

Mandatory Reference: 305  
 File Name: 305mac\_013003\_cd30  
 Revision: 01/30/2003  
 Effective: 11/13/2002

## Country Contracting Handbook

### Chapter 3: Procurement of Equipment and Materials

#### DISCLAIMER

Many of the mandatory and supplementary references to the chapters in the ADS 300 Series contain references to the Handbooks that no longer exist. If the policies remain, they are in an ADS 300 chapter. Information that has not been included in an ADS 300 chapter is guidance only. The references will be revised to refer to ADS chapters or other guidance as applicable.

Formerly Chapter 3, Handbook 11

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## 1.0 Introduction

### 1.1 Applicability

Chapter 3 of the Country Contracting Handbook contains rules and guidance for country contracting for equipment and materials under bilateral assistance (both loan and grant funded), as discussed below:

#### a. Procurement by Borrower/Grantees

This Chapter applies to USAID-financed procurements of commodities, equipment, and materials that are solicited outside the host country, even though host country firms may also be eligible, whether the contract is denominated in U.S. dollars or local currency. Procurements of commodities that are solicited solely within the host country are not included within the scope of this Chapter although portions of the Chapter are incorporated by reference for such purposes.\*

#### b. Procurement by Intermediate Credit Institutions

This Chapter applies to procurements made by development banks or other intermediate credit institutions for their own account. Although the guidance may contain useful information, the rules do not apply to procurement made by or on behalf of the subborrowers of such banks or institutions unless made applicable by the Strategic Objectives Grant Agreement (SOAG) or SOAG Implementation Letter.

\*See also ADS Chapter 311, for contracting policies concerning Local Procurement; Chapter 316, for Intermediate Credit Institutions; and Chapter 317, for Fixed Amount Reimbursement. When equipment and materials are procured solely within the host country, Chapter 311, applies the following portions of this Chapter 3 by reference: (a) the contract approval requirement set forth in Section 2.1, (b) the contracting method in Section 2.2, (c) the eligibility of commodity requirements in Section 2.5, (d) the source of commodity and commodity related services and nationality of suppliers in Section 2.6, and (e) the mandatory contract clauses in Section 2.13 (other than 2.13.3 which is exempted by Chapter 8 of that handbook). In addition, this Chapter 3, contains information and procedures which are useful in entering into such contracts.

#### c. Procurement by Contractors

(1) Chapter 3 of this Handbook does not apply to procurement by contractors when the cost of the equipment and materials is included within fixed price prime contracts. The requirements applicable to any equipment and materials are included in the terms of the prime contracts pursuant to the rules in other chapters of this Handbook.

(2) This Chapter applies, except as provided in 1.1.c (3) below, to procurement by procurement agents and other professional, technical or construction services contractors when the amount the Borrower/Grantee pays for the equipment and material is the actual cost of the items. The contractors who are procuring on behalf of Borrower/Grantees are required to comply with the rules in Section 2 of this Chapter, except that the Borrower/Grantee is responsible for providing shipping instructions that will assure compliance with Section 2.7, Cargo Preference.

(3) The rules in Section 2 of this Chapter are those that USAID considers to be the minimum essential requirements for USAID-financed commodity procurements and are designed to afford purchasers the widest possible latitude in using their existing procedures. Nevertheless, USAID may waive the application of this Chapter in situations when the only procurement by a professional or technical services contractor will be incidental to the principal work under the contract and of relatively low total value.

d. Other Chapters in this Handbook are:

- Chapter 1, Procurement of Professional and Technical Services
- Chapter 2, Procurement of Construction Services
- Chapter 4, Cost Principles for Country Contracts

## **1.2 USAID's Role in Country Contracting**

The USAID Mission is responsible for providing assistance to the Contracting Agency, to the extent necessary, in the application of the rules and guidance in this Handbook. The Mission may also have a useful role in explaining USAID's procedures to the supplier. Prior approval of country contracts by USAID, as discussed in Section 2.1 below, serves both as a vehicle for providing assistance and to safeguard effective contracting.

## **1.3 Rules**

The rules to be followed in country contracting are set forth in Section 2 of this Chapter. They are either derived from U.S. Government statute or based on USAID's experience in carrying out its responsibility for stewardship of U.S. Government funds. In certain cases, as discussed in Section 2, these rules may be waived by an authorized USAID official based on a written justification.

## **1.4 Guidance**

The remainder of this Chapter contains guidance which may be modified based on the circumstances of the particular procurement. This guidance is based on sound procurement practice. Use of procedures other than those recommended in the guidance Section of this Chapter (Section 3) does not require waivers of any kind. The procedures to be followed in selection of the supplier and contract preparation should be agreed upon with the Contracting Agency and set forth in a SOAG Implementation Letter. In reviewing and approving individual

procurement actions, USAID will take into account the Contracting Agency's conformance to the agreed procedures.

## **1.5 Definitions**

Listed below are terms used throughout this Chapter. There are, in addition, a number of shipping terms, e.g., f.o.b., f.a.s., c.i.f., c.&f., etc. These shipping terms are defined in several internationally recognized documents. The contract normally states which set of definitions applies to the contract.

**1.5.1** "USAID Procurement Information Bulletin" means a publication prepared by USAID's Office of Procurement which includes information on USAID-financed procurements. It contains notices of the availability of Invitations for Bids, Requests for Quotations, availability of prequalification questionnaires, and other general information.

**1.5.2** "USAID Geographic Code \_\_\_\_\_" is used by USAID to define eligible countries and means the countries specified in the USAID ADS INSERT: ADS Successor to Geographic Code Book in Handbook 18, Appendix D. Relevant codes are contained in Attachment A to this chapter.

**1.5.3** "Borrower/Grantee" means the government of any cooperating country, or any agency, instrumentality or political subdivision thereof, or any private entity or regional or multi-national organization to which USAID directly makes funds available by loan or grant.

**1.5.4** "Commodity-Related Services" means delivery services and incidental services as defined below.

**1.5.5** "Contract" is an agreement between the buyer and seller concerning the purchase of commodities. It includes purchase orders and bids which have been accepted in writing by the Contracting Agency.

**1.5.6** "Contracting Agency" is a unit or entity of the host country designated by the Borrower/Grantee as responsible for awarding contracts financed by an USAID loan or grant. This includes, but is not limited to, ministries of the national government and their sub-units, authorities (such as port or regional), units of local government at any level and government-owned, private or mixed corporations and similar entities.

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

**1.5.8** "Eligible Countries" are those countries specified by Geographic Code in the SOAG, SOAG Implementation Letters, and other related documents, as eligible countries for the supply of services and goods.

**1.5.9** "Equipment and Materials" means any equipment, materials, supplies, or other goods and are often referred to as "commodities."

**1.5.10** A "Firm" is any supplier, or potential supplier, within the scope of this chapter.

**1.5.11** "Incidental Services" means the installation or erection of USAID-financed equipment or the training of personnel in the maintenance, operation, and use of such equipment.

**1.5.12** "Legal Resident" is a person classified by the immigration authorities as a legal resident, regardless of citizenship.

**1.5.13** "Local," "Cooperating Country" or "Host Country" means the country of the Borrower/Grantee.

**1.5.14** "Procurement Agent" means an individual or entity that undertakes procurement of commodities acting on behalf of and for the account of the Borrower/Grantee. A procurement agent does not provide commodities; rather it provides services that help the Borrower/Grantee secure the commodities from others. The services provided by a procurement agent may include such things as specification writing, preparation and issuance of Invitations for Bids or Requests for Quotations, review and evaluation of offers or bids, placing orders or issuing contracts, inspecting commodities, arranging transportation, arranging and collecting on insurance, etc. This term includes a contractor providing technical, professional, or construction services on a cost reimbursement basis who acts in this capacity.

**1.5.15** RESERVED

**1.5.16** "Supplier" is the supplier of commodities and commodity-related services. Any reference to a firm or supplier also applies to an individual or a sole proprietorship unless indicated otherwise.

**1.5.17** "United States" means the United States of America, any of its states, territories, or possessions, Puerto Rico, and the District of Columbia.

## **2.0 Rules**

### **2.1 USAID Approvals**

**2.1.1** When the total contract amount is anticipated to exceed \$250,000 in value, including any local currency, written USAID approval is required for:

- A. Notices to prospective bidders, e.g. Commerce Business Daily and USAID Procurement Information Bulletin notices;
- B. Lists of prequalified bidders, if any, prior to issuance of the solicitation document;
- C. Complete solicitation document, prior to issuance;
- D. The contractor selection method (See Sections 2.2, 3.6, 3.7, and 3.8.);
- E. The selected contractor;



- F. Decision to reject all bids;
- G. The contract, prior to execution;
- H. Signed contract documents, before financing; and
- I. Contract administrative actions such as subcontracts, amendments, and change orders, as determined by the Mission and stipulated in a SOAG Implementation Letter.

**2.1.2** USAID approvals may also be required, at the Mission's discretion, for contracts with a lower value and/or for other actions taken by the Contracting Agency during the contracting process. Such additional approval requirements will be set forth in a SOAG Implementation Letter.

## **2.2 Contracting Method**

Country contracts for equipment and materials shall be awarded on a competitive basis to the maximum practical extent. Competition is sought through formal competitive bidding procedures, through informal competitive procedures under certain circumstances noted below, or through solicitation of a reasonable number of potential suppliers when the estimated value of the contract is \$100,000 or less (small value procurement).

### **2.2.1 Formal Competitive Bidding**

Contracts for equipment and materials are normally awarded on the basis of formal competitive bids. Formal competitive bidding procedures include advertising the availability of an Invitation for Bids (IFB), issuance of the IFB, public opening of sealed bids, evaluation of bids, and award of the contracts to the lowest, responsive and responsible bidder (these terms are defined in Section 3.6.7). Once competitive bidding procedures have been initiated, they are followed to completion, i.e., contract award or rejection of all bids and cancellation of the IFB.

### **2.2.2 Two-Stage Bidding**

In procurement of specialized equipment, where requirements are stated in performance-type specifications, it may be advantageous to provide for two-stage bidding, subject to the approval of the USAID official who will approve the contract. This procedure is discussed in detail in Section 3.7.

### **2.2.3 Informal Competitive Procedures**

- a. If approved by USAID, an informal competitive procedure (sometimes known as competitive negotiation) may be used. Informal competitive procedures include advertising the availability of Requests for Quotations (RFQ), issuance of the RFQ, receipt and evaluation of offers, negotiation when appropriate and award of the contract to the offeror submitting the most advantageous offer, price and other factors considered. (See Section 3.8.) Informal competitive procedures may be authorized in the following circumstances:

- (1) When it is impossible to develop adequate commodity or incidental services specifications for use in an IFB; or

- (2) When price alone would not be an effective means of determining an award (i.e., when criteria such as time of delivery or service capability need to be evaluated); or
- (3) When emergency procurement is justified by a demonstration that the time required for formal competitive bid procedures would result in an unacceptable delay in delivering the commodities; or
- (4) When proprietary procurement is justified in accordance with Section 2.2.5; or
- (5) When adherence to formal competitive procedures would impair program objectives.

The authorization must be supported by a written record of the reason for approving informal competitive procurement.

b. When formal competitive bidding procedures have failed, all bids have been rejected, and further use of such procedures would clearly not be productive, the Mission Director may authorize use of informal competitive procedures. In this case, further advertising is not required. The Request for Quotations may be prepared as a new document or may incorporate appropriate provisions (by cross-reference or otherwise) of the Invitation for Bids.

#### **2.2.4 Small Value Procurement**

a. When the estimated value of the contract does not exceed \$100,000 or equivalent, the contract may be awarded by soliciting quotations from a reasonable number of sources taking into consideration:

- (1) The nature of the commodities to be purchased;
- (2) The number of sources which can supply the commodities;
- (3) The value of the procurement; and
- (4) The administrative costs of procuring the commodities.

b. The contract is awarded to the offeror with the most advantageous offer, price and other factors considered. (See Section 3.9.) The price must be reasonable in accordance with the criteria in paragraph 3 of the "Supplier's Certificate and Agreement with USAID for Project

c. In low-value procurements, the administrative costs of obtaining competitive quotations may more than offset the potential savings from competition. Therefore, when it will not exceed \$2,500, the procurement may be made without competitive quotations so long as 1. the Contracting Agency/Procurement Services Agent considers the price reasonable, 2. Such purchases are distributed equitably between qualified suppliers, and 3. the awarding official documents these conclusions in the Contracting

Agency/Procurement Services Agent's records of the procurement. The waiver procedure in Section 2.2.6 is not applicable in this circumstance.

d. Equipment, materials, and incidental services which would normally be grouped together shall not be broken down into smaller procurements merely for the purpose of avoiding the requirements of formal, informal, or small value competitive procedures.

### **2.2.5 Proprietary Procurement**

a. Specifications of the equipment and materials to be purchased shall be stated in design or performance terms to the maximum extent practicable and shall not unduly restrict competition. When necessary, a brand or trade name may be used, provided bidders are allowed to offer an item "equal" to the named item whose salient characteristics are specified in the solicitation.

b. In some cases, however, there may be a need for purchasing by brand or trade name or by a restrictive specification without allowing for offers of "equal" items (i.e., proprietary procurement). Proprietary procurement may be justified for reasons such as:

- (1) Substantial benefits, such as economies in maintenance of spare parts inventories, stronger local dealer organization, better repair facilities, or greater familiarity by operating personnel, can be achieved through standardizing on a particular brand;
- (2) Compatibility with equipment on hand is required; or
- (3) Special design or operational characteristics are required.

c. If proprietary procurement is justified, the requirement may serve as the basis for authorizing the use of informal competitive procedures in accordance with Section 2.2.3 or negotiation with a single source in accordance with Section 2.2.6.

### **2.2.6 Waiver - Negotiation with a Single Source\***

a. Circumstances

Competition in the procurement of commodities may be waived and negotiation with a single source authorized by USAID only under one of the following criteria. Waivers must be supported by a written record of the reason for negotiation with only the single source.

1. When the Contracting Agency can demonstrate the existence of an emergency situation in which the requirement for competition would result in unacceptable activity delay;
2. When proprietary procurement is justified (see Section 2.2.5) and the necessary equipment, materials, or spare parts are available from only one source, taking into account any special requirements such as the need for in-country service capability;

3. When adherence to competitive procedures would result in the impairment of the objectives of the United States foreign assistance program or would not be in the best interest of the United States.

b. Amendments

Approval of an amendment to an existing contract which increases the scope of work (i.e., a new procurement amendment) is also required. Negotiation with the single source to amend the contract must be justified under one of the criteria in a.1 through a.3 above, and approved by the official who has the authority under c. below for the estimated amount of the amendment.

<p>*When formal competitive procedures are used and only one responsive bid is received from a responsible bidder and the price is reasonable, award is made in accordance with the Invitation for Bids.</p>
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## 2.3 Advertising

### 2.3.1 Rule

a. In furtherance of the principle of maximum practical competition in Section 2.2 above, solicitation of potential suppliers is effected through widely disseminated advertising in appropriate publications. For procurements estimated to exceed \$25,000, notice of the availability of Invitations for Bids, Requests for Quotations, or if prequalification is used, prequalification questionnaires, is published by the USAID Office of Procurement in the USAID Procurement Information Bulletin. The Contracting Agency should, in addition, advertise in appropriate local, regional, and international journals, newspapers, etc., and otherwise in accordance with local practice. USAID may also disseminate the requirement through its Procurement Information Access System, an electronic bulletin board.

b. If the estimated value of the contract is more than \$100,000 or equivalent, the notice of availability of the Invitation for Bids, Request for Quotations, or, if prequalification is used, prequalification questionnaires, is also published in the Commerce Business Daily of the U.S. Department of Commerce.

c. When adequate information about commodity requirements (i.e., quantities, types, and sizes) are identified early enough, the Contracting Agency may decide to issue a blanket or consolidated advertisement. Procurements covered by a blanket advertisement do not have to be readvertised individually unless (1) the blanket advertisement does not generate sufficient expression of interest, (2) the solicitation document is not issued within one year of the date of the advertisement, or (3) the requirements included in the advertisement change materially.

d. When negotiation with a single source has been authorized pursuant to Section 2.2.6 above, advertising is not required.

### **2.3.2 Waiver**

The requirement for advertising as set forth in paragraphs 2.3.1.a. and b. above may be waived by the Mission Director to avoid serious delay in activity implementation, provided that efforts shall in any event be made to secure bids or offers from a reasonable number of potential suppliers.

## **2.4 (RESERVED)**

## **2.5 Eligibility of Commodities**

### **2.5.1 General**

As a rule, commodities necessary for implementation of the activity are eligible for USAID financing, except as discussed below.

### **2.5.2 Restricted Commodities**

Some commodities may be financed by USAID only if certain conditions are met. These "restricted commodities" include the following:

- a. Agricultural commodities,
- b. Motor vehicles,
- c. Pharmaceuticals,
- d. Pesticides,
- e. Rubber compounding chemicals and plasticizers,
- f. Used equipment, and
- g. Fertilizer.

### **2.5.3 Prohibited Commodities**

USAID financing of certain other commodities is normally prohibited or limited to very special cases. These commodities are:

- a. Military equipment,
- b. Surveillance equipment,
- c. Commodities for support of police and other law enforcement activities,
- d. Abortion equipment and services,
- e. Luxury goods and gambling equipment, and
- f. Weather modification equipment.

