------|--------------------------|-----------------------------------|-------------------|

h. Reporting Utilization of Subject Inventions.

The recipient agrees to submit on request periodic reports no more frequently than annually on the utilization of a subject invention or on efforts at obtaining such utilization that are being made by the recipient or its licensees or assignees. Such reports shall include information regarding the status of development, date of first commercial sale or use, gross royalties received by the recipient, and such other data and information as AID may reasonably specify. The recipient also agrees to provide additional reports as may be requested by AID in connection with any march-in proceedings undertaken by AID in accordance with paragraph j. of this provision. To the extent data or information supplied under this section is considered by the recipient, its licensee or assignee to be privileged and confidential and is so marked, AID agrees that, to the extent permitted by law, it shall not disclose such information to persons outside the Government.

i. Preference for United States Industry.

Notwithstanding any other provision of this clause, the recipient agrees that neither it nor any assignee will grant to any person the exclusive right to use or sell any subject invention in the United States unless such person agrees that any products embodying the subject invention shall be manufactured substantially in the United States. However, in individual cases, the requirement for such an agreement may be waived by AID upon a showing by the recipient or its assignee that reasonable but unsuccessful efforts have been made to grant licenses on similar terms to potential licensees that would be likely to manufacture substantially in the United States or that under the circumstances domestic manufacture is not commercially feasible.

j. March-in Rights.

The recipient agrees that with respect to any subject invention in which it has acquired title, AID has the right in accordance with the procedures in OMB Circular A-124 to require the recipient, an assignee or exclusive licensee of a subject invention to grant a non-exclusive, partially exclusive, or exclusive license in any field of use to a responsible applicant or applicants, upon terms that are reasonable under the circumstances, and if the recipient, assignee, or exclusive licensee refuses such a request, AID has the right to grant such a license itself if AID determines that:

|                   |                                   |                         |                         |
|-------------------|-----------------------------------|-------------------------|-------------------------|
| PAGE NO.<br>4C-42 | EFFECTIVE DATE<br>October 1, 1984 | TRANS MEMO NO.<br>13:33 | AID HANDBOOK 13, App 4C |
|-------------------|-----------------------------------|-------------------------|-------------------------|

(1) Such action is necessary because the recipient or assignee has not taken or is not expected to take within a reasonable time, effective steps to achieve practical application of the subject invention in such field of use;

(2) Such action is necessary to alleviate health or safety needs which are not reasonably satisfied by the recipient, assignee, or their licensees;

(3) Such action is necessary to meet requirements for public use specified by Federal regulations and such requirements are not reasonably satisfied by the recipient, assignee, or licensees; or

(4) Such action is necessary because the agreement required by paragraph i. of this clause has not been obtained or waived or because a license of the exclusive right to use or sell any subject invention in the United States is in breach of such agreement.

k. Special Provisions for Agreements with Nonprofit Organizations.

If the recipient is a nonprofit organization, it agrees that:

(1) Rights to a subject invention in the United States may not be assigned without the approval of AID, except where such assignment is made to an organization which has as one of its primary functions the management of inventions and which is not, itself, engaged in or does not hold a substantial interest in other organizations engaged in the manufacture or sale of products or the use of processes that might utilize the invention or be in competition with embodiments of the invention (provided that such assignee shall be subject to the same provisions as the recipient.

(2) The recipient may not grant exclusive licenses under the United States patents or patent applications in subject inventions to persons other than small business firms for a period in excess of the earlier of:

(i) Five years from first commercial sale or use of the invention; or

|                         |                          |                                   |                   |
|-------------------------|--------------------------|-----------------------------------|-------------------|
| AID HANDBOOK 13, App 4C | TRANS. MEMO NO.<br>13:33 | EFFECTIVE DATE<br>October 1, 1984 | PAGE NO.<br>4C-43 |
|-------------------------|--------------------------|-----------------------------------|-------------------|

(ii) Eight years from the date of the exclusive license excepting that time before regulatory agencies necessary to obtain premarket clearance, unless on a case-by-case basis, AID approves a longer exclusive license. If exclusive field of use licenses are granted, commercial sale or use in one field of use shall not be deemed commercial sale or use as to other fields of use and a first commercial sale or use with respect to a product of the invention shall not be deemed to end the exclusive period to different subsequent products covered by the invention.

(3) The recipient shall share royalties collected on a subject invention with the inventor; and

(4) The balance of any royalties or income earned by the recipient with respect to subject inventions, after payment of expenses (including payments to inventors) incidental to the administration of subject inventions, shall be utilized for the support of scientific research or education.

1. Communications.

Communications concerning this provision shall be addressed to the grant officer at the address shown on the face of this agreement.

