

GRANT PROJECT AGREEMENT

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

AND

The Government of Senegal

(Grantee)

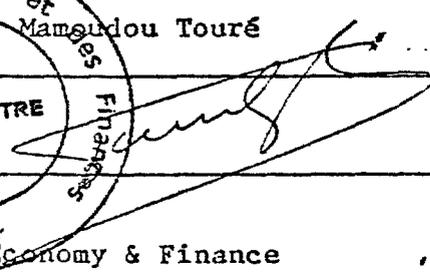
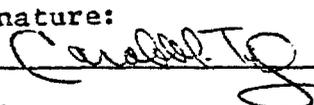
1. Project Title	2. AID Project Number
Community & Enterprise Development	[REDACTED]

The above-named parties hereby mutually agree to carry out the Project described in this Agreement in accordance with (1) the terms of this Agreement, including any annexes attached hereto, and (2) any general agreement between the two governments regarding economic or technical cooperation.

3. Amount of AID Grant	4. Grantee Contribution to the Project	5. Project Assistance Completion Date
\$9,000.000	\$ ---	September 30, 1989

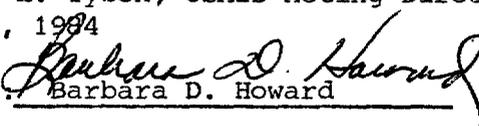
6. This Agreement consists of this title page and a) the following 2 pages b) Annex I General Project Description c) Annex II Standard Provisions d) Annex III Standard Provisions e) AID's Regulation No. 1

7. For the Grantee Typed Name Mamoudou Touré	8. For the Agency for International Development Typed Name Carole H. Tyson
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Signature: 	Signature: 
Title: Minister of Economy & Finance Mamoudou TOURE	Title: Mission Director, USAID/Senegal

Date: - 3 JAN. 1984	Date: Jan 4, 1984
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Certified to be a true copy of the original signed by Carole H. Tyson, USAID Acting Director on January 4, 1984

Signed by: 
Barbara D. Howard
Title: Acting Program Officer

FUNDS AVAILABLE

PROJECT AGREEMENT

PROJECT DESCRIPTION

1. Project Title	:	2. AID Project Number
PVO Community & Enterprise	:	
Development	:	685-0260
	:	

3. This Project consists of:

Assistance to (1) enable village organizations to carry out agricultural production, food processing and preservation, and soil and energy conservation projects on their own and (2) assist rural entrepreneurs and enterprises to support agriculture and manage and sustain their own growth.

Annex I, attached, amplifies the above definition of the Project. Within the limits of the above definition of the Project, elements of the amplified description stated in Annex I may be changed by written agreement of the authorized representatives of the Parties named in block 4 below and in block 8 (USAID Mission Director) of the cover page.

4. Special Provisions

Conditions Precedent to Disbursement

Prior to the first disbursement under the Grant, or to the issuance by AID of documentation pursuant to which disbursement will be made, the Grantee will, except as the Parties may otherwise agree in writing, furnish to AID (1) a letter from the Minister of Plan naming the Government of Senegal representatives to the National Project Policy Committee (described in Annex I), and (2) a statement of the name, together with a specimen signature of the person holding or acting in the office of the Grantee who for all purposes of the Agreement will represent the Grantee including making changes in the amplified project description if such changes are not inconsistent with the project description set out above. The Grantee can designate additional representatives for all purposes other than exercising the power to change the amplified project description.

Special Covenants Concerning Project Implementation and Achievement of Project Objectives

1. Project Evaluation

The Parties agree to establish an evaluation program as part of the Project.

Except as the Parties otherwise agree in writing, the program will include, during the implementation of the Project and at one or more points thereafter:

(a) An on-going evaluation of progress toward attainment of the objectives of the projects;

(Block 4 cont'd)

(b) Identification and evaluation of problem areas or constraints which may inhibit such attainment;

(c) Assessment of how such information may be used to help overcome such problems;

(d) Evaluation, to the degree feasible, of the overall development impact of the Project.

2. Loan Reflows

The Government agrees to use reflows from loans made to village organizations and entrepreneurs for the purpose of rural credit.

3. Registration of Private Voluntary Organizations (PVOs)

In registering PVOs, the Government agrees to establish reasonable procedures and to act in a reasonable time to register PVOs.

4. Policy and Regulatory Environment

The Government agrees that one of the priorities of the National Project Committee will be to address the problems for village organization and small-scale enterprise development arising from governmental policies and regulations. The Government agrees to make all reasonable efforts to act on the recommendations of the National Project Policy Committee to improve the policy, legal, and regulatory climate for the development of village groups and small-scale entrepreneurs.

5. Credit Collection

The Government agrees to all reasonable actions to support and pursue credit collection under the Project.

ANNEX II. GENERAL PROJECT DESCRIPTIONA. Background

The idea for the Community and Enterprise Development Project emerged from the 1980 AID/GOS Joint Assessment of the USAID/Senegal program. This Joint Assessment concluded (1) that the beneficiaries of AID-financed activities ought to be involved more directly in the design and execution of Projects affecting them and (2) that USAID should identify alternative types of assistance to rural producers. The Project aims at enabling rural producers to take charge of their own development. It therefore supports directly the GOS policy of decentralization.

B. Project Purpose and Goal

The purposes of the Project are the following:

- . to enable village organizations to carry out agricultural production, food processing and preservation, and soil and energy conservation projects on their own, and
- . to assist rural entrepreneurs and enterprises that support agriculture to manage and sustain their own growth.

Fulfillment of these purposes will contribute to the goal of this project, which is to encourage decontrol and commercialization of rural production in the region of Sine Saloum.

At the end of the project, the following conditions should indicate accomplishment of the project purpose:

- . Village organizations assisted can identify project needs, manage inputs, and select technical assistance from local sources.
- . PVOs are carrying out collaborative development projects with other village organization not financed by USAID using project models and skills acquired under the Project.
- . A large proportion of the small-scale enterprises assisted will move into the formal credit and banking system.
- . Goods and services produced by small-scale enterprises will be used by the rural population to increase agricultural production in noticeable quantities.

C. Project Outputs

The Project will produce the following outputs:

- . Small-scale projects implemented by village organizations in the priority areas defined by the Project.
- . Local and international PVO's active in Senegal with improved skills in project development, management, implementation, and evaluation through assistance by the Project's Management Unit.
- . Credit used in village projects and repaid.
- . Increased production of agriculture-related goods and services by Small-scale Enterprises (SSE).
- . SSE's assisted by the Project performing business management functions independently.
- . Credit used by SSE and repaid.

D. Major Elements of Project Structure

The major elements of the Project structure are the following:

A National Project Policy Committee will review and approve the overall policy of the Project; the criteria of selection of PVOs to receive funding, of village groups, of village projects, and of entrepreneurs to be assisted, and the criteria for monitoring and evaluating project activities. The Policy Committee will be composed of representatives from USAID and concerned GOS ministries: the Ministry of Plan (who will preside), the Ministries of Economy and Finance, Social Development, Industrial Development and Artisanat, Rural Development, and the Secretariat of State for Decentralization. Each ministry and USAID shall name a primary representative and a second in case the primary representative is unavailable. The Policy Committee will approve PVO proposals for village organization assistance and the program of assistance for small-scale entrepreneurs. All Committee members will be invited to all committee meetings. For PVO proposals, an Executive Committee able to act for the full national Project Policy Committee will consist of the representatives of USAID, the Ministry of Plan, the Ministry of Rural Development, and the Ministry of Social Development. For matters involving assistance to artisans and small entrepreneurs, the Executive Committee able to act will include in addition to the membership named above the representative of the Ministry of Industrial Development and Artisanat. Decisions will be by majority vote of members present. No votes may be cast by members not present at the time of the vote. The Committee shall be convened by the Ministry of Plan to meet on pending business. The Committee shall meet as needed but at least once each quarter to review quarterly project reports and to act on proposed activities.

The Policy Committee will receive quarterly financial and monitoring reports prepared by the Management Unit. Members of the Policy Committee will participate in periodic Project Reviews and in in-depth evaluations of the Project. The Direction of Community Development in the Ministry of Social Development will act as the Secretariat for the Policy Committee.

A contract Management Unit based in Kaolack will manage project activities, review PVO proposals to assist village organizations, and monitor assistance to small-scale entrepreneurs (SSE's) provided by a Small Business Advisory Unit.

A Credit Section, part of the Management Unit, will administer a revolving credit fund for loans to village organizations and small-scale enterprises. This credit component will be taken over by the Caisse Nationale du Credit Agricole du Sénégal (CNCAS) after a positive recommendation of the credit and savings study under the Sahel Development Fund PAAD (685-0249) and after certification by USAID of the CNCAS' accounting system and practices. This certification will be based on a study of the operating experience of the CNCAS. The CNCAS will manage this credit component as a separate program with a separate account and will apply all credit reflows from loans under the project to further lending for project activities except for the last year of the project. In the last year of the project, a certain amount of the credit reflows as specified in the budget will be allocated to project costs. The Management Unit and PVO's will assist in credit activities as appropriate. Interest rates for credit will begin at 12% with upward revisions possible to the maximum commercial rate allowed under West African Monetary Union regulations, depending upon rates of credit repayment. Credit terms and conditions will conform to those of the CNCAS.

The Project will provide training to village organizations and SSE's in literacy and numeracy and in technical areas needed to carry out projects.

PVOs will receive grants from the Management Unit to assist village organizations with village projects. The Management Unit will also provide some assistance to PVOs to strengthen capacities where needed.

PVOs will work within the established structures of Groupements de Producteurs or Sections Villageoises.

Pilot Phase: Project activities will begin in limited numbers in a limited area to develop sound packages of assistance and to resolve basic problems before expanding project activities throughout the region.

Design of Village Projects: PVOs and village groups will consult with Rural Councils, Sous-Préfets, and other elected bodies, administrative authorities, and technical services (CER and SODEVA agents) in designing projects and will present their proposals to local authorities. Local elected and administrative authorities and technical services will provide comments on PVO proposals which will be forwarded to the Governor and the Management Unit through the usual channels.

