

(i) *Local Service Organization* means any person in Vietnam who performs services in connection with A.I.D-financed commodity, but not including:

- (1) a salaried employee of the supplier; or
- (2) a firm without a regular place of business in Vietnam which uses employees who are non-residents of Vietnam to perform services in Vietnam in connection with the goods, provided such employees perform similar services on a regional basis in a geographic area which includes Vietnam and provided such employees are not paid a salary directly or indirectly calculated as, or related to, a percentage of the amount of the sale.

(j) *Producer* means any person who himself or through employees grows, mines, manufactures, processes, or assembles the commodity in the form in which it is exported.

(k) *Regular place of business* means a permanent business establishment such as an office, sales outlet, or other fixed place of business, but does not include a mere postal address or box number or any casual or temporary use of facilities, or the premises of a commission agent, broker, or custodian acting in the ordinary course of his business as such for an enterprise which otherwise would have no regular place of business in the country.

(l) *Sales agent* means any person who is neither the importer nor a commission employee and who has contributed to securing the sale or to securing similar sales on a continuing basis for the supplier.

(m) *Secondary supplier* means any person who sells the goods without having produced them.

(n) *Service payment* means with respect to services performed in connection with commodities sold to an importer in Vietnam and covered by a Certificate for Suppliers to Vietnam, any payment or allowance by the supplier to any person, whether or not a sales agent, but not including (1) commission to a sales agent or commission employee; (2) salary payment to an officer or employee of the supplier; (3) inland, ocean or air freight, or costs related thereto, in connection with a shipment to Vietnam; (4) reimbursement to any person for air or ocean transportation expenses for travel to or from Vietnam; (5) cable or telephone expenses to or from Vietnam; (6) the cost of export packing, A.I.D. emblems, and export forms; and (7) if incurred solely in the United States, printing, publishing, advertising, and promotional expenses.

(o) *Supplier* means any individual or juridical entity which furnishes or which proposes to furnish commodities to an importer in Vietnam under A.I.D. financing.

Sub part 214-2.0 Certificate for Suppliers to Vietnam

§ 214-2.001 General Instructions

§ 214-2.001-1 Requirement for payment

A supplier to Vietnam will be informed in his letter of credit that the Certificate for Suppliers to Vietnam, countersigned by A.I.D., must be submitted by the supplier to the paying bank as a condition for receiving payment.

§ 214-2.001-2 Approval by A.I.D.

A.I.D. will signify its approval in Part III and return the original of the Certificate to the supplier if the form has been properly executed by the supplier and if the Agency has no objection to financing the commodity which the supplier has described, no objection to the eligibility of the supplier or the importer, and no objection to the procurement information provided in Parts I and II of the Certificate. If A.I.D. refuses approval, the Certificate will be returned unsigned with a statement explaining A.I.D.'s reasons for withholding approval.

§ 214-2.001-3 Conditional approval

(a) Approval subject to indemnity undertaking. In Part III, (D), A.I.D. may condition its approval of the Certificate upon submission by the supplier of an indemnity undertaking executed by an acceptable surety. Such a requirement may be imposed for shipments of certain commodities without regard to the identity of the supplier; for reasons related to prior experience with the supplier, with the importer, or with the sales agent; or for reasons relating to the circumstances surrounding the proposed procurement. An acceptable surety with respect to the execution of a Compliance Bond (A.I.D. Form 87) or Annual Compliance Bond (A.I.D. Form 97) is any surety whose name appears on the U. S. Treasury Department's List of Approved Surety Companies, Treasury List No. 270. An acceptable surety with respect to a letter-of-credit or bank-guarantee indemnity is any bank chartered under Federal or state law.

(b) Approval subject to inspection. In Part III, (E), A.I.D. may condition its approval upon submission by the supplier of an Approved Certificate of Inspection. In imposing such a condition, A.I.D. may specify the inspection firm or agree to defray the cost of the inspection from funds not included in the sale price. When inspection is required, the submission of an inspection certificate will become a requirement for payment.

(c) Approval subject to a price maximum. In Part III, (F), A.I.D. may condition its approval upon adherence by the supplier to a specific price maximum. A price maximum will not, however, relieve the supplier from the effect of other price restrictions set forth in Certification 1.

§ 214-2.001-3 Supplier certifications

In Part IV the supplier is required to make a series of certifications to A.I.D. and to signify his adherence to these undertakings by affixing his signature on line 39. After payment to the supplier is accomplished, A.I.D. will review the details of the transaction and determine whether the supplier has in any way breached his certifications. If a breach is found, A.I.D. will notify the supplier (and any surety participating in the transaction) in writing, stating the nature of the violation and the amount of refund requested from the supplier as a result of the violation.

§ 214-2.001-4 Drawdown demand on indemnity undertaking

If after post audit A.I.D. notifies the supplier and the participating surety that in connection with a breach of one or more certifications a refund is claimed, the supplier shall have 30 days in which to object to the refund demand. If no such objection is raised, the decision of the A.I.D. Controller shall become final and shall allow A.I.D. to demand an immediate drawdown on the indemnity undertaking without any further formality. If within 30 days of receiving notice thereof the supplier objects in writing to the grounds put forward by A.I.D. to sustain the claim, the determination of the Controller will be referred for review to the A.I.D. Board of Compliance Appeals. The Board will review the evidence and at informal hearings will consider arguments presented by interested parties. The Board will advise the Administrator of its conclusions. If the Administrator accepts an opinion of the Board upholding the validity of the claim and so notifies the supplier and the surety, A.I.D. may demand drawdown of the indemnity undertaking without further formality.

§ 214-2.001-5 Obtaining forms

Copies of this and related forms may be obtained in limited quantities from banks holding A.I.D. Letters of Commitments, field offices of the Department of Commerce or the Distribution Branch, Agency for International Development, Department of State, Washington, D. C., 20523. The Certificate and any of the related forms may be overprinted with the supplier's name and address. Photo-reproductions identical in content and size with A.I.D. printed forms may be submitted both as originals and as copies.

§ 214-2.001-6 Related forms

(a) A.I.D. Bill of Lading (A.I.D. Form 93) If the supplier is required by his contract or by his letter of credit to make ocean transportation arrangements in behalf of the importer, the supplier shall indicate the amount of ocean transportation on his invoice and shall submit to the paying bank as a condition for securing reimbursement for ocean freight one original and two copies of the carrier's regular bill of lading. In addition, unless waived by A.I.D., the supplier shall submit one original and one copy of the A.I.D. Bill of Lading (A.I.D. Form 93) reproduced in § 214-4.002. The A.I.D. Bill of Lading, properly executed by the carrier or his representative, shall be physically attached to the carrier's regular bill of lading and shall constitute a document required for reimbursement for ocean freight.

(b) Marine Insurance Certificate (A.I.D. Form 327) If the supplier is required by his contract or by his letter of credit to secure marine insurance for the account of the importer, the supplier shall indicate on his invoice the amount paid by him for the premium for such insurance and shall submit one original of the Certificate of Marine Insurance reproduced in § 214-5.002. The Certificate of Marine Insurance shall be executed by the marine insurer or by its authorized representative and shall be submitted as a document required for reimbursement of the marine insurance premium.

§ 214-2.001-7 Submitting forms

One original and one copy of the Certificate for Suppliers to Vietnam shall be submitted for review and approval to the Vietnam Sales Approval Division, Room 714, Rosslyn Plaza, Bureau for Vietnam Affairs, Agency for International Development, Washington, D. C., 20523. Requests for information should also be directed to this address. Before submitting the Certificate for A.I.D. approval, a supplier should fill out Parts I and II of the Form in their entirety except for *Blocks 11, 12, and 14*, if the information requested for these blocks is not available at the time. The information for these blocks should be provided, however, before an approved Certificate is submitted by a supplier to the paying bank as a condition for payment.

§ 214-2.002 Specific Instructions for filling out Parts I and II

§ 214-2.002-1 Transaction Identification Part I-A:

Block 1) Enter the number of the A. I. D. Authorization Document. This number will be stated in the letter of credit and usually on the purchase order or other sales contract documents which the supplier receives from the importer.