## **2.5.4 Eligibility of Commodities Determined by Ineligibility of Carrier and Marine Insurance**

Commodities that are otherwise eligible may be made ineligible if they are not shipped in accordance with the rule in paragraph 2.6.4.4 or because of conflicts with USAID's marine insurance policy (see subparagraph 2.6.4.5.c.).

## **2.5.5 Waivers and Additional Information**

Detailed information regarding commodity eligibility, restrictions, and waiver authorities and criteria are set forth in USAID Automated Directives System Chapter 312, Eligibility of Commodities, or may be obtained from the Office of Procurement (M/OP), USAID/W.

## **2.6 Source of Commodities and Commodity-Related Services and Nationality of Suppliers**

### **2.6.1 Source of Commodities**

#### **2.6.1.1 Rule**

- a. The SOAG, SOAG Implementation Letters, and other related documents specify the authorized geographic code for source of commodities and commodity-related services. All commodities financed by USAID, other than individual transaction not exceeding \$5,000 (not including transportation costs), must meet 2.6.1.1 tests of "source" and "origin". (See Section 2.6.2 for a special source rule covering certain commodities.) In addition, suppliers of commodities must meet the nationality rule in Section 2.6.3. below.
- b. Any component from a Foreign Policy Restricted Country makes the commodity ineligible for USAID financing:
- c. When the commodity being purchased is a kit (e.g., scientific instruments, tools, or medical supplies packaged as a single unit), the kit will be considered a produced commodity.
- d. When spare parts for vehicles or equipment are purchased, each separate shipment will be considered a produced commodity, rather than each individual spare or replacement part. The parts must be packed in and shipped from an eligible country.
- e. Systems determination. When a system consisting of more than one produced commodity is procured as a single, separately priced item, USAID may determine that the system itself shall be considered a produced commodity.
- f. In order to be eligible for USAID financing, when items are considered produced commodities under paragraphs c., d., or e. of this section, the total cost (to the system supplier) of the commodities making up the kit, spare parts, or system which were manufactured in countries not included in the authorized geographic code may not exceed 50 percent of the lowest price (not including ocean transportation and marine insurance) at which the supplier makes the final product available for export sale.
- g. Any commodity obtained under a long-term lease agreement is subject to the source and origin requirements of this rule.

h. So long as the source and origin are eligible under Code 935, a waiver is not required for any individual transaction whose value does not exceed \$5,000, exclusive of transportation costs.

#### **2.6.1.2 Definitions**

a. Source

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

b. Origin

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

c. Components

"Components" are the goods that go directly into production of a produced commodity.

d. Long-Term Lease

"Long-term lease" is defined as a single lease of more than 180 days, or repetitive or intermittent leases under a single activity or program within a one-year period totalling more than 180 days, for the same type of commodity.

e. Motor Vehicles

"Motor vehicles" are defined as self-propelled vehicles with passenger carriage capacity, such as highway trucks, passenger cars and buses, motorcycles, scooters, motorized bicycles and utility vehicles. Excluded from this definition are industrial vehicles for materials handling and earthmoving, such as lift trucks, tractors, graders, scrapers, off-the-highway trucks (such as off-road dump trucks) and other vehicles that are not designed for travel at normal road speeds (40 kilometers per hour and above).

#### **2.6.1.3 Waivers**

a. Criteria

Any waiver of (change in) the authorized list of eligible countries or geographic code must be based upon one of the following criteria:

(1) Commodities required for assistance are of a type that are not produced in and available for purchase in the United States, and for waivers to Code 899 or Code 935, also not in the cooperating country, or any country in Code 941.

(2) It is necessary to permit procurement in a country not otherwise eligible in order to meet unforeseen circumstances, such as emergency situations.

(3) It is necessary to promote efficiency in the use of United States foreign assistance resources, including to avoid impairment of foreign assistance objectives.

(4) For waivers to authorize procurement from Geographic Code 941 or the cooperating country:

(i) When the lowest available delivered price from the United States is reasonably estimated to be 50 percent or more higher than the delivered price from a country or area included in Geographic Code 941 or the cooperating country.

(ii) When the estimated cost of U.S. construction materials (including transportation and handling charges) is at least 50 percent higher than the cost of locally produced materials.

(iii) Reserved.

(iv) Persuasive political considerations.

(v) Procurement in the cooperating country would best promote the objectives of the foreign assistance program.

(vi) Such other circumstances as are determined to be critical to the success of project objectives.

#### b. Restriction on Class Waivers

Waivers to Geographic Code 899 or Code 935 which are justified under paragraph (a) (2) or (3) of this section may only be authorized on a case-by-case basis.

### **2.6.2** Special source rules requiring procurement from the United States

#### **2.6.2.1** Rule

a. Agricultural commodities and products thereof must be procured in the United States if the domestic price is less than parity, unless the commodity cannot reasonably be procured in the United States in fulfillment of the objectives of a particular assistance program under which such commodity procurement is to be financed. (22 U.S.C. 2354)

b. Motor vehicles must be manufactured in the United States to be eligible for USAID financing. (22 U.S.C. 2396) In addition to the above requirements, passenger cars, light trucks, vans, minivans and utility vehicles must be manufactured by either Chrysler, Ford or General Motors and bear their nameplates, brand names or logos, to be eligible for



financing by USAID. The nameplate, brand name or logo requirements do not apply when vehicles are procured under a source waiver. Vehicles which have been assembled in the United States but then subjected to minor disassembly to reduce shipping costs are considered U.S.-manufactured vehicles. However, so-called "knocked-down" vehicles consisting of parts or subassemblies of vehicles shipped for final assembly elsewhere are not considered vehicles. Such parts or subassemblies are subject to the source rule in Section 2.6.1 above.

c. Pharmaceutical products must be manufactured in the United States in order to be eligible for USAID financing. USAID shall not finance any pharmaceutical product manufactured outside the United States if the manufacture of such product in the United States would involve the use of, or be covered by, a valid patent of the United States unless such manufacture is expressly authorized by the owner of such patent. (22 U.S.C. 2356)

### **2.6.2.2 Waivers**

The requirement that motor vehicles be manufactured in the United States may be waived when necessary to carry out the purposes of the Foreign Assistance Act. Among the circumstances which may merit waiving the requirements are: 1) inability of U.S. manufacturers to provide the necessary vehicles, e.g., light weight motorcycles, right-hand drive vehicles; 2) present or projected lack of adequate service facilities and supply of spare parts for U.S.-made vehicles; or 3) an emergency requirement for vehicles for which non-USAID funds are not available and which can be met in time only by purchase of non-U.S. manufactured vehicles.

### **2.6.3 Nationality of Suppliers**

#### **2.6.3.1 Rule**

a. Except as provided in subparagraph 2.6.3.1.b(1), a supplier providing goods must fit one of the following categories to be eligible for USAID financing (but see Section 2.6.4.1 regarding incidental services):

- (1) An individual who is a citizen or a legal resident of a country or area included in the authorized geographic code;
- (2) A corporation or partnership organized under the laws of a country or area included in the authorized geographic code;
- (3) A controlled foreign corporation, i.e., any foreign corporation of which more than 50 percent of the total combined voting power of all classes of stock is owned by United States shareholders within the meaning of Section 957 et seq. of the Internal Revenue Code, 26 U.S.C. 957; or
- (4) A joint venture or unincorporated association consisting entirely of individuals, corporations, or partnerships which fit any of the foregoing categories.

b. Citizens of any country or area or firms or organizations that are located in or organized under the laws of any country or area not included in USAID Geographic Code 935, or firms or organizations that are owned in any part by citizens or

organizations of any country or area not included in USAID Geographic Code 935, are ineligible for financing by USAID as suppliers of commodities or agents in connection with the supply of commodities. There are limited exceptions to this policy:

- (1) non-U.S. citizens lawfully admitted for permanent residence in the United States are eligible as individuals or owners, regardless of their citizenship, and
- (2) USAID may authorize the eligibility of organizations having minimal ownership by citizens or organizations of non-Code 935 countries.

### **2.6.3.2 Waivers**

Geographic code changes authorized by waiver with respect to the source of commodities automatically apply to the nationality of their suppliers. A waiver to effect a change in the geographic code only with respect to the nationality of the supplier of commodities, but not in the source of the commodities, may be sought if the situation requires it, based on the appropriate criteria in 2.6.1.3.

### **2.6.4 Eligibility of Commodity-Related Services**

#### **2.6.4.1 Incidental Services**

The nationality rule in subparagraph 2.6.3.1.a above does not apply to suppliers of incidental services (see Section 1.5.11) related to the procurement of equipment when these services are specified in the contract for the equipment. Citizens or firms of any country not included in USAID Geographic Code 935 are ineligible to supply incidental services except that non-U.S. citizens lawfully admitted for permanent residence in the U.S. are eligible regardless of their citizenship.

#### **2.6.4.2 Ocean Transportation**

- a. The eligibility of ocean transportation services is determined by the flag registry of the vessel.
- b. USAID will finance ocean transportation costs only when such costs meet the requirements of this paragraph b.
  - (1) When the authorized source for procurement is Code 000, USAID will finance ocean transportation costs only on U.S.-flag vessels.
  - (2) When the authorized Geographic Code for commodities is other than Code 000, USAID will finance ocean transportation on vessels under flag registry of the United States or any other country in Code 935.
  - (3) USAID policies restrict the eligibility of certain commodities to U.S. source only. When such commodities are purchased under agreements which normally authorize Code 941 procurement of commodities, USAID will finance the ocean transportation costs in accordance with (2) above.
  - (4) When shipment is made under a through bill of lading issued by a U.S. flag carrier, AID will finance costs incurred on vessels under flag registry of any

country in Code 935 if the costs are part of the total cost paid to the eligible flag carrier.

(5) When necessary to assure adequate competition and competitive pricing for the shipment of bulk commodities, USAID will authorize financing of ocean transportation on vessels under flag registry of countries included in Code 941 and the cooperating country or on vessels under flag registry of countries included in Code 935. Such expanded authorization would allow the financing of ocean transportation on Code 941 or Code 935 vessels, other than U.S.-flag vessels, only to the extent that U.S.-flag vessels are not available to carry the commodities for which transportation is solicited. The Office of Procurement (M/OP) determines when it is necessary to authorize financing in accordance with this paragraph.

c. In cases where the United States owns excess local currency, USAID, to the maximum extent possible, shall use the excess local currency rather than U.S. dollars to finance freight on vessels under flag registry of the host country.

d. If not previously authorized under paragraph b. above, waiver to expand the flag eligibility requirements to allow use of vessels under flag registry of the host country, Code 941, Code 899, or Code 935 countries may be authorized when:

(1) It is necessary to assure adequate competition in the shipping market in order to obtain competitive pricing, particularly in the case of bulk cargoes and large cargoes carried by liners;

(2) Eligible vessels provide liner service, only by transshipment, for commodities that cannot be containerized, and vessels under flag registry of countries to be authorized by the waiver provide liner service without transshipment;

(3) Eligible vessels are not available, and cargo is ready and available for shipment, provided it is reasonably evident that delaying shipment would increase costs or significantly delay receipt of the cargo;

(4) Eligible vessels are found unsuitable for loading, carriage or unloading methods required, or for the available port handling facilities;

(5) Eligible vessels do not provide liner service from the port of loading stated in the procurement's port of export delivery terms, provided the port is named in a manner consistent with normal trade practices; or

(6) Eligible vessels decline to accept an offered consignment.

#### **2.6.4.3 Air Travel and Transportation**

a. The eligibility of air transportation is determined by the flag registry of the aircraft. The definition of "U.S.-flag air carrier" is in Clause 11 of Attachment 3N.

b. Grant-Financed Contracts

A U.S. Government statute requires the use of U.S.-flag air carriers for all USAID grant-financed international air travel and transportation (regardless of the authorized source of the commodity) unless such service is not available. Criteria for determining availability and the certification required for use of a non-U.S. flag air carrier are set out in Clause 11 of Attachment 3N. When U.S.-flag air carriers are not available, any Code 935 flag air carrier may be used.

c. Loan-Financed Contracts

(1) There is no statutory requirement for use of U.S. flag air carriers under loan-financed transactions.

(2) When the authorized source for procurement of commodities under a loan is Code 000, USAID's policy on financing air transportation is the same as under grant-financed transactions.

(3) When the authorized source for procurement of commodities under a loan is Code 941, USAID policy requires use of U.S.-flag air carriers, host country flag air carriers, or Code 941 flag air carriers for international air travel and transportation to the extent they are available in accordance with the criteria in Clause 11 of Attachment 3N. If the supplier certifies that authorized carriers are unavailable, any Code 899 flag air carrier may be used.

#### 2.6.4.4 General Transportation

Notwithstanding any of the provision in Sections 2.6.4.2 or 2.6.4.3, unless otherwise authorized, USAID will not finance any transportation costs:

- a. For shipment beyond the point of entry in the host country except when intermodal transportation service covering the carriage of cargo from point of origin to destination is used and the point of destination is stated in the through bill of lading;\*
- b. On a transportation medium owned, operated or under the control of any country not included in Geographic Code 935;
- c. On any vessel designated by USAID as ineligible to carry USAID-financed cargo; or
- d. Under any ocean or air charter covering full or part cargo which has not received prior approval by USAID/W, Office of Procurement.

#### 2.6.4.5 Marine Insurance

- a. The eligibility of marine insurance is determined by the country in which it is "placed." Insurance is "placed" in a country if payment of the insurance premium is made to, and the insurance policy is issued by, an insurance company office located in that country. Eligible countries for placement are governed by the authorized geographic code, except that if Code 941 is authorized, the Cooperating Country is eligible.
- b. Section 604(d) of the Foreign Assistance Act requires that if a recipient country discriminates by statute, decree, rule or regulation with respect to USAID-financed procurement against any marine insurance company authorized to do business in any

State of the United States, then any USAID-financed commodity shipped to that country shall be insured against marine risks and the insurance shall be placed in the United States with a company or companies authorized to do a marine insurance business in any State of the United States. The prima facie

\* This provision may be waived by Mission Directors or other principal USAID Officers for activities managed in the field, or by Assistant Administrators (or their delegates) for activities managed from USAID/W, when this provision is clearly inconsistent with the interests of the program or activity.

test of discrimination is that a cooperating country takes actions which hinder private importers in USAID transactions from making c.i.f. or c. and i. contracts with U.S. commodity suppliers or which hinder importers in instructing such suppliers to place marine insurance with companies authorized to do business in the United States.

c. When USAID has found that a cooperating country discriminates against any marine insurance company authorized to do business in any state of the United States, and the cooperating country, contrary to a request by USAID, fails to ensure all USAID-financed commodities with U.S. insurance companies, then those commodities are ineligible for USAID financing.

#### **2.6.5 Procurement Financed by the Development Fund for Africa**

When a contract for equipment and materials (or certain contract items) is funded by the Development Fund for Africa (DFA), Code 935 is the eligible source area and special rules apply, as specified in USAID ADS Chapter 310 and Memorandum from John F. Hicks, February 1, 1993, Subject: Update and Reissuance of Africa Bureau Instructions on Implementing Special Procurement Policy Rules Governing the Development Fund for Africa (DFA) (Attachment 3Q).

### **2.7 Cargo Preference**

#### **2.7.1 Rule**

a. This rule is distinct from the rule in paragraph 2.6.4.2 regarding eligibility of ocean transportation for USAID financing. The cargo preference rule applies to all ocean shipments of USAID-financed commodities under an project whether or not USAID finances the freight costs. When contractors or purchasing agents procure commodities on behalf of a Borrower/Grantee, the Borrower/Grantee shall issue shipping instructions to assure compliance with the rule.

b. The Borrower/Grantee shall ensure that at least 50 percent of the gross tonnage of all equipment and materials financed by USAID which may be transported to the host country on ocean vessels for use on, or incorporation in, the activity, shall be transported on privately owned, U.S.-flag commercial vessels to the extent such vessels are available at fair and reasonable rates for U.S.-flag commercial vessels. This requirement is computed separately for dry-bulk carriers, dry-cargo liners, and tankers, and it is computed separately for shipments originating in the U.S. and outside the U.S.

Additionally, at least 50 percent of gross freight revenues generated by dry-cargo liner services must be generated by U.S.-flag commercial vessels.

### **2.7.2 Determination of Non-Availability**

The Office of Procurement (M/OP), USAID/W may make determinations, when circumstances warrant, that U.S.-flag commercial vessels are not available. Requests for determinations of non-availability may be initiated by the Contracting Agency or its agent or the supplier. A determination of non-availability shall be based on one or more of the following factors:

- a. U.S.-flag liner vessels do not offer service from the shipment's geographic source to the destination country;
- b. U.S.-flag liner service for commodities which cannot be containerized is only available by transshipment, and a foreign flag liner carrier provides the required service without transshipment;
- c. U.S.-flag vessels are not available when the cargo is ready and available for shipment and it has been established that delaying the shipment until a U.S.-flag vessel will be available would subject either the supplier or cargo to additional costs or the importer to significant delay in receipt of the cargo;
- d. U.S.-flag vessels which are otherwise available are found unsuitable for loading, carriage, or unloading methods required or for the port handling facilities available;
- e. U.S.-flag liner service is not available between the particular ports of loading/discharge stipulated in the delivery terms of the contract, provided that such ports are stipulated in a manner consistent with normal trade practices;
- f. Rates for otherwise available U.S.-flag vessels are determined to be higher than fair and reasonable rates for such vessels.