Regular contacts between the project and SODEVA will assure the overall technical validity of PVO proposals and their degree of conformity with GOS regional development objectives in the Sine Saloum.

Monitoring and Evaluation: Based on the criteria approved by the National Project Committee, the Management Unit will establish a continuous monitoring system providing periodic reports to USAID and to the National Project Committee. Government officials from national and regional levels will participate in Project Reviews every six months as well as in more in-depth external evaluations utilizing outside experts. The first external evaluation at the end of year two will review the workings of design and approval procedures and recommend necessary adjustments.

The Direction of Community Development of the Ministry of Social Development will complement the monitoring system of the project. Based on their field visits, Ministry representatives will advise the National Project Policy Committee and the Management Unit (1) on the degree to which project activities depart from policies and criteria established by the Policy Committee, (2) on cases in which project activities depart from the regional development plan of Sine Saloum, and (3) lessons which project experience suggests for other development activities in Sine Saloum or elsewhere in Senegal.

E. Project Inputs

The principal Project inputs include:

- . Long-term and short-term technical assistance;
- . Grants to PVOs to assist village organizations;
- . Assistance to SSEs to increase production;
- . Credit to village organizations and SSEs;
- . GOS participation in approving activities in setting Project policies and selection criteria, and in participating in Project Monitoring and evaluation.

II. RESPONSIBILITIES OF THE PARTIES

A. AID Responsibilities

Year One: AID will arrange for procurement of technical services, vehicles, and major commodities under the Project in accordance with U.S. government regulations and in consultation with the GOS. A list of commodities is as follows:

- Passenger vehicles and light trucks of European manufacture;
- Office equipment and supplies for Management and Small Business Unit functioning;

- AID will arrange for in-kind assistance to the Direction of Community Development of the Ministry of Social Development to enable it to fulfill its responsibilities for monitoring the project and for acting as Secretariat for the Policy Committee.

Year Two: AID will monitor Project progress through regular consultation and reporting between AID's project managers and the Management Unit and through Six-Month Project Reviews. AID will contract for and participate in the external project evaluations programmed for the second and fifth year of the Project.

B. Government of Senegal Responsibilities

The Government of Senegal will name members (and seconds) of the National Project Policy Committee who will review Project policy, selection criteria, and the monitoring and evaluation system as well as approve PVO proposals and the program for enterprise assistance. Members of the Policy Committee will also participate in Six-Month Project Reviews and in external project evaluations. The Ministry of Social Development will provide the Secretariat for the Policy Committee and will carry out monitoring responsibilities for the GOS.

The Government of Senegal, upon the request of USAID to the appropriate ministry, will allow Project personnel to use without charge the facilities of existing training centers in Sine Saloum at mutually convenient times.

The Government agrees to make all reasonable efforts to act on recommendations from the Policy Committee to improve the policy, legal, and regulatory climate for the development of village groups and small-scale entrepreneurs.

C. Technical Assistance Contractor Responsibilities

We expect that the contractors will provide long-term technical advisors and short-term technical assistance for specific needs. The contractors will handle all logistic arrangements for short and long-term personnel and prepare short-term scopes of work for AID approval. The contractors will hire Senegalese employees for the Management Unit and the Small Business Advisory Unit insofar as is possible and will prepare Senegalese counterparts to take over from expatriate advisors in the Management Unit and in the Small Business Advisory Unit. The contractors will participate in Project Reviews and in major Project evaluations, if desired by AID and the GOS. However, AID and the GOS will supply evaluation personnel.

III. ILLUSTRATIVE FINANCIAL PLAN

The Financial Plan outlined in Table I is illustrative only. It sets out the budget as the Parties now intend it to be, but as the project unfolds, it will undoubtedly be necessary to modify the budget to meet changing needs. The parties will make such changes, if needed, on the basis of mutual agreement as ratified by Project Implementation Letters. Future AID funding is subject to the availability of funds to AID for this purpose and to the mutual agreement of the parties, at the time, to proceed.

IV. FINANCING METHODS

Project funding will be disbursed in accordance with the regulations of the Governments of Senegal and the United States and the requirements of full accountability.

Specific procedures to be followed will be agreed upon by AID and the GOS and described in the first Project Implementation Letter.

V. SPECIAL CONSIDERATIONS. None

Community & Enterprise Development
(685-0260)

TABLE I. SUMMARY BUDGET TABLE BY CATEGORY OF EXPENDITURE
(\$ 000's)

	Year 1	Year 2	Year 3	Year 4	Year 5	Year 6	TOTAL
<u>I. Personnel</u>							
<u>A. Long-Term</u>							
U.S.	625	625	500	500	250	125	2625.0
Local Hire	114.5	114.5	136.5	138.5	138.5	73.5	716.0
<u>B. Short-Term TA</u>							
U.S.	33	66	33	33	33		198.0
Local	8	8	6	6	4	4	36.0
	<u>(780.5)</u>	<u>(831.5)</u>	<u>(675.5)</u>	<u>(677.5)</u>	<u>(425.5)</u>	<u>(202.5)</u>	<u>(3575.5)</u>
<u>II. Training & Travel</u>	126	73	83	48	40	28	398.0
<u>III. Village Organiza- Assistance</u>	55	295	439	738	818	183	2528.0
<u>IV. Credit Fund</u>	75	219	326	455	258	(644)	1333.0
<u>V. Commodities</u>	75	-	38	90	10	-	213.0
<u>VI. Equipment</u>	90	5	5	5	5	5	115.0
<u>VII Operating Costs</u>	151	161	171	121	90	146.5	840.5
<u>VIII. Evaluation</u>		100			100		200.0
<u>IX. TOTAL I - VIII</u>	1352.5	1666.5	1737.5	2134.5	1746.5	565	9202.5
<u>X. Contingency</u>	70	70	70	70	82.5	79	441.5
<u>GRAND TOTAL</u>	<u>1422.5</u>	<u>1736.5</u>	<u>1807.5</u>	<u>2204.5</u>	<u>1829.0</u>	<u>(644)*</u>	<u>9000.0**</u>

* This \$644,000 in project costs in Year 6 will be financed by the excess credit reflows in Year 6.

** Assistance under the project will total \$9,000,000. The \$644,000 in project costs shown in Year 6 will be financed by the excess credit reflows in Year 6.

ANNEXE II

ACCORD DE PROJET

ANNEXE RELATIVE AUX DISPOSITIONS GENERALES

A. Le terme "présent Accord" désigne l'Accord de Projet initial tel que modifié par toutes révisions qui sont entrées en vigueur. Le terme "pays coopérant" désigne le pays ou territoire du Bénéficiaire.

B. (1) L'AID fournira le montant spécifié à la Section 4 du présent Accord, selon les besoins du Projet, tel qu'il serait défini plus en détail à l'Annexe I.

(2) Le Bénéficiaire fournira le montant spécifié à la Section 4 du présent Accord, selon les besoins du Projet, tel qu'il serait défini plus en détail à l'Annexe I. Le Bénéficiaire apportera également, ou prendra des dispositions pour qu'il soit apporté les contributions supplémentaires en biens, services, locaux et en espèces nécessaires à l'exécution du Projet tel qu'il est spécifié à l'Annexe I.

C. L'AID et le Bénéficiaire peuvent bénéficier de l'assistance d'autres organismes publics et privés dans l'accomplissement de leurs obligations respectives aux termes du présent Accord. Les deux parties peuvent convenir d'accepter des contributions, en biens, services, locaux et en espèces aux fins du présent Accord, provenant d'autres organismes publics ou privés, de même qu'elles peuvent convenir de la participation d'un tel tiers dans l'exécution des activités conformément aux dispositions du présent Accord.

D. Sauf autrement spécifié par les présentes ou ultérieurement convenu par les parties, toutes les contributions des parties en vertu du présent Accord seront apportées au plus tard à la Date d'Achèvement de l'Assistance au Projet ou à la date convenue par amendement. Une contribution en biens ou services sera considérée comme ayant été réalisée lorsque les services auront été exécutés et les biens fournis ainsi que le prévoit le présent Accord. Les décaissements peuvent être effectués après que les dernières contributions ont été apportées, mais il ne sera pas demandé à l'AID de procéder à des décaissements, dans le cadre du présent Accord, après un délai de neuf mois suivant la Date d'Achèvement de l'Assistance au Projet (voir Section 5 du présent Accord) ou toute autre Date d'Achèvement de l'Assistance au Projet convenue par amendement.

ANNEX II

PROJECT AGREEMENT

PROAG STANDARD PROVISIONS ANNEX

A. Reference to "this Agreement" means the original Project Agreement as modified by any revisions which have entered into effect. Reference to "cooperating country" means the country or territory of the Grantee.

B. (1) AID will make available the amount specified in Block 3 of this Agreement, as necessary for the Project, as may be further described in Annex I.

(2) The Grantee will make available the amount specified in Block 4 of this Agreement, as necessary for the Project, as may further be described in Annex I. The Grantee will also make, or arrange to have made, additional contributions of property, services, facilities and funds required for carrying out the Project as specified in Annex I.

C. AID and the Grantee may obtain the assistance of other public and private agencies in carrying out their respective obligations under this Agreement. The two parties may agree to accept contributions of property, services, facilities and funds for purposes of this Agreement from other public and private agencies, and may agree upon the participation of any such third party in carrying out activities under this Agreement.

D. Except as otherwise specified herein or subsequently agreed by the parties, all contributions of the parties pursuant to this Agreement shall be made on or before the Project Assistance Completion Date, or amended date. A contribution of goods or services shall be considered to have been made when the services have been performed and the goods furnished as contemplated in this Agreement. Disbursement of funds may take place after final contributions have been made, but AID shall not be required to disburse funds hereunder after the expiration of nine months following the estimated Project Assistance Completion Date (Block 5 of this Agreement) or any amended Project Assistance Completion Date Specified.