Block 2) Enter the number and the expiration date of the letter of credit in the block and enter the name and address of the U. S. confirming bank in Part II-(2). If payment terms are not by letter of credit, enter *Other* in *Block 2* and clarify in Part II-(2).

Block 3) Enter the gross amount of the letter of credit and state separately in Part II-(3) the amount in the credit allowed for the FOB/FAS price, ocean freight, and marine insurance.

Block 4) Enter the Supplier Identification Number assigned by A. I. D. If no identification number has been assigned, leave blank. A. I. D. will assign and itself enter an identification number to new suppliers. This number should thereafter be used by the supplier in all subsequent transactions.

Block 5) Enter the Zip Code Number for the supplier's sales outlet. Non-U. S. Suppliers should enter the English spelling of the country in which the supplier maintains his sales outlet.

Block 6) Enter the importer's matriculation number and furnish in Part II-(6) the importer's full name and address. (Each Vietnamese importer is assigned a matriculation number by the Government of Vietnam. This number can be found on the letter of credit and usually on the purchase order or other sales contract documents received from the importer.)

Block 7) If the gross contract price (including freight and marine insurance) is entirely payable in dollars, enter the gross contract price. If the gross contract price includes a partial payment in local currency, enter in dollars the gross contract price and, in parentheses, furnish the amount payable in dollars. (The gross contract price should not be reduced by the amount indicated in *Blocks 34* or *35* as payable to a sales agent or service organization as a commission or service payment.)

Block 8) If no commission or service payment is indicated in *Block 34* or *35*, enter in this block the gross contract price. Otherwise, subtract the commission or service payment from the gross contract price and enter the remainder. (This is the net amount payable to the supplier for the commodity sale described on this certificate and should correspond to the net amount claimed on the supplier's invoice.)

Block 9) Enter either *FAS* or *FOB Vessel* and the name of the port of loading.

Block 10) Enter the total price for the shipment under the delivery terms described in *Block 9*. In parentheses, enter the gross price per unit (total price divided by the weight or quantity indicated in *Block 17*).

Block 11) Enter the amount of the freight cost. Enter *A.I.D.* if *A.I.D.* funds are to be used for the payment of freight, or enter *Non-A.I.D.* if *A.I.D.* funds are not to be used for freight.

Block 12) Enter *U.S.* or *Non-U.S.* for flag of vessel and note whether liner, charter, dry-bulk carrier, tanker, or aircraft.

Block 13) Enter the dollar amount of any *A.I.D.*-financed premium and note the type of policy (open or individual). Premium must not exceed actual cost. If the insurance premium is not *A.I.D.*-financed, enter *Non-A.I.D.* If there is no dollar premium insurance, enter *None*.

Block 14) Enter the anticipated date of shipment from port of export and the anticipated date of arrival at port of destination in Vietnam.

§ 214-2.002-2 Commodity Identification Part I-B:

Block 15) Enter the Department of Commerce seven-digit Schedule B number for the commodity.

Block 16) Enter the eleven-digit DOD/GSA Federal Stock Number for the commodity.

Block 17) Enter the weight, number, or volume of the commodity and indicate the unit of measurement (e.g., tons, pounds, cubic feet).

Block 18) Enter the Geographic Code number for the geographic source area authorized for the commodity. This number will appear in the letter of credit or OSB announcement.

Block 19) Enter the Geographic Code number for the geographic source area covering the country in which the commodity was mined, grown, or produced.

Block 20) If all components of a produced commodity have their origin in the authorized geographic source area, enter *All*. If some components originate outside the authorized geographic source area, enter *Partial* and note in Part II-(20) the country of origin for such components.

Block 21) For a produced commodity, enter the cost per finished unit of components having their origin outside the authorized geographic source area. If such cost exceeds 10% of the total cost for all components per finished commodity unit, also enter the identifying number for the Small Business Memorandum authorizing a higher percentage limitation for the commodity.

Block 22) Enter *New, Used, Re-built, Re-conditioned* or such other description which best indicates the condition of the commodity. If the commodity is other than new, enter the number and date of the A.I.D. waiver authorizing the financing of such an item.

Block 23) Enter the description (in trade terminology) which best indicates the quality of the commodity (e.g., first quality = prime, premium, etc.; secondary quality = reject, remnant, etc.).

§ 214-2.002-3 Procurement Information Part I-C:

Block 24) Indicate the affiliation between the supplier and the importer by use of any of these terms: *Contract* (to denote dealer or supplier); *Ownership* (to denote a beneficial interest greater than 30%); *Management*; or *Family*.

Block 25) Indicate whether contract secured by *negotiation* or by competitive *bids*.

Block 26) If the procurement was advertised, enter the OSB Number (the number assigned to the OSB advertisement as published in a Small Business Circular). If the procurement was not advertised and no sole agency waiver has been authorized, enter *None*.

Block 27) Indicate whether the supplier is the *Producer* (any person who, himself or through his employees, grows, mines, manufactures, processes, or assembles a commodity in the form in which it is exported); a *Contract Secondary* (any person who produces the commodity through facilities of independent contractors); or a *Secondary Supplier* (any person who sells the goods without having produced them).

Block 28) If the supplier is a secondary supplier, enter the amount of the supplier's contract price attributable to the producer's sale price and provide in Part III-(28) the name and address of the producer.

Block 29) If the United States is the authorized geographic source area, indicate whether the supplier is an *Individual Resident* in the United States (whether U.S. citizen or alien); a *U.S. Citizen Non-Resident*; a firm *Incorporated in the U.S.* (or a partnership *Organized in the U.S.* under the laws of any State of the U.S.); a *Controlled Foreign Corporation* (within the meaning of § 957 et seq. of the Internal Revenue Code); *Resident Foreign Corporation*; *Non-Resident Foreign Corporation*; or *Non-Resident Alien*.

Block 30) Indicate whether the supplier has received notice that he has been (and is currently) *suspended, debarred* or placed on *prior review* by A.I.D.

Block 31) If the supplier has within the past two years made more than one sale of the commodity described in Part I-B to an importer in a country other than Vietnam, enter *Yes*; if not, enter *No*.

Block 32) Enter the amount of [and describe in Part II-(32) the reason for] any payment or allowance of any kind to the importer in connection with this sale.. [See Part IV-(4A).]

Block 33) Enter *Affiliate* if the importer is affiliated by ownership (any degree), management, or family ties with the sales agent, commission employee or service organization (receiving a dollar service payment) and describe the relationship in Part II-(33); enter *non-affiliated*; or enter *unknown* if the supplier has insufficient information upon which to base his answer.

Block 34) Enter *(A)*, *(B)*, or *(C)*, as appropriate, to indicate the commission certification to which the supplier subscribes in Part IV-(5) of this form. If *(B)* or *(C)* is entered, state the dollar amount of the commission in this block and furnish in Part II-(34) the name and address of the sales agent or commission employee receiving the local currency equivalent.

Block 35) Enter *(A)*, *(B)*, *(C)*, *(D)*, or *(E)*, as appropriate, to indicate the service payment certification to which the supplier subscribes in Part IV-(6) of this form. If *(B)* is entered, state the dollar amount of the service payment in this block and furnish in Part II-(35) the name and address of the service organization. If *(C)* or *(D)* is entered, state the dollar amount of the service payment in this block and furnish in Part II-(35) the name and address of the local service organization receiving the local currency equivalent. If *(E)* is entered, state the dollar amount (as a total for all service payments grouped into the transaction) in this block, and furnish in Part II-(35) the name and address of the local service organization(s) and, the information [see § 214-7.004-3] which identifies past or anticipated A.I.D.-financed sales to which the grouped service payment relates.

COMMODITY SUPPLIER'S NAME AND ADDRESS

Name of Company

Address

City State Zip Code or Country

TRANSACTION IDENTIFICATION NO.