USAID/W determines the availability of U.S.-flag vessels to carry quantitative units (cargo that may be carried in full shiploads) when the Contracting Agency or its agent submits, for USAID's approval, information on vessels offered in response to a solicitation for freight offers for a quantitative unit. A determination of non-availability relieves the Borrower/Grantee of the requirement to use U.S.-flag vessels for the tonnage of commodities included in the determination.

## **2.8 Factors Other than Nationality Affecting the Eligibility of Firms to Compete for the Procurement**

In addition to the source and nationality criteria in Section 2.6 above, firms may be ineligible for USAID-financed procurement for any of the following reasons:

### **2.8.1 Dual Engineering and Supply Functions**

Unless specifically approved by the USAID official authorized to approve the contract (for example, for turnkey jobs or in other exceptional circumstances) no firm, including its affiliates and subsidiaries, may perform both engineering services and provide commodities on the same activity.

## 2.8.2 Unfair Competitive Advantage

A firm, including its affiliates and subsidiaries, should not be employed to perform services when, in the judgment of the USAID official authorized to approve the contract, the firm has been, or might be, placed in a position to achieve an unfair competitive advantage.

## 2.8.3 Debarment, Suspension, and Ineligibility

### a. Rule

The Contracting Agency is required to refrain from awarding contracts to organizations and individuals that are suspended, debarred, or ineligible, as indicated on (1) the "List of Parties Excluded from Federal Nonprocurement Programs" and/or (2) the "Consolidated Lists of Designated Nationals". Prior to considering an award to organizations or individuals that are on the "List of Parties Excluded from Federal Procurement Programs," but are not on the former lists, the Contracting Agency is directed to request the USAID Activity Manager to consult with the USAID/W General Counsel to consider whether additional debarment or suspension action is warranted.

### b. Waivers

(1) Exception with respect to parties listed on the "List of Parties Excluded from Federal Nonprocurement Programs" may only be made upon waiver by the USAID Procurement Executive.

(2) No waivers may be granted to the rule with respect to parties on the "Consolidated Lists of Designated Nationals".

\* The "List of Parties Excluded from Federal Procurement and Nonprocurement Programs" is maintained by the U.S. General Services Administration. The "Consolidated Lists of Designated Nationals" is published under the U.S. Treasury Department Foreign Assets, Sanctions, Transactions, and Funds Control Regulations in 31 CFR Parts 500-599. All of the lists will be regularly distributed to USAID Missions, and will be available for review. Additionally, GSA maintains electronic lists of the parties that may be accessed (Internet URL <http://www.arnet.gov/epl/>) and telephone inquiry about entries may be made to (202) 501-4873. Questions concerning the listing of organizations and individuals on the Treasury Department's "Consolidated Lists of Designated Nationals" may be directed to (202) 566-5021. Questions concerning the listing of organizations and individuals on these lists may also be directed to GC/LE in USAID/W.

## 2.8.4 Equal Employment Opportunity

Any firm incorporated or legally organized in the United States is eligible for an USAID-financed contract only if it certifies in its bid that it is in compliance with its equal employment opportunity obligations under Executive Order 11246, as amended, and regulations and orders issued thereunder. This requirement may be waived only by the USAID Administrator.

## **2.9 Language and Specifications**

**2.9.1** Documents submitted to USAID shall be in English unless USAID otherwise agrees in writing. Notices and solicitations to be published and/or disseminated in the United States shall be prepared in English in any event.

**2.9.2** The metric system of measurements shall be used for specifications that are incorporated in or required by USAID-financed contracts unless USAID determines in writing that such use is impractical or is likely to cause significant inefficiencies or the loss of markets to U.S. firms.

## **2.10 Prohibition Against/Restriction On Certain Types of Contracts**

### **2.10.1 Prohibition**

USAID will not finance a cost-plus-percentage-of-cost contract, i.e., a contract in which the profit or fee (however described) increases without limitation as the cost of the contract increases. An example of a cost-plus-percentage-of-cost contract would be a contract for custom made equipment where the contract amount is the actual cost of making the equipment plus a percentage rate (without maximum monetary value) as the fee. Cost-plus-percentage-of-cost subcontracts under fixed price prime contracts are not prohibited, since the cost of the prime contract does not increase as a result.

### **2.10.2 Restriction**

The use of a cost-reimbursement contract for commodity procurement, regardless of dollar value, requires specific USAID approval in writing. Cost-reimbursement contracts should incorporate the cost principles of Chapter 4 of this handbook and include an agreed budget which the contractor may not exceed without advance approval by the Contracting Agency. The budget sets forth the limitations on direct costs (e.g., salary, allowances, travel, commodities, etc.), indirect costs (e.g., overhead), and the fixed fee.

## **2.11 Documentation for Payment**

Each USAID-financed contract must require that claims by suppliers for payment or reimbursement for goods and services be supported by appropriate and complete documentation (including the "Supplier's Certificate and Agreement with USAID for Project Commodities," see Section 2.14), which is usually specified in the SOAG Implementation Letters or other related documents.

The documentation requirements under different methods of payment are discussed in Section 3.11.3.

## **2.12 Submission of Contracts to USAID and Notification of Award**

- a. The Mission will inform the Contracting Agency how many copies of the final executed contract and amendments are to be submitted to USAID/W. The Regional Bureau shall advise the Mission of USAID/W distribution requirements.



b. Whenever a contract is awarded under formal competitive procedure, regardless of amount, the Contracting Agency or Procurement Services Agent\* (if used) promptly sends a notice of the award to USAID/W as provided for in Attachment 3C, listing the IFB number, the name and

\*Including consulting engineers.

address of the successful bidder, and the contract amount. If the Invitation for Bids is cancelled, a notice should also be sent. This information is published in the USAID Procurement Information Bulletin, and the Commerce Business Daily if the pre-solicitation notice was disseminated there, to inform the public (including unsuccessful bidders) of the results of the bidding.

## **2.13 Mandatory Contract Clauses**

The mandatory clauses set forth in this section must be included in every USAID-financed contract for equipment or materials in the circumstances discussed below. Section 4.1.6 contains guidance on the form in which these clauses can be incorporated into the contract.

### **2.13.1 Legal Effect of USAID Approvals and Decisions**

USAID requires the reservation of certain approval rights with respect to the contract but must not incur legal liability by reason of the exercise of those rights. Clause 5 of Attachment 3N, which must be included verbatim in each contract, does not itself reserve approvals, it does recognize USAID's role as the financing entity and protects USAID against exposure to liability.

### **2.13.2 Nationality and Source**

The contract must state the eligible nationality of suppliers and source of commodities. The eligible countries must match those stated in the SOAG unless a waiver for specific services or goods has been obtained (see paragraphs 2.6.1.3 and 2.6.3.2). The nationality and source requirements arise from a number of U.S. Government statutes and regulations. While the language contained in Clause 10 of Attachment 3N is not required to be used verbatim, any changes should be carefully worked-out because this is a very complex subject.

### **2.13.3 Supplier's Certificate and Agreement with USAID for Project Commodities/Invoice and Contract Abstract (Form USAID 1450-4)**

When the "Supplier's Certificate and Agreement with USAID for Project Commodities/Invoice and Contract Abstract" (Form USAID 1450-4) is required under Section 2.14, the contract must require the supplier to execute and submit it with each request for payment.

### **2.13.4 Air Carrier Travel and Transportation**

The rule in paragraph 2.6.4.3 concerning eligible air carriers must be appropriately incorporated into the contract. The language defining "available" and "unavailable" carriers in Clause 11 of Attachment 3N must be used verbatim in country contracts. See paragraphs 2.6.4.3 and 4.1.6.11 for further discussion.

### **2.13.5 Marking**

This clause implements a Foreign Assistance Act provision. USAID requires that commodities be identified to show that the activity is financed by the United States Government. If compliance with marking requirements is impractical, USAID may waive the requirement. USAID may also waive the marking requirement or authorize the removal of emblems affixed to equipment or materials, on a finding that the appearance of the emblems would produce adverse reactions in the host country. (See paragraph 4.1.6.16, Clause 16 in Attachment 3N, and ADS Chapter 320).

### **2.13.6 Host Country Taxes**

USAID funds may not be used to pay identifiable taxes of the host government or its political subdivisions. The basic exemption from such taxes is generally set forth in the bilateral agreement between the U.S. and host government. The contract must contain a clause (see Clause 9 of Attachment 3N) applying the exemption to the particular contract.

### **2.13.7 Worker's Compensation Insurance**

Whenever incidental services are provided under a contract for materials or equipment, the contract must provide for Worker's Compensation Insurance, often in the form of Defense Base Act coverage. See paragraph 4.1.6.22 for detailed discussion of the clause.

### **2.13.8 Equal Employment Opportunity**

It is USAID policy that every contract with a U.S. firm include a clause requiring the supplier to be in compliance with its equal employment opportunity obligations under Executive Order 11246, as amended, and regulations and orders issued thereunder. (See Clause 29 of Attachment 3N.)

### **2.13.9 Vesting of Title and Diversion Rights**

The contract must include a clause allowing USAID to take title to commodities and divert shipment, pursuant to the terms of the SOAG. (See Clause 30 of Attachment 3N.)

### **2.13.10 Settlement of Disputes**

The contract must contain a clause which specifies impartial and effective procedures to resolve disputes that arise from the performance of the contract for which an amicable settlement can not be reached. The clause and the permissible modifications to it are discussed in 4.1.6.15.

### **2.13.11 Audit and Records**

If the contract exceeds \$2,500 in value, it must contain an audit and record-keeping clause. (See Section 4.1.6.34 and Att. 3N, Clause 34.)

### **2.13.12 Corrupt Practices**

If award is anticipated to exceed \$2500, all contracts must contain a corrupt practices clause. (See Section 4.1.6.35 and Attachment 3N. Clause 35.)

## **2.14 Supplier's Certificate and Agreement with USAID for Project Commodities/Invoice and Contract Abstract (Form USAID 1450-4)**

- a. This form (see Attachment 3B) must be submitted by the supplier with each request for payment under any contract that exceeds \$2,500 in value.
- b. By submitting the form in consideration for receiving payment, the supplier represents to USAID that it has performed in accordance with the contract. The supplier also makes specific certifications with respect to such items as commodity source, price, payments, and commissions, and gives USAID the right to audit its books and records. It also agrees to make appropriate refund to USAID in the event of noncompliance with its representations.
- c. Prospective suppliers must be made aware of this requirement in the Invitation for Bids, Request for Quotations, or other solicitation documents. It is recommended that the solicitation document explain the use of the form, and include a copy of the form, as an attachment, for information.
- d. This requirement for a Supplier's Certificate may be waived by USAID.

## **2.15 Auditing and Contract Closeout Provisions**

Provisions must be made for the proper audit of cost-reimbursable contracts and subcontracts in excess of \$250,000, including as necessary: setting aside SOAG funds to cover the cost of the audit, selection of the auditing entity in accordance with the guidance in Section 3.13, and providing for the finalization of provisional overhead rates annually. Cost-reimbursable items in contracts and subcontracts that do not exceed \$250,000 and contract requirements such as source of goods and use of U.S.-flag air carriers shall be audited when there is basis for questioning contractor representations. (See Sections 3.13. and 4.1.6.34.) The contract shall also be closed out in an orderly fashion upon the contractor's satisfactory completion of the work. (See Section 3.14.)

## **3.0 Guidance**

The guidance in this Section should be applied based on the circumstances of the procurement. Factors for consideration in establishing procedures for country contracting for equipment and materials include:

- Procurement planning
- Restrictions on Disclosure of Information
- Role of procurement agent (if used)
- Choice of type of contract
- USAID approvals
- Formal competitive bidding procedures

- Two-stage bidding
- Informal competitive procedures
- Small value procurement
- Establishing requirements for bonds or guaranties
- Determining the method of payment
- Contract administration
- Auditing the Contract
- Contract Closeout

### **3.1 Procurement Planning**

a. Realistic advance planning for procurement of equipment and materials is essential for the success of an activity. A list of needed commodities and anticipated costs will normally have been prepared as the activity is developed but the list and budget will require refinement into greater detail as the activity proceeds. Up-to-date cost estimates will aid in making judgments about reasonableness of price when bids or offers are received.

b. Preparation of a detailed schedule of procurement actions will help assure that activity commodities are received when needed. The schedule should allow ample time for selecting and contracting with a procurement agent if one will be used, preparing specifications and solicitation documents, advertising, preparing bids or offers by suppliers, evaluating responses, conducting negotiations, issuing contracts or orders, establishing payment documents, manufacturing, inspecting and packing equipment, transporting (within source and cooperating countries as well as between them), clearing customs, etc. Appropriate time should be allowed for approvals when required, for communications and for slippage. Such a schedule prepared at an early stage will help identify priorities and critical dates for taking procurement actions, especially for items with long lead times. Without a schedule, critical dates are likely to pass unnoticed, resulting in costly emergency procurement actions or activity delays.

c. Another factor to be considered in developing the procurement plan is the choice of the contracting method appropriate for the project (see the rule in Section 2.2.). The procedures for formal competitive bidding are discussed in Section 3.5, two-stage bidding is discussed in Section 3.6, informal competitive procedures are discussed in Section 3.7, and small value procedures are discussed in Section 3.8.

### **3.2 Restriction on Disclosure of Information**

To assure that the procurement is conducted in a manner that does not give an unfair competitive advantage to any party, information concerning specific procurement requirements should not be released to any potential bidders, directly or indirectly, prior to the issuance of

prequalification questionnaires or the Invitation for Bids if prequalification is not used. After issuance of the above, no bidder should be given any substantive information that would constitute a competitive advantage over other bidders that did not possess such information unless that information is promptly furnished to all the potential bidders in time for them to consider in preparing their bids. No information concerning the number, identity, or qualifications of the bidders or potential bidders should be released prior to award, except as provided in the Contracting Agency's established procedures.

### **3.3 Role of Procurement Agent (if used)**

If a contractor provides procurement agent services or other services (engineering, technical assistance or construction) which include significant procurement of equipment or materials, the contractor's role and responsibilities are specified in detail in the contract for those services. The responsibilities may include such items as specification writing, preparing and issuing IFBs and RFQs, reviewing and evaluating offers or bids, placing orders or issuing contracts, expediting, inspecting commodities, arranging transportation and arranging for insurance collections. Requirements for review and approval of the contractor's procurement actions by the Contracting Agency, USAID, and any other contractors must be carefully stated and clearly understood by all parties. (Reference Handbook 15, Commodities, Chapter 4, Use of Procurement Agents.)

### **3.4 Choice of Type of Contract**

The Contracting Agency decides which type of contract is most appropriate for the specific procurement. There are two basic types of contracts -- fixed price and cost reimbursement plus fixed fee.

In accordance with the rule in Clause 2.10, a cost-plus-percentage-of-cost contract shall not be utilized.

#### **3.4.1 Fixed Price**

A fixed price contract is normally used in Procurement of equipment and materials. The supplier is paid the amount stated in the contract either in one payment upon delivery of all the equipment and materials called for by the contract or in the form of partial or progress payments prior to completion of the entire contract.

#### **3.4.2 Cost Reimbursement Plus Fixed Fee (CPFF)**

Cost reimbursement plus fixed fee contracts may be used in exceptional cases, i.e., when specifications cannot be defined with sufficient precision to enable a supplier to estimate with reasonable accuracy its costs of fabricating equipment. CPFF contracts are difficult for the Contracting Agency to administer, their actual cost is difficult to estimate with reasonable precision, and the Contracting Agency bears the risk of overruns. They are, therefore, generally less desirable than fixed price contracts.

### **3.5 USAID Approvals**

**3.5.1** Whenever the total contract amount is anticipated to exceed \$250,000 in value, including any local currency, the rule in Section 2.1 requires USAID approval of specified

intermediate steps in the contracting process, the final contract award, and postaward administrative actions as determined by the Mission. With respect to the latter, USAID and the Contracting Agency may agree on the thresholds and other criteria for determining the approval requirements for subcontracts, amendments, change orders, and other actions, depending upon their complexity, value, and other factors.

**3.5.2** Whenever the total contract amount is not anticipated to exceed \$250,000 in value, the establishment of approval requirements is within the discretion of the Mission, and the Mission and the Contracting Agency may agree on which of them should be applied and establish thresholds for applying them. Different Contracting Agencies have widely varying experience with contracting matters and with USAID country contracting rules and procedures. Therefore, the Mission must assess whether the Contracting Agency is likely to select a contractor acceptable to USAID and to award a satisfactory contract without the Mission having prior approval of certain steps in the process. It must consider the complexity of the procurement and the likelihood of the Contracting Agency being able to avoid mistakes in the procurement and to avert offeror protests. On the other hand, these factors must be balanced against the desirability of having the host country be responsible for its own contracting and the time savings possible if USAID reviews are kept to a minimum. The steps at which USAID approval will be required are set forth in a SOAG Implementation Letter.

