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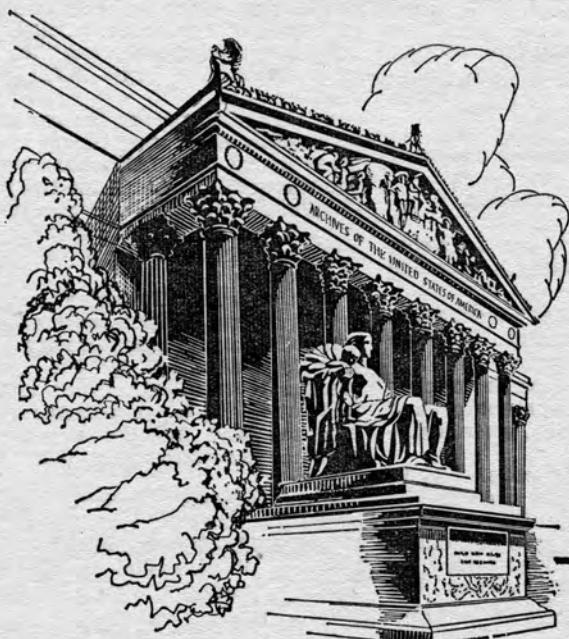
PART II

Department of State

Agency for International  
Development

[A.I.D. Regulation 1]

Commodity  
Transactions  
Financed by A.I.D.



## RULES AND REGULATIONS

**Title 22—FOREIGN RELATIONS****Chapter II—Agency for International Development, Department of State**

[A.I.D. Reg. 1]

**PART 201—RULES AND PROCEDURES APPLICABLE TO COMMODITY TRANSACTIONS FINANCED BY A.I.D.**

Title 22, Chapter II, Part 201 (A.I.D. Reg. 1 as revised) was promulgated September 12, 1964 in 29 F.R. 12895 et seq. Amendments thereto were published in 29 F.R. 18288, 30 F.R. 12941, 31 F.R. 14079, 31 F.R. 15195, 31 F.R. 16693, 32 F.R. 494, 32 F.R. 495, 32 F.R. 923, and 32 F.R. 6488. Because of the number and complexity of the amendments, Part 201 is republished as set forth below. This republication contains editorial, but no substantive changes.

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AUTHORITY: The provisions of this Part 201 issued under sec. 621, 75 Stat. 445; 22 U.S.C. 2402.

**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.

(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, instrumental 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 any country to which A.I.D. provides any form of assistance under the Act.

(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 performed in a commercial export transaction which is necessary to effect a physical transfer of commodities from the country of export 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 fur-

nishes commodities and/or commodity-related services financed under this Part 201.

(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, "Supplier's Certificate and Agreement 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) *Certificate and Agreement Regarding Concerted Pricing.* "Certificate and Agreement Regarding Concerted Pricing" means A.I.D. Form 285 (Appendix D to this Part 201).

(w) *Certificate Concerning Commissions.* "Certificate Concerning Commissions" means the Certificate and Agreement with the Agency for International Development Concerning Commissions and Service Payments Associated with Commodity Sales Financed with Foreign Assistance Funds" (A.I.D. Form 283) which appears as Appendix C to this Part 201.

#### § 201.02 Scope.

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.

(a) The borrower/grantee is responsible for compliance with the applicable provisions of this Part 201 by importers and suppliers and for assuring that importers and suppliers are informed of the extent to which this Part 201 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. The subpart also contains necessary transitory provisions.

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

#### 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 implementing document. Unless otherwise authorized by A.I.D./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 listed in A.I.D. geographic code 899; 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 10 percent, or such other percentage as A.I.D. may pre-

scribe, 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.).

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

(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 899; or

(2) From the United States 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 (e) 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 paragraph (d) (1) and (2) of this § 201.11.

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

**§ 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) The supplier does not procure such services with local currency in the cooperating country; and

(b) Such services are specified in the purchase contract relating to the equipment.

**§ 201.13 Eligibility of delivery services.**

Delivery services will be financed by A.I.D. in the manner provided in this § 201.13.

(a) *General.* Delivery services which relate to A.I.D.-financed commodities may be financed under the implementing document which authorizes the purchase of the commodities or under a separate implementing document.

(b) *Conditions and limitations—(1) Freight.* Unless otherwise authorized, A.I.D. will not finance freight

(i) For shipment beyond the point of entry in the cooperating country; or

(ii) On any non-U.S.-flag transportation medium or any U.S.-flag vessel transferred from foreign-flag to provisional U.S.-flag registry under 46 U.S.C. section 12 for carriage of commodities to the cooperating country, or to or from a free port or bonded warehouse; or

(iii) On any vessel designated by A.I.D. as ineligible to carry A.I.D.-financed cargo; or

(iv) On any liner vessel for which the rate applicable to the commodity shipped and applying to both A.I.D.-financed and non-A.I.D.-financed cargo has not been filed with the Federal Maritime Commission (whether or not such filing is required by the Federal Maritime Commission); or

(v) 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 (Resources Transportation Division); or

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

(2) *Inspection services.* A.I.D. will finance inspection of A.I.D.-financed commodities if such inspection is 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.

(3) *Insurance.* (i) A.I.D. will finance U.S. dollar premiums for marine insurance including war risk on A.I.D.-financed commodities, if

(a) The insurance is placed on a competitive basis, in an authorized source country, with a company or companies authorized to do a marine insurance

business in any State of the United States; and

(b) Such insurance is placed either in accordance with the terms of the commodity purchase contract or by, or on the written instructions of, the importer; and

(c) 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 so-called "warehouse-to-warehouse" clause; and

(d) The premiums do not exceed the limitations contained in § 201.68.

(e) Within 15 days after payment by a supplier of marine insurance of any loss claim in excess of \$6,000 to the assured or to his assignee under any marine insurance policy financed by A.I.D. pursuant to this Part 201, the supplier of marine insurance notifies A.I.D., Office of the Controller, of the amount and date of the payment, a description of the commodity, the A.I.D. number, name of carrier, vessel, and voyage number (alternatively, flight or inland carrier run number), date of the bill of lading, the identity and address of the assured, and the identity and address of any assignee of the assured to whom payment has actually been made.

(ii) 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 said country. "On a competitive basis" means under conditions of effective competition, but not necessarily under formal competitive bid procedures.

**§ 201.14 Eligibility of bid bonds and performance guarantees.**

The cost of any bid bond posted by a successful bidder or of any guaranty of performance 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: *Provided*, That the bid bond and guarantee of performance must be payable in U.S. dollars and must conform to the requirements of the invitation for bids or the contract, as applicable.

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

(a) *General requirement.* 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 any dry bulk carrier shipments, dry cargo liner shipments, and tanker shipments from each of the following geographical areas:

- (1) United States;
- (2) Europe and Africa;
- (3) Near East and South Asia;
- (4) Latin America and Canada; and
- (5) Far East.

(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 (July 1-June 30) 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 (Resources Transportation Division) 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 § 201.15 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 render transportation costs on foreign flag vessels eligible for A.I.D. financing.

(d) *Privately owned U.S.-flag commercial vessels.* For purposes of this § 201.15 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.

**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; and

(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).

**§ 201.22 Formal competitive bid procedures.**

If the implementing document requires, or if the importer elects procurement through formal competitive bid procedures, the following minimum requirements shall apply:

(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 formal competitive bid procedures 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 nonrestrictive 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, or regulations or forms are necessary for bidding, the invitation shall state where such material may be obtained.

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

(b) *Advertising the invitation for bids.* The invitation for bids shall be advertised in the manner described in § 201.24(a)(1).

(c) *Handling bids.* Bids received shall be held intact and sealed and shall be safeguarded against disclosure of contents prior to bid opening. The bids shall be opened publicly as specified in the bid invitation, and all properly submitted bids shall be considered. Direct submission of a bid by a prospective supplier, rather than through an agent or other representative of the supplier in the co-operating country, shall not be cause for rejection.

(d) *Awards.* Every award shall be made to that responsible bidder whose bid, conforming to the invitation for bids, is lowest in price, unless another bid is demonstrably more advantageous to the importer because of any factor (other than price) set forth in the invitation for bids as a factor to be considered in the evaluation of bids.

(e) *Submission of award information to A.I.D.* The importer shall complete Form A.I.D. 11-83 "Abstract of Bids", identifying thereon the successful bidder, and noting any two or more identical bids or any evidence of suspected collusion. If the lowest bid has not been accepted, the importer shall justify the award and shall append to the Abstract a statement of reasons for rejecting all lower bids. The Abstract and any justification statement shall be sent in triplicate to the Office of the Controller, A.I.D., Washington, D.C. 20523, to arrive within 20 days after the award of the contract.

**§ 201.23 Other procurement procedures.**

(a) *General requirements.* Procurement not subject to § 201.22 shall be made in accordance with good commercial practice. Specifications shall be expressed in terms of U.S. standards and shall be in the English language. All solicitations of quotations and offers shall be made uniformly to a reasonable number of prospective suppliers.

(b) *Notification as adequate solicitation.* If the notification requirements of § 201.24(a)(2) apply, such notification shall be deemed an adequate solicitation of quotations and offers, and all supplementary solicitations shall be consistent with such notification.

(c) *Notice of quotations and offers received.* A.I.D. may require that an importer furnish an abstract in the English language and identify thereon all offers or quotations received, the offer accepted or order placed, the price, the quantity, the name and address of all persons submitting offers or quotations and of their principals, if any (including manufacturers or processors of the commodity).

**§ 201.24 Solicitation of bids and quotations.**

(a) *Notification requirements.* Except as paragraph (b) or (c) of this § 201.24 may apply, the importer shall comply with the minimum notification requirements set forth in this paragraph (a). He may take such additional steps to notify prospective suppliers as are consistent with prudent procurement.

(1) *Under formal competitive bid procedures.* Invitations for bids must be advertised in the following manner:

(i) *Submission to A.I.D.* Three copies of the invitation for bids must be sent to the Office of Small Business, A.I.D., Washington, D.C. 20523, and 50 copies of the invitation shall be sent to a place in the United States 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 Office of Small Business 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.

(ii) *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 by the Office of Small Business, AID/W, or upon application of the importer a lesser period is authorized by such Office, the required copies shall be sent so as to arrive in the Office of Small Business, AID/W, at least 45 days in advance of the bid-closing date.

(2) *Under other procurement procedures.* In procurement other than by formal competitive bids, the solicitation of quotations and offers must include the following: The importer shall submit, in triplicate, to the Office of Small

Business, A.I.D., Washington, D.C. 20523, a notice of proposed procurement, which shall include commodity specifications in terms of U.S. standards, and other procurement data, in the English language and in the format set out in "Instructions for Notice of Proposed Procurement" (Appendix B to this Part 201). No importer, importer's agent or representative, or anyone acting in his behalf, shall accept any offer or place any order or agree to accept any offer or place any order until 45 days after the expected arrival of such form at the Office of Small Business, AID/W, in the course of mail. The Office of Small Business may require a longer period or, upon application of the importer, authorize a lesser period.