(This No. will henceforth identify the transaction)

Address (if different) of regular place of business

City State Zip Code or Country

PART I (A): TRANSACTION IDENTIFICATION:

1. A.I.D. Authorization No.

2. Letter-of-credit info.

3. Letter-of-credit amount

4. Supplier's A.I.D. identification No.

5. Zip Code/Country

6. Importer's matriculation No.

7. Gross contract price

8. Net contract price

9. Delivery terms

10. Price

11. Freight

12. Vessel identification

13. Marine insurance

14. Shipment and arrival

Certificate and Agreement with the AGENCY FOR INTERNATIONAL DEVELOPMENT for Suppliers to Vietnam

A.I.D. Form 77

PART I (B): COMMODITY IDENTIFICATION:

15. Schedule B No.

16. Federal stock No.

17. Weight or No.

18. Source area

19. Origin

20. Componentry

21. Cost per unit of non-source components

22. Condition

23. Quality

PART I (C): PROCUREMENT INFORMATION:

24. Supplier affiliation

25. Method of procurement

26. OSB No.

27. Status of supplier

28. Producer information

29. Relationship to U. S.

30. Administrative sanctions

31. Sales outside Vietnam

32. Allowances to importer

33. Agent/importer ties

34. Commission information

35. Service-payment information

PART II ADDITIONAL INFORMATION:

(2)

(3)

(6)

(20)

(28)

(32)

(33)

(34)

(35)

PART III-A ACCURACY OF INFORMATION FURNISHED:
 The information furnished in Parts I and II of this form is true and accurate as far as the supplier can determine using with diligence all reasonable sources of information available to it. The supplier acknowledges that he has furnished this information after reading carefully the General and Special Instructions and that he understands that A.I.D. will rely upon the information which he has provided in reviewing the transaction to determine its eligibility for financing with Foreign Assistance funds.

(36)

Supplier's Representative

Title or Position in Firm

Date

PART III-B A.I.D. APPROVAL:

On the basis of the information provided by the supplier in Parts I and II and on the basis of the Certifications executed in Part IV of this form, A.I.D. approves the transaction described by the supplier for financing with funds administered by A.I.D. under the Foreign Assistance Act of 1961, as amended. A.I.D. reserves the right to post audit this transaction and to determine whether the supplier has performed his undertakings in accordance with the information he has provided and in compliance with the Certifications which he has made to A.I.D. in Part IV of this form. It is understood that breach of any Certification by the supplier may result in a claim for a refund in accordance with Certification IV-(11).

(37)

PART IV Supplier Certifications

In consideration of the receipt of funds made available under the Foreign Assistance Act of 1961, as amended, in payment in whole or in part for the commodity described in Part I-B and sold in the transaction described in Part I-C, the undersigned whose name appears on line below and acting in behalf of the supplier, whose name and address appear on the face sheet of this form, hereby certifies to and agrees with A.I.D. as follows:

1. Price Limitations

The sale price received by the supplier from all sources does not exceed any of the following:

- A. The maximum price, if any, specified by A.I.D. for this transaction in Part III, Block (F) of this form;
- B. Unless A.I.D. has approved in writing a request by the supplier for approval of a higher price, the lowest price charged by the supplier or by any affiliate company (in which the supplier through beneficial ownership controls more than 50% of the voting stock) in any export sale (without regard to destination) from the same geographic source area of the same or a substantially identical commodity to the same class of customer (end-user or dealer-distributor) within the last four months and in the last three export sales (excluding from this calculated sales at the lower end of the range of prices charged by the supplier, provided such sales do not exceed 5% of the dollar volume of all sales of the commodity by the supplier during the relevant period, and excluding distress sales);
- C. Unless A.I.D. has approved in writing a request by the supplier for approval of a higher price, the producer's list price for the commodity if the sale indicated in Part I is to an importer not affiliated with the producer; or the producer's list price minus the producer's usual discount from list price for a sale to an importer affiliated with the producer or with the producer's authorized exporter. This rule shall apply whether or not the seller is the producer or a secondary supplier. For purposes of this limitation, *affiliated* means affiliated by contract (under a distributorship or dealership agreement) by ownership, management, or family ties. *Usual discount* means if the supplier has made ten or more export sales to affiliates in the past twelve months, the discount given most frequently, and if the supplier has made fewer sales, the discount given in the sale to an affiliate covering the largest contract price; **12.**

- D. If the limitations in Paragraphs A, B and C cannot be applied and the supplier is also the producer, the lowest price at which the producer of the commodity has made the commodity available in the country of production to buyers in the domestic market during the past four months, adjusting such price to quantity sales, packaging, tax differentials and transportation, and excluding from this calculation sales at the lower end of the range of prices charged by the producer, provided such sales do not exceed 5% of the dollar volume of all sales of the commodity by the supplier during this period, and excluding distress sales.
- E. If the limitations in Paragraphs A, B, and C cannot be applied and the supplier is a secondary supplier, the price described in Paragraph D plus 10% of such price; or
- F. To the exclusion of all other price limitations except the limitation in Paragraph A, the lowest responsive bid price which is accepted for award under formal competitive bid procedures at which an A.I.D. representative is present at the time bids are opened.

2. Concerted Pricing

With respect to any sale from the United States --

- A. The price and quantity terms of the sale described in Part I of this form and on the supplier's invoice presented for payment have been arrived at independently by the supplier, without consultation or agreement concerning such price or quantity with any other bidder, offeror, competitor, or any member of any Export Trade Association (an Association within the meaning of 15 U.S.C. § 61-65), and without reliance upon any price established or recommended by any such Association.
- B. If the supplier has indicated in *Block 27* in Part I of this form that he is not the producer of the commodities and if the supplier is furnishing a commodity covered by any of the following commodity designations, the supplier has appended to his invoice an invoice executed by the producer of the commodity, and on or attached to such producer's invoice the producer has reproduced and signed the certification which appears as Paragraph 2, A: Potassic fertilizers (Commodity Codes 2332, 2333, and 233⁴); mixed chemical fertilizers (Commodity Code 2343); phosphates and phosphatic fertilizer materials (Commodity Codes 2351, 2354, 2355, and 2356); carbon black (Commodity Code 3907); wood pulp (Commodity Code 5913); corrugating material of paper and paperboard (Commodity Code 5916); kraft paper and kraft paperboard (Commodity Code 5917); sulphur (Commodity Code 6406); and tires, tubes, and repair materials (Commodity Code 8913).

3. Source, Origin and Componentry Limitations

The commodity described in Part I, B of this form-

- A. has been or will be shipped to Vietnam from the United States or from such other Geographic Source Area which A.I.D. has specified and with respect to which the supplier has received notice in his letter of credit;
- B. has been mined, grown, or produced (through manufacture, processing, or assembly) in the United States or in such other Geographic Source Area which A.I.D. has specified and with respect to which the supplier has received notice in his letter of credit;
- C. contains U. S. or specified -geographic-source-area components which account for at least 90% (or such other lower figure as A.I.D. may have prescribed for the commodity in the Small Business Memorandum identified by the supplier in *Block 21*) of the total cost of all components, calculated at the point of production. For purposes of this limitation, components of unknown origin will be presumed to have their origin outside the United States and outside the specified Geographic Source Area. The supplier may counter this presumption with evidence indicating an origin for the components in the United States or in the specified geographic source area. For this purpose, a written declaration by the producer concerning the origin of commodities will be adequate to rebut the presumption. *Component* means any material in whatever physical form directly incorporated in, attached to, overlaid on, or used to encase (by wrapping, crating, bottling, canning, boxing or bagging) the produced commodity. *U.S. or specified geographic source area component* means a component mined, grown, or produced in the United States or in the specified geographic source area, and, if produced from material which has been mined or grown, such material has been mined or grown in the United States or in the specified geographic source area.