### **3.6 Formal Competitive Bidding Procedures**

a. The formal competitive bid procedure is used for procurement estimated to be more than \$100,000 or equivalent, except when other procedures are authorized in accordance with the rule in Section 2.2. This procedure may also be used for procurement under \$100,000 if the Contracting Agency wishes to do so.

b. The formal competitive bid procedure is highly structured. Award of the contract is made to the lowest responsive, responsible bidder, according to fairly rigid criteria. The steps in this procedure are discussed in the following sections.

#### **3.6.1 Advertising**

In accordance with the rule in Section 2.3, a Notice of the proposed procurement is published in the Commerce Business Daily, the USAID Procurement Information Bulletin, and if appropriate, in other announcements. The Notice announces the availability of prequalification questionnaires (if prequalification is to be used) or Invitation for Bids. See Attachment 3C for instructions on preparation and submission of the Notice. If prequalification is used, the availability of the IFB is not separately advertised.

#### **3.6.2 Prequalification of Bidders**

##### **a. General**

When specialized, highly technical or complex equipment is to be procured, it may be advantageous to prequalify prospective bidders to establish their eligibility under Sections 2.6 and 2.8 and overall responsibility (technical expertise, management capability, workload capacity and financial resources). If the contract is anticipated to exceed \$250,000, USAID reserves the right to approve whether or not prequalification is used (as part of its approval of the contractor selection method).

b. Procedure

(1) The Contracting Agency prepares a prequalification questionnaire requesting the information necessary to establish the responsibility of the firm and its capability of providing the required equipment. Attachment 3D is a sample prequalification questionnaire. Other formats soliciting similar information may be used.

(2) A Notice of the availability of prequalification questionnaires is published in accordance with Section 3.6.1.

(3) The questionnaire is distributed to all firms responding to the announcement and any other firms the Contracting Agency wishes to solicit.

(4) Prequalification information is submitted to the Contracting Agency by the date specified in the Notice. The deadline date should be a reasonable time after publication of the Notice, but normally not less than 45 days after publication. The Contracting Agency may consider prequalification information received after the due date as long as such consideration does not delay the contracting process. In order to avoid disputes, it is recommended that the Notice contain a statement whether or not the Contracting Agency will, at its option, consider late prequalification information.

(5) The Contracting Agency evaluates the information submitted by interested firms against the requirements imposed by Sections 2.6 and 2.8 \* and the previously established experience and responsibility criteria. It should contact a sufficient number of the business references listed by each firm in order to make an assessment of the experience claimed. The USAID Activity Manager will provide liaison to check the performance record that a firm may claim with USAID.

\* The "Lists of Parties Excluded from Federal Procurement and Nonprocurement Programs" are maintained by the U.S. General Services Administration. The "Consolidated Lists of Designated Nationals" are published under the U.S. Treasury Department Foreign Assets, Sanctions, Transactions, and Funds Control Regulations in 31 CFR Parts 500-599. All of the lists will be regularly distributed to USAID Missions, and will be available for review. Additionally, GSA maintains electronic lists of the parties that may be accessed (for information contact (202) 501-3566) and telephone inquiry about entries may be made to (202) 501-0688. Questions concerning the listing of organizations and individuals on the Treasury Department's "Consolidated Lists of Designated Nationals" may be directed to (202) 566-5021. Questions concerning the listing of organizations and individuals on these lists may also be directed to GC/LE in USAID/W.

(6) When considering U.S. firms for which USAID and the Contracting Agency do not have sufficient first-hand information on previous performance or qualifications, the USAID Activity Manager may obtain additional business data

for the Contracting Agency's consideration by cabling PPC/CDIE/DI, in USAID/W. This office has access to approximately a dozen computerized business data bases, such as Dun and Bradstreet, Standard and Poor's, Moody's etc.

(7) The Contracting Agency then establishes a list of prequalified bidders. The Contracting Agency should prepare a memorandum explaining the basis for the selection of the bidders on the "shortlist," and provide a copy of the memorandum to the Mission. If required, USAID approval of the "shortlist" must be given before the IFB is issued.

(8) Any firm that is not deemed qualified for the procurement should not appear on the "shortlist", and is not considered further. However, the firms that are not included on the "shortlist" are not necessarily judged to be unqualified for want of inclusion.

(9) The Contracting Agency should advise firms promptly whether or not they are deemed qualified. If the IFB will be issued shortly after prequalification evaluation is completed, the Contracting Agency may advise firms that they are prequalified by sending it to them.

### **3.6.3 Preparation of the Invitation for Bids (IFB)**

The contents of the Invitation for Bids are discussed in detail in Section 4.1. As required by the rule in Section 2.1, the IFB is approved by USAID prior to distribution.

#### **3.6.3.1 Establishing the Closing Date**

The closing date established in the IFB must allow bidders sufficient time to receive the IFB, prepare responsive bids, and submit their bids to the specified place by the specified time. The time allowed is normally at least 45 days, with more time allowed when more complex equipment or materials are being procured. The closing date may be extended by the Contracting Agency by means of an addendum to the IFB (see subsection 3.5.4.3) which is sent to all firms that receive the IFB.

#### **3.6.3.2 Late Bids**

Bids received after the closing date established in the IFB are returned to the bidder unopened, unless the bidder can prove that the bid was late solely because of mishandling by the Contracting Agency, its employees or agents. A statement to this effect should be included in the Invitation for Bids. (See paragraph 7 of Attachment 3H.)

### **3.6.4 Solicitation of Bids**

#### **3.6.4.1 Distribution of the IFB**

The Contracting Agency provides the Invitation for Bids to all firms requesting the IFB and any other firms the Contracting Agency wishes to solicit, or, if prequalification was used, to all prequalified firms. If a charge is made, it normally does not exceed the cost of reproduction and mailing. See Section 4.1 of this Chapter for a discussion of the contents of the IFB.



#### **3.6.4.2. Prebid Conference**

In cases of major equipment, purchases it may be appropriate to hold a prebid conference. The location and timing of such conferences should take into account the mutual convenience of the Contracting Agency and the bidders. The purpose of a prebid conference is to exchange information with potential bidders concerning complex technical requirements for equipment and materials, any questions about the bid documents, contract terms and conditions that may be controversial, and other matters pertinent to the contract. Addenda to the IFB are prepared to communicate to all bidders any changes or clarifications of the IFB which are considered necessary in light of the prebid conference.

#### **3.6.4.3 Addenda to the Invitation for Bids**

If, after issuance of the IFB, it becomes necessary to make any amendments or corrections, a written addendum to the IFB is prepared. If USAID approved the original IFB, it must also approve the addendum before it is distributed to prospective bidders. The addendum is distributed promptly (after approval) to all firms which have been sent copies of the IFB. Issuance of an addendum may necessitate an extension of the bid closing date to afford bidders adequate time to prepare or modify their bids in light of the information in the addendum. Information given to any prospective bidder concerning the IFB shall be furnished promptly to all other prospective bidders as an addendum to the IFB if the information is necessary to the preparation of bids or would be prejudicial to any uninformed bidder. The bidder acknowledges receipt of the addenda as a part of its bid.

#### **3.6.5 Receipt of Bids**

- a. As bids are received, a record should be made of the time and date of receipt and name of bidder. Bids received prior to the closing time specified in the IFB are kept secure and unopened until the bid opening date and time established in the IFB. However, bids may be withdrawn or modified prior to bid opening.
- b. Bids received after the time specified in the IFB are returned unopened to the bidder.

#### **3.6.6 Bid Opening**

The sealed bids received prior to the closing time are opened and read publicly at the time and place specified in the IFB. At a minimum, the name of bidder and bid prices are announced. The bids are recorded by IFB number, date, name of bidder, amount(s), whether a bid bond was included, and other appropriate identification. The form in Attachment 3E or a similar form may be used to record bids.

#### **3.6.7 Bid Evaluation**

- a. The Contracting Agency or its authorized agent conducts an evaluation of bids. Bids must be "responsive" and be deemed reasonable in price. The updated detailed cost estimate (see Section 3.1) is one means of judging the reasonableness of the prices bid. In addition, the bidder must be a "responsible" firm.

(1) A "responsive bid" is one that complies with all the terms and conditions of the IFB without material modification. A material modification is one which affects the price, quantity, quality, delivery or installation date of the equipment or

materials or which limits in any way any responsibilities, duties, or liabilities of the bidders or any rights of the Contracting Agency or USAID as any of the foregoing have been specified or defined in the IFB. The Contracting Agency may waive any minor informality in a bid which does not constitute a material modification. The Contracting Agency should reject any bid which is nonresponsive as defined above since USAID would not approve the contract for financing. No bidder is permitted to modify a non-responsive bid after bid opening in order to make it responsive. However, the Contracting Agency may request the bidder to provide clarification of the bid as long as no material modification is made.

(2) The eligibility and "responsibility" of the bidder must be determined. An eligible bidder is one who meets the requirements imposed under Sections 2.6 and 2.8. A "responsible" bidder is one who has the technical expertise, management capability, workload capacity, and financial resources to perform the work. The bid of any bidder found not to be eligible and/or responsible should be rejected. When prequalification is used, the determinations of eligibility and responsibility are made in the establishment of the list of prequalified bidders. When prequalification is not used, the evaluation discussed in 3.6.2.(b) (5) and (6) is made at this point.

(3) The bid amount is composed of U.S. dollars plus any local currency. The local currency portion of the bid amount is converted to dollars at the predetermined exchange rate specified in the Instructions to Bidders to arrive at the total bid amount. If any factor other than price is to be used in evaluating bids, the monetary value to each such factor is computed in accordance with the formula included in the Instructions to Bidders. A bid so adjusted is known as the "evaluated bid."

b. The Contracting Agency shall prepare a detailed written statement explaining the rejection of any low bid(s) determined to be non-responsive or the reasons for finding a firm to be not responsible. With USAID approval, if required, the Contracting Agency may reject all bids.

### **3.6.8** Protests by Bidders

Protests of the contractor selection and award processes which are submitted by bidders contending for award should be directed to the Contracting Agency in accordance with its policies and procedures. Consistent with its role as a financing entity and not a party to the contract, USAID will not become directly involved in the resolution of such protests. However, in accordance with paragraph 3.6.9.1 of this chapter, the equitable settlement of such protests will be a consideration in the determination to grant USAID approval of the contract award. Costs incurred by the Contracting Agency in the adjudication and settlement of protests by bidders are not subject to reimbursement by USAID.

### **3.6.9** Contract Award

#### **3.6.9.1** USAID Approval of Proposed Award

If required by the SOAG or a SOAG Implementation Letter, USAID approves the supplier and the contract before signature. The Contracting Agency submits the following documentation to USAID:

- a. The final contract (unsigned) with a statement either that it is identical to the contract included in the previously approved IFB, or showing how the contract included with the IFB has been changed;
- b. The record of bids received (Section 3.6.6) and the written statement prepared in accordance with paragraph 3.6.7.b; and
- c. A statement that the selected bidder is responsible and submitted the lowest responsive bid (see paragraph 3.6.7.a), that the supplier is otherwise eligible for the contract (see Sections 2.6 and 2.8), and that the bid price is reasonable.
- d. Bidder protests and documentation of their disposition.

The documentation is retained in USAID's files.

If USAID finds the proposed award acceptable for financing after reviewing the documentation, it informs the Contracting Agency of its approval. Otherwise USAID informs the Contracting Agency of the reasons for its objections to the proposed award and agrees with it on actions to achieve a mutually acceptable award.

#### **3.6.9.2 Signature of Contract**

Upon receipt of USAID's approval of the proposed award, the Contracting Agency awards the contract, usually by signing an "acceptance" block on the bid form. However, the successful bidder is not notified of the award until USAID approval of the final contract (see the rule in Section 2.1).

### **3.7 Two-Stage Bidding**

In contracts for specialized equipment, where requirements are stated in performance-type specifications, it is advantageous to provide for a two-stage procedure, subject to approval by the USAID official who will approve the contract. Doing so will give the Contracting Agency an opportunity to establish technical specification through discussions with prospective bidders before the prices are submitted and reduce the possibility that competent and experienced supplier's bids prove unacceptable because they do not understand the technical requirements of the equipment or the specifications are unrealistic. The two stages in this procedure are submission of technical proposals followed by submission of priced bids. Variations of the procedure discussed below may also be authorized.

- a. The procurement is advertised in accordance with the rule in Section 2.3, and the procedure in Section 3.6.1.
- b. The request for technical proposals is distributed to firms responding to the advertisement. The request contains:
  - (1) The best possible description of the equipment required;
  - (2) Notification that a two-stage bidding procedure is being used and an explanation of the procedure;

- (3) The requirements for the technical proposal, e.g., drawings, data, etc., to be submitted;
- (4) A statement that the technical proposal should not include price information;
- (5) The date by which the proposal must be submitted;
- (6) A statement that the Contracting Agency may discuss the technical aspects of the proposal with the firm submitting it;
- (7) A statement that in the second stage of the procurement, only those firms will be asked to submit priced bids whose technical proposals are determined to be acceptable;
- (8) A statement that firms submitting unacceptable technical proposals will be so notified upon completion of the technical evaluation, and that priced bids will not be requested from them.

c. Since prices are not included at this stage, there is no public opening of proposals. Technical proposals are evaluated by the Contracting Agency to determine whether they generally meet the requirements of the procurement. The technical proposals are categorized as unacceptable (in which case they are rejected), conditionally acceptable, or fully acceptable. The Contracting Agency arranges for any necessary discussion with firms submitting technical proposals for the purpose of obtaining additional information or clarification which may be required and should give the offerors a reasonable opportunity to make proposals fully acceptable. If it is determined after discussions that a technical proposal is not fully acceptable, it should be classified as unacceptable.

d. After the proposals have been evaluated, a request for priced bids is sent to those firms whose technical proposals have been found fully acceptable. The technical specifications will be those contained in the bidder's technical proposal, as modified and accepted during the discussions between the offeror and the Contracting Agency. The priced bids are opened publicly. The contract is awarded to the lowest responsive, responsible bidder, as in Sections 3.6.7, 3.6.8, and 3.6.9. It is possible for an offeror with an acceptable technical proposal to subsequently submit a non-responsive priced bid.

## **3.8 Informal Competitive Procedures**

### **3.8.1 General**

In accordance with the rule in Section 2.2.3, informal competitive procedures may be used if approved by the Mission Director. Informal competitive procedures permit negotiation with two or more offerors to arrive at a satisfactory contract, price and other factors considered. These procedures differ from formal competitive bidding primarily in that changes in the offers submitted may be negotiated and there is no public opening of offers received. Other differences are noted in the guidelines for use of the procedure in the following sections. Two somewhat different procedures to obtain quotations are used in cases where informal procedures are authorized before the procurement process has been begun (see 3.8.2) or after the unsuccessful use of formal competitive bidding (see 3.8.3). The procedure is the same from receipt of quotations through contract award (3.8.4 through 3.8.7).

### **3.8.2 Procedure When Formal Competitive Bidding Has Not Been Used**

If formal competitive procedures are not used from the beginning of the procurement process, the guidance in this Section 3.8.2 applies.

#### **3.8.2.1 Advertising**

In accordance with the rule in 2.3, notice of availability of prequalification questionnaires or Requests for Quotations (RFQ), is published in the Commerce Business Daily, the USAID Procurement Information Bulletin, and if appropriate, other publications. (See Attachment 3C for instructions on preparation and submission of the Notice.) If prequalification is used, the availability of the RFQ is not advertised.

#### **3.8.2.2 Prequalification (if used)**

If the Contracting Agency wishes to prequalify firms when using the informal competitive procedure, the process is the same as set forth in Section 3.5.2.

#### **3.8.2.3 Preparation of the Request for Quotations**

The contents of the RFQ are discussed in detail in Section 4.2. As required by the rule 2.1, the RFQ is approved by USAID prior to distribution.

#### **3.8.2.4 Solicitation of Quotations**

The Contracting Agency provides the Request for Quotations to all firms requesting it and any other firms the Contracting Agency wishes to solicit or, if prequalification was used, to all prequalified firms.

### **3.8.3 Procedure When Formal Competitive Bidding Has Not Been Successful**

If informal procedures are used after formal bidding procedures have failed to lead to an award, the Contracting Agency establishes detailed procedures for USAID approval which include the following elements:

- a. Formal rejection of all bids received in response to the IFB.
- b. Review of factors in the bids received which made them unacceptable. The review may indicate that either the specifications or the contract terms could be modified to produce acceptable offers. If there are clear indications that such modifications would produce acceptable bids (e.g., when several bidders took exception to the same specifications or the same contract terms but their bids were otherwise responsive) and if such modifications would not impair the quality of the goods to the Contracting Agency or USAID, repetition of formal competitive procedures with a revised IFB should be considered. If that course is considered inadvisable, if the bids originally received contained numerous or different exceptions, or if it appears advisable to consult with the potential suppliers on specifications or contract terms, use of the informal procedure is indicated.

c. Selection of firms to submit quotations. The Contracting Agency may decide to readvertise the procurement and use informal competitive procedures throughout pursuant to Section 3.8.2, request quotations from all prequalified firms (if bidders were prequalified prior to issuance of the original IFB), from all firms which submitted bids, or from two or more firms which submitted the lowest bids. In making the decision the Contracting Agency considers the potential benefits of wide competition, any time constraints relevant for the completion of the procurement, and other pertinent factors. If substantial modifications in the specifications or contract terms are contemplated, it is generally advisable to request all previous bidders or all firms which were prequalified to submit offers.

d. Request for quotations. The request includes: (1) advice on the modifications made to the specifications or contract terms contained in the original IFB, either by reference to that IFB or in revised specifications or contract terms; (2) the form in which offers are to be submitted; (3) the time and place at which offers will be received (see subparagraph 4.2.2.a); (4) a statement that the Contracting Agency reserves the right to negotiate with the offerors (see subparagraph 4.2.2.d); (5) a statement on the treatment of late offers (see subparagraph 4.2.2.b); and (6) a statement on the manner in which offers will be evaluated (see subparagraph 4.2.2.c).

e. For the subsequent steps in the procedure, the guidance in Sections 3.8.4 through 3.8.7 applies.