(3) *Resubmission of notifications to A.I.D.* A.I.D. may require the revision and resubmission to A.I.D. of any invitation for bids which does not comply with the requirements of § 201.22(a) or of subparagraph (1) of this paragraph (a), or of any notice of proposed procurement which does not comply with the requirements of subparagraph (2) of this paragraph (a). In such cases the importer shall effect changes necessary to assure compliance with the applicable requirements. The bid-closing date or the date before which an order may not be placed or accepted will be extended as A.I.D. (Office of Small Business) may instruct. A.I.D. (Office of Small Business) may, when it determines it necessary, return to the importer for revision or resubmission the invitation for bids or the notice of proposed procurement. In such cases the revised invitation or notice must be resubmitted in accordance with all the requirements of this paragraph (a) for original submission to A.I.D.

(b) *Exemption for small value procurement.* Any commodity procurement undertaken by an importer under a single import license or other authority where the estimated landed cost of all purchases made by him under a single three-digit A.I.D. commodity code is less than \$5,000 is exempted from the notification requirements of paragraph (a) of this § 201.24. This exemption does not apply to procurement undertaken in amounts of less than \$5,000 for the purpose, or with the effect, of evading the requirements of paragraph (a) of this § 201.24.

(c) *Waiver provisions.* A.I.D. may waive any notification requirement in the following situations:

(1) *Procurement under certain special supplier-importer relationships.* (i) A supplier may apply for a waiver for the benefit of a named importer if

(a) The procurement concerns a registered brand name commodity

(1) Which is for resale by the importer;

(2) For which the importer is a regularly authorized distributor or dealer of the supplier; and

(3) For which the supplier is the sole distributor; or

(b) The procurement concerns a commodity

(1) Which is for resale by the importer;

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(2) For which the importer is a regularly authorized distributor or dealer of the supplier; and

(3) For which the supplier is the manufacturer or the manufacturer's regularly authorized exporter for the destination involved; or

(c) The procurement concerns a commodity

(1) Which is procured for manufacture, processing or assembly, and resale of the end-product by the importer;

(2) For which the importer is a regularly authorized distributor or dealer of the supplier; and

(3) For which the supplier is the manufacturer or the manufacturer's regularly authorized exporter for the destination involved; or

(d) The commodity is procured under such other commercial relationship which appears to A.I.D. to merit a waiver from the notification requirements.

(ii) Applications for waiver shall be sent by the supplier to the Office of Small Business, A.I.D., Washington, D.C. 20523, and shall include the following:

(a) The name and address of the importer who serves as the authorized distributor or dealer;

(b) The specific commodities covered by the supplier-importer agreement;

(c) Certification concerning the nature and duration of the commercial relationship between the supplier and the importer, supported by a copy or abstract of the pertinent provisions of any underlying written agreement between the supplier and the importer; and

(d) If the supplier is not the manufacturer of the commodity, a statement containing the pertinent provisions of any underlying agreement between the supplier and the manufacturer.

(iii) The waiver, if granted, will be forwarded in duplicate to the supplier. The supplier is responsible for forwarding one copy of the waiver to the importer and for advising the Office of Small Business, A.I.D./W, of any change in his agreement with the importer which may affect the waiver granted by A.I.D.

(2) *Proprietary procurement.* (i) Procurement where A.I.D. has determined that, in order to assure the interchangeability or standardization of equipment, or because of special design requirements, or for any similar reason, purchase of a commodity by reference to a particular specification, trade name, or designation is necessary.

(ii) Application for waivers shall be made in writing to A.I.D. by the importer and shall include supporting justification together with the recommendations of the borrower/grantee. In the absence of other instructions, such applications shall be submitted to the US AID for transmittal to A.I.D./W. Notice of approval or rejection of any such application for a waiver will normally be transmitted to the importer through the US AID.

(3) *Emergency procurement.* (i) Commodity procurement necessary to avoid a serious delay in project completion or in a plant's production, or to avoid a substantial increase in the cost

thereof, if the procurement cannot be effected within the time limitations prescribed by paragraph (a) of this § 201.24 for notification procedures.

(ii) A request for an emergency procurement waiver shall be made by the importer to the US AID. The request shall state the facts justifying such emergency procurement and shall bear the endorsement of the borrower/grantee. Emergency procurement requires the prior written approval of the US AID.

(4) *Special situations.* (i) Procurement in special situations, if A.I.D./W has determined that it would be impractical or inconsistent with the purposes of the Act to require adherence to the notification procedures prescribed in paragraph (a) of this § 201.24.

(ii) A request for a special situation waiver shall be made by the importer to the US AID. The request shall justify the procurement and shall bear the endorsement of the borrower/grantee. In the absence of other instructions, the US AID shall transmit the request to A.I.D./W for decision.

#### § 201.25 Advance and progress payments for custom-made commodities.

(a) Advance or progress payments prior to shipment may be made with A.I.D. funds if the procurement involves any commodity made to the special specifications of the importer and if prior written approval to make such payments has been obtained from A.I.D. by the importer, through the borrower/grantee, or if such payments are authorized in the implementing document. Any request for A.I.D. approval may be submitted either to A.I.D./W or to the US AID for transmittal to A.I.D./W. A.I.D. will consider any such request only if

(1) The total purchase price exceeds \$100,000;

(2) Each payment is at least ten percent of such price; and

(3) The total of all payments prior to shipment does not exceed eighty percent of the purchase price.

(b) A.I.D. may require the supplier to post in A.I.D.'s favor either a guaranty of performance or a prepayment bond equal to the amount of the contract. A.I.D. may impose such further conditions as it deems appropriate.

#### § 201.26 Bid bonds and performance guaranties.

Whenever the importer requires the posting of a bid bond or performance guaranty, the type of bond or guaranty (whether certified check, irrevocable letter of credit, bank bond, bank guaranty, surety bond, or otherwise) shall be at the option of the bidder or supplier. Posted bid bonds shall be returned to unsuccessful bidders promptly after an award is made. Unless converted to a required guaranty of performance, any bid bond posted by the successful bidder shall also be returned promptly. Performance guaranties (as distinguished from commodity warranties of quality or performance) shall be canceled no later than 30 days after completion of the contract performance guarantee.

#### § 201.27 Expenditure of marine insurance loss payments.

If the importer receives directly or indirectly any marine insurance loss payment under a marine insurance policy financed pursuant to this Part 201, the importer shall use such loss proceeds to procure from a source specified in the implementing document which originally provided the A.I.D. funds commodities which have not been designated by A.I.D. to the borrower/grantee as ineligible for A.I.D. financing.

#### Subpart D—Responsibilities of Suppliers

##### § 201.30 Purpose.

This subpart establishes the responsibilities of suppliers who furnish commodities and/or commodity-related services. The subpart also establishes procedures for prior review by A.I.D. of relevant contract data.

##### § 201.31 Suppliers of commodities.

(a) *Performance of the sales contract.* The supplier of commodities shall comply with the terms and conditions of his contract with the importer and of any letter of credit under which he secures payment.

(b) *Eligibility of commodities.* The supplier shall fulfill his responsibilities under § 201.11 by assuring that

(1) The commodity conforms to the description contained in his contract and letter of credit and, unless otherwise authorized by A.I.D. in writing, the commodity is unused and has not been disposed of as surplus by any governmental agency;

(2) The source of the commodity complies with the provisions of § 201.11(b), relating to source as required by his contract or letter of credit, and with the provisions of § 201.11(h), relating to commodities shipped out of free port or bonded warehouse, if the supplier arranged transportation to the free port or bonded warehouse;

(3) The provisions of § 201.11(d) relating to the medium of transportation are complied with to the extent that the supplier arranges such transportation;

(4) All documents required by § 201.52 to be submitted by the supplier to receive payment are submitted by him on or before the terminal date specified in the letter of credit, or, if there is no letter of credit, in his contract;

(5) The provisions of the U.S. Treasury Department Foreign Assets Control Regulation and Cuban Assets Control Regulation are complied with; and

(6) The purchase price of the commodity meets the requirements of Subpart G applicable to the supplier.

(c) *Eligibility of delivery services.* The supplier of commodities shall be responsible for assuring that any delivery services obtained by him for his own or for the importer's account comply with the requirements (other than those relating to freight rates) of § 201.13 and, if required by A.I.D., for assuring that any shipping documents obtained by him contain an appropriate diversion clause pursuant to § 201.43. The supplier shall

deliver to A.I.D. any shipping documents available to him whenever such delivery is requested by A.I.D.

(d) *Commodity marking*—(1) *Affixation of emblem and identification number*. The supplier shall be responsible for assuring that all commodities and their shipping containers, whether shipped from the United States or from any other source country, carry the official A.I.D. (clasped hands) emblem and, in addition, in the case of commodities furnished to countries participating in the Alliance for Progress, the Alliance for Progress (flaming torch) emblem. Emblems shall be affixed by metal plate, decalcomania, stencil, label, tag, or other means, depending upon the type of commodity or shipping container and the nature of the surface to be marked. The emblem placed on the commodities shall be as durable as the trademark, company or brand name affixed by the producer; the emblem on each shipping container shall be affixed in a manner which assures that the emblem will remain legible until the container reaches the consignee. Upon each shipping container the last set of digits of the identification number of the pertinent implementing document shall be marked in characters at least equal in height to the shipper's marks.

(i) *Size of emblems*. The size of an emblem may vary depending upon the size of the commodity and the size of the package or shipping container. The emblem shall in every case be large enough to be clearly visible at a reasonable distance.

(ii) *Design and color of emblems*. Emblems shall conform in design and color to samples available from AID/W (Office of Small Business) and from the US AID.

(2) *Exception to requirement for affixation of emblems*. To the extent compliance is impracticable, affixation shall not be required for

(i) Raw materials shipped in bulk (including grain, coal, petroleum, oil, and lubricants);

(ii) Vegetable fibers packaged in bales; and

(iii) Semifinished products which are not packaged in any way.

(3) *Waiver*. If compliance with the marking requirement is found to be impracticable with respect to other commodities not excepted by subparagraph (2) of this paragraph (d), the supplier (or, when appropriate, the borrower/grantee) may request AID/W (Office of Small Business) for a waiver.

(4) *Display of emblems on ships*. The official A.I.D. (clasped hands) emblem, and, in addition, in the case of shipments to countries participating in the Alliance for Progress, the Alliance for Progress (flaming torch) emblem shall be prominently displayed on all ships during loading and unloading when their cargoes consist entirely of A.I.D.-financed goods. Ship charterers shall insert in charter party agreements instructions relating to the display of A.I.D. emblems.