4. Rebates, Bribes, and Proscribed Inducements

Neither the supplier nor any person acting in his behalf has or will in connection with the sale described in Part I of this form make any payment, directly or indirectly, or give any allowance or credit-

- A. to or for the benefit of the importer; and a supplier who is not the producer vouches that neither the producer nor any intermediate seller to the supplier has or will, directly or indirectly, rebate to the importer any portion of the price. A payment for the Benefit of the importer shall include a deposit to an account controlled by the importer; a commission to a sales agent if any part of the commission is routed by the sales agent to the importer; a payment to a sales agent or local service organization affiliated with the importer by ownership, management, or family ties; payment by the supplier in a collateral sham transaction for goods or services secured from the importer; or payment by any trick or device which has as its objective the routing of funds from the supplier to the importer as part of the sales undertaking assumed by the supplier in the A.I.D.-financed sale described on this form, but shall not include any payment to A.I.D.

which a supplier makes to discharge an obligation to the importer as part of a bona fide contract adjustment with the importer. For purposes of this limitation, any payment by the supplier to the importer for a period of two years from the date of shipment shall be presumed to have been financed from A.I.D. funds in connection with an A.I.D. financed sale. A supplier may overcome this presumption by demonstrating that a payment to any importer was made as a contract adjustment in connection with a bona fide non-A.I.D. financed transaction with the same importer;

- B. to any official of the United States Government or of the Government of Vietnam. For purposes of this limitation, a proscribed payment shall include a payment to secure an import license for the importer, a payment to refrain from filing a complaint with A.I.D., or any other payment designed to induce conduct on the part of any Government official;
- C. to or for the benefit of an ocean carrier or his representative, or his representative, or execute any indemnity undertaking as an inducement to the carrier to issue a clean bill of lading;
- D. to or for the Benefit of an inspection firm as an inducement to issue a favorable inspection report.

5. Commissions

The undersigned has inserted in *Block 34* of this form the letter which corresponds to one of the following undertakings and thereby subscribes to its contents:

- A. No commission has been paid or is payable either in dollars or in local currency to any sales agent or commission employee; or
- B. A commission in local currency in the amount indicated in *Block 34* has been paid or is payable by the importer for the account of the supplier directly to the sales agent or commission employee and the amount of such commission, expressed in dollars, has been subtracted from the invoice amount for which the supplier is claiming A.I.D. financing; or
- C. A commission in local currency is payable by the supplier in the amount indicated in *Block 34* to the sales agent or commission employee whose name and address appear in Part II, (34). To discharge this obligation, the supplier has secured a bank draft payable to the opening bank in behalf of the sales agent or commission employee and has placed such bank draft in a sealed envelope marked on the outside with the name of the opening bank. On his invoice, the supplier has set forth:

- (1) the gross amount of the sale;
- (2) the amount of the commission (expressed in dollars);

- (3) the net amount payable to the supplier with A.I.D. dollars;
- (4) the name and address of the sales agent or commission employee;

and

- (5) on or attached to the invoice, the following request signed by an officer of the supplier and directed to the opening bank.

Request to the Opening Bank

The undersigned, acting in behalf of the supplier, has represented to A.I.D. on the Certificate for Suppliers to Vietnam that a commission payment is due and payable to a sales agent or commission employee in Vietnam. To carry out this representation, the supplier hereby requests the opening bank in accordance with procedures outlined in § 214-6.003 of A.I.D. Regulation 14 and in regulations issued by the National Bank of Vietnam to convert the dollar amount covered by the accompanying bank draft into a local-currency equivalent (based upon the official exchange rate) and to pay the resulting sum in behalf of the supplier to the sales agent or commission employee on the basis of the information contained on this invoice.

(Signature) _____

The supplier will pay no commission in any other manner in connection with the transaction described in Part I of this form. The supplier acknowledges that any commission paid by the supplier from whatever source will be presumed conclusively to have been financed with A.I.D. funds.

6. Service Payments

The undersigned has inserted in *Block 35* of this form the letter which corresponds to one of the following undertakings and thereby subscribes to its contents:

- A. No service payment has been paid or is payable in dollars or in local currency; or
- B. A service payment has been paid or is payable in dollars in the amount included in *Block 35* of this form to the service organization whose name and address appear in Part II, (35); but no service payment has been or will be paid to a local service organization;
- C. A service payment in local currency in the amount indicated in *Block 35*, has been paid or is payable by the importer for the account of the supplier directly to a local service organization and if such service is included by the supplier within the sales price, the service

payment, expressed in dollars, has been subtracted from the invoice amount for which the supplier is claiming A.I.D.-financing;

D. A service payment in local currency is payable by the supplier in the amount indicated in *Block 35* to a local service organization whose name and address appear in Part II, (35). To discharge this obligation, the supplier has secured a bank draft payable to the opening bank in behalf of the local service organization and has placed such bank draft in a sealed envelope marked on the outside with the name of the opening bank. On his invoice the supplier has: --

- (1) set forth the gross amount of the sale;
- (2) the amount of the service payment (expressed in dollars);
- (3) the net amount payable to the supplier with A.I.D. dollars;
- (4) the name and address of the local service organization; and
- (5) on or attached to the invoice, the following request signed by an officer of the supplier and directed to the opening bank:

Request to Opening Bank

The undersigned, acting on behalf of the supplier, has represented to A.I.D. on the Certificate for Suppliers to Vietnam that a service payment is due and payable to a local service organization in Vietnam. To carry out this representation, the supplier hereby requests the opening bank in accordance with procedures outlined in § 214-6.004 of A.I.D. Regulation 14 and in regulations issued by the National Bank of Vietnam, to convert the dollar amount by the accompanying bank draft into a local-currency equivalent (based upon the official exchange rate) and to pay the resulting sum in behalf of the supplier to the local service organization on the basis of the information contained on this invoice.

(Signature) _____

The supplier will pay no service payment in any other manner in connection with the transaction described in Part I of this form. The supplier acknowledges that any service payment paid by the supplier from whatever source will be presumed conclusively to have been financed with A.I.D. funds.

E. A service payment is payable to a local service organization in connection with one or more A.I.D.-financed sales to Vietnam which have already taken place or which are anticipated, but which cannot be directly related to the sale described in Part I of this form. In accordance with the procedure and rules set forth in § 214-7.004 of A.I.D. Regulation 14, the supplier is using the occasion of this sale to effect a service payment in the amount indicated in *Block 35*

to the local service organization whose name and address appear in Part II, (35) of this form. In all other respects, the supplier subscribes to the procedures outlined in Paragraph D of this Certification.

7. Delivery Terms

The commodity has been sold to the importer under delivery terms FAS or FOB (named port of loading) and title and risk of loss have passed to the importer upon transfer of the goods into the custody of the ocean carrier. If the letter of credit so provides, the supplier has secured ocean freight for the account of the importer and has retained for himself no part of the freight. If the letter of credit so provides, the supplier has secured marine insurance covering the shipment and has retained for himself no part of the premium or insurance loss proceeds.

8. Supplier's Regular Place of Business

With respect to any sale of a commodity shipped from the United States, the supplier maintains a regular place of business in the United States at the same address indicated on the face sheet of this form.

9. Suspension or Debarment

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 for resale under A.I.D. financing the goods described in Part I of this form from any supplier suspended or debarred by A.I.D. or included on the Treasury List of Designated Nationals or from any affiliate of such a person.

10. Records and Documents

The supplier will for a period of not less than five 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 A.I.D. make such records and documents available to A.I.D. for examination concerning the purchase price, the cost to the supplier of the commodities (and if the supplier has secured ocean freight or marine insurance for the account of the importer, the cost of such services), or any other facts, data, or business records relating to the supplier's compliance with his undertakings and certifications in this form.

11. A.I.D. Refund Rates

The supplier acknowledges that A.I.D. financing is made available only on the basis of the representations contained in this form and that if A.I.D. should determine that the supplier has breached any of these certifications, the supplier shall independently or jointly with any surety executing an indemnity undertaking in favor of A.I.D. refund to A.I.D. the entire amount

received from A.I.D. funds in connection with the sale of the commodities for violation of Certification 3 or Certification 9, double the amount of any payment prohibited by Certification 4, and for violation of any other Certification, such amount as the Administrator may determine to be the damage sustained by the United States as the result of the supplier's breach, and, unless payment is made within 30 days of the receipt of a bill for collection, interest at 5% per annum from the date of the breach.