#### **3.8.4 Receipt of Quotation**

a. As quotations are received, a record is made of the time and date of receipt and the name of the offeror. Offers received prior to the closing time specified in the RFQ shall be kept secure and unopened until the time and date specified in the RFQ.

b. Offers received after the time specified in the RFQ are handled in accordance with the procedure established in the RFQ.

#### **3.8.5 Opening and Evaluation**

a. Because quotations are subject to evaluation and negotiation, the opening is not public and prices are not disclosed.

b. Offers are opened after the time established in the RFQ and evaluated against the criteria established in the RFQ. The evaluation is conducted by a Procurement Agent (if used) or a selection panel of the Contracting Agency which rates each offer against each evaluation criterion. The proposals are ranked in order.

c. If a selection panel is used to evaluate the offers, USAID will furnish an observer to monitor the selection panel proceedings for procurements expected to exceed \$250,000. The observer will not actively participate in the proceedings, other than answering questions concerning USAID procedures and providing liaison with USAID in obtaining business references; USAID will not conduct a separate ranking of the offers.

### **3.8.6** Negotiation

- a. If the Contracting Agency wishes to award the contract without negotiations and reserved the right in the RFQ, it may do so.
- b. Negotiations may be conducted with the highest ranked offeror or with all offerors within a "competitive range." A competitive range includes two or more offerors whose proposals are reasonably close and the highest in the ranking.
- c. Negotiations should be conducted fairly and expeditiously. All firms selected for negotiation are informed at the same time and are given the same information about the bases of negotiation. Minor changes in the Contracting Agency's requirements which will relax, increase, or otherwise modify the scope of work or contract terms are given simultaneously in writing to all offerors during the negotiation stage. If any such changes substantially affect the original scope of work in the RFQ, the Contracting Agency should consider cancelling the procurement and issuing a new RFQ to all prequalified firms or a new source list, if appropriate.

The Contracting Agency should ensure that "technical transfer" is avoided during the negotiations. This occurs when technical aspects of one offeror's proposal are transmitted to other offerors and may be incorporated in their revised proposals.

No indication shall be given to any offeror of a competitor's price which must be met to obtain further consideration since such a practice constitutes an auction which must be avoided. Likewise, no offeror shall be advised of its relative standing with other offerors as to price or be furnished information as to the prices offered by other offerors.

- d. After negotiations have been concluded, all offerors with whom negotiations were conducted are invited to submit their best and final written offers based on negotiations by a specified date and time. The Contracting Agency evaluates the final offers based on criteria communicated to all offerors and awards the contract to the firm with the best offer in terms of those criteria. Detailed records of all negotiations are prepared by the Contracting Agency.

### **3.8.7** Contract Award

- a. If required by the SOAG or a SOAG Implementation Letter, USAID approves the supplier and the contract before signature. The Contracting Agency submits the following documentation to USAID:
  - (1) The final contract (unsigned) with a statement either that is identical to the contract included in the previously approved RFQ or showing how the contract included with the RFQ has been changed.
  - (2) The record of negotiations prepared pursuant to subparagraph 3.8.6d. above, including the reasons for finding that the offer is most advantageous to the Contracting Agency, price and other factors considered.
  - (3) A statement that the offeror selected is eligible for the contract.
  - (4) Offeror protests and documentation of their disposition.

b. IF USAID finds with the proposed award acceptable for financing, after reviewing the documentation submitted, it informs the Contracting Agency of its approval. Otherwise, USAID informs the Contracting Agency of the reasons for its objections to the proposed award and agrees with it on actions to achieve a mutually acceptable award.

c. Upon receipt of USAID's approval of the proposed award, the Contracting Agency and supplier sign the contract. The contract is submitted for USAID approval of the final signed contract. (See the rule in Section 2.1.)

### **3.9 Small Value Procurement**

a. In accordance with the rule in Section 2.2.4, when the estimated value of the contract does not exceed \$100,000 or equivalent the contract may be awarded by soliciting quotations from as many sources as practical taking into consideration the commodities to be purchased, potential suppliers, and administrative costs involved in the procurement. The contract is awarded to the offeror with the most advantageous quotation, price and other factors considered. All equipment, materials, and incidental services which would normally be grouped together shall not be broken down into smaller procurements merely for the purpose of avoiding the requirements of formal or informal competitive procedures.

b. Pursuant to the rule in Section 2.3.1a, all procurements estimated to exceed \$25,000 are advertised in the USAID Procurement Information Bulletin. The Notice of the procurement is submitted as provided for in Attachment 3C. The Notice should be identified as "PIB ONLY". Additional advertising may also be used, and quotations may be solicited by telephone, telex, or written requests for quotations. It is the responsibility of the Contracting Agency to inform prospective suppliers of the conditions of the procurement, e.g., USAID-financing, source requirements, payment documentation requirements, etc.

c. Thus small value procurement procedures differ from the procedures applicable to informal competitive procurement in that: (i) advertising the Commerce Business Daily is not required, (ii) advertising in the USAID Procurement Information Bulletin is required only for procurements exceeding \$25,000, (iii) offers may be solicited by means other than the issuance of an RFQ, (iv) USAID approval is required only for some noncompetitive awards (see Section 2.2.4.c) or as stated in the SOAG or SOAG Implementation Letter. As a result, the procurement process is normally shorter and simpler than under other procedures. It is important, however, that the Contracting Agency maintain records relating to small value procurement adequate to show from whom offers were solicited and obtained and how the supplier was selected.

d. A sample purchase order format, which may be adapted for use for small value procurement, is shown in Attachment 3P.

### **3.10 Establishing Requirements for Bonds or Guaranties**

#### **3.10.1 Definitions**

a. A bond is an instrument executed by surety which assures the owner (i.e. Contracting Agency) that in the event the principal (i.e. supplier) fails to satisfy its



obligations, the surety will either assume the obligations of the principal or assure payment of any losses sustained to the extent specified in the bond.

b. A guaranty is an instrument (generally a letter of credit) issued by a banking institution at the request of a supplier which provides for payment up to a specified amount to a designated party upon presentation of prescribed documents indicating an unfulfilled obligation on the part of the supplier. A guaranty, unlike a bond, is virtually equivalent to cash and normally encumbers the assets of the supplier, a point that should be kept in mind if the required guaranty is large.

c. Types of Bonds and Guaranties

(1) A bid bond or guaranty is a third-party commitment that accompanies a bid when Invitations for Bids so require. It assures that the bidder will not withdraw its bid within the period specified for acceptance and will execute a written contract and furnish such additional bonds or guaranties as may be required in the Invitation for Bids within the periods specified.

(2) A performance bond or guaranty is a commitment by a surety or guarantor ensuring completion of contract requirements.

(3) A payment bond or guaranty is a commitment which secures payment to all persons supplying labor and material for performance of the work under a contract.

(4) An advance payment bond or guaranty is a commitment which secures fulfillment of the supplier's obligations under an advance payment provision. The coverage usually declines as the advance is liquidated.

**3.10.2 General**

a. USAID may require bid, performance, payment or advance payment bonds or guaranties or other security with respect to procurement of equipment and materials. To the extent such security for contract requirements is required, the contract solicitation should provide for either bonds or guaranties at the option of the supplier unless local law requires a guaranty or surety bonding is not available (which is often the case for non-U.S. firms).

b. USAID prefers the use of surety bonds rather than bank guaranties as they are generally less costly to obtain and they place the responsibility for completion of contractual requirements on the surety. Surety bonds are issued by insurance companies specializing in the business of guarantying the performance of contract obligations. Sureties analyze the supplier's experience, workload capacity, and financial standing before issuing written assurance of contract performance, they are equipped to assist suppliers having problems in contract performance, and ultimately they may take over the work to ensure completion. On the other hand, bank guaranties are extensions of credit available on demand which ensure that the Contracting Agency can collect a penal sum in the event of default. Bank guaranties are usually issued as letters of credit based primarily on financial strength. Surety bonds usually are considerably less expensive than bank guaranties and do not tie up a supplier's line of credit, thus allowing

more suppliers to compete. This results in reduced costs to the Contracting Agency by reducing the supplier's cost of performance and by increasing competition.

The IFB must indicate the required bid, performance and payment bonds or guaranties. Bonds or guaranties must be issued by surety companies, insurance companies, or banks acceptable to the Contracting Agency.

### **3.10.3 Bonds**

a. Bonds may be denominated in any convertible currency acceptable to the Contracting Agency and USAID. All bonds shall designate the Contracting Agency as beneficiary.

b. Bid Bonds protect the Contracting Agency by ensuring that the supplier will execute a written contract and furnish such additional bonds or guaranties as may be required. Bid bond requirements may be expressed in the IFB as a fixed amount or as a percentage of the supplier's bid price. Generally the percentage or amount specified should be sufficient to protect the Contracting Agency from loss in the event the successful bidder fails to execute a contract or provide other bonds. USAID favors expressing the amount as a percentage of the supplier's bid price. The amount specified should generally be between 5% and 10% of the bid price or \$3,000,000, whichever is less. Bid bonds are not required in single source procurement authorized pursuant to Section 2.2.6 or in competitive negotiation which will result in a cost reimbursement plus fixed fee contract. Bid bonds should not be required unless performance bonds are also required because the bidder could execute the contract to protect the bid bond but never follow through on performance.

c. Performance bonds are issued by sureties to ensure completion of contract requirements. In the event a supplier defaults, the surety will remedy the default, assume responsibility for performance itself, arrange for another supplier to complete the work, or pay the additional costs incurred by the Contracting Agency for completing the contract, up to the amount of the bond (the "principal sum"). The requirement for a performance bond in the Invitation for Bids is expressed as a percentage of the contract price. Where performance bonds are required, the amount of the performance bond should be 100 percent of the contract price. Normally, the cost of a performance bond covering 100 percent is the same as for a bond based on a lower percentage.

d. Payment bonds are issued by a surety to secure payment to all persons supplying labor and material for the performance of work under a contract. Payment bonds are expressed as a percentage of contract price. The amount specified should be 50 percent of the contract price but not more than \$2,500,000. While payment bonds have limited applicability in the procurement of equipment and materials, such bonds should be obtained when performance bonds are required since sureties writing performance bonds provide payment bonds at no additional cost.

e. Advance payment bonds should be used only when the contract provides for advance payment in accordance with Section 3.11.2. The amount of the bond should equal the amount of the advance and is reduced as the advance is liquidated.

f. If the Contracting Agency is dealing with a single source in negotiated procurement or a limited number of large suppliers and wants the automatic call on credit associated

with bank guaranties, USAID may approve the use of "demand" or "guaranty" bonds on a case by case basis. These bonds, issued by U.S. sureties, are less costly than bank guaranties but are only available for large suppliers with liquidity to immediately reimburse the surety in the event the bond is called. "Demand" or "guaranty" bonds might prove useful on large industrial activities where only the very large firms which could qualify financially for the bonds are prequalified for the contract. Demand bonds should not be used in other situations since they would limit competition to the small percentage of suppliers who can meet the stringent surety requirements.

### **3.10.4 Guaranties**

In instances where suppliers elect to furnish guaranties in lieu of surety bonds or local law requires bank guaranties, the penal amount of the guaranties should be as follows:

- a. Bid Guaranty - 1% to 3% of the Contracting Agency's estimated contract price.
- b. Performance Guaranty - 8% to 15% of the contract price.
- c. Advance Payment Guaranty - amount of the advance payment.
- d. Payment Guaranties are not normally used.

## **3.11 Determining the Method of Payment**

### **3.11.1 General**

**3.11.1.1** The method of payment to the supplier is described in the IFB or RFQ and the contract and should be chosen in consultation with USAID personnel. The three basic methods employed for payment are Direct Reimbursement to the Borrower/Grantee, Direct Letter of Commitment to the Supplier, or Letter of Commitment to a U.S. bank with subsidiary Letter(s) of Credit. Each is especially useful in certain situations explained below. In each method, payments are made on the basis of submission of the appropriate documents discussed in Section 3.11.3.

#### **3.11.1.2 Direct Reimbursement to the Borrower/Grantee**

Under the Direct Reimbursement procedure, the Borrower/Grantee pays the supplier for the commodities and related services from its own resources, prepares a Request for Reimbursement with the required supporting documentation, as listed in Section 3.11.3, submits it to USAID, and receives payment.

#### **3.11.1.3 Direct Letter of Commitment to the Supplier**

The Direct Letter of Commitment (DL/COM) is an agreement between USAID and the supplier, under which USAID makes payments directly to the supplier for eligible commodities and services furnished under a country contract. The DL/COM is assignable, under the Assignment of Claims Act, by the supplier to a banking institution and thus may serve as collateral for credit the supplier may require for working capital.

The steps involved in this method of U.S. dollar payments are:

- a. The Contracting Agency prepares a request for a Letter of Commitment and submits it to USAID.
- b. Based on the SOAG and SOAG Implementation Letter, the request for a Letter of Commitment, and the contract, USAID issues a Letter of Commitment directly to the supplier.
- c. The supplier presents the appropriate documents as discussed in Section 3.10.3 to USAID, and receives payment directly from USAID.

#### **3.11.1.4 Letter of Commitment to U.S. Bank**

The Bank Letter of Commitment (L/COM) is an agreement between USAID and a U.S. bank, under which the bank is authorized to make payments to the supplier for eligible commodities and services. The bank is reimbursed by USAID for payments made in accordance with the conditions set forth in the L/COM. This financing device utilizes established commercial banking channels to process payments to suppliers. Under this financing arrangement, a party designated by the Borrower/Grantee (known as the "approved applicant" which is generally a host country bank) may either issue letters of credit to suppliers and request the L/COM bank to advise or confirm them or may request the L/COM bank to issue its own letters of credit to suppliers.

##### **a. Eligibility and Designation of U.S. Banks**

Any banking institution organized under the laws of the United States, or any State, Territory or possession thereof, Puerto Rico or the District of Columbia is eligible to be designated as an L/COM bank. It is the responsibility of the Borrower/Grantee to select the U.S. banking institution, and as a general rule, responsibility for selection of the U.S. bank is delegated to the approved applicant. Normally, an existing correspondent relationship between the approved applicant and the U.S. bank is the basis on which a U.S. bank is selected. In those cases where the amount of the contract is \$50,000 or more, the supplier may, prior to signature of the contract, request the designation of a specific U.S. bank to receive the L/COM. The decision as to whether or not to comply with the supplier's request rests with the approved applicant which should make every effort to grant this request.

##### **b. U.S. Bank Charges**

U.S. banking institutions charge for their services under Letters of Commitment issued to them by USAID. These charges are for the account of the approved applicant, but may be financed by USAID from funds set aside in the L/COM, if so authorized by the terms of the underlying agreement. The schedule of fees and charges should be negotiated, and agreed upon by the approved applicant and the U.S. bank prior to the time a bank is designated as the L/COM bank. If the Contracting Agency elects to finance the bank charges under the L/COM, which is usually the case, the amount to be set aside in the L/COM should be specified by the Contracting Agency and not be estimated by USAID. USAID will not finance any banking charges other than those assessed by the L/COM bank.

##### **c. The steps involved in this method of financing are:**

(1) The Contracting Agency requests USAID to issue an L/COM. The request should contain the L/COM amount including the amount of estimated banking charges, the name and address of the U.S. bank, the name and address of the approved applicant, and the expiration date of the Letter of Commitment.

(2) USAID issues a Letter of Commitment to the specified U.S. bank. The L/COM sets forth the conditions under which USAID will reimburse the bank.

(3) The L/COM bank, based on instructions received from the approved applicant, issues, advises, or confirms a Letter of Credit to the supplier. The Letter of Credit must be in accordance with the terms of the contract, including documentation requirements, and be consistent with the terms of the L/COM.

(4) The supplier presents the documentation prescribed in the Letter of Credit to the U.S. bank and receives payment.

(5) The U.S. bank submits its voucher and the prescribed USAID documentation to USAID and receives reimbursement. The documentation submitted to USAID by the bank is not pre-audited by USAID but, like all USAID-financed transactions, is subject to post-audit.

### **3.11.2 Types of Payment**

#### **3.11.2.1 Lump sum payments**

Normally, the total amount due is paid to the supplier when the paying agent (bank, USAID, or Contracting Agency) receives shipping documents and other required documentation indicating that all the equipment and materials called for under the contract have been delivered in accordance with the contract terms.