(e) *Export licenses*. The supplier shall assure that all necessary export licenses are obtained.

(f) *Airmail distribution of shipping documents*. In addition to customary commercial document distribution the supplier shall, at the time of loading the commodities or as soon as practicable thereafter, airmail one set of the following documents to the Controller, US AID, c/o American Embassy in the capital city of the cooperating country to which shipment is being made, or to such other address as is designated to him: a nonnegotiable copy of the ocean or charter party bill of lading or other shipping document, supplier's invoice, and packing list. The supplier shall indicate on each such document the number of the applicable implementing document, if known to the supplier.

(g) *Adjustment refunds, credits, and allowances*. All adjustments in the purchase price in an A.I.D.-financed transaction in favor of the importer arising out of the terms of the contract or the customs of the trade shall be made by the supplier in the form of a dollar payment to A.I.D. Any such payment shall be transmitted to the Office of the Controller, A.I.D., Washington, D.C., and shall be accompanied by a statement explaining the adjustment and shall specify the name and address of the importer, the date and amount of the original invoice, and the identification number of the implementing document, if known, under which the original transaction was financed. A.I.D. will advise the borrower/grantee of such adjustment refunds received. Despatch earned by the supplier, other than despatch earned at the port of loading on c.i.f. and c. & f. shipments, shall be refunded to A.I.D. in accordance with the provision of § 201.67(a)(5).

(h) *Vesting in A.I.D. of title to commodities*. The supplier shall be responsible for compliance with the provisions of § 201.44 applicable to him.

(i) *Termination or modification of A.I.D. financing*. The supplier shall be responsible for compliance with the provisions of § 201.45 applicable to him.

### § 201.32 Suppliers of delivery services.

(a) *Performance of the service contract*. The supplier of delivery services financed by A.I.D. shall comply with the terms and conditions of his contract to supply delivery services.

(b) *Emblems*. A supplier of ocean transportation services shall assure that the A.I.D. emblem and, where applicable, the Alliance for Progress emblem are prominently displayed, during loading and unloading, on any ship whose cargo consists entirely of A.I.D.-financed commodities.

(c) *Adjustments in the price of delivery services*. The supplier of delivery services shall pay to the Controller, A.I.D., Washington, D.C. 20523, all adjustments in the purchase price in favor of the importer (or person purchasing the ocean transportation services) arising out of the terms of the contract or the customs of the trade. Any such payment shall be accompanied by a statement explaining the adjustment and shall specify the name and address of the importer or other person for whom the adjustment is made, the date and

amount of the original invoice, and the identification number of the implementing document, if known, under which the original transaction was financed.

(d) *Marine insurance reporting requirement*. With respect to any loss payment in excess of \$6,000 which a supplier of marine insurance makes under a marine insurance policy financed pursuant to this Part 201, the supplier of marine insurance shall, within 15 days of making such payment, report to A.I.D., Office of the Controller, the amount and date of the payment, a description of the commodity, the A.I.D. numbers, name of the carrier, vessel, and voyage number (alternatively, flight or inland carrier run number), date of the bill of lading, the identity and address of the assured, and the identity and address of any assignee of the assured to whom payment has actually been made.

### § 201.33 Prior review of proposed sales.

A.I.D. may require that a supplier submit to A.I.D. for prior review any proposed sale of commodities or of commodity-related services which is to be financed by A.I.D. Upon being notified by A.I.D. that such prior review will be required, the supplier shall submit to A.I.D. for review all proposed transactions of the type covered by the notification in accordance with instructions contained therein. The supplier shall also provide any further information, documentation, or certification which A.I.D. may specify after review of a proposed transaction. A.I.D. will notify the supplier of any special documents or certifications which the supplier must submit in order to obtain payment under such transactions and will forward to the banks appropriate amendments to letters of commitment or to requests for the opening of a special letter of credit.

### Subpart E—General Provisions Relating to A.I.D. Financing of Commodities and Commodity-Related Services

#### § 201.40 Purpose.

This subpart sets forth certain provisions of general application to transactions subject to this part.

#### § 201.41 Audit and inspection.

The borrower/grantee shall maintain records adequate to document the arrival and disposition in the cooperating country of all commodities financed by A.I.D. and to identify the importer (or the first purchaser or transferee if the commodity is imported by the borrower/grantee) for a period of 5 years following the date of payment or reimbursement by A.I.D. or for such other period as A.I.D. and the borrower/grantee agree. In addition, the borrower/grantee or the importer shall, to the extent either exercises control or custody over the commodities, permit A.I.D. or any of its authorized representatives at all reasonable times during the 5-year or other agreed period to inspect the commodities at any point, including the point of use, and to inspect all records and documents pertaining to such commodities.

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**§ 201.42 Reexport of A.I.D.-financed commodities.**

Unless specifically authorized by A.I.D., commodities imported into a co-operating country under A.I.D. financing may not be exported in the same or substantially in the same form from the cooperating country. In the event of any unauthorized reexport, the borrower/grantee shall pay promptly to A.I.D., upon demand, the entire amount reimbursed or such lesser or greater amount as A.I.D. may deem appropriate under the circumstances of the particular transaction. Such an amount shall in no event, however, exceed the greater of either the amount reimbursed or the amount realized from the reexport.

**§ 201.43 Diversion clause.**

A.I.D. may require that charter parties, bills of lading, or other ocean shipping documents covering A.I.D.-financed commodities contain a clause substantially as follows:

A.I.D. may at any time prior to unloading prescribe a different port of discharge from among the ports covered by the applicable conference tariff. Deviation charges shall apply in accordance with the tariff. Deviation insurance and extra handling costs actually incurred shall be reimbursed.

**§ 201.44 Vesting in A.I.D. of title to commodities.**

(a) *Vesting upon order of A.I.D.* A.I.D. may direct that title to A.I.D.-financed commodities in transit to a cooperating country shall be vested in A.I.D. if in the opinion of A.I.D. such action is necessary to assure compliance with the provisions or purposes of any act of Congress.

(1) *Rights of A.I.D. upon vesting of title.* In accordance with instructions by A.I.D., the borrower/grantee, supplier, and bank shall transfer such negotiable bills of lading, suppliers' invoices, packing lists, inspection certificates or other designated documents relating to the commodities as are in, or may come into, their possession.

(2) *Diversion of commodities.* A.I.D. may direct the master or operator of a vessel or an inland carrier carrying the commodities to divert them away from the port or other destination specified in the shipping documents and to deliver them at such other destination as A.I.D. may designate.

(b) *Financial responsibility of A.I.D. under vesting order.* (1) A.I.D. will reimburse a supplier who has not already received payment under the sales contract for all commodities with respect to which A.I.D. has taken title under a vesting order.

(2) A.I.D. will assume the responsibility for any extra costs (including the costs of marine insurance and handling) which are incurred as a result of a diversion. With respect to liner shipments, such costs shall not exceed diversion charges as per tariff, and shall include only those deviation insurance and extra handling costs which are actually incurred.

(3) A.I.D. shall incur no liability to the borrower/grantee, the importer, or to

the approved applicant by reason of any order which vests in A.I.D. title to commodities, or by reason of any request for the diversion of commodities.

**§ 201.45 Termination or modification of a loan, grant or implementing document.**

(a) *Effect of termination or modification.* (1) Except as provided in subparagraph (2) of this paragraph (a), the availability of A.I.D. funds to finance the procurement of commodities and commodity-related services shall terminate or shall be modified, whenever and to the same extent that the implementing document, letter of commitment or special letter of credit which relates to such delivery is terminated or modified by operation of provisions contained in the document or by the exercise of rights otherwise reserved to A.I.D.

(2) Unless the supplier and A.I.D. agree otherwise, to the extent that the supplier has received an irrevocable letter of credit from a bank under an A.I.D. letter of commitment, the purchase contract shall be affected only to the extent necessary to comply with any vesting order issued by A.I.D. in accordance with § 201.44.

(b) *Responsibilities of parties after termination or modification of A.I.D. financing.* Upon termination or modification of A.I.D. financing of commodities or commodity-related services, the supplier, importer and approved applicant shall make such arrangements as are necessary to obtain the cancellation or modification of any letter of credit in favor of the supplier.

**§ 201.46 Compensation to supplier if shipment is prohibited.**

(a) *Payment to supplier.* A.I.D. shall make appropriate payment to a supplier for the value of A.I.D.-financed commodities available for immediate shipment from the United States if all the following conditions are satisfied:

(1) Shipment is prohibited by order of the U.S. Government and such order has general application to all shipments to the cooperating country.

(2) Payment may not be made by the bank under the terms of the letter of credit or payment instructions.

(3) The supplier is unable to dispose of the commodities without loss.

(4) The supplier tenders to A.I.D. a negotiable warehouse receipt covering the commodities in question and presents to A.I.D. such other documentation required by § 201.52 as may be appropriate under the circumstances.

(b) *Other settlement.* In lieu of accepting title to the commodities, A.I.D. may negotiate with the supplier such other settlement as may be fair and equitable under the circumstances.

**§ 201.47 Use of marine insurance loss proceeds.**

The borrower/grantee shall pay promptly to A.I.D. a sum equal to the proceeds received by an importer or his assignee in settlement of a marine insurance claim under a marine insurance policy financed pursuant to this Part

201, if such proceeds are not expended in the manner provided by § 201.27 within a reasonable period after receipt by the importer.

**Subpart F—Payment and Reimbursement****§ 201.50 Purpose.**

This subpart describes:

(a) The methods by which A.I.D. will make payment or reimbursement for commodities and commodity-related services which have been furnished;

(b) The documentation required to be submitted to A.I.D. for the purpose of obtaining such payment or reimbursement; and

(c) The terminal date for presentation of documents which A.I.D. requires as a condition for reimbursement.

**§ 201.51 Methods of financing.**

In procurement subject to this Part 201 the following methods of financing may be employed by A.I.D. In each case, the method of financing shall be consistent with provisions in the pertinent implementing documents.

(a) *Direct reimbursement.* Upon presentation to A.I.D. of the documents specified in § 201.52, a borrower/grantee will be reimbursed for the cost of commodities and commodity-related services procured by the borrower/grantee directly or procured by other importers with the authorization of the borrower/grantee, if such commodities or services are eligible under the implementing document and under this Part 201 for A.I.D. financing.

(b) *Letter of commitment to a bank.* At the request of the borrower/grantee, A.I.D. will issue a letter of commitment to a bank for a specified amount in dollars. Reimbursement to a bank will be in accordance with the terms of such letter of commitment for sight payments made for the account of an approved applicant. Any such payment by a bank made in anticipation of a letter of commitment and falling within the scope of payments authorized by such letter when issued will be deemed to be a payment to be reimbursed by A.I.D. thereunder.