29. REGULATIONS GOVERNING EMPLOYEES OUTSIDE THE UNITED STATES

(This provision is applicable only to the Grantee's U.S. and third country national employees; it is not applicable to the Grantee's Cooperating Country national employees)

(a) The Grantee's employees, when employed in work overseas, shall maintain private status and may not rely on local U.S. Government Offices or facilities for support while so engaged.

(b) The sale of personal property or automobiles by Grantee employees and their dependents in the foreign country to which they are assigned shall be subject to the same limitations and prohibitions which apply to direct-hire AID personnel employed by the Mission, except as this may conflict with host government regulations.

55

(c) Other than work to be performed under this grant for which an employee or consultant is assigned by the Grantee, no regular or short term employee or consultant of the Grantee shall engage directly or indirectly, either in his/her own name or in the name or through an agency of another person, in any business, profession, or occupation in the foreign countries to which he/she is assigned, nor shall he/she make loans or investments to or in any business, profession or occupation in the foreign countries to which he/she is assigned.

(d) The Grantee's employees, while in a foreign country, are expected to show respect for its conventions, customs, and institutions, to abide by its applicable laws and regulations, and not to interfere in its internal political affairs.

(e) In the event the conduct of any Grantee employee is not in accordance with the preceding paragraphs, the Grantee's chief of party shall consult with the Mission Director and the employee involved and shall recommend to the Grantee a course of action with regard to such employee.

(f) The parties recognize the right of the U.S. Ambassador to direct the removal from a country of any U.S. citizen or the discharge from this grant of any third country national when, in the discretion of the Ambassador, the interests of the United States so require.

(g) If it is determined, under either (e) or (f) above, that the services of such employee shall be terminated, the Grantee shall use its best efforts to cause the return of such employee to the United States, or point of origin, as appropriate.

### 30. SUBORDINATE AGREEMENTS

(a) The placement of subordinate agreements (i.e., grants or contracts) with other organizations, firms or institutions, and the provisions of such subordinate agreements are subject to prior written consent of the Grant Officer unless such subordinate agreements were identified in the approved Financial Plan, in accordance with paragraph (b)(7) of the Standard Provision of this grant entitled "Revision of Financial Plans."

(b) The use of the Standard Provisions of this grant is mandatory for subgrants to U.S. institutions. For subgrants to foreign institutions the Grantee shall use the Standard Provisions set forth in Appendix 4D of Handbook 13.

|                   |                                   |                          |                         |
|-------------------|-----------------------------------|--------------------------|-------------------------|
| PAGE NO.<br>4C-44 | EFFECTIVE DATE<br>October 1, 1981 | TRANS. MEMO NO.<br>13:33 | AID HANDBOOK 13, App 4C |
|-------------------|-----------------------------------|--------------------------|-------------------------|

30

(c) Contracts awarded with funds provided by this grant shall be undertaken in accordance with the requirements of the Standard Provision of this grant entitled "Procurement of Goods and Services over \$250,000" or "Procurement of Goods and Services under \$250,000" (whichever is applicable), and paragraph 103 of Handbook 13. Contracts awarded with funds provided by this grant to U.S. organizations shall set forth the provisions of paragraph 104 of Handbook 13. Paragraph 104 does not apply to foreign organizations.

### 31. SALARIES

All salaries, wages, fees, and stipends, which will be reimbursable by AID under this grant, shall be in accordance with both the Grantee's usual policy and practice and the applicable cost principles. To the extent that the Grantee's policy and practice conflict with the applicable cost principles, the latter shall prevail.

### 32. INELIGIBLE COUNTRIES

Unless otherwise approved by the AID Grant Officer, no AID funds will be expended for costs incurred in countries ineligible for assistance under the Foreign Assistance Act of 1961, as amended, or under acts appropriating funds for foreign assistance.

### 33. DISPUTES

(a) Any dispute arising under this grant, which is not disposed of by agreement, shall be decided by the AID Grant Officer who shall reduce his/his decision to writing and mail or otherwise furnish a copy thereof to the Grantee.

(b) Decisions of the AID Grant Officer shall be final and conclusive unless, within 30 days of receipt of the decision of the Grant Officer, the Grantee appeals the decision to the Administrator, AID. Any appeal made under this provision shall be in writing and addressed to the Administrator, Agency for International Development, Washington, D.C. 20523; a copy of any such appeal shall be concurrently furnished to the Grant Officer.

(c) In connection with any appeal proceeding under this provision, the Grantee shall be afforded an opportunity to be heard and to offer evidence in support of its appeal.