#### **3.11.2.2 Partial payments**

Partial payments are payments made to a supplier for goods actually delivered, or for services actually rendered, where such goods or services represent complete performance of an identifiable part of the total contract requirement. Partial payments are made when the paying agent receives shipping documents and other required documentation. If partial payments are to be made, the contract must authorize them.

#### **3.11.2.3 Progress payments**

##### **a. Definition**

Progress payments are payments made under a fixed price contract to the supplier on the basis of (1) actual costs incurred, (2) actual percentage of completion accomplished, or (3) actual stage of completion reached.

##### **b. Conditions for Use**

Provision for progress payments may be included in the solicitation when the host country requests and USAID determines that: (1) the period between the beginning of work and the first required delivery will exceed 4 months, (2) there will be substantial

predelivery costs that may have a material impact on a contractor's working capital, and (3) the contract or procurement will involve \$200,000 or more. The solicitation shall state whether progress payments will be allowed and, if so, that a request for progress payments will not be considered an adverse factor in the award of the contract.

c. Security

The contract must contain a security provision which allows the host country to obtain a lien or title to work in progress or materials allocated to the contract, or the contractor may furnish a bank guaranty or performance bond.

d. Amount

Progress payments shall not exceed 95% of total costs. In order to minimize administrative effort and expense, progress payments are not authorized under contracts of less than \$200,000.

e. Approval

(1) Progress payments based on actual costs incurred in an amount not exceeding 95% of the total cost may be authorized by the Mission Director or his/her designee, with the concurrence of the Mission Controller, if the contractor's accounting system and controls have been found by audit or experience to be sufficient and reliable for segregation and accumulation of contract costs.

(2) Progress payments based on a percentage or stage of completion may be authorized by the Mission Director if he/she has determined that progress payments based on cost cannot be practically employed. An examination of the contractor's accounting system is not required.

(3) Progress payments not within the scope of the above may be authorized by the Mission Director, with Mission Controller concurrence.

#### **3.11.2.4 Mobilization payments**

a) Definition

Mobilization payments are payments provided to a supplier of custom-made equipment to assist in meeting extraordinary start-up costs incurred to promptly perform under the contract (e.g., purchase of specialized equipment and shipment to the host country). Mobilization payments are normally included as a line item in the bid schedule. The Instructions to Bidders will state that the amount to be entered for mobilization is not to exceed a certain percentage, usually 10 to 20 percent, of the total bid price. The contractor is permitted to receive limited mobilization payments after expenditures are incurred for purchase of equipment, materials, etc., rather than having to wait for progress payments which are not made until actual work items are completed.

b. Conditions for Use

USAID considers mobilization payments to contractors selected in accordance with competitive bidding as advantageous since they enhance competition and reduce contract costs. Mobilization advances may be provided without interest so long as there is true competition in the bidding process and USAID obtains the advantage of reduced contract costs as a consequence of providing the advance.

c. Approval

The USAID official who approves host country contracting solicitations must consider the reasonableness of proposed mobilization payments and determine before publication of the solicitation that (1) a mobilization payment in the amount proposed is necessary to avoiding restricting competition, and (2) it may be reasonably assumed that a compensating financial benefit will accrue to USAID and the host country as a consequence of providing the payment. This written determination will become part of the official activity file.

**3.11.2.5 Advance payments.**

a. Definition.

Advance payments are payments of monies to the supplier prior to or in anticipation of future performance under a contract. They differ from partial and progress payments because they are not based on actual performance or actual costs incurred. Such payments must be authorized in the contract.

b. Conditions for Use.

(1) Nonprofit Contractors

Contractors or suppliers which are nonprofit organizations (including international research centers and educational institutions) and which do not charge a fee are authorized advance payments. This policy assures that nonprofit organizations will not be forced to utilize their own working capital or earmarked funds to finance work carried out under USAID-financed contracts.

However, before USAID may finance contracts which provide for advance payments, the recipient organization must have a financial management system which has been found by U.S. Government audit or other acceptable audit to be adequate for controlling and accounting for USAID funds. If the contractor or supplier does not have an acceptable financial management system, payment shall be on a reimbursement, not advance basis.

(2) Profit-Making Contractors

Advance payments to profit making contractors or suppliers or nonprofit organizations which charge a fee may be authorized only when the approving official in paragraph d has made a positive determination in writing that USAID will benefit in terms of increased competition and/or lower prices. This determination must be made prior to the issuance of the solicitation so that all prospective contractors or suppliers are made aware of the availability of

advance payments. The contractor or supplier must post adequate security for the advance (e.g. advance payment bond or guaranty).

The requirement for acceptable financial management system described in paragraph (1) above also applies to profit-making organizations.

c. Amount of the Advance.

The amount of the advance payment, whether in dollars or local currency, is to be based on an analysis of the working capital required under the contract, taking into consideration the reimbursement cycle and, in the case of profit-making firms, the availability of their own working capital. The advance shall be limited to the minimum amount needed for immediate disbursing needs (i.e., up to 30 days from date received until expended). The advance period may be extended up to 90 days when the approving official, with the concurrence of the Controller serving that official, has made a written determination that implementation will be interrupted or impeded by applying the 30 day maximum.

d. Approvals

(1) Advances to nonprofit organizations are authorized, subject to the concurrence of the USAID Controller serving the Mission, when the organization has an acceptable financial management system.

(2) Advances of \$100,000 or less to profit-making firms, regardless of the percentage of contract value, may be approved by the Mission Director with the concurrence of the USAID Controller serving the Mission.

(3) Advances to profit-making firms of up to 10% of the contract value with a maximum of \$1 million may be approved by the Mission Director with the concurrence of the USAID Controller serving that Mission.

(4) Advances to profit-making firms in excess of 10% of the contract value or \$1 million, whichever is less, must be approved by the regional Assistant Administrator with the concurrence of the USAID/W Controller (M/FM).

**3.11.3 Documentation for Payment**

Regardless of the method of payment used, appropriate documentation, as discussed below, must be submitted in order to receive payment.

**3.11.3.1 Voucher**

The voucher, SF-1034, "Public Voucher for Purchases and Services Other Than Personal," (Attachment 3F) is to be submitted in an original and three copies, normally prepared by the U.S. banking institution under Letters of Commitment, by the Contracting Agency under Direct Reimbursement, or by the supplier under Direct Letters of Commitment.



### **3.11.3.2 Supplier's Invoice**

The supplier submits one copy of its invoice describing the goods delivered and services performed. If the contract provides for partial, progress or advance payments, the invoice identifies the sections or paragraphs in the covering contract which contain the terms of payment.

### **3.11.3.3 Evidence of Shipment**

For each shipment of equipment or materials:

- a. A copy or photostat of the bill of lading (ocean, airway, charter party, railway, barge or truck) or parcel post receipt evidencing shipment from the source country or a free port or bonded warehouse to the host country is to be submitted. The bill of lading shall indicate the carrier's complete statement of charges including all relevant weights, cubic measurements, rates, and additional charges whether or not freight is financed by USAID. (See the note in the following Section 3.11.3.4 concerning the additional distribution requirements for ocean bills of lading.)
- b. However, in those cases where, under the terms of the contract, the supplier is not responsible for loading the goods on board the vessel for shipment to the host country (e.g., when delivery terms are f.a.s. port of shipment, f.o.b. factory) and a bill of lading is not available within a reasonable time after delivery of the goods to the port, the Contracting Agency may provide for the supplier to be paid upon submission of the following documentation instead of a bill of lading:
  - (1) A dock or warehouse receipt containing commodity description; weight and cubic measurement, port of loading, and if available, name and flag of vessel and showing consignment of the goods to a person or organization designated by the Contracting Agency, and
  - (2) A letter from the consignee addressed to USAID undertaking to arrange for shipment of the goods to the host country and to deliver to the Chief, Program Accounting and Finance Division, Office of Financial Management, USAID, Washington, D.C., 20523-0209, within 45 days from the date of the dock or warehouse receipt, a copy of an ocean or airway bill of lading evidencing shipment to the host country.
- c. In addition, when shipment is effected from a free port or bonded warehouse, the supplier is to submit a copy of the bill of lading, bearing a notation of the freight costs, covering shipment from the source country to the free port or bonded warehouse and, if the free port or bonded warehouse is located within the host country, accompanied by a delivery receipt evidencing release from the free port or bonded warehouse to the supplier. The date of the delivery receipt will be considered as the shipment date for the transaction and, therefore, must be dated within such delivery period as may be specified in the Letter of Commitment.

**3.11.3.4 Supplier's Certificate and Agreement with USAID for Project Commodities/Invoice and Contract Abstract. Form USAID 1450-4 (Attachment 3B)**

In accordance with the rules in Sections 2.13.3 and 2.14 the "Supplier's Certificate and Agreement with USAID for Project Commodities/ Invoice and Contract Abstract", Form USAID 1450-4, shall be prepared in accordance with the instructions thereon, and submitted with each request for payment.

Note: The Supplier's Certificate includes a certification (Item No. 12.) that a copy of every ocean bill of lading applicable to the transaction has been submitted to:

Maritime Administration  
National Cargo Division  
400 Seventh Street, S.W.  
Washington, D.C. 20590

and

Office of Procurement  
Transportation Division  
USAID  
Washington, D.C. 20523-1419

**3.11.3.5 Borrower/Grantee's Certification for Reimbursement**

When Direct Reimbursement to the Borrower/Grantee is used, the following certification, signed and dated by the Contracting Agency, must accompany the required documentation:

Pursuant to Agreement No. \_\_\_\_\_ dated \_\_\_\_\_, the (Borrower/Grantee) hereby requests reimbursement and certifies as follows:

1. The (Borrower/Grantee) has not applied for or received reimbursement for the cost of any of the items for which reimbursement is requested, and will not obtain such reimbursement out of the proceeds of any other loan or grant available to the (Borrower/Grantee).
2. If, pursuant to a loan or grant agreement, some portion of the total payment for the specific goods and services covered herein is to be met from other than USAID sources, the (Borrower/Grantee) certifies that the total payment was \$ \_\_\_\_\_, of which the sum of \$ \_\_\_\_\_ was borne by \_\_\_\_\_."

**3.11.3.6 Certification of Performance for Final Payment**

When the contract requires installation or erection of the equipment or acceptance by the Contracting Agency before final payment is made, the following certification signed and dated by the Contracting Agency or Procurement Agent (if formally authorized) is required to accompany the invoice for final payment under any of the payment methods:

"The (Contracting Agency) certifies that 1) the equipment and materials for which payment is requested have been satisfactorily delivered; 2) any incidental services

for which payment is requested have been satisfactorily performed, and 3) the amount invoiced is properly due and payable under the terms of the contract."

### **3.11.3.7 Termination Claims**

If the contract has been terminated pursuant to the provisions contained therein, the claim for termination costs is accompanied by:

- a. Written justification by the supplier supporting in detail the claimed charge, and
- b. One of the following:
  - (1) Written concurrence by the Contracting Agency to the supplier's claim, or
  - (2) A certified copy of an arbitration award.

### **3.12 Contract Administration**

The responsibility of the Contracting Agency and USAID for the contract does not cease when the contract is signed. The Contracting Agency has the primary responsibility for ensuring that the supplier performs in accordance with the terms of the contract and making certain certifications in order for the supplier to be paid (see Section 3.11.3). USAID may have certain approval responsibilities for contract administration actions (such as subcontracts, change orders, amendments, etc.) as set forth in the contract. Also, USAID has certain responsibilities under the SOAG which affect the contract, such as waiving nationality and source requirements, waiving marking requirements, etc.

The Contracting Agency should be aware of supplier performance at all times. Any problems or delays should be analyzed and appropriate action taken as soon as possible. Appropriate action might include non-contractual remedies (such as expediting commodities through customs) or contractual action (change order, invoking force majeure, or termination).

### **3.13 Auditing the Contract**

Arrangements must be made for properly auditing cost-reimbursable contracts and subcontracts that exceed \$300,000 to verify the costs claimed and to finalize provisional overhead rates. These arrangements will include setting aside activity funds to cover the cost of the audit, as necessary, and the selection of the auditing entity.

Audits of cost-reimbursable contracts under \$300,000 and of contract requirements with regard to source, use of U.S.-flag carriers, etc. in all types of contracts will be conducted where there is reason to question contractor representations.

U.S.-based firms - The host country contracting agency should request M/OP/PS/CAM, through the Mission, to arrange the audit of costs claimed under cost-reimbursable contracts in excess of \$300,000 awarded to U.S.-based firms. Audits will be conducted by the cognizant U.S. audit agency or an independent auditor. As circumstances dictate, the contracting agency should also request audits of cost in smaller cost-reimbursable contracts and of other contract requirements.

Non-U.S.-based firms - The audit of non-U.S.-based firms shall be a cost-incurred, financial audit performed by the principal audit agency of the host country or an independent audit agency acceptable to the USAID Inspector General and as set forth in the SOAG or a SOAG Implementation Letter. When the need to audit the costs incurred under a cost-reimbursable contracts that is less than \$300,000 or the need to audit other contract requirements is indicated, the Mission should be consulted to provide liaison with the USAID Inspector General concerning the arrangements to be made for the audit.

The guidance contained in Guidelines for Financial Audits Contracted by Foreign Recipients, July 1998, shall be followed in selection of the acceptable auditors. Guidance in planning, conducting, and reporting on the results of the audit contained in the Guide for Financial Audits Contracted by the Agency for International Development, January 1991, shall be observed by the auditors. These USAID Inspector General publications are available from IG/A/FA and the USAID Regional IG offices.

### **3.14 Contract Closeout**

The contract should be closed out in an orderly fashion upon satisfactory completion of the work by the contractor. Final payment to the contractor is withheld until the contractor provides evidence that it has met all of its obligations under the contract and all required certifications (including acceptance of the work by the Contracting Agency) have been executed and the contract has been audited, as provided above. The USAID Activity Manager will be notified of contract closeout and contract files will be maintained in storage at least three years from the final disbursement under the SOAG.

## **4.0 Contents of the Invitation for Bids or Request for Quotations**

### **4.1 Invitation for Bids**

The Invitation for Bids is the basic document in formal competitive procurement of equipment and materials. It not only requests firms to compete for the contract; it also sets forth the specifications for the equipment and materials and includes conditions governing delivery, incidental services, payment and the like -- that is, the contract itself. It establishes the criteria against which all bids are judged equally. If the IFB is not accurate and complete, with all information necessary for firms to prepare bids which can be evaluated on a common basis, the procurement process will be seriously delayed until deficiencies can be corrected. On the other hand, a carefully prepared IFB will expedite contract award within a minimum time after bid opening. The IFB usually includes the following sections:

- a. Cover letter inviting bids,
- b. Instructions to Bidders,
- c. Bid/Award/Contract Form,
- d. Bid Schedule,
- e. Forms of Bid and Performance Bonds,

- f. Conditions of Contract, and
- g. Technical Specifications.

These sections of the IFB are discussed in detail in the following paragraphs. The documents shown in Attachment 3G through 3N are samples only and should be adapted for the particular procurement, subject to the rules in Section 2 of this Chapter.

#### **4.1.1 Cover Letter Inviting Bids**

The Cover Letter is sent to each of the firms invited to bid, identifies the IFB by number and lists the parts of the IFB. (See sample in Attachment 3G.)

#### **4.1.2 Instructions to Bidders**

The Instructions to Bidders includes all the information the bidder needs to submit a bid in the required form and at the specified time and place. Any conditions affecting actual performance of the contract are included in the Conditions of Contract or specifications, not in the Instructions to Bidders. A sample of Instructions to Bidders, which must be adapted to each specific project, is in Attachment 3H.

The Instructions to Bidders include the following as appropriate:

- a. Invitation number,
- b. Name and address of Contracting Agency, and
- c. Date of issuance
- d. Date, hour, and place of opening. (Prevailing local time should be used.) A statement regarding late bids should be included (see Section 3.5.3.2).
- e. Permission, if any, to submit telegraphic bids.
- f. Permission, if any, to submit alternative bids, including alternative material or design. In order for an alternative bid to be considered, both the basic bid (responsive to the IFB) and the alternative bid should be the low bid.
- g. Bid bond or guaranty requirements, if any (see Section 3.10).
- h. A requirement that all bids must allow a period for acceptance of not less than a minimum period stipulated in the Invitation for Bids and that bids offering less than the minimum period stipulated in the Invitation for Bids will be rejected. The minimum period so stipulated should be no more than reasonably required for evaluation of bids and other pre-award processing.
- i. The name and address of the person in the Contracting Agency to whom questions are to be addressed.
- j. The method of issuing addenda to the IFB.