(1) *Requests for letters of commitment.* Requests for the issuance of letters of commitment shall be in the English language and shall be submitted to A.I.D. by the borrower/grantee in duplicate. They shall contain the following:

(i) Identification of the implementing document;

(ii) The dollar amount of the letter of commitment;

(iii) The name and address of the bank to which the letter of commitment is to be issued;

(iv) The name and address of the approved applicant;

(v) The expiration date to be stated in the letter of commitment, which shall be not later than the final date specified in the implementing document for submission of documentation to the bank as a basis for disbursement against the letter of commitment, except that, if a

terminal shipping date is provided in the implementing document, the expiration date shall be the last day of the month following the month in which the terminal shipping date occurs; and

(vi) Identification of the items to be financed under the letter of commitment (described, if practicable, in terms of the A.I.D. 3- or 4-digit commodity code).

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

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

(iii) *Requirements imposed by bank*. The borrower/grantee and the approved applicant shall be deemed to have consented to imposition by the bank upon the beneficiary of any letter of credit or payment instruction of such requirements as the bank deems necessary in order to comply with its applicable obligations to A.I.D. Such consent shall be deemed an express condition incorporated in any request of the approved applicant under subparagraph (2)(i) of this paragraph (b).

(3) *Reimbursement of bank*. Upon presentation to A.I.D. of the documents described in § 201.52, A.I.D. will reimburse the bank for any amounts paid by it in dollars to or on behalf of the approved applicant pursuant to a letter of commitment, subject, however, to compliance by the bank with the requirements of Subpart H. Such documents in the normal course should be presented to A.I.D. promptly. Bank charges will be eligible for reimbursement if authorized in the letter of commitment. Reimbursement will be made by check within 30 days.

(c) *Special letter of credit*. Upon application of the borrower/grantee, A.I.D. may request a bank to open a special letter of credit, revocable or irrevocable, for a designated beneficiary.

(1) *Financing instructions*. The beneficiary of the special letter of credit may instruct the bank to issue subsidiary letters of credit, or to make payments at sight, to designated parties or may claim reimbursement from the bank for payments which it has made to suppliers upon submission to the bank of the documents required under § 201.52. When issuing subsidiary letters of credit to parties designated by the beneficiary of the special letter of credit, the bank will in-

struct such parties to make reference in their documents to the A.I.D. reference number indicated in the A.I.D. request for the opening of a special letter of credit.

(2) *Reimbursement of bank*. Upon presentation to A.I.D. of the documents described in § 201.52, A.I.D. will reimburse the bank for any amounts paid by it in dollars pursuant to the letter of credit, subject, however, to compliance by the bank with the requirements of Subpart H. Such documents in the normal course should be presented to A.I.D. promptly. Bank charges will be eligible for reimbursement if authorized in the A.I.D. request for the opening of a special letter of credit. Reimbursement will be made by check within 30 days.

(3) *Availability of documents*. The bank shall make available to A.I.D., upon request, a copy of each subsidiary letter of credit issued; a copy of each payment instruction or request; and a copy of each document in its possession received by it against payment.

(d) *Bank charges under letter of commitment or special letter of credit*. (1) To claim reimbursement for commissions, transfers or other charges, not including interest on advances, the bank shall submit Voucher SF 1034 and shall attach thereto a copy of the payment advice which identifies the costs being billed.

(2) To claim reimbursement for interest on advances, the bank shall claim reimbursement on Voucher SF 1034, attaching thereto

(i) The monthly statement of advance account established under the letter of commitment or special letter of credit, in duplicate, showing

(a) The opening balance;

(b) The date and amount of such charge attributable to the letter of commitment or special letter of credit, indicating the number of the letter of commitment or special letter of credit, subsidiary letter of credit, or payment instruction or request under which the charge was made;

(c) The date and amount of each A.I.D. reimbursement to the bank, indicating either the A.I.D. bureau voucher number or the number of the letter of commitment or special letter of credit, subsidiary letter of credit, or payment instruction or request under which the payment was made; and

(d) The closing balance;

(ii) The bank's monthly advice of charge, in duplicate, showing

(a) The outstanding balance in the advance account on each day of the period covered; and

(b) The amount of interest charged during the period.

(3) *Certification*. Each claim for reimbursement shall have endorsed thereon or attached thereto a certification by an authorized representative of the bank that the charges for which payment is being claimed are in accordance with the schedule of charges agreed on between the bank and the approved applicant or beneficiary.

(4) *Report*. The bank shall render a report as of the end of each calendar month to AID/W (Office of the Controller) and to the approved applicant or beneficiary. The report shall contain the following information based upon actual paid invoices and paid bank charges:

- (i) The balance as of the end of the previous reporting period;
- (ii) Increases or decreases during the current reporting period in the authorized amount of the letter of commitment or special letter of credit;
- (iii) Total payments made during the current reporting period; and
- (iv) The balance as of the close of the current reporting period.

#### **§ 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 (9) of this paragraph (a) 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.

(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.

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(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.

(3) *Charter party.* A copy (or photostat) of any charter party under which shipment is made. 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.* 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. In the case of any sale on a c.i.f. or c. & f. basis the bill of lading shall indicate the carrier's statement of charges whether or not freight is financed by A.I.D.

(5) *Documentation on shipment to a free port or bonded warehouse.* (i) In the case of commodities shipped from a free port or bonded warehouse, the supplier shall

(a) Provide as an attachment to a copy of the invoice a copy of the bill of lading (bearing a notation of the freight cost) covering the shipment of the commodity into the free port or bonded warehouse, or

(b) If such a bill of lading is not available to the supplier, provide the following information and certify to its accuracy to the best of his knowledge and belief: the country or area from which the commodities were shipped to such free port or bonded warehouse; the name and flag of the vessel which transported the commodities from the source country to the free port or bonded warehouse; the cost of the freight on such shipment; and the free port or bonded warehouse to which shipment was made from the source country, or

(c) With respect to commodities which have been commingled in the warehouse in such a way that shipments out of the warehouse cannot be related to particular shipments into the warehouse, the supplier shall certify to the best of his knowledge and belief that a portion of the commodities was transported to the free port or bonded warehouse on U.S.-flag carriers, and the quantity for which A.I.D. financing is sought does not exceed that amount.

(ii) In the event a supplier cannot comply with the requirements of subdivision (1) of this subparagraph, it will be assumed, in the absence of evidence to the contrary, that the commodity was transported to the free port or bonded warehouse by a vessel under the flag of a country under A.I.D. geographic code 899 other than the United States.

(6) *Supplier's Certificates.* An original and two copies of the Supplier's Certificate executed by

(i) The supplier of the commodity for the cost of the commodity and any commodity-related services furnished by the commodity supplier;

(ii) The carrier for the cost of ocean or air transportation;

(iii) The insurer for the cost of marine insurance if such cost exceeds \$50.

(7) *Certificate and Agreement Regarding Concurred Pricing.* One signed original of the Certificate and Agreement Regarding Concurred Pricing executed by

(i) The supplier of the commodity; and

(ii) The producer of the commodity, if the supplier indicates in paragraph (1)(a) of the Certificate that he is not also the producer.

This subparagraph (7) shall apply only when the letter of commitment, a request for opening of a special letter of credit, or (in cases of A.I.D. financing by direct reimbursement of a borrower/grantee) other implementing document limits the source of procurement to the United States (A.I.D. Geographic Code 000) and the supplier supplies any of the following commodities: 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).

(8) *Producer's invoice.* Whenever the supplier indicates in paragraph (1)(a) of the Certificate and Agreement Regarding Concurred Pricing that he is not also the producer, one copy of the producer's invoice covering the same commodities which are described in the supplier's invoice.

(9) *Certificate Concerning Commissions.* One signed original executed by the commodity supplier of the Certificate Concerning Commissions.

(b) *Special provision in case of direct reimbursement to borrower/grantee.* In the case of financing by reimbursement directly to a borrower/grantee for payments made by it for procurement, the supplier may, if he desires, submit the Supplier's Certificate prescribed in paragraph (a)(6)(1) of this § 201.52, in duplicate, with Invoice-and-Contract Abstract completed in all applicable respects except as to class of supplier, information as to agents' commission, domestic and foreign, and domestic unit price information, accompanied by one copy of such certificate with the Invoice-and-Contract Abstract fully completed in a sealed envelope, addressed to the Controller, A.I.D., Washington, D.C. 20523, with the following statement upon its face, signed by the supplier:

The undersigned certifies that enclosed in this envelope is a copy of an executed Supplier's Certificate covering the item invoiced, which has been filled in wherever applicable. This envelope contains a document intended

only for A.I.D. and is to be opened only by A.I.D.

If such alternative procedure is used, the signer of the Supplier's Certificate shall be deemed to have satisfied the requirement in § 201.65(k) to report all commissions and similar allowances and the requirement of the Supplier's Certificate that he has filled in the applicable portions of the Invoice-and-Contract Abstract.

(c) *Execution of Certificates.* (1) The original of each Supplier's Certificate, each Certificate Concerning Commissions, and each Certificate and Agreement Regarding Concurred Pricing shall be signed by hand and shall bind the person or organization on whose behalf the execution is made. Any person or organization on whose behalf another purports to sign a Certificate which is submitted by such person or organization shall in all respects be bound thereby, notwithstanding that the person so signing acted without express authority.

(2) The Supplier's Certificate covering the cost of marine insurance may be executed on behalf of the marine insurer by an insurance broker or by a commodity supplier if the commodity supplier is the assured under an open cargo insurance policy issued by the marine insurer and is authorized under such policy to bind the marine insurer by issuing insurance certificates or policies in favor of importers. In each such case, the insurance broker or commodity supplier shall indicate on the Supplier's Certificate the name and address of the insurance company which is acting as the supplier of marine insurance and shall describe himself below his signature as a commodity supplier issuing a certificate under an open cargo insurance policy or as an insurance broker.

#### § 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.

#### 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 201. 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.* "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 com-

modity which, with respect to the quantity, quality, grade, period of delivery, supply area, terms of sale, or class of purchaser, either.

(1) 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

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

(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) *Commission employee.* "Commission employee" means any employee or officer of the supplier who has contributed to securing the sale and who is paid a salary which is directly or indirectly calculated as, or related to, a percentage of the amount of the sale.

(p) *Local currency.* "Local currency" means the currency of the cooperating country.

(q) *Local service organization.* "Local service organization" means any person who in the cooperating country performs services in connection with the A.I.D.-financed commodities.

(r) *Opening bank.* "Opening bank" means the bank which has opened the

letter of credit in the cooperating country in favor of the supplier.

(s) *Regular place of business.* "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 for the sole or principal purpose of rendering a commission eligible for A.I.D. financing.