(d) A decision under this provision by the Administrator or his duly authorized representative shall be final and conclusive, unless determined by a court of competent jurisdiction to be fraudulent, capricious, arbitrary, an abuse of discretion, or based on clearly erroneous findings of facts or conclusions of law.

|                         |                          |                                   |                   |
|-------------------------|--------------------------|-----------------------------------|-------------------|
| AID HANDBOOK 13, App 4C | TRANS. MEMO NO.<br>13:33 | EFFECTIVE DATE<br>October 1, 1984 | PAGE NO.<br>4C-45 |
|-------------------------|--------------------------|-----------------------------------|-------------------|

34. PARTICIPANT TRAINING (OCTOBER 1984)

(This provision is applicable when any participant training is financed under the grant).

(a) Definitions:

1. Participant training is the training of any non-U.S. individual outside of his or her home country using AID funds or under AID sponsorship.

2. A participant is any non-U.S. individual being trained under this grant outside of his or her home country.

(b) Application of Handbook 10:

Participant training under this grant is to be conducted according to the policies established in AID Handbook 10, Participant Training, except to the extent that specific exceptions to Handbook 10 have been provided in this grant with the concurrence of the Office of International Training. (Handbook 10 may be obtained by submitting a request to the Office of International Training (S&T/IT), Agency for International Development, Washington, D.C. 20523.)

(c) Reporting Requirement

For participants trained in the United States, data shall be submitted by means of the form AID 1381-4, "Participant Data", simultaneously with enrollment in the Health and Accident Coverage Program (see Section (d) below). For participants trained in third countries, grantees shall submit to S&T/IT only the top white sheet of the Participant Data form (and blue copies if subsequent changes in the participant's training program are made). Copies of the Participant Data form may be obtained from the Office of International Training at the address indicated in Section (b) above.

(d) Health and Accident Coverage (HAC) Program For Training Within The United States

The grantee shall enroll all participants training in the United States in AID's HAC Program.

1. The HAC Program enables the participant, or the provider of medical services, to submit bills for medical costs resulting from illness and accident to the HAC Claims Office

|                   |                                   |                         |                            |
|-------------------|-----------------------------------|-------------------------|----------------------------|
| PAGE NO.<br>4C-46 | EFFECTIVE DATE<br>October 1, 1984 | TRANS MEMO NO.<br>13:33 | AID HANDBOOK<br>13, App 4C |
|-------------------|-----------------------------------|-------------------------|----------------------------|

which pays all reasonable and necessary medical charges for covered services not otherwise covered by other insurance programs (see paragraph 5 below), in accordance with the standard coverage established by AID under the HAC Program.

2. The grantee shall, as early as possible and no later than the initiation of travel to the United States by each participant financed by AID under this grant, fill out form AID 1381-4 entitled "Participant Data" and mail it to the addressees indicated on the back of the form. The grantee can obtain a supply of these forms and instructions for completing them from the Office of International Training at the address indicated in section (b) above.

3. Enrollment fees shall be submitted, thirty days prior to the beginning of each new enrollment period. The current enrollment fee amount shall be obtained from the address indicated in section (b) above. Payments will be made via check made payable to A.I.D. and submitted to:

Agency for International Development  
Office of Financial Development  
Central Accounting Division-Cashier (FM/CAD)  
Washington, D.C. 205023

(a) The enrollment fee shall be accompanied by a letter which lists the names of the enrollees identical to that on the Participant Data Form), period of coverage, fee amount paid, grant number, and the U.S. Government appropriation number as shown on the grant.

(b) The enrollment fees shall be calculated on the basis of fixed rates per participant per each 30 day period. The enrollment fees may not be prorated for fractional periods of less than 30 days and should cover the current training period for which funds are obligated under the grant.

4. The grantee shall assure that enrollment begins immediately upon the participant's departure for the United States for the purpose of participating in a training program financed or sponsored by AID, and that enrollment continues in full force and effect until the participant returns to his or her country of origin or is released from AID's responsibility, whichever occurs first.

5. The grantee shall provide each participant with a copy of the HAC brochure, copies of which are available from S&T/IT at the address indicated in section (b) above.

6. If the grantee has a mandatory, nonwaivable health and accident insurance program for participants, the costs of such insurance will be allowable under this grant. Any claims eligible under such insurance will not be payable under AID's

|                         |                          |                                   |                   |
|-------------------------|--------------------------|-----------------------------------|-------------------|
| AID HANDBOOK 13, App 4C | TRANS. MEMO NO.<br>13:33 | EFFECTIVE DATE<br>October 1, 1984 | PAGE NO.<br>4C-47 |
|-------------------------|--------------------------|-----------------------------------|-------------------|

HAC plan or under this grant. However, even though the participant is covered by the grantee's mandatory, nonwaivable health and accident insurance program, the participant must be enrolled in AID's HAC Program. In addition, a copy of the mandatory insurance policy must be forwarded to the HAC Claims Office.