Sub Part 214-3.0 Indemnity Undertaking

§ 214-3.001 Requirement for indemnity undertaking

Block (D) in the Certificate for Suppliers to Vietnam is reserved for A.I.D. approval conditioned upon the execution and submission of an indemnity undertaking by a surety company whose name appears on U. S. Treasury list of Approved Surety Companies (Treasury List No. 270) or by any bank chartered under Federal or state law. If Block (D) is checked under an A.I.D. conditional approval, the supplier must submit an original Compliance Bond (A.I.D. Form 87) or a copy of an Annual Compliance Bond (A.I.D. Form 97) executed by an approved surety or bank. In lieu thereof, the supplier may submit a letter-of-credit or bank-guarantee indemnity undertaking executed by a bank. In special situations, the supplier may apply pursuant to § 214-3.006 of this Part to A.I.D. to use the special bank account procedure as a substitute for an indemnity undertaking. Under each form of indemnity undertaking, the surety or bank must undertake in the amount of the penal sum to insure compliance by the supplier with the certifications which the supplier executes in favor of A.I.D. in Part IV of the Certificate for Suppliers to Vietnam.

Agency for International Development

COMPLIANCE BOND

| | | | |
|--|---|-------------|--|
| PRINCIPAL (Legal name and business address) | TYPE OF ORGANIZATION ("X" one) | | |
| | Individual | Partnership | |
| | Joint Venture | Corporation | |
| SUPPLIER I.D. No. | STATE OF INCORPORATION | | |
| SURETY(IES) [Name(s) and business address(es)] | PENAL SUM OF BOND MILLION(S) THOUSAND(S) HUNDRED(S) CENTS | | |
| | CERTIFICATE FOR SUPPLIERS TO VIETNAM TRANSACTION I.D. No. A.I.D. Approval Date: | | |

KNOW ALL MEN BY THESE PRESENTS, That we, the Principal and Surety(ies) hereto, are firmly bound to the Agency for International Development (hereinafter called A.I.D.) in the above penal sum for payment of which we bind ourselves, our heirs, executors, administrators, and successors, jointly and severally: Provided, That where the Sureties are corporations acting as co-sureties, we, the Sureties, bind ourselves in such sum "jointly and severally" as well as "severally" only for the purpose of allowing a joint action or actions against any of all of us, and for all other purposes each Surety binds itself, jointly and severally with the Principal for the payment of such sum only as is set forth opposite the name of such Surety, but if no limit of liability is indicated, the limit of liability shall be the full amount of the penal sum.

THE CONDITION OF THIS OBLIGATION IS SUCH, that whereas the Principal has represented to A.I.D. the terms of a sale undertaking in the Certificate for Suppliers to Vietnam identified above and has expressly undertaken to comply with the certifications which he has made to A.I.D. in Part IV of the Certificate identified above:

NOW, THEREFORE, if in accordance with the procedure for administrative determination of Principal's breach of certification set forth as *Attachment A* to this document, A.I.D. either (1) fails to present a Bill for Collection to the Principal (with a copy to the Surety) accompanied by a notification to the Principal and the Surety, in writing, within one year of the date of payment to the Principal, that the Principal has breached a certification set forth in Part IV of the Certificate for Suppliers to Vietnam or (2) withdraws a Bill for Collection which had been presented to the Principal within one year of the date of payment to the Principal, then the above obligation shall be void and of no effect.

IN WITNESS WHEREOF, THE Principal and Surety(ies) have executed this Compliance Bond and have affixed their seals on the date set forth above.

| | | | |
|-------------------------------|----|----|------------------------------|
| PRINCIPAL | | | |
| Signature(s) | 1. | 2. | (Seal) (Seal) Corporate Seal |
| Name(s) & Title(s) (TYPED) | 1. | 2. | |

CORPORATE SURETY(IES)

| SURETY A | Name & Address | STATE OF INC. / LIABILITY LIMIT | | Corporate Seal |
|----------|----------------------------|---------------------------------|--|----------------|
| | 1. | 2. | | |
| | Signature(s) | | | |
| | Name(s) & Title(s) (TYPED) | | | |
| SURETY B | Name & Address | STATE OF INC. / LIABILITY LIMIT | | Corporate Seal |
| | 1. | 2. | | |
| | Signature(s) | | | |
| | Name(s) & Title(s) (TYPED) | | | |
| SURETY C | Name & Address | STATE OF INC. / LIABILITY LIMIT | | Corporate Seal |
| | 1. | 2. | | |
| | Signature(s) | | | |
| | Name(s) & Title(s) (TYPED) | | | |
| SURETY D | Name & Address | STATE OF INC. / LIABILITY LIMIT | | Corporate Seal |
| | 1. | 2. | | |
| | Signature(s) | | | |
| | Name(s) & Title(s) (TYPED) | | | |

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COMPLIANCE BOND

[Instructions for reverse side]

1. This form is authorized for use in connection with contracts for the supply of commodities by suppliers to Vietnam. This form may be used whenever A.I.D. has directed in Part III, Block (D) of the Certificate for Suppliers to Vietnam, or otherwise, that an indemnity undertaking must be submitted by the supplier to the paying bank as a condition for payment in connection with an A.I.D.-financed sale to Vietnam.
2. The full legal name and business address of the Principal shall be inserted in the space designated *Principal* on the face of the form. The bond shall be signed by an authorized person. Where such person is signing in a representative capacity (e.g., an attorney-in-fact), but is not a member of the firm, partnership, or joint venture, or an officer of the corporation involved, evidence of his authority must be furnished.
3. Corporations executing the bond as sureties must be among those appearing on the Department of the Treasury *List of Approved Sureties* (Treasury List No. 270) and must be acting within the limitations set forth therein. Where more than a single corporate surety is involved, their names and addresses (city and State) shall be inserted in the spaces (Surety A, Surety B, etc.) headed *CORPORATE SURETY(IES)*, and in the space designated *SURETY(IES)* on the face of this form only the letter identification of the Sureties shall be inserted. Corporations executing the bond shall affix their corporate seals.
4. The name of each person signing this compliance bond should be typed in the space provided.

§ 214-3.003 Annual Compliance Bond

[The Annual Compliance Bond will closely resemble the Compliance Bond. In the upper part of the face sheet, a block will be reserved for a statement of the expiration date. It is assumed that all compliance bonds will expire together at the end of each fiscal year (June 30). Suppliers would be required to keep Annual Bonds in effect for a forward period of at least one year from the date of payment. The penal sum of the Annual Bond would be placed at a figure between \$100,000 and \$500,000. It might be possible to have a varying penal amount which A.I.D. would specify upon request from the supplier depending upon the volume of projected sales. In the text of the bond, the paragraph which begins with "NOW, THEREFORE," would indicate that the bond runs until the end of the fiscal year rather than a period limited to one year after the date of payment.]

§ 214-3.004 Format for Letter of Credit Indemnity Undertaking

In lieu of a compliance bond, a supplier may submit for each transaction a letter-of-credit indemnity undertaking in an amount equal to the contract price rounded to the nearest \$100. Upon special application by the supplier and approval by the Compliance Review Division, Vietnam Bureau, the supplier may submit an annual letter of credit undertaking in a minimum amount specified by A.I.D. Each letter of credit indemnity undertaking must be issued by a bank, chartered under Federal or State law, directly to A.I.D. and shall remain valid for a period of at least one year after the date of the last payment to a supplier for a commodity shipment to Vietnam. Each such credit shall provide that payment will be made at sight against draft drawn by the Controller of A.I.D. for any sum not exceeding the face amount of the credit (equal to the contract price rounded to the nearest \$100), upon submission to the bank of the following notarized statement signed by the Controller of A.I.D.:

In accordance with the procedures set forth in Attachment A (*Procedure for Administrative Determination by A.I.D. of Principal's Liability for Breach of Certification*), the Administrator of A.I.D. has determined [the (name of court) has rendered a final judgment determining] that (name of principal) has violated a certification undertaking contained in the Certificate for Suppliers to Vietnam (A.I.D. Form 77), in the transaction which bears A.I.D. Identification Number _____ and has thereby become liable to A.I.D. for the payment of damages in accordance with the damage formula set forth in Certification 11 of the Certificate for Suppliers to Vietnam, to which the principal has subscribed. The amount being claimed under this letter of credit indemnity undertaking has not been recovered by A.I.D. directly from (name of principal) .