E. L'achat des biens et services que l'AID doit financer entièrement ou en partie (lorsque les procédures de l'AID l'exigent) ne peut être effectué que conformément aux Ordres d'Exécution du Projet (PIO) ou aux Lettres d'Exécution du Projet (PIL) établis par l'AID.

F. (1) Les décaissements seront uniquement utilisés pour financer les montants des biens et services nécessaires à l'exécution du Projet et ayant leur source et origine aux Etats-Unis (Code 000 du Code géographique de l'AID tel qu'il sera en vigueur à l'époque où les commandes seront placées et les marchés passés pour ces biens et services) ("Coûts en devises") à moins que l'AID n'en convienne autrement par écrit.

(2) Les décaissements seront uniquement utilisés pour financer les achats des biens et services nécessaires à l'exécution du Projet ayant leur source et leur origine au Sénégal, à moins que l'AID n'en convienne autrement par écrit, ("Achats en monnaie locale").

(3) Malgré que les biens financés dans le cadre du projet doivent avoir leur source et leur origine aux Etats-Unis ou au Sénégal comme décrit ci-dessus, les marchandises disponibles au niveau local et normalement importées au Sénégal et emmagasinées pour faire face à une demande générale peuvent être achetées pourvu que (a) elles aient été importées d'un pays du Code 899 (Monde Libre), (b) la valeur totale de la facture de chaque transaction ne dépasse pas en monnaie locale le montant de 20.000 dollars, et (c) l'ensemble de l'achat des articles en stock ne dépasse pas 15% du coût des achats locaux effectués dans le cadre du projet.

G. (1) Le Bénéficiaire peut obtenir les décaissements des fonds au titre du financement des achats en devises des biens et services nécessaires à l'exécution du Projet et ce, conformément aux termes du présent Accord, pour lesquels l'approbation de l'AID a été obtenue avant les commandes par les méthodes suivantes ou par les Lettres d'Exécution du Projet.

(a) en présentant à l'AID, accompagnés des pièces justificatives nécessaires comme le

E. The procurement of commodities and services to be financed in whole or in part by AID may (where so required by AID procedures) be undertaken only pursuant to Project Implementation Orders (PIOs) or Project Implementation Letters (PILs) issued by AID.

F. (1) Disbursements will be used exclusively to finance the costs of goods and services required for the Project having their source and origin in the United States (Code 000 of the AID Geographic Code Book as in effect at the time orders are placed or contracts entered into for such goods or services) (Foreign Exchange Costs), except as AID may otherwise agree in writing.

(2) Disbursements will be used to finance the costs of goods and services required for the Project having their source and, except as AID may otherwise agree in writing, their origin in Senegal (Local Currency Costs).

(3) Notwithstanding that goods financed under the Project shall have their source and origin in the U.S. or in Senegal, local procurement of commodities normally imported into Senegal and kept in stock to meet general demand may be purchased provided that (a) they have been imported from a Code 899 (Free World) country, and (b) the total invoice value of any single transaction does not exceed the local currency value of \$20,000, and (c) the total of such shelf-item purchases does not exceed 15% of total local cost purchases under the Project.

G. (1) The Grantee may obtain disbursements of funds under the Grant for the Foreign Exchange Costs of goods or service required for the Project in accordance with the terms of this Agreement by such of the following methods as may be mutually agreed upon by Project Implementation Letters.

(a) by submitting to AID, with necessary supporting documentation as prescribed

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stipulent les Lettres d'Exécution du Projet, i) les demandes de remboursement de ces biens et services ou ii) les demandes à l'AID d'achat des biens et services au nom du Bénéficiaire pour l'exécution du Projet; ou

(b) en demandant à l'AID d'envoyer des documents d'autorisation de décaissement pour des montants donnés directement à un ou plusieurs entrepreneurs ou fournisseurs engageant l'AID à payer ces entrepreneurs.

(2) Pour faciliter l'achat de marchandises et d'équipement au Sénégal, et pour le règlement des constructions, du coût de la formation, etc. un (des) compte(s) spécial(aux) sera ouvert(s) auprès d'une banque agréée afin de recevoir ces fonds. Nous espérons que chaque ONG dans le cadre du Projet ouvrira un compte distinct à cet effet. A certains intervalles qui peuvent être décidés d'un commun accord entre l'AID et les représentants désignés de chacune des ONG respectives, l'AID versera des avances de fonds en monnaie locale dans le(s) compte(s) spécial(aux).

La dépense de ces fonds s'effectuera selon les procédures commerciales établies et selon les règlements du Gouvernement du Sénégal en matière d'achats et de dépenses. L'AID peut examiner et contrôler toutes les écritures effectuées dans le cadre du (des) compte(s) spécial(aux) et étudiera à l'avance les documents d'appel d'offres, les contrats et les factures pro-forma pour des transactions dépassant l'équivalent de 5.000 dollars américains. Ceci sera effectué par des consultations fréquentes entre les représentants des ONG respectives et le responsable du Projet de l'AID.

Quand cela sera nécessaire, l'AID fournira de temps à autre d'avantage d'informations plus détaillées en ce qui concerne les procédures d'achat et de décaissement par l'intermédiaire de Lettres d'Exécution.

in Project Implementation Letters i) requests for reimbursement for such goods or services, or ii) requests for AID to procure commodities or services in Grantee's behalf for the Project; or

(b) by requesting AID to issue Authorization Documents for specified amounts directly to one or more contractors or suppliers, committing AID to pay such contractors or suppliers for such goods or services.

(2) To facilitate the purchase of commodities and equipment in Senegal and the payment of construction, training costs, etc., a Special Account(s) will be established in an approved bank to receive such funds. It is expected that each PVO for the Project will establish separate accounts for this purpose. At such intervals as may be mutually agreed between AID and nominated representatives of each of the respective PVO, AID will advance local currency to the Special Account(s).

Expenditure of this fund will follow good commercial practice and will be according to established Government of Senegal procurement and expenditure regulations. AID may review and audit all books and records under the Special Account(s) and will have the opportunity to review in advance bid documents, contracts and proforma invoices for actions exceeding equivalent of U.S \$5,000. This will be accomplished by frequent consultations between representatives of the respective PVOs and the AID Project Officer.

As appropriate, AID will from time to time provide more detailed information relative to procurement and disbursement procedures in the form of Implementation Letters.

H. Sauf autrement spécifié dans le PIO ou dans la Lettre d'Exécution du Projet (PIL) approprié, l'achat de biens importés précisément pour le Projet et financés grâce à la contribution de l'AID mentionnée à la Section 3 du présent Accord se fera conformément aux dispositions du Règlement n° 1 de l'AID.

I. Sauf autrement convenu par les parties ou spécifié dans le PIO approprié, tout bien acquis grâce au financement de l'AID conformément à la Section 3 du présent Accord sera la propriété du Bénéficiaire, ou de l'organisme public ou privé désigné par le Bénéficiaire.

J. (1) Tout bien fourni à l'une des parties par le biais d'un financement de l'autre partie dans le cadre du présent Accord devra, sauf autrement convenu par la partie ayant financé l'achat, être effectivement utilisé aux fins du Projet conformément aux dispositions du présent Accord, et à l'achèvement du Projet, devra être utilisé pour consolider les acquis du Projet. Chacune des parties s'engage à rendre à l'autre, ou à lui en rembourser le coût, tout bien acquis grâce au financement de l'autre partie, dans le cadre du présent Accord, qui n'est pas utilisé conformément à la disposition ci-dessus.

(2) Tous fonds fournis à l'une des parties par l'autre en vertu du présent Accord et non utilisés conformément aux dispositions du présent Accord, seront remboursés à la partie ayant fourni les fonds.

(3) Tout intérêt ou autres bénéfices provenant des fonds octroyés par l'AID au Bénéficiaire dans le cadre du présent Accord seront restitués à l'AID par le Bénéficiaire.

H. Unless otherwise specified in the applicable PIO or Project Implementation Letter (PIL), the procurement of commodities imported specially for the Project and financed with the AID contribution referred to in Block 3 of this Agreement shall be subject to the provisions of AID Regulation 1.

I. Unless otherwise agreed by the parties or otherwise specified in the applicable PIO, title to all property procured through financing by AID pursuant to Block 3 of this Agreement shall be in the Grantee's name, or such public or private agency as it may authorize.

J. (1) Any property furnished to either party through financing by the other party pursuant to this Agreement shall, unless otherwise agreed by the party which financed the procurement, be used effectively for the purposes of the Project in accordance with this Agreement, and upon completion of the Project will be used so as to further the objectives sought in carrying out the Project. Either party shall offer to return to the other, or to reimburse the other for, any property which it obtains through financing by the other party pursuant to this Agreement which is not used in accordance with the preceding sentence.

(2) Any funds provided to either party pursuant to this Agreement which are not used in accordance with this Agreement, shall be refunded to the party providing the funds.

(3) Any interest or other earnings on funds provided by AID to the Grantee under this Agreement will be returned to AID by the Grantee.

K. (1) Si l'AID ou tout organisme public ou privé fournissant des biens, par l'intermédiaire du financement de l'AID, destinés aux activités mises en oeuvre aux termes du présent Accord dans le pays coopérant, est, en vertu des lois, règlements ou procédures administratives du pays coopérant, astreint à des droits de douanes et des taxes à l'importation sur les biens importés dans le pays coopérant aux fins de la mise en oeuvre du présent Accord, le Bénéficiaire prendra en charge le paiement de tels droits et taxes à moins qu'une exonération ne soit prévue par un accord international applicable en la matière.