7. Medical costs not covered by the grantee's health service program or mandatory, nonwaivable health and accident insurance program, or AID's HAC Program shall not be reimbursable under this grant unless specific written approval from the grant officer has been obtained.

### 35. USE OF POUCH FACILITIES

(a) Use of diplomatic pouch is controlled by the Department of State. The Department of State has authorized the use of pouch facilities for AID Grantees and their employees as a general policy, as detailed in items (1) through (7) below; however, the final decision regarding use of pouch facilities rests with the Embassy or AID Mission. In consideration of the use of pouch facilities as hereinafter stated, the Grantee and its employees agree to indemnify and hold harmless the Department of State and AID for loss or damage occurring in pouch transmission.

(1) Grantees and their employees are authorized use of the pouch for transmission and receipt of up to a maximum of two pounds per shipment of correspondence and documents needed in the administration of assistance programs.

(2) U.S. citizen employees are authorized use of the pouch for personal mail up to a maximum of one pound per shipment (but see (a)(3) below).

(3) Merchandise, parcels, magazines, or newspapers are not considered to be personal mail for purposes of this clause, and are not authorized to be sent or received by pouch.

(4) Official mail pursuant to (a)(1) above, sent by pouch should be addressed as follows:

Name of individual or organization (followed by letter symbol "C")  
Name of post (USAID/\_\_\_\_\_)   
Agency for International Development  
Washington, D.C. 20523

(5) Personal mail pursuant to (a)(2) above should be to the address specified in (a)(4) above, but without the name of the organization.

|                   |                                   |                          |                         |
|-------------------|-----------------------------------|--------------------------|-------------------------|
| PAGE NO.<br>4C-48 | EFFECTIVE DATE<br>October 1, 1984 | TRANS. MEMO NO.<br>13:33 | AID HANDBOOK 13, App 4C |
|-------------------|-----------------------------------|--------------------------|-------------------------|

(6) Mail sent via the diplomatic pouch may not be in violation of U.S. Postal laws and may not contain material ineligible for pouch transmission.

(7) AID Grantee personnel are not authorized use of military postal facilities (APO/FPO). This is an Adjutant General's decision based on existing laws and regulations governing military postal facilities and is being enforced worldwide. Posts having access to APO/FPO facilities and using such for diplomatic pouch dispatch may, however, accept official mail from Grantees and letter mail from their employees for the pouch, provided of course, adequate postage is affixed.

(b) The Grantee shall be responsible for advising its employees of this authorization and these guidelines and limitations on use of pouch facilities.

(c) Specific additional guidance on Grantee use of pouch facilities in accordance with this clause is available from the Post Communication Center at the Embassy or AID Mission.

#### 36. U.S. OFFICIALS NOT TO BENEFIT

No member of or delegate to the U.S. Congress or resident U.S. Commissioner shall be admitted to any share or part of this grant or to any benefit that may arise therefrom; but this provision shall not be construed to extend to this grant if made with a corporation for its general benefit.

#### 37. COVENANT AGAINST CONTINGENT FEES

The Grantee warrants that no person or selling agency has been employed or retained to solicit or secure this grant upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee except bona fide employees or bona fide established commercial or selling agencies maintained by the Grantee for the purpose of securing business. For breach or violation of this warranty, AID shall have the right to cancel this grant without liability or, in its discretion, to deduct from the grant amount, or otherwise recover, the full amount of each commission, percentage, brokerage, or contingent fee.

#### 38. NONLIABILITY

AID does not assume liability with respect to any third party claims for damages arising out of work supported by this Grant.

#### 39. AMENDMENT

The grant may be amended by formal modifications to the basic grant document or by means of an exchange of letters between the Grant Officer and an appropriate official of the Grantee.

|                         |                          |                                   |                   |
|-------------------------|--------------------------|-----------------------------------|-------------------|
| AID HANDBOOK 13, App 4C | TRANS. MEMO NO.<br>13:33 | EFFECTIVE DATE<br>October 1, 1984 | PAGE NO.<br>4C-49 |
|-------------------------|--------------------------|-----------------------------------|-------------------|

40. THE GRANT

The letter to the Grantee signed by the Grant Officer, the Schedule, the Program Description and the Standard Provisions which have been reviewed and agreed to by the Grantee, constitute the grant.

41. NOTICES

Any notice given by any of the parties hereunder, shall be sufficient only if in writing and delivered in person or sent by telegraph, cable, registered or regular mail as follows:

To the AID Grant Officer, at the address specified in the grant,

To Grantee, at Grantee's address shown in the grant,

or to such other address as either of such parties shall designate by notice given as herein required. Notices hereunder shall be effective when delivered in accordance with this provision, or on the effective date of the notice, whichever is later.

---

1.2