§ 214-3.005 Format for Bank Guarantee Indemnity Undertaking

In lieu of a Compliance Bond, the supplier may submit a bank guarantee indemnity undertaking issued directly to A.I.D. by any bank chartered under Federal or State law in an amount equal to the contract price rounded to the nearest \$100. The bank guarantee shall provide for payment to A.I.D. upon demand by the Controller of A.I.D., accompanied by the notarized statement set forth in § 214-3.004.

§ 214-3.006 Special Bank Account

In lieu of a compliance bond, a supplier may with the approval of the Compliance Review Division, Vietnam Bureau, deposit in any bank (except a bank affiliated with the supplier by ownership or management ties) a sum equal to 50% of the contract price indicated on the Certificate for Suppliers to Vietnam in the name of A.I.D. The bank accepting this account shall issue a statement to A.I.D. that this sum will not

be released to the supplier for a period of one year from the date on which the supplier receives payment in the A.I.D.-financed sale covered by the Certificate for Suppliers to Vietnam (or thereafter if within the year period A.I.D. presents the principal (with a copy to the bank) with a Bill for Collection and a Notification of Breach of Certification) and that if at any time the bank receives the notarized statement set forth in § 214-3.004, the bank will pay out the sum demanded by A.I.D. Such a statement from the bank shall be accepted as evidence that the account described in this section has been established.

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§ 214-3.007 Attachment (A): Procedure for Administrative Determination by A.I.D. of Principal's Liability for Breach of Certification

This attachment shall be included as an integral part of the indemnity undertaking assumed by the surety and shall govern the relationship between the surety and A.I.D. with respect to drawdown by A.I.D. on the indemnity undertaking.

Drawdown Demand

If within one year after the principal has received payment from funds administered under the Foreign Assistance Act of 1961, as amended, the Controller of A.I.D. presents the Principal with a Bill for Collection (copy to the Surety) and notifies the Principal and the Surety by registered letter, return receipt requested, that an administrative determination has been made based upon evidence made available to A.I.D. that the Principal has breached a certification contained in Part IV of the Certificate for Suppliers to Vietnam in a transaction covered by this indemnity undertaking, and if within 30 days from the date of receipt of such Bill for Collection and Notice of Determination of Liability for Breach of Certification by the supplier, neither the Principal nor the Surety objects in writing to the grounds upon which the determination is based, the decision of the Controller, A.I.D., shall become final.

A notification by A.I.D. to a Surety under a Compliance Bond or Annual Compliance Bond that in the absence of an objection of the Principal or the Surety a final decision has been rendered, accompanied by a demand for immediate payment of the amount claimed to be due and owing under the indemnity undertaking shall without any further formality cause the Surety to become liable for payment of the amount claimed (but in no event in an amount which exceeds the penal sum of the Compliance or Annual Compliance Bond, the letter-of-credit or the bank guarantee indemnity undertaking).

A certification by A.I.D. to a Surety under a letter of credit or bank guarantee indemnity undertaking that a final decision has been rendered, without the objection of the supplier, accompanied by the authorized statement set forth on the face of the letter of credit or bank guarantee shall without any further formality render the Surety liable for the amount claimed (but in no event for an amount received which exceeds the penal sum of the letter of credit or bank guarantee). After receipt of such a notification, the Surety expressly agrees to a confession of judgement and to raise no defense in any action instituted by A.I.D. to recover under the indemnity undertaking.

Administrative appeals

If within 30 days of receipt of notice of an administrative decision

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concerning the principal's liability for breach of a certification the Principal or Surety objects in writing to the grounds for the determination, A.I.D. will refer the determination and the stated objections to the A.I.D. Board of Compliance Appeals. The Secretariat of the Board will notify the Principal and the Surety of the date within which a written defense to the A.I.D. determination must be submitted to the board for review.

The Principal or the Surety may request an informal hearing with the Board at any time. A formal hearing will take place if the Principal or the Surety requests such a hearing in writing and declares to challenge, by means of witnesses or oral testimony, the facts upon which A.I.D. has based its determination.

Decision by the Board of Compliance Appeals

After review of the evidence and the arguments submitted by the Principal (and/or by the Surety in the name of the Principal), the Board of Compliance Appeals will issue an advisory opinion to the Administrator of A.I.D. The Administrator may reject or accept the opinion of the Board. If the Board affirms the determination of liability of the Principal for breach of a certification and the Administrator accepts the opinion of the Board and notifies the supplier and the Surety, the Surety agrees to a confession of judgment and to raise no defense in any action instituted by A.I.D. to recover under the indemnity undertaking.

Suit by Principal or Surety

If the Principal or the Surety pays the penal amount to A.I.D. voluntarily or under a confession of judgment, after a final decision by the Controller or by the Administrator, A.I.D., may within six months of such payment institute in any Court of Competent Jurisdiction to recover such payment. No suit shall be brought after six months from the date of payment to A.I.D.

Contents of the Determination by A.I.D. of Liability of the Principal for Breach of a Certification

The letter of notification sent to the Principal and the Surety in accordance with this section shall identify the certification in the Certificate for Suppliers to Vietnam breached by the supplier; the information available to A.I.D. to support reasonable cause for belief that the certification has in fact been breached; and the amount of damages suffered by A.I.D. as a result thereof. The letter of notification may set forth the sources for such information, but at any informal hearing A.I.D. shall, at the request of the Principal or the Surety, furnish the sources of such information.

Sub Part 214-4.0 A.I.D. Bill of Lading

§ 214-4.001 Use of the A.I.D. Bill of Lading

Unless notified by A.I.D. to the contrary, the supplier responsible for making freight arrangements in circumstances in which A.I.D. will finance the freight, shall secure from the carrier one signed original of the A.I.D. Bill of Lading (Form 93) and shall physically attach this form to the carrier's regular bill of lading. The A.I.D. Bill of Lading shall be submitted along with the carrier's regular bill of lading, to the paying bank as a payment document required for reimbursement of ocean freight.

Agency for International Development

BILL OF LADING DATE

BILL OF LADING

BILL OF LADING No.

DELIVERING CARRIER TO STEAMER

Car Number - Reference

FORWARDING AGENT - REFERENCES

EXPORT DECLARATION No.

COMMODITY SUPPLIER'S NAME & ADDRESS

IMPORTER'S NAME & ADDRESS

VESSEL

VOYAGE No.

FLAG

PIER

PORT OF LOADING

FOREIGN PORT OF DISCHARGE

FREIGHT RATES

TYPE OF VESSEL

Bulk Berth Tanker Air

PARTICULARS FURNISHED BY SHIPPER

| MARKS & NUMBERS | NUMBER OF PACKAGES | DESCRIPTION OF PACKAGES AND GOODS | MEASUREMENT | GROSS WEIGHT |
|-----------------|--------------------|-----------------------------------|-------------|--------------|
| | | | | |

In consideration of the receipt of funds from A.I.D. to finance the freight of the shipment described above, the undersigned, whose name appears on the reverse of this form and authorized to bind the carrier whose name appears on this bill of lading, subscribes in the name of the carrier to the contents of the certifications which appear on the reverse hereof.