(2) Si tout agent (autre que les citoyens et résidents du pays coopérant), qu'il s'agisse de fonctionnaires américains, ou d'employés des organismes publics ou privés sous contrat avec l'AID, ou de particuliers sous contrat avec l'AID, le Bénéficiaire ou toute agence autorisée par le Bénéficiaire, présent dans le pays coopérant pour assurer des services que l'AID a convenu de fournir ou de financer dans le cadre du présent accord, est, en vertu des lois, règlements ou procédures administratives du pays coopérant, astreint à des impôts sur le revenu ou à des prélèvements au titre de la sécurité sociale en fonction du revenu qu'ils sont obligés de payer au Gouvernement des Etats-Unis d'Amérique, à des impôts réels sur les biens personnels destinés à son propre usage, ou au paiement de droits de douane ou de taxes sur les biens personnels ou d'équipement ménager importés dans le pays coopérant pour son usage personnel ou celle des membres de sa famille (à l'exclusion des biens personnels ou d'équipement ménager pouvant être vendu par le propriétaire dans le pays coopérant) ou si toute firme ne résidant pas régulièrement dans le pays coopérant est astreinte à des impôts sur le revenu, les recettes ou toutes autres taxes relatives aux travaux financés par l'AID dans le cadre du présent Accord, le Bénéficiaire prendra en charge le paiement de tels impôts, droits ou taxes à moins qu'une exonération ne soit prévue par un accord international applicable en la matière.

K. (1) If AID and any public or private organization furnishing commodities through AID financing for operations hereunder in the cooperating country is, under the laws, regulations or administrative procedures of the cooperating country, liable for customs, duties and import taxes on commodities imported into the cooperating country for purposes of carrying out this Agreement, the Grantee will pay such duties and taxes unless exemption is otherwise provided by any applicable international agreement.

(2) If any personnel (other than citizens and residents of the cooperating country), whether United States Government employees, or employees of public or private organizations under contract with, or individuals under contract with AID, the Grantee or any agency authorized by the Grantee, who are present in the cooperating country to provide services which AID has agreed to furnish or finance under this Agreement, are under the laws, regulations or administrative procedures of the cooperating country, liable for income and social security taxes with respect to income which they are obligated to pay income or social security taxes to the Government of the United States of America, for property taxes on personal property intended for their own use, or for the payment of any tariff or duty upon personal or household goods brought into the cooperating country for the personal use of themselves and members of their families (not including such personal or household goods as may be sold by any such personnel in the cooperating country) or if any firm, not normally resident in the cooperating country, is liable for income, receipts, or other taxes on work financed by AID hereunder, the grantee will pay such taxes, or duty unless exemption is otherwise provided by any applicable international agreement.

L. Si les fonds octroyés par l'AID sont transférés dans le pays coopérant par l'AID ou tout organisme public ou privé en vue d'exécuter les obligations de l'AID en vertu du présent Accord, le Bénéficiaire prendra toutes les dispositions nécessaires afin que ces fonds soient convertibles dans la monnaie du pays coopérant au taux de change le plus élevé qui, au moment de la conversion, ne sont pas illégal dans le pays coopérant.

M. L'AID ne dépensera les fonds et n'exécutera les activités dans le cadre du présent Accord que conformément aux lois et règlements en vigueur du Gouvernement des Etats-Unis.

N. Les deux parties ont le droit, à n'importe quel moment, de suivre l'exécution des activités entreprises dans le cadre du présent Accord. Pendant toute la durée d'une activité, et jusqu'à trois ans après son achèvement, l'une ou l'autre partie aura également le droit (1) d'inspecter les biens acquis grâce aux financements assurés par ladite partie dans le cadre de l'Accord, où que ces biens se trouvent, et (2) d'examiner et vérifier les registres et les comptes relatifs aux fonds fournis par ladite partie ou aux biens acquis et services exécutés sous contrat par l'intermédiaire du financement de ladite partie dans le cadre du présent Accord, à quelque endroit que ces registres se trouvent. Lorsqu'elles prendront des dispositions en vue de la liquidation de tout bien acquis grâce à un financement de l'autre partie dans le cadre du présent Accord, chaque partie devra s'assurer que les droits d'examen, d'inspection et de vérification définis dans la phrase précédente sont sauvegardés pour la partie ayant effectué le financement.

O. L'AID et le Bénéficiaire se communiqueront les informations nécessaires pour déterminer la nature et l'ampleur des activités à entreprendre dans le cadre du présent Accord et pour évaluer l'efficacité de telles activités.

L. If funds provided by AID are introduced into the cooperating country by AID or any public or private agency for purposes of carrying out obligations of AID hereunder, the Grantee will make such arrangements as may be necessary so that such funds shall be convertible into currency of the cooperating country at the highest rate which, at the time the conversion is made, is not unlawful in the cooperating country.

M. AID shall expend funds and carry on operations pursuant to this Agreement only in accordance with the applicable laws and regulations of the United States Government.

N. The two parties shall have the right at any time to observe operations carried out under this Agreement. Either party during the term of the Project and for three years after the completion of the Project shall further have the right (1) to examine any property procured through financing by that party under this Agreement, wherever such property is located, and (2) to inspect and audit any records and accounts with respect to funds provided by, or any properties and contract services procured through financing by, that party under this Agreement, wherever such records may be located and maintained. Each party, in arranging for any property procured through financing by the other party under this Agreement, shall assure that the rights of examination, inspection and audit described in the preceding sentence are reserved to the party which did the financing.

O. AID and the Grantee shall each furnish the other with such information as may be needed to determine the nature and scope of operations under this Agreement and to evaluate the effectiveness of such operations.

P. Le présent Accord entrera en vigueur dès sa signature. L'une ou l'autre partie pourra mettre fin au présent Accord par notification écrite à l'autre partie, 30 jours à l'avance, de son intention d'y mettre fin. La dénonciation du présent Accord mettra fin à tous les engagements pris par les deux parties d'apporter des contributions conformément aux Sections 3 et 4 du présent Accord, sauf en ce qui concerne les paiements qu'elles se sont engagées à effectuer et qui constituent des engagements irrévocables pris avec des tiers avant qu'il ait été mis fin au présent Accord. Il est expressément entendu que les obligations définies au paragraphe H en ce qui concerne l'utilisation des biens ou des fonds resteront en vigueur après une telle dénonciation, l'AID peut, à ses frais, ordonner que la propriété des biens financés dans le cadre de la Subvention soit transférée à l'AID si ces biens proviennent d'une source située en dehors du territoire du Bénéficiaire, si ils sont livrables et n'ont pas été débarqués dans un port du pays Bénéficiaire.

Q. En vue d'aider à l'exécution du projet, l'AID peut, de temps en temps, établir des Lettres d'Exécution de Projet qui fourniront des informations complémentaires sur des sujets énoncés dans le présent Accord. Les parties peuvent également utiliser des Lettres d'Exécution de Projet convenues d'un commun accord pour confirmer et consigner leur accord concernant certains aspects de l'exécution du présent Accord.

R. Le Bénéficiaire accepte, sur demande de l'AID de faire une cession de droits à l'AID pour tout cas d'ouverture d'instance relatif à l'exécution ou à l'inexécution de contrat par une partie à un contrat direct en dollars américains financé en totalité ou en partie des fonds de la subvention accordée par l'AID au titre du présent Accord.

P. The present Agreement shall enter into force when signed. Either party may, terminate this Agreement by giving the other party thirty (30) days written notice of intention to terminate it. Termination of this Agreement shall terminate any obligations of the two parties to make contributions pursuant to Blocks 3 and 4 of this Agreement, except for payments which they are committed to make pursuant to non-cancellable commitments entered into with third parties prior to the termination of the Agreement. It is expressly understood that the obligations under paragraph H relating to the use of property or funds shall remain in full force after such termination. In addition, upon such termination AID may, at AID's expense, direct that title to goods financed under the Grant be transferred to AID if the goods are from a source outside the Grantee's country, are in a deliverable state and have not been offloaded in ports of entry of the Grantee's country.

Q. To assist in the implementation of the Project, AID, from time to time, may issue PILS that will furnish additional information about matters stated in this Agreement. The parties may also use jointly agreed-upon PILs to confirm and record their mutual understanding on aspects of the implementation of this Agreement.

R. The Grantee agrees, upon request, to execute an assignment to AID of any cause of action which may accrue to the Grantee in connection with or arising out of the contractual performance or breach of performance by a party to direct U.S. Dollar contract with AID financed in whole or in part out of funds granted by AID under this Agreement.

Project Grant Standard

Provisions Annex

Definitions: As used in this Annex, the "Agreement" refers to the Project Grant Agreement to which this Annex is attached and of which this Annex forms a part. Terms used in this Annex have the same meaning or reference as in the Agreement.

Article A: Project Implementation Letters

To assist Grantee in the implementation of the Project A.I.D., from time to time, will issue Project Implementation Letters that will furnish additional information about matters stated in this Agreement. The parties may also use jointly agreed-upon Project Implementation Letters to confirm and record their mutual understanding on aspects of the implementation of this Agreement. Project Implementation Letters will not be used to amend the text of the Agreement, but can be used to record revisions or exceptions which are permitted by the Agreement, including the revision of elements of the amplified description of the Project in Annex 1.

Article B: General Covenants

SECTION B.1. Consultation. The Parties will cooperate to assure that the purpose of this Agreement will be accomplished. To this end, the Parties, at the request of either, will exchange views on the progress of the Project, the performance of obligations under this Agreement, the performance of any consultants, contractors or suppliers engaged on the Project, and other matters relating to the Project.

SECTION B.2. Execution of Project. The Grantee will:

(a) carry out the Project or cause it to be carried out with due diligence and efficiency, in conformity with sound technical, financial, and management practices, and in conformity with those documents, plans, specifications, contracts, schedules or other arrangements, and with any modifications therein, approved by A.I. D. pursuant to this Agreement; and

(b) provide qualified and experienced management for, and train such staff as may be appropriate or the maintenance and operation of the Project, and, as applicable for continuing activities, cause the Project to be operated and maintained in such manner as to assure the continuing and successful achievement of the purposes of the Project.

Article B: General Covenants (Continued)

SECTION B.3. Utilization of Goods and Services.

(a) Any resources financed under the Grant will, unless otherwise agreed in writing by A.I.D., be devoted to the Project until the completion of the Project, and thereafter will be used so as to further the objectives sought in carrying out the Project.