- k. A statement that the Contracting Agency may, at its option, reject all bids and that the contract will be awarded to the lowest responsive, responsible bidder.
- l. Information concerning the prebid conference, if any.
- m. Any special qualifications or experience requirements that will be considered in determining the responsibility of bidders, and the procedure for determining whether bidders are responsible to perform the contract.
- n. A statement that the bid price is the sum of all dollar and/or local currency amounts and the exchange rates to be used in computing the total bid amount.
- o. A statement concerning the currency in which agents' fees may be paid.
- p. If bids are invited on more than one basis (f.o.b., f.a.s., c.i.f., or c.&f.), which basis will be used in determining the bid price.
- q. If elements other than bid prices are to be considered in the evaluation of bids the formula by which the monetary value of each such factor will be computed.
- r. A statement of how dollar and currency portions of the contract will be paid, see Section 3.11.1, usually be reference to the contract provisions, and if appropriate, whether advance or progress payments are authorized (see Sections 3.11.1 and 3.11.2).
- s. A list of documents to be included in the bid.
- t. A statement concerning modifications to bids.
- u. A statement, when the Contracting Agency wishes to reserve the right to do so, that the Contracting Agency may increase or decrease the quantity ordered up to a specific percentage.
- v. A reference to the requirement for submission of the "Supplier's Certificate and Agreement with USAID for Project Commodities/ Invoice and Contract Abstract," Form 1450-4, (Attachment 3B), and the certifications required by it.
- w. Whether or not the cost of spare parts will be included in arriving at the total bid amount.
- x. A statement that requests for clarification of the IFB and explanations of the award should be addressed to the Contracting Agency.
- y. Requirements for certifications as to (1) whether the bidder has been placed upon any debarment list maintained by the U.S. Government and (2) its compliance with the equal employment opportunity obligations under Executive Order 11246, as amended, and regulations and orders issued thereunder.

#### **4.1.3 Bid/Award/Contract Form**

The first part of the Bid/Award/Contract Form included in the IFB is completed by each bidder. The Contracting Agency accepts the successful bid by signing the second part of the form,

thereby entering into a contract. The form lists the parts of the contract (e.g. Bid Schedule, Conditions of Contract, etc.), incorporating them by reference. A sample form is in Attachment 3I.

#### **4.1.4 Bid Schedule**

The Bid Schedule lists the commodities and, if appropriate, incidental services, and provides for the pricing of each item. The Bid Schedule may be referenced to the technical specifications. The quantity of each item is shown. The bidder fills in the unit price for the item and the amount (i.e. quantity times unit price). Bids may be requested on an f.o.b., f.a.s., c.&f., or c.i.f. basis. In some cases the Contracting Agency may solicit bids on more than one basis to ascertain whether it is more advantageous to the Contracting Agency to make its own shipping or insurance arrangements or have the supplier do so. A sample Bid Schedule is shown in Attachment 3J.

#### **4.1.5 Forms of Bid, Performance, and Payment Bonds or Guaranties**

**4.1.5.1** The requirements for bid, performance, and payment bonds and the amounts for these bonds must be specified in detail (see Section 3.9 for guidance). If special formats are required these must be listed and furnished to prospective suppliers.

A sample bid bond is illustrated in Attachment 3K.

A sample performance bond is illustrated in Attachment 3L.

A sample payment bond is illustrated in Attachment 3M.

If only U.S. suppliers will bid, it is sufficient to indicate that the format for bid, performance and payment bonds will be in accordance with standard U.S. commercial practice.

**4.1.5.2** If bank guaranties are used, the amount and currency of the guaranties must be stated. If the Contracting Agency requires specific wording of the guaranty, a sample format should be included in the IFB.

#### **4.1.6 Conditions of Contract**

a. The Conditions of Contract must be adapted as necessary to the conditions under which the supplier will provide the commodities and related services, set forth precisely the rights and obligations of the parties and include provisions for payment, inspection, release of bonds or guaranties, and generally contain all provisions to define the relationship of the parties. While the form and content of each contract may vary, every contract for equipment and materials should be prepared taking into account the rules and guidance of this chapter and local laws and customs unless specified otherwise the SOAG, SOAG Implementation Letters or other documents. The contract provisions listed in Section 2.13 are mandatory, are so basic that they should only be omitted after thorough and careful analysis. USAID's review will take the foregoing principles into account. This section discusses points to be covered in terms of the effect the clause should have.

b. Development of approved Conditions of Contract to be used in a series of contracts will speed USAID approvals considerably since the review of specific contracts could be

limited to the other parts of the contract and any changes to the approved conditions which are appropriate for the particular procurement.

#### **4.1.6.1 Definitions (See Clause 1 of Attachment 3N)**

A definitions clause may be helpful to clarify recurring expressions, avoid repetition, or to introduce abbreviations used in the contract.

#### **4.1.6.2 Governing Law and Language (See Clause 2 in Attachment 3N)**

This clause specifies:

- a. The laws which govern the interpretation of the contract, and
- b. The governing version of the contract if it is prepared in more than one language, as well as which language will be used in Notices prepared by either party. (See the rule in Section 2.9.)

#### **4.1.6.3 Delivery (See Clause 3 in Attachment 3N)**

This clause specifies the time (preferably by specific date) and place of delivery. Normally delivery is made at the port of export in the source country even though the supplier may be obligated to arrange transportation to a destination (port of entry) in the cooperating country (i.e., c.& f. or c.i.f. terms). If the supplier is to have additional responsibilities, e.g., delivery to destination, installation, or start up, then the contract must clearly specify what those responsibilities are beyond the stated f.o.b., f.a.s., c.& f. or c.i.f. terms and when they must be accomplished. If f.o.b. or f.a.s. terms are used, the contract should require that the port of loading be specified by the supplier and be one with regular liner service to the destination. Alternatively, the Contracting Agency may specify which ports of loading are acceptable.

#### **4.1.6.4 Responsibilities of Other Contractors (See Clause 4 in Attachment 3N)**

If another contractor is employed by the Contracting Agency to supervise the project, the contract must enumerate the authorities and responsibilities of that contractor in relationship to the particular commodity procurement. Such responsibilities and authorities might include inspection, testing, acceptance, certifying vouchers for payment, and the like.

#### **4.1.6.5 Legal Effect of USAID Approvals and Decisions (See Clause 5 in Attachment 3N)**

In accordance with the rule in Section 2.13.1, Clause 5 in attachment 3N must be included verbatim in every USAID-financed contract.

#### **4.1.6.6 Payment (See Clause 6 in Attachment 3N)**

A clause must be included covering all areas relating to payment to the supplier including documentation requirements, local currency payments, partial, progress or advance payments (if any), and the like. In accordance with the rule in Section 2.13.3, the contract must require that the "Supplier's Certificate and Agreement with USAID for Project Commodities/Invoice and Contract Abstract" (Form USAID 1450-4), be submitted with each payment request.



The methods of payments are discussed in Section 3.11. This clause includes the specific requirements and procedures to be followed by the supplier in obtaining payment.

Under fixed price contracts, payments may be made in one sum at completion of the contract, partial payments may be made during the term of the contract upon delivery of a portion of the commodities, or advance or progress payments may be made when USAID has authorized them in accordance with the provisions in Section 3.11.2. The clause may include an amount to be retained from each billing (not more than 5-10 percent) and the terms under which the retention will be paid. This clause also provides that the final payment to the supplier is withheld until it has met all its obligations under the contract, unless the Contracting Agency and supplier agree otherwise. The obligations include delivery of all items called for by the contract and may also include, if specified in the contract, such additional requirements as acceptance by the Contracting Agency, receipt of the warranties, and the like.

Generally the local currency costs of the contract shall not be reimbursed or paid to the supplier in United States dollars, but shall be paid in local currency whether financed by USAID or otherwise. If appropriate this clause specifies whether the Contracting Agency will provide local currency directly or if the supplier is to convert dollars. If conversion is necessary, the contract states where such conversion should be made.

#### **4.1.6.7 Audit and Records (See Clause 7 in Attachment 3N)**

This clause requires the supplier to maintain adequate books and records concerning transactions under or in connection with the contract and to make available for inspection and audit by the Contracting Agency (or its authorized agents) during the contract term and for a period of 3 years after final payment to ensure compliance with the requirements of the contract. By their nature, fixed-price contracts are not subject to audit of the costs involved (except for any cost-reimbursable items) but are subject to audit for compliance with source and comparable requirements.

#### **4.1.6.8 Assignment (See Clause 8 in Attachment 3N)**

This clause limits the right of the supplier to assign its obligations under the contract except with the prior written consent of the Contracting Agency with USAID concurrence. While assignment of the right to receive payments is usually a legitimate business practice, assignment could be a sign of financial problems of which the Contracting Agency should be aware. Consequently, the contract may require that the Contracting Agency must agree to such assignment.

#### **4.1.6.9 Host Country Taxes (See Clauses 9 in Attachment 3N)**

In accordance with the rule in Section 2.13.6, this clause indicates to the extent to which the supplier, the commodities, and the supplier's employees are exempt from all readily identifiable taxes (including customs duties, registration fees, and the like) imposed by or in the host country. To the extent the Government does not provide such exemption, the contract should state the extent to which all such taxes are to be shown as local expense and reimbursed or paid directly to the supplier by the Borrower/Grantee. As specified in the Agreement, SOAG Implementation Letters, or other related documents, the contract should enumerate the taxes subject to this provision. Normally these will not include taxes (such as value added) included in other local costs and not readily identifiable.

#### **4.1.6.10 Nationality and Source (See Clause 10 in Attachment 3N)**

This clause is mandatory in accordance with the rule in Section 2.13.2. However, to the extent that items being procured under the contract are funded by the Development Fund for Africa, the clause must be modified in accordance with USAID Handbook 1, Supplement B, Chapter 21E.

#### **4.1.6.11 Air Travel and Transportation (See Clause 11 in Attachment 3N)**

This mandatory clause must incorporate the appropriate provisions as set forth in the rules in subsection 2.6.4.3 and Section 2.13.4.

#### **4.1.6.12 Subcontracts (See Clause 12 in Attachment 3N)**

A clause may be included which specifies the extent to which USAID and the Contracting Agency must approve subcontracts in writing in advance. To avoid unnecessary delays, subcontracts and purchase orders for small value or administrative purchases usually should not require approval. The Contract Agency and USAID should use discretion in establishing approval requirements. USAID may decline to finance subcontracts not approved by USAID as required.

This clause may also list any prime contract clauses that must be incorporated into subcontracts in order for USAID (or Contracting Agency) approval to be granted.

#### **4.1.6.13 Change Orders (See Clause 13 in Attachment 3N)**

This clause allows the Contracting Agency to issue Change Orders providing for changes in the work required and for equitable adjustment in the contract price, if appropriate. The Change Order is used in situations requiring swift action and lays the basis for later contract amendment. Change orders may only be issued to make changes within the scope of the contract.

#### **4.1.6.14 Amendments (See Clause 14 in Attachment 3N)**

This clause provides for modification of the contract by written amendment. Letter agreements and other such "informal" arrangements normally should not be used. The contract should specify what kinds of amendments must be approved by USAID. As a minimum it is recommended that any amendments which increase the contract amount or extend the completion date be approved by USAID; however, USAID and the Contracting Agency may agree on additional circumstances when USAID approval would be appropriate.

#### **4.1.6.15 Settlement of Disputes (See Clause 15 in Attachment 3N and Clause 11 in Attachment 3P)**

(1) The contract must contain a clause which specifies impartial and effective procedures to settle disputes arising from the performance of the contract. Settlements negotiated between the parties are preferable because formal arbitration is time consuming and costly, and attempts to reach amicable settlements between the parties are stressed, but provision for final resolution through binding arbitration is required. Except as provided for in (4) or (5), the clause must conform to either (2) or (3) below. (See 2.13.10.)

(2) The clause may provide for final resolution, in the event an amicable settlement can not be reached, in accordance with the Rules of Conciliation and Arbitration of the International Chamber of Commerce (ICC) or the Arbitration Rules of the United Nations Commission of International Trade Law (UNCITRAL). The ICC or UNCITRAL rules are incorporated into Clause 15 of Attachment 3N, Settlement of Disputes. USAID does not specify a general preference between the ICC rules and the UNCITRAL rules.

(3) Alternatively, the parties may establish final settlement procedures other than those stated in (2) above, provided these procedures (a) specify the use of an established, impartial institution to administer arbitration in accordance with its rules; (b) permit non-nationals of the parties to the dispute to serve on the panel of arbitration and permit each party select at least one arbitrator of its choice; and (c) permit conduct of the arbitration in a third country, which will be specified in the contract, if it is requested by one of the parties.

(4) Except for reasonable modifications in the time periods specified in the clause and for contracts with host country firms, further modifications to Clause 15 of Attachment 3N, including the establishment of ad hoc arbitration procedures, require USAID approval by the USAID Procurement Executive (with GC/CCM clearance) on a case-by-case basis.

(5) Further modifications to Clause 11 of Attachment 3P shall likewise adhere to the above provisions or the aforementioned USAID approval will be required.

#### **4.1.6.16** Marking (See Clause 16 in Attachment 3N)

This clause governs marking of commodities to show that the commodities are financed by the United States Government. It is a required clause unless USAID has waived the marking requirements as set forth in 2.13.5.

#### **4.1.6.17** Inspection (See Clause 17 in Attachment 3N)

The clause provides that the Contracting Agency and its representatives have the right to inspect and test the commodities supplied under the contract at any reasonable time.

#### **4.1.6.18** Force Majeure (See Clause 18 in Attachment 3N)

This clause provides for events beyond the control of the supplier which, should they occur, would make further performance of the work, in whole or in part, impossible. The clause also provides for an orderly modification or termination of the work and the contract in the event a force majeure continues to impede performance for a stated period of time.

#### **4.1.6.19** Termination by the Contracting Agency for Default (See Clause 19 in Attachment 3N)

This clause permits the Contracting Agency to terminate the contract for default if the supplier fails to perform under the contract. The clause defines the rights of the Contracting Agency and the obligations of the supplier if the contract is terminated for default.

**4.1.6.20 Liquidated Damages (See Clause 20 in Attachment 3N)**

If the Contracting Agency will suffer damage if the commodities are not delivered on schedule (except for reasons beyond the control of the supplier), a liquidated damages clause should be used to reimburse the Contracting Agency for such damages. Liquidated damages are based on the estimated cost of specific losses; therefore an arbitrary penalty sum may not be assessed. The specific losses may include, for example, the cost of maintaining work forces of other contractors who are idle because the commodities were not delivered or operational as required by this contract.

**4.1.6.21 Termination by the Contracting Agency for Convenience (See Clause 21 in Attachment 3N)**

This clause permits the Contracting Agency to terminate the contract for convenience; i.e., when it is desirable to cancel the contract through no fault of the supplier. Conditions leading to termination for convenience might include cancellation of the project, a force majeure event, and the like. This clause defines the obligation of the supplier upon receipt of a termination notice, and the supplier's right to compensation in the event of termination for convenience.

**4.1.6.22 Worker's Compensation Insurance (See Clause 22 in Attachment 3N)**

a. Insurance coverage as required by the Defense Base Act (42 U.S.C. 1601) must be obtained under contracts for equipment and materials which involve performance of incidental services outside of the United States unless a waiver is obtained from the U.S. Department of Labor. (See paragraph 4.1.6.22.c. below.)

b. All Defense Base Act (DBA) Insurance coverage under country contracts must be placed with in accordance with the blanket contract for guaranteed rates negotiated between USAID and Fidelity and Casualty Company of NY. In order to obtain coverage, contractors should contact:

Rutherford International, Inc.  
5500 Cherokee Avenue, Suite 300  
Alexandria, VA 22312  
(703) 354-1616

Agent for:

Fidelity and Casualty Company of NY  
333 South Wabash Avenue  
Chicago, IL 60604

c. The U.S. Department of Labor may authorize the following exemptions to procuring DBA coverage under a contract:

1. Contractors with a DBA self-insurance program approved by the U.S. Department of Labor, and
2. Contractors with an approved retrospective rating plan for DBA.

d. Contractors should be prepared to provide the following information from when applying for DBA coverage:

- Company name and address,
- Point of contact,
- Telephone and fax numbers,
- Contract number,
- Brief description of type of work to be performed (e.g., installation of equipment),
- Period of performance,
- Number of nonwaived employees,
- Country of performance, and
- Projected employee remuneration (defined as overseas salary, post differential, and any overseas recruitment incentive).

e. Waivers may be obtained for third-country nationals and cooperating country nationals but cannot be obtained under any circumstances for persons who are hired in the United States or who are citizens or residents of the United States. Waivers of the Defense Base Act insurance requirements are prepared by M/OP/E, USAID/W. Blanket waivers of the Defense Base Act insurance requirements for third-country nationals and cooperating country nationals are in effect in the following countries:

#### **DEFENSE BASE ACT (DBA) WAIVER LIST**

Afghanistan	Haiti	St Lucia
Albania	Honduras	St. Vincent
Antigua	Hungary	Senegal
Armenia	India	Serbia
Azerbaijan	Indonesia	Seychelles
Bahamas	Israel	Sierra Leone
Bangladesh	Italy	Slovak Republic
Barbados	Jamaica	Slovenia
Belarus	Jordan	Somalia
Belize	Kazakhstan	South Africa
Benin	Kenya	Sri Lanka
Bolivia	Korea	Sudan
Bosnia & Hercegovina	Krygyzstan	Swaziland
	Latvia	Syria
Botswana	Lebanon	Tajikistan
Brazil	Lesotho	Tanzania
Bulgaria	Liberia	Thailand

Burkina Faso	Lithuania	Togo
Burundi	Macedonia	Tonga
Cambodia	Madagascar	Tunisia
Cameroon	Malawi	Turkey
Cape Verde	Mali	Turkmenistan
Chad	Mauritania	Uganda
Chile	Mauritius	Ukraine
Colombia	Mexico	Uruguay
Costa Rica	Moldova	Uzbekistan
Cote d'Ivoire	Mongolia	Vietnam
Croatia	Montenegro	Western Samoa
Czech Republic	Morocco	Yemen
Democratic Republic of the Congo	Mozambique	Yugoslavia
	Namibia	Zambia
Djibouti	Nepal	Zimbabwe
Dominica	New Caledonia	
Dominican Republic	Nicaragua	
Ecuador	Niger	
Egypt	Nigeria	
El Salvador	Oman	
Equatorial Guinea	Pakistan	
Estonia	Panama	
Ethiopia	Papua New Guinea	
Fiji	Paraguay	
Gambia	Peru	
Georgia	Philippines	
Ghana	Poland	
Grenada	Portugal	
Guatemala	Romania	
Guinea	Russian Federation	
Guinea-Bissau	Rwanda	
Guyana	St. Christopher & Nevis	

A condition imposed by these blanket waivers is that the waived employee(s) must be provided worker's compensation coverage as required by local law or custom.