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

(u) *Resident of the United States.* "Resident of the United States" means any natural person who maintains a permanent household in the United States; who pays or who is subject to the income tax requirements, if any, of the State in which he maintains his household; and who is physically present for at least 60 days of the year in the United States.

(v) *Sales agent.* "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.

(w) *Service payment.* "Service payment" means with respect to services performed in connection with commodities financed under this Part 201 any payment or allowance by the supplier to any person, whether or not a sales agent, but not including a commission, payment or allowance for incidental or delivery services, or a salary payment to any officer or employee of the supplier.

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

(y) *U.S. firm.* "U.S. firm" means

(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.

#### § 201.62 Responsibilities of borrower/grantee and of supplier.

(a) *Responsibilities of borrower/grantee and importer.* The borrower/grantee shall insure that the importer

(1) Procures in accordance with the conditions set forth in § 201.24, and in either § 201.22 or § 201.23, whichever is applicable, and

(2) 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 executes in order to receive payment, the supplier is responsible for compliance with the provisions of this Sub-

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part G other than paragraph (a) of this § 201.62.

**§ 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 (c) 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 (c) 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 a comparable sale at the time of purchase—U.S. and non-U.S. sources—(1) Sale by a supplier who is not the producer.* The purchase price shall not exceed the sum of

(i) The supplier's cost of acquisition; and

(ii) The customary markup of the supplier

(a) In comparable sales other than at the time of purchase; or

(b) If no comparable sale at any time can be found, in the most nearly similar sale of the most nearly similar commodity by the supplier or his competitors.

(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 § 201.63, 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 quantity, 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 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 (g) shall not include sales under formal competitive bid procedures.

**§ 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

(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 out of a free port or bonded warehouse.* In the case of a shipment from a free port or bonded warehouse, A.I.D. will not finance any portion of the cost of the commodity, delivered to the country of destination, which exceeds the eligible price of the commodity, f.o.b. or f.a.s. source country, plus any transportation cost which can be documented in accordance with § 201.52(a)(5)(i) as having been incurred on a U.S.-flag transportation medium.

(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.

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

(a) *General.* This section sets forth rules which govern the eligibility of commissions, service payments, and discounts for A.I.D. financing. Paragraphs (b), (c), and (d) of this § 201.65 establish general limitation, subject to special exceptions, on the eligibility for A.I.D. financing of commissions and service payments. These limitations will govern unless A.I.D. has rendered them inapplicable by express provision in the letter of commitment, request for opening of a special letter of credit, or other implementing document to the effect that paragraphs (b), (c), (d), and (e) of this § 201.65 will not apply to the particular transaction. In any case where A.I.D. does finance a commission or service payment, the specific limitations set forth in paragraph (h) of this § 201.65 shall continue to apply. With respect to shipments to Vietnam, the general limitations established by paragraphs (b), (c), and (d) of this section are modified in

special regard by the option established by paragraph (f) of this § 201.65 in favor of a supplier to effect a commission or service payment in local currency through a dollar bank draft procedure.

(b) *Commission to sales agents.* Unless otherwise authorized by A.I.D., a commission paid or payable by a supplier to or for the benefit of a sales agent in connection with any sale subject to this Part 201 will be eligible for A.I.D. financing only if—

(1) The sales agent performed no part of the services relating to the commission outside the United States, and the sales agent maintains a regular place of business in the United States; or

(2) The sales agent whose services relate to the commission is a U.S. firm, and any officer, employee, partner, or association member of the sales agent who has performed outside the United States any part of the services relating to the commission is both a citizen and resident of the United States.

(c) *Commission to commission employees.* Unless otherwise authorized by A.I.D., a commission paid or payable by a supplier to or for the benefit of a commission employee in connection with any sale subject to this Part 201 will be eligible for A.I.D. financing only if—

(1) The commission employee performed no part of the services relating to the commission outside the United States; or

(2) The commission employee whose services relate to the commission is both a citizen and resident of the United States.

(d) *Service payments.* Unless otherwise authorized by A.I.D., a service payment in connection with any sale subject to this Part 201 will not be eligible for A.I.D. financing if any portion thereof has been paid or is payable by the supplier to or for the benefit of a local service organization.

(e) *Payments by opening bank in local currency.*—(1) *General.* Under arrangements between A.I.D. and the governments of certain cooperating countries a supplier may, if he wishes, request the opening bank on the Certificate Concerning Commissions to pay a commission in local currency directly to the sales agent or commission employee or to make a service payment on behalf of the supplier in local currency directly to a local service organization. Under this procedure, the sales agent, commission employee, or local service organization will be paid by the opening bank with local currency funds deposited by the importer with the opening bank.

(2) *Contents of invoice.* A supplier who wishes to arrange a commission or service payment in local currency in accordance with this procedure shall show on his invoice the gross value of the shipment, all the deductions required by this § 201.65 and the net invoice amount. The draft on the U.S. bank which the supplier presents may not exceed the net amount shown on his invoice. The supplier shall also provide on his invoice—

(i) *Commission information.* An amount expressed in dollars to be paid

in a local currency equivalent to the sales agent or commission employee as commission; the name and address of the sales agent or commission employee; and the dollar sales price to be financed with A.I.D. funds, exclusive of commission.

(ii) *Service payment information.* An amount expressed in dollars to be paid in a local currency equivalent to a local service organization as a service payment; the name and address of the local service organization; and the dollar sales price to be financed with A.I.D. funds, exclusive of the service payment.

(3) *Contents of sealed envelope.* The supplier shall place in a sealed envelope one signed copy of the Certificate Concerning Commissions and shall signify thereon his adherence to Certification H. The sealed envelope shall be physically attached to the supplier's invoice. The supplier shall place on the outside of the envelope the name and address of the opening bank. If the supplier does not wish to have the amount of commission or service payment made known to the importer, he may place in the sealed envelope a second set of invoices. This second set will be made out for the gross value of the shipment, and, unlike the first set submitted to the U.S. bank as a required document, will not contain a deduction for the commission or service payment which the opening bank is to pay on behalf of the supplier. If a second set of invoices is placed in the sealed envelope, the supplier shall note on each such copy the words "For the importer" and shall note on each copy of the 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."

(4) *Execution of Certificate Concerning Commissions.* As a requirement for receiving payment, the supplier shall execute one signed original of the Certificate Concerning Commissions. This original will be forwarded by the U.S. bank to A.I.D. By executing Certification H on the Certificate Concerning Commissions the supplier undertakes to make a commission or service payment in no other manner in connection with the sale described on the Invoice-and-Contract Abstract. Appended to Certification H is a request to the opening bank to make the requested payment in local currency on behalf of the supplier to the sales agent, commission employee, or local service organization. This request reaches the opening bank through the signed copy of the Certificate Concerning Commissions which the supplier has placed in the sealed envelope.

(5) *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 contained in Certification H of the Certificate Concerning Commissions by withholding from the importer the supplier's invoice for the net amount and substituting in lieu thereof the supplier's invoice for the gross amount contained in the sealed envelope. The opening bank will convert the commission or service payment which the supplier has indicated in dollars on the Certificate Con-

cerning Commissions, on the Invoice-and-Contract Abstract, and on his invoice into a local currency equivalent (at the official rate of exchange) and ~~pay~~ <sup>over</sup> the resulting sum on behalf of the supplier to the sales agent, commission employee, or local service organization.

(6) *No multiple or split commissions.* Unless otherwise authorized by A.I.D., a supplier who pays a commission in local currency may not claim A.I.D. financing for any dollar commission in connection with the same transaction.

(f) *Payments by opening banks in local currency on shipments to Vietnam.*—(1) *Special bank draft procedure.* Under arrangements between A.I.D. and the Government of Vietnam a supplier may, if he wishes, arrange for the opening bank to pay on his behalf a commission in local currency directly to the sales agent or commission employee or to make on his behalf a service payment directly to a local service organization. Under this procedure, the supplier will execute an invoice on which the commission or service payment information may appear or may be withheld at the supplier's discretion. Commission or service payment information must however appear on the Invoice-and-Contract Abstract and on the Certificate Concerning Commissions. The supplier may effect a payment to the sales agent or local service organization by placing in a sealed envelope attached to his invoice a dollar bank draft drawn on any bank and payable to the opening bank on behalf of the sales agent, commission employee, or local service organization. The supplier shall also enclose in the sealed envelope a signed, executed copy of the Certificate Concerning Commissions and shall mark on the outside of the envelope the name and address of the opening bank. The U.S. bank will forward to the opening bank the sealed envelope along with the other documents. The opening bank will remove the bank draft, convert the amount contained therein into a local currency equivalent (at the official exchange rate), and will pay over the resulting sum to the sales agent, commission employee, or local service organization whose name and address the supplier has set forth on the Invoice-and-Contract Abstract and on the Certificate Concerning Commissions. The opening bank will transfer the dollar amount representing such commission or service payment to the National Bank of Vietnam. From time to time, as A.I.D. identifies the amounts of such commission or service payments, A.I.D. will issue bills for collection requesting the Government of Vietnam to refund these dollar amounts to A.I.D.

(2) *Execution of Certificate Concerning Commissions.* A supplier who uses the procedure described in this paragraph (f) in connection with shipments to Vietnam shall execute Certification I on the Certificate Concerning Commissions. By this undertaking to A.I.D. the supplier agrees to make a commission or service payment in no other manner in connection with the sale described on

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the Invoice-and-Contract Abstract. The execution of Certification I will also comprise a separate request to the opening bank to make the payment in local currency on his behalf to the sales agent, commission employee, or local service organization.

(3) *No multiple or split commissions.* Unless authorized by A.I.D., a supplier who arranges for the opening bank to pay a commission in local currency in accordance with the bank draft procedure described by this paragraph (f) may not claim A.I.D. financing for any other commission in connection with the same transaction.

(g) *Required deductions from invoice amount.* To arrive at the net amount eligible for A.I.D. financing, there shall be deducted from the gross amount of the supplier's invoice submitted under paragraph (a) (2) of § 201.52—

(1) All trade discounts to which the importer is entitled; and

(2) All commissions and service payments to the extent they are ineligible for dollar financing under this § 201.65.

(h) *Commissions and service payments to importers, purchasing agents, and third parties.* A commission or service payment in connection with any sale subject to this Part 201 shall not be eligible for A.I.D. financing if paid or payable by the supplier—

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

(2) To or for the benefit of a purchasing agent or other 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 service payments attributable to A.I.D. financing.* In connection with commodities financed under this Part 201 every commission paid or payable by a supplier to or for the benefit of a sales agent or commission employee and every service payment payable by a supplier to or for the benefit of a local service organization shall be presumed conclusively to have been paid or to be paid from A.I.D. funds, whether or not such commission or service payment is reported to A.I.D. on the Supplier's Certificate or is deducted on the supplier's invoice, and shall thereby be subject to the eligibility requirements of this § 201.65. This presumption shall not apply whenever—

(1) The supplier arranges for a commission to be paid to a sales agent or commission employee or arranges for a service payment to be paid to a local service organization through the opening bank under the procedure described in paragraph (e) or (f) of this § 201.65; or

(2) The importer, on behalf of the supplier, pays in local currency a commission directly to a sales agent or commission employee or makes a service payment in local currency directly to a local service organization.