(b) Goods or services financed under the Grant, except as A.I.D. may otherwise agree in writing, will not be used to promote or assist a foreign aid project or activity associated with or financed by a country not included in Code 935 of the A.I.D. Geographic Code Book as in effect at the time of such use. (See HB 18.)

SECTION B.4. Taxation.

(a) This Agreement and the Grant will be free from any taxation or fees imposed under laws in effect in the territory of the Grantee.

(b) To the extent that (1) any contractor, including any consulting firm, any personnel of such contractor financed under the Grant, and any property or transaction relating to such contracts and (2) any commodity procurement transaction financed under the Grant, are not exempt from identifiable taxes, tariffs, duties or other levies imposed under laws in effect in the territory of the Grantee, the Grantee will, as and to the extent provided in and pursuant to Project Implementation Letters, pay or reimburse the same with funds other than those provided under the Grant.

SECTION B.5. Reports, Records, Inspections, Audit.

The Grantee will:

(a) furnish A.I.D. such information and reports relating to the Project and to this Agreement as A.I.D. may reasonably request;

(b) maintain or cause to be maintained, in accordance with generally accepted accounting principles and practices consistently applied, books and records relating to the Project and to this Agreement, adequate to show, without limitation, the receipt and use of goods and services acquired under the Grant. Such books and records will be audited regularly, in accordance with generally accepted auditing standards, and maintained for three years after the date of last disbursement by A.I.D.; such books and records will also be adequate to show the nature and extent of solicitations of prospective suppliers of goods and services acquired, the basis of award of contracts and orders, and the overall progress of the Project toward completion; and

Article B: General Covenants (Continued)

(c) afford authorized representatives of a Party the opportunity at all reasonable times to inspect the Project, the utilization of goods and services financed by such Party, and books, records, and other documents relating to the Project and the Grant.

SECTION B.6. Completeness of Information. The Grantee confirms:

(a) that the facts and circumstances of which it has informed A.I.D., or cause A.I.D. to be informed, in the course of reaching agreement with A.I.D. on the Grant, are accurate and complete, and include all facts and circumstances that might materially affect the Project and the discharge of responsibilities under this Agreement;

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

SECTION B.7. Other Payments. Grantee affirms that no payments have been or will be received by any official of the Grantee in connection with the procurement of goods or services financed under the Grant, except fees, taxes, or similar payments legally established in the country of the Grantee.

SECTION B.8. Information and Marking. The Grantee will give appropriate publicity to the Grant and the Project as a program to which the United States has contributed, identify the Project site, and mark goods financed by A.I.D., as described in Project Implementation Letters.

Article C: Procurement Provisions

SECTION C.1. Special Rules.

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

(b) Premiums for marine insurance placed in the territory of the Grantee will be deemed an eligible Foreign Exchange Cost, if otherwise eligible under Section C.7(a).

(c) Any motor vehicle financed under the Grant will be of United States manufacture, except as A.I.D. may otherwise agree in writing.

Article C: Procurement Provisions (Continued)

(d) Transportation by air, financed under the Grant, of property or persons, will be on carriers holding United States certification, to the extent service by such carriers is available. Details on this requirement will be described in a Project Implementation Letter.

SECTION C.2. Eligibility Date. No goods or services may be financed under the Grant which are procured pursuant to orders or contracts firmly placed or entered into prior to the date of this Agreement, except as the Parties may otherwise agree in writing.

SECTION C.3. Plans, Specifications, and Contracts. In order for there to be mutual agreement on the following matters, and except as the Parties may otherwise agree in writing:

(a) The Grantee will furnish to A.I.D. upon preparation,

(1) any plans, specifications, procurement or construction schedules, contracts, or other documentation relating to goods or services to be financed under the Grant, including documentation relating to the prequalification and selection of contractors and to the solicitation of bids and proposals. Material modifications in such documentation will likewise be furnished A.I.D. on preparation;

(2) such documentation will also be furnished to A.I.D., upon preparation, relating to any goods or services, which, though not financed under the Grant, are deemed by A.I.D. to be of major importance to the Project. Aspects of the Project involving matters under this subsection (a)(2) will be identified in Project Implementation Letters;

(b) Documents related to the prequalification of contractors, and to the solicitation of bids or proposals for goods and services financed under the Grant will be approved by A.I.D. in writing prior to their issuance, and their terms will include United States standards and measurements;

(c) Contracts and contractors financed under the Grant for engineering and other professional services, for construction services, and for such other services, equipment or materials as may be specified in Project Implementation Letters, will be approved by A.I.D. in writing prior to execution of the contract. Material modifications in such contracts will also be approved in writing by A.I.D. prior to execution; and

Article C: Procurement Provisions (Continued)

(d) Consulting firms used by the Grantee for the Project but not financed under the Grant, the scope of their services and such of their personnel assigned to the Project as A.I.D. may specify, and construction contractors used by the Grantee for the Project but not financed under the Grant, shall be acceptable to A.I.D.

SECTION C.4 Reasonable Price. No more than reasonable prices will be paid for any goods or services financed, in whole or in part, under the Grant. Such items will be procured on a fair and, to the maximum extent practicable, on a competitive basis.

SECTION C.5 Notification to Potential Suppliers. To permit all United States firms to have the opportunity to participate in furnishing goods and services to be financed under the Grant, the Grantee will furnish A.I.D. such information with regard thereto, and at such times, as A.I.D. may request on Project Implementation Letters.

SECTION C.6 Shipping.

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

(b) Costs of ocean or air transportation (of goods or persons) and related delivery services may not be financed under the Grant, if such goods or persons are carried: (1) on an ocean vessel under the flag of a country not, at the time of shipment, identified under the paragraph of the Agreement entitled "Procurement Source: Foreign Exchange Costs," without prior written A.I.D. approval; or (2) on an ocean vessel which A.I.D., by written notice to the Grantee, has designated as ineligible, or (3) under an ocean vessel or air charter which has not received prior A.I.D. approval.

(c) Unless A.I.D. determines that privately owned United States-flag commercial ocean vessels are not available at fair and reasonable rates for such vessels, (1) at least fifty percent (50%) of the gross tonnage of all goods (computed separately for dry bulk carriers, dry cargo liners and tankers) financed by A.I.D. which may be transported on ocean vessels will be transported on privately owned United States-flag commercial vessels, and (2) at least fifty percent (50%) of the gross freight revenue generated by all shipments financed

by A.I.D. and transported to the territory of the Grantee on dry cargo liners shall be paid to or for the benefit of privately owned United States-flag commercial vessels. Compliance with the requirements of (1) and (2) of this subsection must be achieved with respect to both any cargo transported from U.S. ports and any cargo transported from non-U.S. ports, computed separately.

SECTION C.7. Insurance

(a) Marine insurance on goods financed by A.I.D. which are to be transported to the territory of the Grantee may be financed as a Foreign Exchange Cost under this Agreement provided (1) such insurance is placed at the lowest available competitive rate, and (2) claims thereunder are payable in the currency in which such goods were financed or in any freely convertible currency. If the Grantee (or government of Grantee), by statute, decree, rule, regulation, or practice discriminates with respect to A.I.D.-financed procurement against any marine insurance company authorized to do business in any State of the United States, then all goods shipped to the territory of the Grantee financed by A.I.D. hereunder will be insured against marinerisks and such insurance will be placed in the United States with a company or companies authorized to do a marine insurance business in a State of the United States.

(b) Except as A.I.D. may otherwise agree in writing, the Grantee will insure, or cause to be insured, goods financed under the Grant imported for the Project against risks incident to their transit to the point of their use in the Project; such insurance will be issued on terms and conditions consistent with sound commercial practice and will insure the full value of the goods. Any indemnification received by the Grantee under such insurance will be used to replace or repair any material damage or any loss of the goods insured or will be used to reimburse the Grantee for the replacement or repair of such goods. Any such replacements will be of source and origin of countries listed in A.I.D. Geographic Code 935 as in effect at the time of replacement, and, except as the Parties may agree in writing, will be otherwise subject to the provisions of the Agreement.

SECTION C.8. U.S. Government-Owned Excess Property. The Grantee agrees that wherever practicable, United States Government-owned excess personal property, in lieu of new items financed under the Grant, should be utilized. Funds under the Grant may be used to finance the costs of obtaining such property for the Project.

Article D: Termination; Remedies.

SECTION D.1. Termination. Either Party may terminate this Agreement by giving the other Party 30 days written notice. Termination of this Agreement will terminate any obligations of the Parties to provide financial or other resources to the Project pursuant to this Agreement, except for payment which they are committed to make pursuant to noncancellable commitments entered into with third parties prior to the termination of this Agreement. In addition, upon such termination A.I.D. may, at A.I.D.'s expense, direct that title to goods financed under the Grant to be transferred to A.I.D. if the goods are from a source outside Grantee's country, are in a deliverable state and have not been offloaded in ports of entry of Grantee's country.

SECTION D.2. Refunds.

(a) In the case of any disbursement which is not supported by valid documentation in accordance with this Agreement, or which is not made or used in accordance with this Agreement, or which was for goods or services not used in accordance with this Agreement, A.I.D., notwithstanding the availability or exercise of any other remedies under this Agreement, may require the Grantee to refund the amount of such disbursement in U.S. Dollars to A.I.D. within sixty (60) days after receipt of a request therefor.

(b) If the failure of Grantee to comply with any of its obligations under this Agreement has the result that goods or services financed under the Grant are not used effectively in accordance with this Agreement, A.I.D. may require the Grantee to refund all or any part of the amount of the disbursements under this Agreement for such goods or services in U.S. Dollars to A.I.D. within sixty days after receipt of a request therefor.

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

(d) (1) Any refund under subsection (a) or (b), or (2) any refund to A.I.D. from a contractor, supplier, bank or other third party with respect to goods or services financed under the Grant, which refund relates to an unreasonable price for or erroneous invoicing of goods or services, or to goods that did not conform to specifications, or to services that were inadequate, will (A) be made available first for the cost of goods and services required for the Project, to the extent justified, and (B) the remainder, if any, will be applied to reduce the amount of the Grant.