SIGNATURE

DATE

RELATIONSHIP TO CARRIER

It is mutually agreed and understood between A.I.D. and carriers by water or by air who are parties to this bill of lading that:

1. Unless otherwise specifically provided or otherwise stated hereon, this bill of lading is subject to the same rules and conditions as govern commercial shipments covered by the usual bill of lading form provided therefor by the carrier.
2. Whether prepaid or collect, freight shall be earned by the carrier only upon delivery of the shipment covered by this bill of lading at the port of discharge and proper receipt therefor. If part of the shipment is lost, the carrier shall be entitled to the freight only on the quantity actually delivered and received.
3. The carrier shall be responsible for loss or damage arising or resulting from (a) negligence, fault, or failure in proper loading, stowage, custody, care, discharge, or proper delivery of the shipment covered by this bill of lading; or (b) unseaworthiness caused by want of due diligence on the part of the carrier to make the ship seaworthy, and secure that the ship is properly manned, equipped, and supplied, and to make the holds and all other parts of the ship in which the goods are carried fit and safe for their reception, carriage and preservation. The carrier shall not be responsible for loss or damage arising or resulting from the act, neglect, or default of the master, mariner, pilot or the servants of the carrier in the navigation or in the management of the ship. The shipment shall be charged to the custody of the carrier upon its delivery to the carrier for shipment. Such custody shall continue until the carrier has delivered the shipment and received from the consignee a receipt therefor.
4. The ship shall proceed to her destination in the usual and customary manner without unreasonable deviation from the normal route. Any deviation by the carrier for the purpose of loading or unloading the ship or any delay which is not fairly ancillary to the prescribed voyage shall, *prima facie*, be regarded as a breach of this contract of carriage, and the carrier shall be liable for any loss or any damage resulting therefrom.
5. No charge shall be made by any carrier for the execution of this bill of lading in manner and form as provided by the instructions hereon.
6. If the carrier is a conference member, the rate charged for this shipment does not exceed the conference contract rate. If the carrier is a non-conference liner, the rate does not exceed the applicable tariff or other rate listing which the carrier may have filed with the United States Federal Maritime Commission. If a special rate has been negotiated for this shipment, such rate does not exceed the lowest rate charged by the carrier for similar shipments on the same voyage.
7. The carrier has not given, and will not give any rebate or other payment to the shipper, to the consignee, or to any connecting carrier as an inducement to secure the carriage of the shipment covered by this bill of lading.

8. In case of loss, damage, or shrinkage in transit or, in case of any dispute concerning the propriety of the rate charged for the shipment covered by this bill of lading, claim for damages shall be made or a suit instituted no later than three (3) years after the date of vessel arrival to the port of discharge or three (3) years after the date at which the vessel should have, in the normal course of sailing, have arrived at the intended port of destination.

9. The carrier has not accepted from the shipper or from any third party any promise of indemnity, whether written or oral, in return for failing to note on the carrier's regular bill of lading form any apparent defect in the condition of any part of the shipment or any apparent shortage in the amount indicated as loaded on board or received by the carrier for shipment. Information concerning any offer by the shipper to execute an indemnity as an inducement to the carrier to refrain from any such notation on the bill of lading shall be recorded by the carrier and shall be made available upon request to A.I.D.

10. Neither the carrier nor any executive officer or affiliate of the carrier is the shipper or the consignee of the shipment covered by this bill of lading. The carrier certifies that he has no knowledge of any attempt by an executive officer or affiliate to disguise the identity of the true shipper or consignee in order to circumvent this provision.

11. A.I.D. may exercise any right under this contract of carriage which is reserved to or which accrues to the shipper or to the consignee. A.I.D. may at any time direct the carrier to divert the shipment covered by this bill of lading to any designated port or to make delivery to any named person without regard to the place of delivery or intended consignee indicated on the face sheet of this bill of lading. In any such case, A.I.D. agrees to save the carrier harmless if as a result of complying with any such order by A.I.D., the carrier incurs any additional expense or any additional liability.

12. Disputes arising under any term of this contract of carriage shall be governed by the law of the United States.

13. The carrier is put on notice that willful or fraudulent disregard of the provision of this bill of lading may subject the carrier to the civil penalties provided in 31 U.S.C. § 231-232 or to the criminal penalties provided in 18 U.S.C. § 286-287, or to both sets of penalties.

DATE: _____ AUTHORIZED REPRESENTATIVE OF CARRIER: _____

PRINTED NAME: _____

POSITION IN CARRIER ORGANIZATION OR SOURCE OF SIGNING AUTHORITY:

Sub part 214-5.0 A.I.D. Marine Insurance Certificate

§ 214-5.001 Use of the A.I.D. Marine Insurance Certificate

[RESERVED]

§ 214-5.002 Text of the A.I.D. Marine Insurance Certificate

[RESERVED]

Sub part 214-6.0 Policy matters

§ 214-6.001 Geographic Source

§ 214-6.001-1 Preference for United States as Specified Geographic Source Area

Unless expressly stated to the contrary in the letter of credit, the geographic source area which A.I.D. will prescribe for shipments to Vietnam will be limited to the United States. A commodity from the United States loses its geographic source area characteristic if the commodity is routed through or sold at a free port or bonded warehouse located outside of Vietnam. A commodity unloaded outside of Vietnam as a result of the frustration or abandonment of a voyage by an ocean carrier does not lose its U. S. geographic source area characteristic.

§ 214-6.001-2 Geographic Source Area Codes

The following code numbers cover the regional geographic source areas indicated:

- 000 United States and areas of U. S.-associated sovereignty;
- 935 Any country *excluding* the following: U.S.S.R., Albania, Bulgaria, Czechoslovakia, East Germany (Soviet Zone of Germany and Soviet Sector of Berlin), Estonia, Hungary, Latvia, Lithuania, Rumania, Poland, North Vietnam, North Korea, China (Mainland), Manchuria, Inner Mongolia, Tsinghai Province, Sikang Province, Sinkiang, Tibet, the former Kwantung Leased Territory, the present Port Arthur Naval Base area, Liaoning Province, Outer Mongolia, and Cuba;
- 899 Any Code 935 country *excluding* South Vietnam;
- 898 Any Code 935 country *excluding* South Vietnam, Australia, Austria, Belgium, Canada, Denmark, France, Germany (Fed. Rep.), Hong Kong, Italy, Japan, Luxembourg, Monaco, Netherlands, New Zealand, Norway, South Africa, Sweden, Switzerland, and the United Kingdom;
- 901 Any Code 935 country *excluding* South Vietnam, 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.

§ 214-6.002 Freight Policy

§ 214-6.002-1 U. S.-Flag Preference

- (a) If the supplier undertakes on behalf of the importer to make freight arrangements for the transportation of the commodity to Vietnam by pre-paying the freight and securing reimbursement from A.I.D. funds

or by arranging for freight on a collect basis knowing the freight will be financed with A.I.D. funds, the supplier shall, unless expressly notified to the contrary in his letter of credit, choose a U.S.-flag vessel;

(b) If the supplier undertakes to make freight arrangements using air transportation, the supplier shall, unless notified to the contrary in his letter of credit, choose a direct or indirect U.S. air carrier.

§ 214-6.002-2 Waiver in Favor of Foreign Flag.

If a U.S.-flag vessel is not available, the supplier may be requested by the importer to apply to the Resources Transportation Division of A.I.D. for a *Certificate of Non-Availability*. The grant of such a request demonstrates, for the limited purpose of determining compliance by the Government of Vietnam with A.I.D. cargo preference requirements, that a U.S.-flag vessel was not available at the time the cargo was ready for shipment. If such a *Certificate of Non-Availability* is issued with respect to a particular shipment, the shipment does not thereby, in the absence of a waiver from the U.S.-flag requirement, become eligible for A.I.D. freight financing on a foreign-flag vessel. For balance of payment reasons, A.I.D. will generally reject waiver applications requesting A.I.D. financing for foreign-flag freight. A.I.D. expects ocean freight on foreign vessels to be paid in whole by the Government of Vietnam. As between A.I.D. and the Government of Vietnam, A.I.D. may undertake to finance 30% of the foreign-flag freight cost in certain situations. Suppliers, however, should pay strict attention to letter-of-credit instructions concerning responsibility for freight arrangements and for choice of flag of vessel.