(j) *Maximum commission or service payment.* A commission or service payment 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 service payments.* All commissions and service payments, whether or not eligible for financing under this Part 201, made by the supplier in connection with A.I.D.-financed sales to or for the benefit of a sales agent, commission employee, 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 a firm organized under the laws of a state of the United States or to an individual who is a resident of the United States; and

(3) The names of all persons receiving such commission 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 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.

#### § 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.* (i) 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 maximum rate determined by the Maritime Administration in connection with the Cargo Preference Act (46 U.S.C. 1241).

(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

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

(ii) The rate named in any other applicable tariff or other rate listing 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 Controller, A.I.D., Washington, D.C. 20523, within 90 days after date of discharge of the cargo on which the despatch was earned.

(b) *Air freight rates.* A.I.D. will not finance air freight which exceeds the applicable rate on file at the Civil Aeronautics Board, Washington, D.C.

#### § 201.68 Maximum prices for commodity-related services.

The price for an A.I.D.-financed commodity-related service other than ocean or air transportation shall not exceed (a) the prevailing price, if any, for the same or similar services; or (b) the price paid to the supplier under similar circumstances by other customers.

#### § 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 es-

## RULES AND REGULATIONS

calation 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 § 201.69.

(2) Uses a formula based upon 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 A.I.D. commodity code 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. re-

quest 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 Certificates.* The bank shall examine the documents (other than the Supplier's Certificate, the Certificate Concerning Commissions, and the Certificate and Agreement Regarding Concurred Pricing) 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 (b) 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.

(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, transhipment, 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) or whether the carrier statement of charges is indicated on the bill of lading.

(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, the Certificate Concerning Commissions, or the Certificate and Agreement Regarding Concurred Pricing unless, to the best knowledge and belief of the bank, each such original has been signed by hand.

##### § 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, the Certificate Concerning Commissions, and the Certificate and Agreement Regarding Concurred Pricing, 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—

(1) The Certificate and Agreement Regarding Concurred Pricing, the Certificate Concerning Commissions, or the Invoice-and-Contract Abstract in 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; or

(2) In conjunction with the submission by a supplier of a Certificate and Agreement Regarding Concurred Pricing, the bank has failed to secure from a supplier who is not also the producer of the commodities a producer's invoice and a Certificate and Agreement Regarding

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ing Concurred Pricing executed by the producer of the commodities.

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

(d) *Protection of bank making payment.* Acceptance by the bank of any document in the ordinary course of business in good faith as being a genuine and valid document and sufficient in the premises, and the delivery thereof to A.I.D., shall constitute full compliance by the bank with any provision of this 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.

#### § 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 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.

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

##### § 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 201, and

the continuation in effect of certain prior issuances.

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

If any transaction financed hereunder violates the requirements of this Part 201 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 A.I.D. against suppliers.

Without limiting the responsibility of the borrower/grantee or other parties, A.I.D. may require an appropriate refund to it by a supplier under any transaction which violates the requirements of this Part 201, whenever in A.I.D.'s opinion the failure of the supplier to comply with the rules and other requirements of this part has contributed to such violation.

##### § 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 five 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 201.

##### § 201.86 Continuation in effect of certain prior issuances.

(a) The following documents, if issued or executed by A.I.D. or any predecessor agency or corporation prior to November 1, 1964, will continue in effect subject to all the terms and conditions of such documents and, to the extent applicable, all the terms and conditions of this Part 201 as in effect on the date of the is-

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suance of such documents: Project agreements, procurement authorizations and project implementation orders, U.S. Government agency purchase requisitions, loan agreements and implementation letters, letters of commitment and letters of notification to banks, requests for the opening of a special letter of credit and letters of commitment to suppliers. Authorizations, bank contracts, letters of guaranty to banks or suppliers issued by A.I.D. or any predecessor agency or corporation prior to the effective date of this part will continue in effect in accordance with their terms. Amendments to any of the above documents may continue to be made in accordance with the procedures in effect prior to November 1, 1964.

(b) Whenever a Supplier's Certificate A.I.D. Form 280 is required to be submitted under the provisions of this Part 201 as in effect prior to November 1, 1964, a Supplier's Certificate A.I.D. Form 281 or 282 completed and executed in accordance with the provisions of § 201.52 (a) (6), (b), and (c) may, at the election of the supplier, be submitted in lieu of such Supplier's Certificate A.I.D. Form 280, and, if such Supplier's Certificate A.I.D. Form 281 or 282 is submitted, the supplier executing the same shall be bound by the provisions thereof and by the provisions of this Part 201 as in effect at the time of his execution of such Supplier's Certificate.

(c) Whenever a Supplier's Certificate A.I.D. Form 281 is required to be submitted under the provisions of this Part 201 as in effect prior to January 1, 1967, a Supplier's Certificate A.I.D. Form 282 completed and executed in accordance with the provisions of § 201.52(a) (6), (b), and (c) may, at the election of the supplier, be submitted in lieu of such Supplier's Certificate A.I.D. Form 281 and, if such Supplier's Certificate A.I.D. Form 282 is submitted, the supplier executing the same shall be bound by the provisions thereof.

*Effective date.* The foregoing republished version of Part 201 shall become effective on June 1, 1967.

WILLIAM S. GAUD,  
Administrator.

MAY 19, 1967.

APPENDIX A—SUPPLIER'S CERTIFICATE AND AGREEMENT WITH THE AGENCY FOR INTERNATIONAL DEVELOPMENT

(AID 282(1-1-67))

The supplier hereby acknowledges notice 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, and that such payment is subject to Regulation 1 of the Agency for International Development (AID), as in effect on the date hereof (22 CFR Part 201). 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, is entitled under

said contract 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. The supplier will, upon the request of AID, promptly make refund to AID of any amount by which the purchase price exceeds the maximum price permitted under the provisions of subpart G of AID Regulation 1 other than § 201.62(a).

3. The supplier will, upon the request of AID, promptly make appropriate refund to AID in the event of—

(a) His nonperformance, in whole or in part, under said contract, 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 in regard to the transaction indicated therein.

4. The supplier will promptly pay to AID (Office of the Comptroller, AID, Washington, D.C. 20523) and adjustment refunds, credits, or allowances payable to or for the account of the importer arising out of the terms of the said contract or the customs of the trade.

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

6. The supplier or his agent 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 side payments, "kickbacks", or any other payment or benefit whatever in connection with said transaction or any series of transactions of which said transaction is a part, other than those payments or benefits referred to in paragraphs 1 and 4 and indicated on the reverse hereof. Any commissions paid or to be paid in connection with said transaction are shown on the reverse hereof in blocks 28 and 29.

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

9. 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 § 201.62(a).

10. The amount shown on the reverse hereof in block 9 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.

11. The supplier will for a period of not less than five (5) 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.

12. The supplier has complied with the provisions contained and referred to in subpart D of AID Regulation 1. If the supplier has been informed by AID of a requirement for submitting to AID for prior review proposed sales to be financed through funds made available by AID, the supplier has made

such submission, 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 supplier has filled in the applicable portions of the Invoice-and-Contract Abstract on the reverse hereof, certifies to the correctness of the information shown therein, and will upon the request of AID 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, or any other facts, data, or business records relating to the supplier's compliance with his undertakings and certifications in this Supplier's Certificate and Agreement.

14. The agreement incorporated herein shall be deemed to be a contract made under the laws of the District of Columbia, U.S.A., and shall be governed by and construed in accordance with such laws.

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 hereof. (b) False statements herein are punishable by U.S. law. (c) The word "Copy" must be written after signature on all signed copies other than the original.

Signature of official authorized to sign for (check one): Commodity supplier ; carrier ; insurer ; date \_\_\_\_\_

## INSTRUCTIONS

This form must be completed in the English language only and all amounts of money are to be shown in U.S. dollars.

*General—Execution of Form.* This form is designed for use with the Standard Export format. An original and two copies of this form, completed by the following, as appropriate, must accompany each invoice for which payment is requested: (a) Commodity—executed by the supplier of the commodity covering the cost of the commodity, including the cost of any commodity-related service paid by the supplier for his own or the buyer's account; (b) Transportation—executed by each carrier who is separately paid for ocean and air freight to be financed by AID; (c) Insurance—executed by the insurer, insurance broker, or underwriter for the cost of marine insurance to be financed by AID when such cost exceeds \$50. The original must be signed by an authorized official of the supplier, who shall indicate his title thereon. Unless otherwise specified below, all numbered blocks MUST be appropriately completed or the letters "NA" (not applicable) entered.

*Obtaining Forms.* The forms (as well as copies of AID Regulation 1 referred to in this form) may be obtained in limited quantities from banks holding AID letters of commitment, field offices of the Department of Commerce, or the Distribution Branch, Agency for International Development, Washington, D.C. 20523. Forms may be reproduced provided the reproduction is identical in content, size, color, and format.

*Invoice and Contract Abstract—Block 1:* Enter the commodity supplier's name and address.

*Block 2:* Enter the importer's name and address. Caution: On other documents in the Standard Export format, 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 instead.

*Block 3:* Enter name of vessel.

*Block 4:* Enter flag of registry.

*Block 5:* Enter port shown on Bill of Lading.

*Block 6:* Insert the written description of each commodity, preceded by its appropriate U.S. Department of Commerce Schedule B number.

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ber or numbers. On shipments not from the United States, these numbers should be inserted if known. For multi-item invoices, insert the descriptive words commonly employed within the trade and the appropriate Schedule B number(s). *Block 7:* Show the Bill of Lading measurement. *Block 8:* Show the Bill of Lading weight. *Block 9:* The amount shown is the net amount for which the supplier seeks payment. It must not include any credit, discount, commissions, or allowance to or for the account of the importer or his agent. Commissions paid or to be paid in connection with the transaction covered by this form to agents of supplier which are included in the amount shown in block 9 must be detailed in blocks 28 through 30.

*Block 10:* Show the country of source as defined in § 201.01 of AID Regulation 1. *Block 11:* Insert the AID 3- or 4-digit commodity code numbers, if known.

*Block 12:* Insert AID implementing document number furnished in the letter of credit or importer's instructions. *Blocks 13 and 14:* When an import license is furnished by the importer, insert the number in block 14; otherwise insert in block 13 the letter of credit number assigned by the opening bank in the importing country, if applicable.