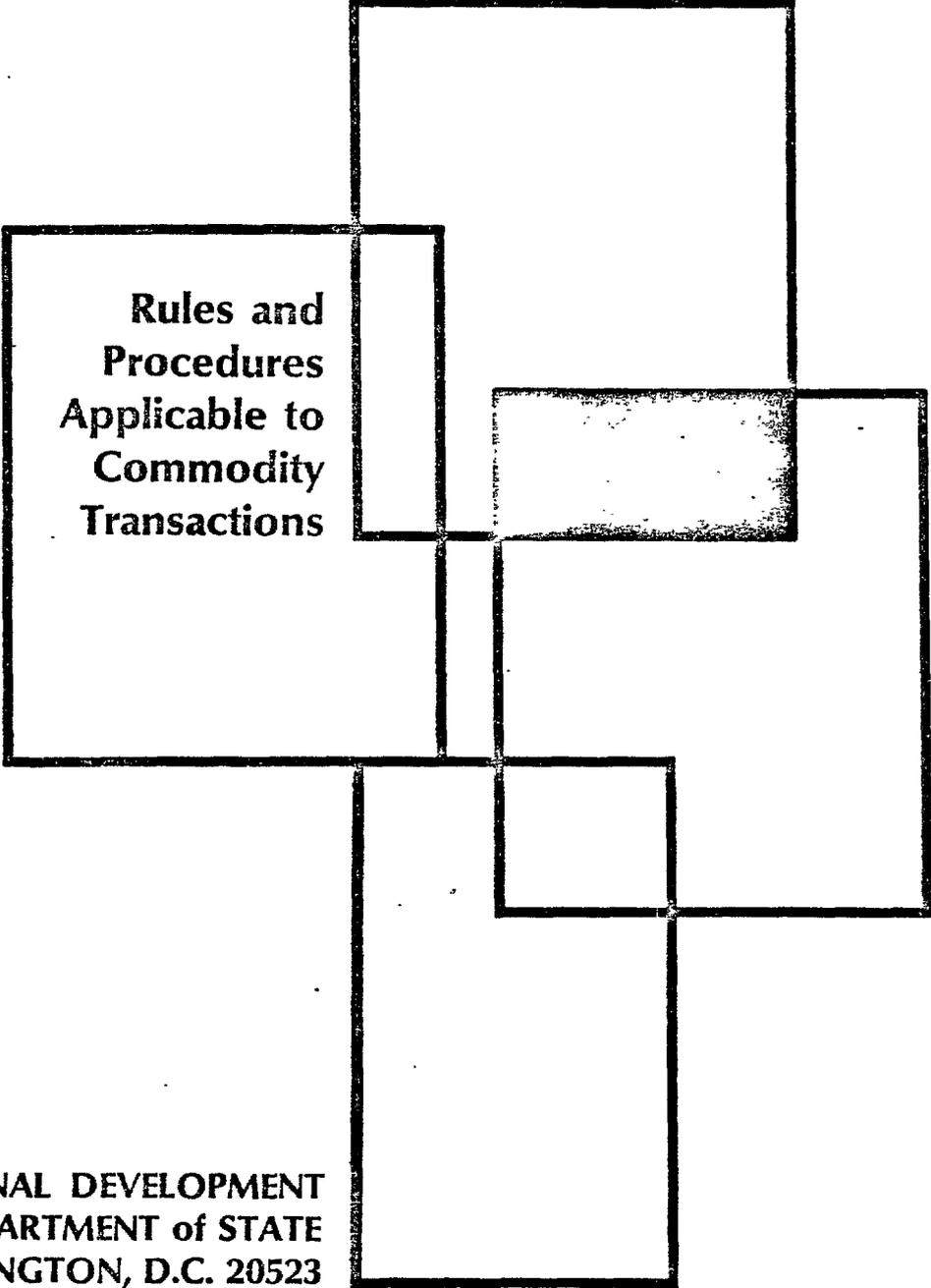
Article D: Termination; Remedies (Continued)

(e) Any interest or other earnings on Grant funds disbursed by A.I.D. to the Grantee under this Agreement prior to the authorized use of such funds for the Project will be returned to A.I.D. in U.S. Dollars by the Grantee.

SECTION D.3. Nonwaiver of Remedies. No delay in exercising any right or remedy accruing to a Party in connection with its financing under this Agreement will be construed as a waiver of such right or remedy.

SECTION D.4. Assignment. The Grantee agrees, upon request, to execute an assignment to A.I.D. of any cause of action which may accrue to the Grantee in connection with or arising out of the contractual performance or breach of performance by a party to a direct U.S. Dollar contract with A.I.D. financed in whole or in part out of funds granted by A.I.D. under this Agreement.

A.I.D. Regulation 1



**Rules and
Procedures
Applicable to
Commodity
Transactions**

**AGENCY for INTERNATIONAL DEVELOPMENT
DEPARTMENT of STATE
WASHINGTON, D.C. 20523**

APPENDIX A

NOTE TO USERS

The attached is a compilation in loose-leaf format of AID Regulation 1, 1971 Edition, issued April 14, 1971, in 36 Federal Register 72, Part II, which incorporates into the text of the Regulation the amendments issued after the 1971 publication. To facilitate the incorporation of future revisions into the text, subsequent amendments will be distributed as replacement pages for the appropriate section of the text.

Following is a listing of the amendments to AID Regulation 1, 1971 Edition, including the Federal Register (F.R.) reference, the date of publication in the Federal Register, the AID Regulation 1 sections affected, and a brief description of the revision.

1. 36 F.R. 121 of 6/23/71, Sections 201.21 and 201.31 -- revised AID's marking requirements.
2. 36 F.R. 21190 of 11/4/71, Sections 201.15, 201.31, and 201.52 -- revised U.S.-flag shipping requirements and requirements regarding the distribution of shipping documents.
3. 37 F.R. 12792 of 6/29/72 -- made miscellaneous corrections to the text.
4. 37 F.R. 18192 of 9/8/72, Section 201.11 -- added Thailand as a Geographic Code 910 country.
5. 37 F.R. 26516 of 12/13/72, Section 201.11 -- revised Geographic Code 941.
6. 38 F.R. 13640-13643 of 5/24/73, Sections 201.52, and 201.61, 201.65, 201.72, and 201.73 -- made changes regarding commissions, service payments, and discounts. Revised Appendix A to publish the May 1, 1973, version of the Supplier's Certificate, form AID 282.
7. 38 F.R. 18015 of 7/6/73 -- deleted Appendix C, the Certificate Concerning Commission and Service Payments, form AID 283, because the form is no longer required.
8. 39 F.R. 17946 and 17947 of 5/22/74, Sections 201.22, 201.23, and 201.24 -- revised the advertising requirements for negotiated procurement and changed the section regarding formal bid procedures. Deleted Appendix B, which detailed the information importers under negotiated procurement had

to furnish, because such information is no longer required. Section 201.31 was revised to drop the requirement that shipping documents be airmailed to USAID Controllers. This requirement may apply in certain instances; the letter of credit will so inform the supplier.

9. 40 F.R. 8947 of March 4, 1975. Sec. 201.11(b)(4) revised to delete Egypt and Syria from the list of countries excluded from Code 941.

10. 40 F.R. 34112 and 34113 of August 14, 1975. Section 201.11(b)(4) is revised --

a. To add Cambodia and South Vietnam to the excluded countries under Code 899 - "Free World."

b. To add Saudi Arabia and Republic of Congo, Brazzaville, to the excepted countries under Code 941 - "Selected Free World," and to delete Israel as an excepted country under that code.

11. 41 F.R. 48732 of November 5, 1976, Section 201.65 -- deleted paragraph (n) on commissions for sales to Cambodia, Laos, and Vietnam. Section 201.72 -- revised responsibilities of banks.

12. 43 F.R. 25997-26001 of June 16, 1978 revised Regulation 1 as follows:

a. Section 201.11 was amended to allow use of components from the cooperating country and countries included in Code 941 in unlimited amounts regardless of the authorized source, and the summary of Geographic Codes was amended to delete the Ryukyu Islands from Code 000 and add Iran to the list of countries excluded from Code 941.

b. The revision of Section 201.12 authorizes financing of incidental services not in excess of \$50,000 or 25% of the total contract, even when such services are procured with local currency.

c. Section 201.13, paragraph (b)(1) has been revised to provide that, unless otherwise authorized, AID will finance freight costs only on vessels under flag registry of the United States or the cooperating country when Code 941 is authorized for procurement. If there is a general unavailability of such vessels, AID will authorize use of vessels under flag registry of any Code 941 country. The revision to this section also authorizes financing of shipment beyond the point of entry in the cooperating country under certain circumstances if intermodal transportation service is used.

d. The requirement for filing freight rates with AID/W for voyages originating outside the United States has been deleted from Section 201.13, Section 201.52, and Section 201.67.

e. Section 201.14 makes bonds and guaranties eligible for financing when payable in dollars, local currency, or other freely convertible currency.

f. In Section 201.22, the value of formal procurements which must be advertised is raised from \$5,000 to \$25,000.

g. As Section 201.25 has been revised, the purchase price for custom-made commodities must exceed \$200,000 if advance or progress payments are to be authorized, and the bond or guaranty covering such payments must be payable to the B/G.

h. Editorial changes have been made to Section 201.26 and Section 201.52(a)(5)(i).

i. Section 201.41 and Section 201.84 have changed the record retention requirements and the time during which AID will endeavor to request any refunds from 5 years to 3 years.

j. A new price rule for formal competitive bidding has been added to Section 201.63.

k. The payment address requirement has been deleted from Section 201.71.

l. The Supplier's Certificate, form AID 282, dated 1-78, has been published as revised Appendix A.