§ 214-6.002-3 Transshipment and Storage at Intermediate Ports

A U.S.-flag vessel is available to carry A.I.D. cargo and to receive A.I.D. freight financing only if the carrier is willing to execute a through bill of lading without any transshipment. A commodity supplier should not make freight arrangements which call for transshipment at any intermediate point unless his letter of credit expressly stipulates to the contrary or unless A.I.D. has given a waiver which allows transshipment. A carrier willing to accept cargo only on a transshipment basis, is not "available" within the meaning of a cargo preference law or within the meaning of the U.S.-flag payment requirement set forth in § 214-6.002-1. For purposes of this limitation, goods may *not* be shipped to a free port or to a bonded warehouse outside Vietnam for subsequent shipment to Vietnam. All such interruptions in transportation shall be regarded as transshipment.

§ 214-6.003 Commissions

§ 214-6.003-1 No Dollar Commissions

A.I.D. will not finance any dollar commission associated with a sale to Vietnam whether such commission is claimed as having been earned in connection with activities performed within or outside the United States.

§ 214-6.003-2 Commission paid by importer

A commission paid in local currency by the importer to a sales agent or commission employee is regarded as part of the total remuneration received by the supplier in connection with the sale. The commission amount should be indicated as part of the price in *Block 7 and 34* in Part I of the *Certificate for Suppliers to Vietnam*. This amount, converted into dollars, should be subtracted from the gross contract price to reach the new contract price payable with A.I.D. funds.

§ 214-6.003-3 Commission Payment by opening bank in local currency

(a) General Under arrangements between A.I.D. and the Government of Vietnam, a supplier may request the opening bank, on his invoice or in a statement attached to his invoice, to pay a commission in local currency directly to the sale agent or to a commission employee. Under this procedure, the sales agent or commission employee will be paid by the opening bank with local currency funds deposited by the importer with the opening bank or otherwise made available by the Government of Vietnam.

(b) Contents of Invoice A supplier who arranges a commission in local currency in accordance with this procedure shall show the following on his invoice:

- (1) the gross value of the shipment;
- (2) the amount of the commission expressed in dollars: (This amount in a local currency equivalent, based upon the official exchange rate, will be paid by the opening bank to the sales agent or commission employee);
- (3) the net invoice amount (gross amount minus commission): (The draft on the U.S. bank which the supplier presents may not exceed the net amount);
- (4) the name and address of the sales agent or commission employee; and
- (5) on or attached to the invoice, the following request signed by an officer of the supplier and directed to the opening bank:

REQUEST TO OPENING BANK

The undersigned, acting in behalf of the supplier, has represented to A.I.D. on the *Certificate for Suppliers to Vietnam* that a commission payment is due and payable to a sales agent or commission employee in Vietnam. To carry out this representation, the supplier hereby requests the opening bank in accordance with procedures outlined in § 214-6.003 of A.I.D. Regulation 14 and in regulations issued by the National Bank of Vietnam to convert the dollar amount covered by the accompanying bank draft into a local-currency equivalent (based

upon the official exchange rate) and to pay the resulting sum in behalf of the supplier to the sales agent or commission employee on the basis of the information contained on this invoice.

(Signature) _____

(c) Content of Sealed Envelope If the supplier does not wish to have the amount of the commission made known to the importer, he may place in a sealed envelope a second set of invoices. This second set, for the *gross* amount of the shipment, will not contain a deduction for the commission which the opening bank is to pay on behalf of the supplier. If such a second set of invoices is placed in the sealed envelope, the supplier shall note on each copy of the gross amount invoice the words: *For the importer* and shall note on each copy of the net amount invoice which he submits to the U. S. bank as a basis for payment the words *Only for A.I.D. and the Opening Bank*.

(d) Bank Draft The supplier shall present to the paying bank a dollar bank draft drawn on any bank and payable to the opening bank in behalf of the sales agent or commission employee. If the supplier submits with his documents a sealed envelope containing a set of gross amount invoices, he shall also place the bank draft in the sealed envelope.

(e) Payment by Opening Bank Without responsibility for itself, for A.I.D. or for the U. S. bank, the opening bank will honor the request of the supplier which appears on, or in an attachment to, his invoice by converting the bank draft into a local-currency equivalent (at the official rate of exchange) and paying over the resulting sum on behalf of the supplier to the sales agent or commission employee. If the supplier has submitted a sealed envelope containing gross amount invoices, the opening bank will withhold from the importer the supplier's invoice for the net amount and will substitute in lieu thereof the supplier's invoice for the gross amount. The opening bank will transfer the dollar amount representing the commission to the National Bank of Vietnam. From time to time, as A.I.D. identifies the amounts of such commissions, A.I.D. will issue Bills for Collection requesting the Government of Vietnam to refund these dollar amounts to A.I.D.

§ 214-6.004 Service Payments

§ 214-6.004-1 Dollar service payments

A.I.D. will not finance a service payment by the supplier in dollars to or for the benefit of a local service organization.

§ 214-6.004-2 Application of commission rules to service payments to local service organizations

The supplier shall apply the rules which appear in § 214-6.003-3 relating to commissions paid in local currency paid by the opening bank in a corresponding fashion to any service payment to a local service organization.

§ 214-6.004-3 Grouping Service Payments

(a) Unrelated payments A supplier who has an agreement with a local service organization to make service payments at fixed or fluctuating intervals may accumulate such payments and may choose any A.I.D.-financed sale to Vietnam at a time which the supplier finds convenient to effect the payment even though the service payment cannot be related in whole or in part to the particular shipment being used as a payment vehicle. A supplier who chooses to group payments in this manner may execute Certification 6 (a) on the Certificate for Suppliers to Vietnam for each intermediate shipment. The execution of Certification 6 (a) will be understood by A.I.D. to mean that the supplier has not paid and will not pay a service payment until he so indicates on a subsequent Certificate for Suppliers to Vietnam in connection with a subsequent transaction and in connection therewith employs the bank-draft procedure required to effect payment.

(b) Prior Transactions The amount of service payments which can be grouped to cover prior transactions shall be limited only by the amount which the supplier is entitled to draw down under his credit in the transaction used as a payment vehicle. In grouping payments to cover prior transactions, the supplier shall identify in *Block 35* and in Part II-(35) the past transactions to which the payment relates. Identification shall include the identification number(s) assigned by A.I.D. to the relevant Certificate(s) for Suppliers to Vietnam, the net amount received at the time payment was made, and the date of shipment. Attachments to the Certificate for Suppliers to Vietnam may be used for this purpose.

(c) Future Transactions Payments may be grouped to cover anticipated future transactions. The supplier shall indicate in *Block 35* and in Part II-(35) the period of time which will be covered by the payment.

§ 214-6.004-4 Attribution of overhead costs to A.I.D.-financed sales

If during the six-month period immediately preceding the date of payment at least 80% of the supplier's sales to Vietnam were financed by A.I.D., all service payments which a supplier makes to a local service organization to maintain a promotional, servicing, distribution, or selling facility in Vietnam for both A.I.D. and non-A.I.D. sales shall be made in compliance with the bank-draft payment procedure. If, however, 20% or more of such sales were not A.I.D. financed, the supplier is encouraged to make a proportionate payment to the local service organization under the bank-draft payment procedure, but is not required to do so. A supplier who wishes to make a service payment for future services to be performed by a local service organization may project the pattern of future A.I.D. and non-A.I.D. sales in accordance with the foregoing formula to determine his responsibility to effect payment in accordance with the bank-draft payment procedure.

S 214-6.005 Waivers and special determinations

Requests for special price approval contemplated by Certifications 7-(b) and 7-(c) of the Certificate for Suppliers to Vietnam should be addressed to the Compliance Review Division, Bureau for Vietnam. Information and requests concerning modifications of the componentry rule set forth in Certification 3 of the Certificate for Suppliers to Vietnam should be directed to the Office of Small Business within the Office of Procurement.