*Block 15:* Insert the invoice date. *Block 16:* Show the shipping terms, i.e., if a commodity supplier, show "FOB (or FAS) at \_\_\_\_\_" or "CIF (or C&F) to \_\_\_\_\_"; if a supplier of ocean transportation, show "Collect" or "Prepaid".

*Blocks 17 through 19:* Insert the commodity invoice data or insurance rate, as applicable. If there is insufficient room, as in the case of multiple-item invoices, the information may be furnished (a) on an attached listing, (b) in block 21, or (c) by means of an additional copy of the invoice attached to this form. In any of these instances, appropriate reference should be made in blocks 17 through 19 as to the method by which the information is furnished, e.g., "See attached listing". *Block 20:* Enter the date of the contract. *Block 21:* Use to explain any differences between shipping terms, quantity, and unit price as stated in the contract and as invoiced. May also be used to furnish explanation of, or additional information in connection with, any entries on the form. *Block 22:* Enter the total contract amount.

*Transportation Information—Block 23:* Check appropriate vessel types. *Block 24:* Enter as per tariff the appropriate freight rate, other freight charges, and total dollar amount of freight charges after discount. *Block 25:* Enter the Bill of Lading number. *Block 26:* Enter the Bill of Lading date.

*Insurance Information—Block 27:* Self-explanatory.

*Information as to Commissions, Credits, Allowances, Similar Payments, and Side Payments—Blocks 28 through 30:* Enter in these blocks pertinent information with reference to (a) all payments, credits, commissions, and similar allowances 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(h) 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 § 201.65 of AID Regulation 1. In block 30 indicate whether or not the amount is included in the invoice amount reported in block 9 by entering the amount of each payment opposite the related entry in the appropriate column "Included in Invoice" or "Not Included in Invoice". If there is insufficient room to furnish the information required in blocks 28 through 30, the blocks may be noted "Continued" or "See attached listing" and the required information shown in block

21 or furnished on a listing attached to the form. If no commissions, credits, allowances, similar payments, and side payments are involved, insert "None" in block 28. Contracts need not be submitted to AID unless specifically requested. In the case of ocean freight, however, charter parties, if any, are to be included in the reimbursement documents.

## INVOICE-AND-CONTRACT ABSTRACT

1. Commodity supplier's name and address: \_\_\_\_\_
2. Importer's name and address: \_\_\_\_\_
3. Vessel: \_\_\_\_\_
4. Flag: \_\_\_\_\_
5. Port of exit: \_\_\_\_\_

## COMMODITY INFORMATION

6. Schedule B number and description of commodity: \_\_\_\_\_
7. Measurement: \_\_\_\_\_
8. Gross weight: \_\_\_\_\_
9. Invoice amount after discount: \_\_\_\_\_
10. Source (country): \_\_\_\_\_
11. AID commodity code: \_\_\_\_\_
12. AID number: \_\_\_\_\_
13. Opening bank ltr. cr. number: \_\_\_\_\_
14. Import license number: \_\_\_\_\_
15. Invoice date: \_\_\_\_\_
16. Shipping terms: \_\_\_\_\_
17. Quantity: \_\_\_\_\_
18. Unit: \_\_\_\_\_
19. Unit price: \_\_\_\_\_
20. Contract date: \_\_\_\_\_
21. Specify here items and amounts that will account for any differences between contract and invoice prices: \_\_\_\_\_
22. Total contract amount: \_\_\_\_\_

## TRANSPORTATION INFORMATION

23. Vessel type:  Bulk  Berth  Tanker  
\_\_\_\_\_
24. Freight rate:  
Other: \_\_\_\_\_ Total: \_\_\_\_\_
25. B/L number: \_\_\_\_\_
26. B/L date: \_\_\_\_\_

## INSURANCE INFORMATION

27. Insurance premium on this shipment (if over \$50): \_\_\_\_\_

## INFORMATION AS TO COMMISSIONS, CREDITS, ALLOWANCES, SIMILAR PAYMENTS, AND SIDE PAYMENTS

28. Name of recipients: \_\_\_\_\_
29. Addresses: \_\_\_\_\_
30. Amount paid or to be paid: Included in invoice: \_\_\_\_\_ Not included in invoice: \_\_\_\_\_

If certification on other side is made by carrier or insurer, type or print name and address of company:

Carrier: \_\_\_\_\_  
Insurer: \_\_\_\_\_  
Type or print name and title of official authorized to sign on the other side: \_\_\_\_\_  
Place executed (city, State, country): \_\_\_\_\_

## APPENDIX B—INSTRUCTIONS FOR NOTICE OF PROPOSED PROCUREMENT

In general, the minimum notification requirements specified in subparagraphs (2) and (3) of § 201.24(a) of A.I.D. Regulation 1 must be observed by the importer in all A.I.D.-financed procurement other than by formal competitive bids. Exceptions from these requirements are set forth in § 201.24(b) "Exemption for small value procurement" and § 201.24(c) "Waiver provisions" of the regulation.

These minimum notification requirements are as follows:

The importer must submit to the Office of Small Business (OSB), A.I.D., a notice of proposed procurement. Until forty-five (45) days after its expected arrival there, the importer or his agent may not accept any offer

or place any order, or agree to accept any offer or to place any order. The OSB may require a waiting period longer than forty-five (45) days or, upon application of the importer, authorize a shorter period. Except when submission is by cablegram, three copies are to be submitted by registered mail to the OSB.

Cablegram: OSBAID, Washington, D.C., USA

Mail: Office of Small Business, Agency for International Development, Washington, D.C. 20523, U.S.A.

The information contained in the notice shall be in the English language, and specifications shall be in terms of U.S. standards. If the notice as submitted does not comply with all the specified minimum notification requirements, it may be returned by OSB to the importer for revision and resubmission. In such cases, the revised copies must be submitted anew in accordance with the applicable requirements.

The notice of proposed procurement shall be submitted in the format set forth below. Guidance as to the information required in the individual paragraphs of the notice is contained in the notes listed following the format.

## (FORMAT)

## NOTICE OF PROPOSED PROCUREMENT

A. Country: \_\_\_\_\_ (See Note A)  
B. Authority: \_\_\_\_\_ (See Note B)  
C. Subauthority: \_\_\_\_\_ (See Note C)  
D. Source: \_\_\_\_\_ (See Note D)  
E. End of waiting period: \_\_\_\_\_ (See Note E)  
F. Buyer: \_\_\_\_\_ (See Note F)  
G. Commodity: \_\_\_\_\_ (See Note G)  
H. Value: \_\_\_\_\_ (See Note H)  
I. Basis: \_\_\_\_\_ (See Note I)  
J. Cablegram: \_\_\_\_\_ (See Note J)  
K. Delivery: \_\_\_\_\_ (See Note K)  
L. Other: \_\_\_\_\_ (See Note L)

NOTE A. Designate the importing country (e.g., A. Country: India).

NOTE B. Identify, if known, the implementing document which authorizes the use of A.I.D. funds for the proposed procurement (e.g., B. Authority: 518-B-432).

NOTE C. Indicate, if applicable, the sub-authorization (SA), and/or Import License (IL) numbers (e.g., C. Subauthority: SA 1324/IL 4321).

NOTE D. Indicate the eligible source (area in which procurement may be made) as designated in the implementing document. List both the name description and the number for the A.I.D. Geographic Code (e.g., D. Source: United States, 000).

NOTE E. Indicate the calendar date by which quotations or offers must reach the importer to assure their consideration. This date must be established as being at least forty-five (45) calendar days after expected receipt of notice in AID/W (Office of Small Business) (e.g., E. End of waiting period: Aug. 16, 1964).

NOTE F. Indicate the name and complete address of the importer. This will be the person or organization who for this transaction is the purchaser. Telephone number may also be included if contact by such means is acceptable (e.g., F. Buyer: XYZ Import Company, Ltd., 14 Front Street, Bombay, India, Tel. Bombay 373781).

NOTE G. Fully describe the commodities and/or services (excluding ocean transportation and marine insurance) for which quotations or offers are desired. Specifications shall be in terms of U.S. standards and shall indicate sizes, quantities, etc. Electrical equipment shall include the power characteristics required. Data shall be in such sufficient detail as to provide an adequate basis on which suppliers can submit realistic offers. Omission of U.S. standards as herein prescribed will make the entire notice unacceptable.

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NOTE H. Indicate the full dollar amount of the Import License, except when the notice covers only part of the commodities included in the License. In such cases, show on any one notice only the approximate dollar value of the commodities included. The dollar value will not be published in the Small Business Circular except in those instances where the importer does not indicate a specific quantity, but instead, desires to purchase the greatest quantity for a given sum (e.g., H. Cost: \$250,000).

NOTE I. Indicate basis on which quotations or offers are to be submitted: c.i.f. or c. & f. Port of Entry; f.a.s. or f.o.b. Port of Exit; etc. (e.g., I Basis: c.i.f. Bombay).

NOTE J. Indicate whether or not cablegram quotations will be accepted. If acceptable, show Importer's cable address (e.g., J. Cablegram: Acceptable, CMMP, Bombay).

NOTE K. Indicate the date by which shipment from source country is required or desired, and the destination port (e.g., K. Delivery: Bombay, Nov. 14, 1964).

NOTE L. List any special shipping or packing instructions or other conditions and information which are applicable and not included in preceding paragraphs.

**APPENDIX C—CERTIFICATE AND AGREEMENT WITH THE AGENCY FOR INTERNATIONAL DEVELOPMENT CONCERNING COMMISSION AND SERVICE PAYMENTS ASSOCIATED WITH COMMODITY SALES FINANCED WITH FOREIGN ASSISTANCE FUNDS (A.I.D. FORM 283)**

Limitations on A.I.D. Financing: Paragraphs (b), (c), and (d) of § 201.65 of A.I.D. Regulation 1 (22 C.F.R. § 201.65) provide as follows:

(b) *Commission to sales agents.* Unless otherwise authorized by A.I.D., a commission paid or payable by a supplier to or for the benefit of a sales agent in connection with any sale subject to this Part 201 shall be eligible for A.I.D. financing only if—

(1) The sales agent performed no part of the services relating to the commission outside the United States, and the sales agent maintains a regular place of business in the United States; or

(2) The sales agent whose services relate to the commission is a U.S. firm, and any officer, employee, partner or association member of the sales agent who has performed outside the United States any part of the services relating to the commission is both a citizen and resident of the United States.

(c) *Commission to commission employees.* Unless otherwise authorized by A.I.D., a commission paid or payable by a supplier to or for the benefit of a commission employee in connection with any sale subject to this Part 201 shall be eligible for A.I.D. financing only if—

(1) The commission employee performed no part of the services relating to the commission outside the United States; or

(2) The commission employee whose services relate to the commission is both a citizen and resident of the United States.