* * 13. 45 F.R. 77198 and 77199 of October 30, 1980 revised Regulation 1 as follows:

a. The language regarding eligible transportation costs, as published on June 16, 1978 in the Federal Register (43 FR 25997) unintentionally restricted AID financing of land transportation costs. This amendment makes it clear that AID normally will finance rail, truck or other land transportation costs to the point of entry in the cooperating country.

b. Another change to the transportation regulations provides that if Code 941 (Selected Free World) has been authorized for procurement of commodities, AID may authorize use of vessels under flag registry of any country included in Code 941 to obtain broadened competition for shipment of bulk commodities.

c. Southern Rhodesia is deleted from the list of countries excluded from AID Geographic Code 941 (Selected Free World). AID has determined that Zimbabwe, as Southern Rhodesia is now known, is an eligible source country under Code 941. * *

* * New Material

* *

d. AID marking regulations are amended to delete the requirement to use the Alliance for Progress (flaming torch) emblem and to delete the requirement that AID emblems be displayed while loading and unloading vessels whose cargoes consist entirely of AID-financed goods. In addition, this revision shows that the authority for waiving marking requirements has been transferred from the Office of Small Business to the Regional Assistant Administrators.

e. The price provisions are amended to delete references and definitions relating to a method of commission payment which is no longer used.

f. A provision concerning interest on AID refund claims is added to explain that interest will be charged from the date of payment to the supplier at the rate established by the Secretary of the Treasury under the Internal Revenue Code, 26 U.S.C. 6621(b).

g. Other editorial changes have also been made. * *

Additional copies of AID Regulation 1 may be obtained from Distribution Branch, Agency for International Development, Washington, D.C. 20523 (202/632-8410).

USERS ARE CAUTIONED THAT IN THE EVENT OF ANY DISCREPANCY BETWEEN THIS PUBLICATION AND AID REGULATION 1 AS IT APPEARS IN THE FEDERAL REGISTER AS FROM TIME TO TIME AMENDED, IT IS THE FEDERAL REGISTER VERSION WHICH PREVAILS.

* * New Material

A-1

"Title 22 - Foreign Relations

Chapter II. Agency for International Development, Department of State

[AID Regulation 1]"

**PART 201—RULES AND PROCEDURES
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(10-16-70))

AUTHORITY: The provisions of this Part
201 issued under sec. 621, 75 Stat. 424; 22
U.S.C. 2381.

SOURCE: The provisions of this Part 201
appear at A.I.D. Regulation 1. 36 F.R. 7096,
Apr. 14, 1971, unless otherwise noted.

**Subpart A—Definitions and Scope of
This Part**

§ 201.01 Definitions.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(s) *Supplier's Certificate*. "Supplier's Certificate" means AID Form 282 (1-78) "Supplier's Certificate and Agree-

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

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

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

(v) [Reserved]

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

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

[A.I.D. Regulation 1, 36 F.R. 7096, Apr. 14, 1971, as amended at 37 F.R. 12792, June 29, 1972; 38 F.R. 13641, May 24, 1973; 38 F.R. 18016, July 6, 1973]

§ 201.02 Scope and application.

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

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

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

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

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

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

(e) Subpart E contains provisions relating to

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

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

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

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

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

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

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

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

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

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

§ 201.10 Purpose.

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

§ 201.11 Eligibility of commodities.

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

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

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

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

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

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

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

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

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

(c) For the purpose of calculating eligible components under this subdivision, "authorized source countries" shall include the cooperating country itself and all AID Geographic Code 941 countries regardless of the eligible source code authorized in the implementing document.

(3) *Waiver provision*. AID/W may from time to time waive or modify the requirements of subparagraph (2) (ii) of this paragraph if in its view such action is necessary to achieve A.I.D.'s objective of conformity with normal industry practices.

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

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

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

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

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

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

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

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

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

Iran,

*

*Revised

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

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

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

(v) [Reserved]

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

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

[A.I.D. Regulation 1, 36 F.R. 7096, Apr. 14, 1971, as amended at 37 F.R. 12792, June 29, 1972; 38 FR 13641, May 24, 1973; 38 FR 18016, July 6, 1973]

§ 201.02 Scope and application.

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

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

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

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

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

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

(e) Subpart E contains provisions relating to

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

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

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

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

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

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

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

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

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

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

§ 201.10 Purpose.

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

§ 201.11 Eligibility of commodities.

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

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

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

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

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

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

(3) Under any ocean or air charter which has not received prior approval by AID/W.

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

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

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

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

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

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

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

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

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

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

[A.I.D. Regulation 1, 36 F.R. 7096, Apr. 14, 1971, as amended at 37 F.R. 12792, June 29, 1972; 37 F.R. 18192, Sept. 8, 1972; 37 F.R. 26516, Dec. 13, 1972.]

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

§ 201.12 Eligibility of incidental services.

Incidental services may be financed under the same implementing document which makes funds available for the procurement of equipment if, (a) Such services are specified in the purchase contract relating to the equipment; and (b) The price satisfies the requirements of § 201.53; and (c) The portion of the total purchase contract price attributable to such services does not exceed \$50,000 or 25 percent of the total purchase contract, whichever is less.

*** § 201.13 Eligibility of delivery services.**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(v) Which are attributable to brokerage commissions which exceed the limitations specified in § 201.65(1) or to address commissions, dead freight, or demurrage.

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

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

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

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

§ 201.14 Eligibility of bid and performance bonds and guaranties.

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

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

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

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

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

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

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

will determine and advise

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

(d) *Privately owned U.S.-flag commercial vessels.* For purposes of this section the term "privately owned U.S.-flag commercial vessels" shall not include any vessel which, subsequent to September 21, 1961, shall have been either built outside the United States, rebuilt outside the United States, or documented under any foreign registry until such vessel shall have been documented under the laws of the United States for a period of 3 years.

[A.I.D. Reg. 1, 36 F.R. 7096, Apr. 14, 1971, as amended at 36 F.R. 21190, Nov. 4, 1971; 37 F.R. 12782, June 29, 1972; 43 F.R. 25998 and 25999, June 16, 1978]

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Subpart C—Procurement Procedures—Responsibilities of Importers.

§ 201.20 Purpose.

This subpart prescribes procurement procedures which shall apply to an importer whenever a commodity procurement is to be financed by A.I.D.

§ 201.21 Notice to supplier.

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

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

(b) The identification number of the implementing document;

(c) All additional information prerequisite to A.I.D. financing and contained in the instructions from the borrower/grantee to the importer (for example, eligible source of commodity, periods during which deliveries must be made, shipping provisions, and documentation requirements); and, where appropriate,

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

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

§ 201.22 Formal competitive bid procedures.

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

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

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

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

(3) *Statement regarding this Part 201.* The invitation for bids shall expressly indicate the extent to which any resulting contract is subject to the requirements of this Part 201.

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

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

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

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

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

[A.I.D. Regulation 1, 36 F.R. 7098, Apr. 14, 1971, as amended at 37 F.R. 12792, June 29, 1972]

§ 201.52 Required documents.

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

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

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

(a) The name and address of the importer;

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

(c) The total gross sales price;

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

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

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

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

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

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

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

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

(iii) [Reserved]

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

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

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

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

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§ 201.53 Final date for presentation of documents.

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

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

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Subpart G—Price Provisions

§ 201.60 Purpose and applicability of this subpart.

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

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

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

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

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

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

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

§ 201.61 Meaning of terms in this subpart.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(1) The source country; or

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

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

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

(2) Affords the purchaser substantially equivalent serviceability.

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

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

(o) [Reserved]

* (p) (Reserved)

(q) [Reserved]

(r) [Reserved]

* (s) (Reserved)

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

* (u) (Reserved)

(v) [Reserved]

(w) [Reserved]

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

* (y) (Reserved) *

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

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

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

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

§ 201.62 Responsibilities of borrower/grantee and of supplier.

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

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

(2) Insure that the importer

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

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

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

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

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§ 201.63 Maximum prices for commodities.

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

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

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

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

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

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

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

(i) Under formal competitive bid procedures; or

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(i) *Rule for formal competitive bid procedures.* A price resulting in an award under a formal competitive bid procedure conducted in accordance with § 201.22 will satisfy the price requirements of this § 201.63: *Provided*, That AID determines that the formal bid procedure attracted a sufficient number of independent, responsive bids to assure that competition was achieved.

§ 201.64 Application of the price rules to commodities.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

§ 201.65 *Commissions, service payments, and discounts.*

(a)-(f) [Reserved]

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

§ 201.66 Side payments.

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

§ 201.67 Maximum freight charges.

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

(2) *Maximum charter rates*. (1) A.I.D. will not finance ocean freight under any charter which has not been submitted to and received prior approval by AID/W. A.I.D. will not approve a charter if the freight rate exceeds

(a) The rate prevailing for similar shipments;

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

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

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

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

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

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

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

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

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

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

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

(ii) Refunds of despatch, supported by the vessel's signed lay time statement(s), must be transmitted to the

Office of Financial Management, A.I.D., Washington, D.C.

§ 201.65 and every payment or allowance required to be made through the bank transfer procedure in accordance with paragraph (n) of this § 201.65, shall be presumed conclusively to have been paid from AID funds and shall thereby be subject to the requirements of this part 201.

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

(k) *Report of commissions and other payments or benefits*. All commissions and other payments, credits, allowances, or benefits of any kind paid, made or given by the supplier in connection with AID-financed sales to or for the benefit

§ 201.69 Commodity price subject to escalation.

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

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

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

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

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

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

(4) Accords with recognized trade practice.

Subpart H—Rights and Responsibilities of Banks

§ 201.70 Purpose.

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

§ 201.71 Terms of letters of credit.

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

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

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

§ 201.72 Making payments.

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

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

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

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

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

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

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

(i). The bank shall not be required to determine whether the supplier's invoice meets the detailed requirements of §201.52(a)(2)(i).

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

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

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

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

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

[A.I.D. Regulation 1, 36 FR 7096, Apr. 14, 1971, as amended at 38 FR 13641, May 24, 1973]; 41FR48732, Nov. 5, 1976.

§ 201.73 Limitations on the responsibilities of banks.

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

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

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

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

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thereon, to be submitted by it or to make any independent investigation as to the truth or accuracy of any information or statement contained therein.

(d) *Protection of bank making payment.* Acceptance by the bank of any document in the ordinary course of business in good faith as being a genuine and valid document and sufficient in the premises, and the delivery thereof to A.I.D., shall constitute full compliance by the bank with any provision of this part, the letter of commitment or the request for the opening of a special letter of credit requiring delivery of a document of the sort that the document actually so delivered purports to be. The bank shall be entitled to receive and retain reimbursement of the amount of all payments made by it against documents so accepted, notwithstanding that such payments may be made in connection with a purchase in excess of the price calculated in accordance with the applicable provisions of Subpart G.

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

(f) *Bank procedures with regard to certain suppliers.* In the event a bank receives written advice from A.I.D. concerning special conditions which are applicable to transactions of particular suppliers, such bank will use reasonable care to maintain procedures designed to ensure that accommodations thereafter furnished by it with respect to such suppliers by means of the issuance, confirmation, advising or transfer of letters of credit, or the making of payments not under letters of credit shall reflect such special conditions. While banks are expected to comply with the foregoing obligation, a bank which has used reasonable care to establish and maintain such procedures will not be responsible for any inadvertent furnishing of any such accommodation not containing applicable special conditions or the making of payment thereunder. For the purpose

of ascertaining whether the supplier is a person or organization subject to an A.I.D. advice concerning special conditions applicable to its transactions under this paragraph, a bank, in making payment under a letter of credit or otherwise, may consider as supplier the person or organization issuing the invoice.

(g) *Provision of implementing documents.* A bank shall not be responsible for compliance with any provision of an implementing document other than a letter of commitment or a request for the opening of a special letter of credit.

[A.I.D. Regulation 1, 35 FR 7096, Apr. 14, 1971, as amended at 38 FR 13641, May 24, 1973]

§ 201.74 Additional documents for A.I.D.

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

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

(b) Payment instructions received from the approved applicant;

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

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

§ 201.75 Termination or modification.

If A.I.D. directs that the delivery of commodities be terminated, orders that title to commodities be vested in it, or modifies any implementing document concerning the disposition of documents, A.I.D. shall give written notice thereof to the banks holding applicable letters of commitment or requests for the opening of special letters of credit and shall instruct each bank with regard to the disposition of documents. Each such bank shall be relieved of any liability whatsoever to the approved applicant for anything done or omitted to be done under instruction of A.I.D. Notwithstanding the foregoing, a bank shall

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comply with the instructions of A.I.D. only to the extent that it may do so without impairing or affecting any irrevocable obligation to any person or organization except an approved applicant, and in the event the bank shall incur any costs, expenses, or liabilities, including any liability to the approved applicant, it shall be repaid and reimbursed by A.I.D. in respect thereof.

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

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

§ 201.80 Purpose.

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

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

§ 201.81 Rights of A.I.D. against borrower/grantees.

If any transaction financed hereunder violates the requirements of this part or any U.S. statute or any rule or regulation of A.I.D. promulgated under any such statute, A.I.D. may require the borrower/grantee to refund the amounts A.I.D. determines are attributable to such violation and may exercise any right of acceleration or termination contained in the implementing document. The borrower/grantee shall be deemed to have agreed to make such refund or accelerated payment promptly upon request by A.I.D. and shall be deemed to have consented to any modification of the implementing document determined by A.I.D. to be necessary to reflect any such refund or acceleration.

* § 201.82 Rights of AID against suppliers

Without limiting the responsibility of the borrower/grantee or other parties, AID may require an appropriate refund to it by a supplier under any transaction which violates the requirements of this part, whenever in AID's opinion the failure of the supplier to comply with the rules and other requirements of this part has contributed to such violation. Any refund requested will include interest from the time of payment to the supplier. Interest will be charged at the rate established by the Secretary of the Treasury in accordance with the Internal Revenue Code, 26 U.S.C. 6621(b).

* Revised

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

No right reserved to A.I.D. in this subpart to seek a refund from a borrower/grantee, and no exercise of such right, whether or not successful, shall in any way limit or affect, under the doctrine of the election of remedies or otherwise, A.I.D.'s rights against a supplier under this Subpart I or under the laws of the United States, or of any other country or political subdivision thereof, nor shall any right or remedy herein reserved to A.I.D. against a supplier in any way derogate from or otherwise limit any other rights or remedies which may accrue to A.I.D. under such laws.

§ 201.84 Limitation on period for making refund requests.

A.I.D. will endeavor, but shall not be bound, to make any requests for refunds from a borrower/grantee within three years from the date of the last disbursement of A.I.D. funds for the transaction to which such request relates.

§ 201.85 Waiver and amendment authority.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

8. Any commodity supplied under said contract:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Date.

Commodity Supplier Carrier Insurer

Place executed (city, state, country).

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

INSTRUCTIONS FOR COMPLETING FORM AID 232

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

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

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

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

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

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

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

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

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

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

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

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

INSTRUCTIONS FOR INDIVIDUAL BLOCKS

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

Block 2: For AID use only.

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

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

Block 5: Enter the name of the vessel.

Block 6: Enter the flag of registry.

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

Block 8: Commodity Information.

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

b: Enter the Bill of Lading weight.

c: Enter the Bill of Lading measurement.

Block 9: Invoice Information.

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

b: Enter the invoice date.

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

Block 10: Contract Information.

a: Enter the date of the contract.

b: Enter the total contract amount.

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

Block 11: Supplier Information.

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

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

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

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

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

Block 12: Insurance Information.

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

a: Enter the insured value of the shipment.

b: Enter the total premium.

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

Block 13: Transportation Information.

a: Check appropriate vessel type.

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

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

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

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

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

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

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

**AID 282 (1-78)—INVOICE-AND-CONTRACT
ABSTRACT**

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

(Sec. 621, Foreign Assistance Act of 1961, as amended, 75 Stat. 4214; (22 U.S.C. 2381) 22 CFR 201.85.)

APPENDIX B—(Reserved)

[39 FR 17946, May 22, 1974]

APPENDIX C—RESERVED

APPENDIX D—APPLICATION FOR APPROVAL OF
 COMMODITY ELIGIBILITY

AID 11(10-16-70)

Budget Bureau No. 24-R0055

Approval Expires 5-31-74

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

TRANSACTION IDENTIFICATION

1. A.I.D. No. _____
2. Payment Terms:
 Letter of Credit No. _____
 Date _____
 Name and Address of U.S. Bank _____
 Other Payment Terms _____
3. Import License No. _____
 Date _____
4. Supplier's Relationship to Authorized Source Country:
 Corporation or Partnership Organized under Source Country Laws.
 Individual: Citizen or Resident of Source Country.
 Controlled Foreign Corporation.
 Other.
5. Supplier's Name and Address _____
6. Importer's Name and Address _____
7. Contract:
 Total Amount _____
 Date _____
8. Shipping Plans as of Time of Application:
 a. Partial Shipment No Yes \$_____
- b. Loading Port _____
- c. Destination Port _____
- d. Month(s) of Shipment _____

COMMODITY IDENTIFICATION

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

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

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

15. Information about Producers and Plants:

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

16. Remarks and Additional Information _____

17.:

SUPPLIER'S CERTIFICATIONS

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

1. The supplier has contracted for the sale of the commodity described on this form to the importer whose name appears in block 6, and the supplier has either attached to this form a copy of such contract or has furnished in block 2 information concerning a letter of credit confirmed or advised in his favor under a payment obligation assumed by the importer in the sales contract.

2. The supplier has filled in the applicable portions of this form and certifies to the correctness of the information shown herein.

3. The supplier agrees that the commodity will be shipped and invoiced in accordance with the information shown herein; that if any change in commodity identification takes place after A.I.D. has approved this transaction, the supplier will resubmit this form to A.I.D. for review and further approval for financing in light of the changed commodity; and that this Commodity Approval Application which the supplier proposes to use as a basis for securing payment from A.I.D. funds, is in every respect the original or true copy of the original application approved by A.I.D. The supplier acknowledges that any commodity, other than a commodity described on this form from any supplier approved by A.I.D. below, is ineligible for A.I.D. financing with respect to the sale transaction for which this form must be submitted as a condition for payment.

4. The supplier certifies that he is an individual resident in a country included in the authorized source code; a nonresident citizen of a country included in the authorized source code; a corporation or partnership organized under the laws of a country included in the authorized source code; or a controlled foreign corporation (within the meaning of section 957 et seq. of the Internal Revenue Code) as attested by current information on file with the Internal Revenue Service of the United States (on IRS Form 959,2952,3646, or any substitute or successor forms) submitted by shareholders of the corporation. If the supplier is a controlled foreign corporation without a regular place

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

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

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

Typed or Printed Name and Title.....

Signature of Authorized Representative of Supplier

Date.....

18.:

A.I.D. APPROVAL

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

Expiration Date.....

Approved for A.I.D. Authorized Signature

Date.....

19.:

CERTIFICATE FOR PARTIAL SHIPMENT

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

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

Typed or Printed Name and Title.....

Signature of Authorized Representative of Supplier

Date.....

GENERAL INSTRUCTIONS

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

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

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

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

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

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

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

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

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

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

INSTRUCTIONS RELATING TO SPECIFIC ITEMS

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

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

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

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

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

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

Block 4: Check the appropriate box to indicate the supplier's relationship to a country in the authorized source code. This information is relevant to certification 4 in block 17. If the box for "Controlled Foreign Corporation" is checked, show the U.S. payment address in block 18. If "Other" is checked, furnish explanation of relationship in block 16.

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

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

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

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

(c) Enter the proposed destination port.

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

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

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

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

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

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

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

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

Special instructions—Blocks 12 through

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

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

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

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

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

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

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

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

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

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

Block 15: At the supplier's option, this information may be omitted from the original form and shown only on the duplicate copy which does not leave A.I.D.'s possession.

(a) Enter the name of the producer (e.g., the manufacturer, processor, assembler) and the location (city and State or country) of the plant where produced. "Same as block 5" may be entered when appropriate.

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

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

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

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

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

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