(d) *Service payments.* Unless otherwise authorized by A.I.D., a service payment in connection with any sale subject to this Part 201 will not be eligible for A.I.D. financing if any portion thereof has been paid or is payable by the supplier to or for the benefit of a local service organization.

Instructions: As a condition for receiving payment from Foreign Assistance Funds, the supplier is required to check one or more of the certifications which appear as separate blocks on the reverse of this form and which apply to his transaction. The supplier shall indicate on line 4 the letter of the certification(s) to which he subscribes. If the supplier checks the block for Certifications A,

H, or I, he may check no other certification. A supplier who executes Certification H will also thereby request the opening bank to pay a commission or to make a service payment in local currency in accordance with the procedure described in paragraph (e) of § 201.65 of A.I.D. Regulation 1. By executing Certification I, a supplier to Vietnam will also thereby request the opening bank to pay a commission or to make a service payment in local currency in accordance with the procedure described in paragraph (f) of § 201.65 of A.I.D. Regulation 1. As appropriate, the supplier may check one or more of Certifications B, C, D, E, F, or G.

On line 1 below the supplier shall insert the serial or other number which he has assigned to the invoice which he submits to his bank as the basis for receiving payment. On line 2 the supplier shall insert the A.I.D. identification number of the implementing document.

1. Invoice No. \_\_\_\_\_
2. A.I.D. No. \_\_\_\_\_

**CERTIFICATIONS TO A.I.D. AND REQUEST TO OPENING BANK**

**NO COMMISSION OR SERVICE PAYMENTS**

Certification A:  The undersigned certifies on behalf of the supplier that in connection with the sale described on the accompanying Invoice-and-Contract Abstract no commission and no service payment has been paid or is payable either in dollars or in local currency.

**DOLLAR COMMISSION TO A SALES AGENT**

The undersigned certifies on behalf of the supplier that a dollar commission has been paid or is payable in the amount indicated on the accompanying A.I.D. Invoice-and-Contract Abstract to a sales agent; and—

Certification B:  That no part of the services relating to the commission were performed by the sales agent outside the United States; and that the sales agent maintains a regular place of business in the United States; or—

Certification C:  That the sales agent whose services relate to the commission is a U.S. firm; and that any officer, employee, partner, or association member of such U.S. firm who has performed outside the United States any part of the services relating to the commission is both a citizen and resident of the United States.

**DOLLAR COMMISSION TO A COMMISSION EMPLOYEE**

The undersigned certifies on behalf of the supplier that a dollar commission has been paid or is payable in the amount indicated on the accompanying A.I.D. Invoice-and-Contract Abstract to a commission employee; and—

Certification D:  That no part of the services relating to the commission were performed by the commission employee outside the United States; or—

Certification E:  That the commission employee who has performed outside the United States any part of the services relating to the commission is both a citizen and resident of the United States.

**DOLLAR SERVICE PAYMENTS**

Certification F:  The undersigned certifies on behalf of the supplier that a service payment has been paid or is payable in dollars in the amount indicated on the accompanying A.I.D. Invoice-and-Contract Abstract and that such amount has neither been paid nor is payable to a local service organization.

**LOCAL CURRENCY COMMISSION OR SERVICE PAYMENT BY IMPORTER**

Certification G:  The undersigned certifies on behalf of the supplier that a commission or service payment has been paid or is payable by the importer in local currency for account of the supplier directly to the sales agent, commission employee, or local service organization in the amount indicated on the accompanying A.I.D. Invoice-and-Contract Abstract and that the amount of the commission or service payment, expressed in dollars, has been subtracted from the invoice amount for which the supplier is claiming A.I.D. financing.

**LOCAL CURRENCY COMMISSION OR SERVICE PAYMENT BY OPENING BANK**

Certification H:  The undersigned certifies on behalf of the supplier that a commission or service payment is payable in local currency in the amount indicated on the accompanying A.I.D. Invoice-and-Contract Abstract; that the amount of the commission or service payment, expressed in dollars, has been subtracted from the invoice amount for which the supplier is claiming A.I.D. financing; and that the supplier will make no commission or service payment in any other manner in connection with the transaction described on the accompanying A.I.D. Invoice-and-Contract Abstract.

Request to opening bank: The opening bank, in accordance with the procedure outlined in paragraph (e) of § 201.65 of A.I.D. Regulation 1 and in instructions issued by the central banking authority of the government of the cooperating country, is requested by the undersigned to pay on behalf of the supplier, on the basis of the information provided on line 3 of this form and on the supplier's invoice, a local currency equivalent (based upon the official exchange rate) of the amount indicated in dollars to the sales agent, commission employee, or local service organization.

**3. Commission and Service Payment Information:**

a. Name of:  
 sales agent  
 commission employee  
 local service organization

b. Address of sales agent, commission employee, or local service organization

c. Gross invoice amount

d. Commission or service payment (expressed in dollars) payable by opening bank in local currency

e. Net invoice amount to be paid to supplier with A.I.D. dollars (line c minus line d)

Certification I (for suppliers to Vietnam only):  The undersigned certifies on behalf of the supplier that a commission or service payment is payable to the sales agent, commission employee, or local service organization whose name and address appear on line 3 of this form; that to discharge his obligation the supplier has secured a bank draft payable to the opening bank on behalf of the sales agent, commission employee, or local service organization and has placed such bank draft along with a signed, executed copy of this form in a sealed envelope marked on the outside with the name of the opening bank; and that the supplier, without the prior approval of A.I.D., will make no commission or service payment in any other manner in connection with the transaction described on the accompanying A.I.D. Invoice-and-Contract Abstract.

Request to opening bank: By executing this Certification I the undersigned, acting

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on behalf of the supplier, hereby requests the opening bank, in accordance with the procedure outlined in paragraph (f) of § 201.65 of A.I.D. Regulation 1 and in regulations issued by the National Bank of Vietnam, to convert the dollar amount covered by the attached bank draft into a local currency equivalent (based upon the official exchange rate) and to pay on behalf of the supplier the resulting sum to the sales agent, commission employee, or local service organization on the basis of the information provided on line 3 of this form.

4. The undersigned has checked block letter(s) \_\_\_\_\_ and has thereby subscribed to the contents of the certification(s) set forth therein as a condition for receiving payment from funds authorized under the Foreign Assistance Act of 1961, as amended, for the sale described on the accompanying Invoice-and-Contract Abstract. The undersigned represents that, except as certified in the block(s) which he has checked on this form, no commission or service payment either in dollars or in local currency has been paid or is payable to a sales agent, commission employee or local service organization in connection with the sale described on the accompanying Invoice-and-Contract Abstract. The undersigned acknowledges that the supplier will, upon request of the Administrator of A.I.D., promptly refund to A.I.D. in dollars any sum which the supplier has paid over in violation of any certification which he has made on this form. The supplier also acknowledges that false certification may bring about the application of penalties provided by Title 18 and Title 31 of the United States Code.

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Name of supplier (name of firm))

\_\_\_\_\_  
(Position in firm)

\_\_\_\_\_  
(Date)

Definitions: As used on this form, "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; "commission employee" means any employee or officer of the supplier who has contributed to securing the sale and who is paid a salary which is directly or indirectly calculated as, or related to, a percentage of the amount of the sale; "Invoice-and-Contract Abstract" means the reverse side of A.I.D. Form 282 (which appears as Appendix A to A.I.D. Regulation 1, 22 C.F.R. Part 201) or A.I.D. Form 18-24;

"local currency" means the currency of the cooperating country; "local service organization" means any person who in the cooperating country performs services in connection with the A.I.D.-financed commodities; "opening bank" means the bank which has opened the letter of credit in the cooperating country in favor of the supplier; "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 for the sole or principal purpose of rendering a commission eligible for A.I.D. financing; "resident of the United States" means any natural person who maintains a permanent household in the United States, who pays or who is subject to the income tax requirements, if any, of the State in which he maintains his household; and who is physically present for at least 60 days of the year in the United States; "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; "service payment" means with respect to services performed in connection with the A.I.D.-financed commodities any payment or allowance by the supplier to any person, whether or not a sales agent, but not including a commission, payment or allowance for incidental or delivery services, or a salary payment to any officer or employee of the supplier; "State" means the District of Columbia, Puerto Rico, or any State, territory or possession of the United States; "U.S. firm" means (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.

APPENDIX D—CERTIFICATE AND AGREEMENT  
REGARDING CONCERTED PRICING

(A.I.D. Form 285)

In consideration of the receipt of funds made available by the United States under the Foreign Assistance Act of 1961, as amended, in payment, in whole or in part, of the sum indicated on the accompanying invoice as claimed to be due and owing, the undersigned, acting on behalf of the firm whose name appears on line 6 below (the supplier or the producer of the commodities) and authorized to bind such firm, agrees with and certifies to A.I.D. as follows:

(1) The firm whose name appears on line 6 below—  
 a. Is the A.I.D.-financed supplier, but is not the producer of the goods described by the attached invoice which the supplier has executed.  
 b. Is the A.I.D.-financed supplier and is also the producer of the goods described by the attached invoice which the supplier has executed.  
 c. Is not the A.I.D.-financed supplier, but is the producer of the goods described by the attached invoice which the producer has executed.

[Check the appropriate box.]

(2) The price and quantity terms of the sale described by the attached invoice have been arrived at independently by the firm on whose behalf this Certificate is executed, without consultation or agreement concerning such price or quantity with any other bidder, offeror, competitor, or any member of an 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.

(3) If the undersigned has checked box (1)(a) of this Certificate, he has also appended an invoice executed by the producer of the commodities described in the supplier's invoice and a Certificate and Agreement Regarding Concerted Pricing (A.I.D. Form 285) executed by the producer of such commodities.

(4) Invoice No. \_\_\_\_\_

(5) A.I.D. No. \_\_\_\_\_

(6) Name of firm \_\_\_\_\_

(7) Name of undersigned and position in firm \_\_\_\_\_

(8) Signature \_\_\_\_\_

(9) Date \_\_\_\_\_

INSTRUCTIONS: "Firm" means the supplier or producer on whose behalf this Certificate and Agreement Regarding Concerted Pricing is executed. The supplier of the commodity shall execute this Certificate in every case in which he is required to do so as a condition for receiving payment. If the supplier indicates in box (1)(a) that he is not also the producer of the commodities (through manufacture, processing, mining, growth, or assembly), he shall attach to his invoice the invoice of the producer (covering the same commodities described in the supplier's invoice) and an additional Certificate and Agreement Regarding Concerted Pricing (A.I.D. Form 285) executed by the producer of the commodities. On line 4, the supplier or the producer shall insert the serial number or other number which he has assigned to his invoice. On line 5 the supplier or the producer shall insert the A.I.D. implementation number which identifies the transaction.

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