#### **4.1.6.23 Performance Bond or Guaranty (See Clause 23 of Attachment 3N)**

This clause sets forth the requirement for the performance bond or guaranty. It establishes the form and amount of the bond or guaranty, the time within which the bond or guaranty must be furnished to the Contracting Agency, and the time at which the bond or guaranty is released by the Contracting. If a performance bond is required, a payment bond, which is normally provided at no extra charge, should also be obtained by the supplier.

#### **4.1.6.24** Warranties (See Clause 24 of Attachment 3N)

The contract should include a clause concerning the extent and the period for which the supplier is responsible for satisfactory operation of equipment. The contract clause will vary, depending on the type of specifications used and the validity period customary in the industry or considered necessary to protect the Contracting Agency. It is usually desirable to ensure that at least 6 to 12 months of operations are covered but suppliers will usually insist on an absolute limit on the validity period calculated from time of shipment in the case of f.o.b. contracts or time of arrival at the port of entry in the case of c.i.f. contracts. Clause 24 in Attachment N is a clause that could be used in the case of a c.i.f. contract. Note that it provides for replacement and repairs by the supplier, including transportation and insurance, without cost to the Contracting Agency; costs of installation of replacement materials should also be included for the supplier's account if the contract provides that the supplier is responsible for installation. The clause would have to be further modified in regard to particular circumstances such as the joint operations of equipment furnished by more than one supplier. In the case of an f.o.b. contract, the clause should be adapted to limit the supplier's responsibility for replacement materials to delivery to the port of export. If unusually long time periods are considered necessary, or if other conditions are unusually severe, it should be recognized that suppliers may include contingent costs in their bids.

#### **4.1.6.25** Packing (See Clause 25 in Attachment 3N)

The contract should include a clause requiring suitable packing of the commodities. If special packing is appropriate, detailed instructions should be included.

#### **4.1.6.26** Incidental Services (See Clause 26 of Attachment 3N)

If incidental services are to be supplied under the contract, it must specify any conditions relating to such services. This clause must be carefully drafted to reflect the particular circumstances of the procurement.

#### **4.1.6.27** Spare Parts (See Clause 27 of Attachment 3N)

The contract should state any requirements relating to spare parts, such as maintenance of a stock in the host country, providing catalog, etc.

#### **4.1.6.28** Suspension of Work (See Clause 28 of Attachment 3N)

A clause may be included which permits the Contracting Agency to order the supplier to stop work under the contract for a specified period of time. If such a Suspension of Work Order is issued, the contract is later amended to adjust the price, delivery dates, and other affected provisions equitably.

#### **4.1.6.29** Equal Employment Opportunity (See Clause 29 of Attachment 3N)

This clause is mandatory in contracts with U.S. firms (see Section 2.13.8). It requires the supplier to comply with its equal employment opportunity requirements.

**4.1.6.30** Vesting of Title and Diversion Rights (See Clause 30 of Attachment 3N)

This clause permits USAID to take title to undelivered commodities and direct carriers to delivery the commodities to alternate destinations. It is mandatory in accordance with Section 2.13.9.

**4.1.6.31** Escalation (See Clause 31 of Attachment 3N)

This clause provides for the upward or downward revision of the fixed price if certain defined contingencies occur. Such contingencies might include specific significant changes in the cost of basic materials, and the like. Use of this clause is appropriate where it is foreseeable that prices will fluctuate substantially during the period of performance and where those conditions are identifiable and can be covered by a price adjustment. Administration of this provision can be difficult, and great care should be used in stating the conditions which will bring it into effect, and the formula to be used in determining the amount of the adjustment.

**4.1.6.32** Marine Insurance (See Clause 32 of Attachment 3N)

This clause is used only if c.i.f. contracts, i.e. when the supplier is to obtain insurance coverage. It states the amount of insurance required, the source of marine insurance coverage, the currency in which proceeds are payable and eligible source for replacement commodities.

**4.1.6.33** Notices (See Clause 33 in Attachment 3N)

This clause states persons designated by the parties to receive official notices under the contract, e.g., Change Orders, Notices of Termination, etc.

**4.1.6.34** Audit and Records (See Clause 34 in Attachment 3N)

This clause requires the Contractor to maintain adequate books and records concerning transactions under or in connection with the contract, and to make them available for inspection and audit during the contract term and for a period of 3 years after final payment to insure compliance with the requirements of the contract. The clause must be included substantially as written in all contracts for commodities that exceed \$2,500 in value.

**4.1.6.35** Anti-Corruption Provisions (See Clause 35 in Attachment 3N)

If award will exceed \$2500, a clause must be included which contains the DAC Anti-Corruption Provisions, substantially as specified in Attachment 3N. Clause 35.

**4.1.7** Technical Specifications

The Technical Specifications should include as appropriate:

- a. Detailed information on the commodities to be procured, applicable standards and specifications and any other data required to define each item with the precision needed for the bidder to estimate the cost and the Contracting Agency to verify that the commodities have been supplied as required;
- b. Test procedures and criteria to be used;



c. The drawings needed by the supplier and a list of drawings, if any, to be submitted by the supplier.

## 4.2 Request for Quotations

The contents of an RFQ are generally the same as those of an IFB. The guidance in 4.1 applies equally to RFQ's with the exceptions discussed below.

### 4.2.1 Terminology

Wording in Section 4.1 should be modified as listed below when an RFQ is used:

IFB Term	RFQ Term
Bid	Offer or quotation
Bidder	Offeror
Invitation for Bids	Request for Quotations

### 4.2.2 Instructions to Offerors

Instructions to Offerors include the same type of information as discussed in Section 4.1.2 above. However there are some very significant differences which are set forth below.

#### a. Establishing the Closing Date

The closing date established in the RFQ allows offerors sufficient time to receive the RFQ, prepare quotations, and submit them to the specified place by the specified time. The time allowed should normally be at least 45 days.

#### b. Late Quotations

The Request for Quotations includes a statement on how late quotations will be treated. The Contracting Agency may consider late quotations if it includes an RFQ provision that sets forth its criteria for their acceptance (e.g. they must be postmarked by a certain date, they must be received before the evaluation is completed, etc.). However, the Contracting Agency should be careful in establishing the criteria to ensure that an offeror cannot obtain an unfair competitive advantage by submitting a late quotation.

#### c. Evaluation Criteria

The RFQ lists all the criteria to be used in determining the most advantageous offer, price and other factors considered. The criteria are listed in order of importance. Price is usually the most important criterion; other criteria might include delivery dates, service facilities, spare part availability, technical factors, and other factors important for the particular procurement. In addition, the offeror must be determined to be "responsible" as defined Section 3.6.7.a(2).

#### d. Negotiations

Normally, the RFQ contains a statement inviting best offer quotations, with the Contracting Agency reserving the right to conduct negotiations or to make an award

without conducting negotiations based solely on written quotations if it decides it is in its best interest to do so. The RFQ should also state that the Contracting Agency reserves the right not to make any award.

#### **4.2.3 Offer/Award/Contract Form**

The Bid/Award/Contract Form (Section 4.1.3) is normally not used, since negotiations normally result in substantive modifications to the quotation. A contract signed by both parties is prepared subsequent to negotiations which sets forth the agreement negotiated by the parties and may either repeat or incorporate by reference the unchanged parts of the quotation.

## Attachment 3A - Relevant USAID Geographic Codes

- 000 United States
- 899 Any area or country, except the cooperating country itself and the following foreign policy restricted countries: Libya, Cuba, Laos, Iraq, Iran, North Korea, and Syria.
- 935 Any area or country, including the cooperating country, but excluding the foreign policy restricted countries.
- 941 The United States and any independent country except 1. the cooperating country itself, 2. the foreign policy restricted countries, and 3. the following:

Europe		Other	
Albania	Lithuania	Angola	Kyrgyzstan
Andorra	Luxembourg	Australia	Mongolia
Armenia	Macedonia*	Bahamas	New Zealand
Austria	Malta	Bahrain	People's Republic of China
Azerbaijan	Moldova	Canada	China
Belgium	Monaco	Cyprus	Qatar
Bosnia and Herzegovina	Montenegro*	Gabon	Saudi Arabia
Bulgaria	Netherlands	Hong Kong	Singapore
Belarus	Norway	Iceland	South Africa
Croatia	Poland	Japan	Taiwan*
Czech Republic	Portugal	Kazakhstan	Tajikistan
Denmark	Romania	Kuwait	Turkmenistan
Estonia	Russia	Uzbekistan	United Arab Emirates
Finland	San Marino		
France	Serbia*		
Georgia	Slovak Republic		
Germany	Slovenia		
Greece	Spain		
Hungary	Sweeden		
Ireland	Switzerland		
Italy	Ukraine		
Latvia	United Kingdom		
Liechtenstein	Vatican City		

\*Has the status of a "geopolitical entity," rather than an independent country.

**Attachment 3B – Supplier's Certificate and Agreement With the  
Agency for International Development for Project  
Commodities/Invoice and Contract Abstract**

**See FORM USAID 1450-4 (3-88)**  
(4 Pages)

RESERVED

# Attachment 3C – Commerce Business Daily and Procurement Information Bulletin Notices: Preparation and Transmittal Of Synopses

## 1. Transmittal

Contracting agencies and Procurement Services Agents should submit synopses of proposed procurements and contract awards to M/OP/PS/SUP, USAID/W\*, by the most expeditious and reliable means available i.e., electronic memo, telegram, or telefax. Telefax No. is (202) 216-3395. When electronic transmission is not feasible, synopses should be sent by mail or other printed-copy delivery to:

U.S. Agency for International Development  
M/OP/PS/SUP  
Washington, D.C. 20523-7801

The Office of Small and Disadvantaged Business Utilization/Minority Resource Center (OSDBU) will review the synopses for conformance with small business and disadvantaged business considerations, particularly the allocation of sufficient offeror response time.

Procurement schedules should normally establish the closing dates for receipt of bids, proposals, or prequalification questionnaires at least forty-five days after the anticipated date of synopsis publication in the Commerce Business Daily (CBD) and/or USAID Procurement Information Bulletin (PIB)\*\*. In addition, nine business days should be allowed for OSDBU review and for CBD and the Office of Procurement to publish the synopses after their receipt.

OSDBU will contact the USAID Mission/Procurement Services Agent to resolve any problems before sending the synopses for publication. Early contact with OSDBU is advised to avoid delays when such problems are foreseen.

## 2. General Format

The contracting agency should prepare the synopses in the following format:

### A. General

Format for all synopses should employ conventional English language typing with abbreviations, capitalization, and punctuation all grammatically correct--to the extent that the means of transmission permits. Each synopsis should include all 17 format items. Do not include the title of the format item.

\* Prior USAID approval may be required under Section 2.1 of Chapter 3, and in such case, the notice should be transmitted to USAID/W through the USAID mission.

\*\* When CBD synopsis is not desired for a procurement that is not anticipated to exceed \$100,000, the transmittal should be tagged "PIB ONLY".

## B. Length of Text

Overall length of the text of synopses should not exceed 12,000 characters, approximately 3.5 single-spaced pages.

## C. Spacing

Begin each line flush with the left margin and separate each format item with a blank line. If more than one synopsis is sent in a single transmission, separate each synopsis with four blank lines and begin each new synopsis with format item number 1.

## D. Abbreviations

Limit the use of abbreviations and acronyms to those commonly used by the general U.S. public. (NOTE: USAID will provide advice on accepted usage, as required.)

## E. Standard Format

Prepare each synopsis in the following manner. Begin each format item with the number of the item followed by a period (e.g., 1.). Then leave two spaces after the period. Next type the appropriate information for each format item. Then conclude each format item (except the last one of the synopsis) with two exclamation points (i.e., !!). Conclude each complete synopsis, following format item 17, with five asterisks (i.e., \*\*\*\*\*). If the means of transmission does not permit complete conformance to this format, adhere to it to the extent possible and note items of nonconformance in explanatory footnotes, and the transmission will be reformatted in USAID/W for forwarding to CBD. (CAUTION: USE OF ASTERISKS IN SOME TELEGRAM SYSTEMS WILL DELETE TEXT; THIS REQUIREMENT SHOULD BE DISREGARDED IN SUCH CIRCUMSTANCES.)

### FORMAT ITEM EXPLANATION/DESCRIPTION OF ENTRY

1. ACTION CODE--A single alphabetic letter denoting the specific action related in the synopsis. "P" = Presolicitation notice/procurement. "M" = Modification of a previously announced procurement action (a correction to a previous CBD announcement). "A" = Award announcement. "N/A" = Not applicable; it is to be used for notices of events (bidders conferences, etc.) that do not fit any of the preceding categories. (NOTE: CBD has discontinued the use of entry "F" for foreign procurement or tender.)
2. DATE--Date on which synopsis is transmitted for publication. Use a four digit number indicating month in two digits and date in two digits, in the U.S. style, with the month preceding the day (MMDD). All four spaces must be used--use a preceding "0" for months January through September (e.g., 0225 for February 25).
3. YEAR--Two numeric digits denoting the calendar year of the synopsis (e.g., 98 for 1998).
4. GOVERNMENT PRINTING OFFICE (GPO) BILLING ACCOUNT CODE. Host-country contracting agencies should use the code number assigned to USAID by the GPO. Enter: GPO471AID.

5. CONTRACTING AGENCY ZIP CODE--The geographic zip code for the contracting agency if a U.S. or APO/FPO address is specified. If an overseas address is specified, indicate "N/A". Up to nine numeric characters may be entered. When using a nine digit zip code, separate the first five digits and last four digits with a hyphen (e.g., 23456-1234).
6. CLASSIFICATION CODE--Service or supply code number. For equipment and material, see Table 3C-1 For other classifications, consult Attachments 1M and 2B of this Country Contracting Handbook. Each synopsis should classify the services or supplies under one grouping. If the action is for a multiplicity of goods and/or services, the preparer should group the action under the category best defining the overall acquisition based upon value. Inclusion of more than one classification code, or failure to include a classification code, will result in rejection of the synopsis by CBD.
7. CONTRACTING AGENCY ADDRESS--The complete name and mailing address of the contracting agency. The permissible length of this entry is open but is generally not expected to exceed 90 alpha-numeric characters. Failure to include a complete mailing address will result in rejection of the synopsis by CBD.
8. SUBJECT--Insert the classification code (must be the same as in Format Item 6 above) and a brief title description of the supplies being procured by the contracting agency. Code and description must be separated by a hyphen. This will appear in the CBD as the bold-faced title in the first line of the description.
9. PROPOSED SOLICITATION NUMBER--Contracting agency number for control, tracking, and identification. For solicitations; if not a solicitation, enter "N/A".
10. OPENING/CLOSING RESPONSE DATE--For solicitations; if not a solicitation, enter "N/A". Contracting agency deadline for receipt of bids, proposals, or responses. Use a six digit date, in the U.S. style, with the month preceding the date and then the year (MMDDYY). All six spaces must be used--use a preceding 0 for the first digit in the months January through September (e.g., 041598). Explanation may appear in text of synopsis in Format Item 17.
11. CONTACT POINT/CONTRACTING AGENCY--Include name and telephone number (with country and city codes, as necessary) of the contracting agency contact. Indicate if the telephone number is an international number (to avoid responders confusing country and city codes with U.S area codes). Also consider including the name and telephone number of a U.S. contact (in host country's embassy to U.S., OSDBU, or the cognizant USAID/W project development office, etc.) whom potential offerors may query for information regarding the procurement. (NOTE: Consult with USAID and the intended contact prior to designating a U.S. contact.) This will appear as the first item of information in the published entry. This entry may be alpha-numeric and up to 320 character blocks in length.

12. CONTRACT AWARD AND SOLICITATION NUMBER--For awards; if not an award, enter "N/A". The award, solicitation, and/or project number assigned by the contracting agency or USAID to provide a reference for bidders/subcontractors. Seventy-two character blocks are available for alpha-numeric entries plus slashes and dashes.

13. CONTRACT AWARD DOLLAR AMOUNT--For awards; if not an award, enter "N/A". Enter whole U.S dollars preceded by a "\$" sign (spell-out "U.S. Dols" in telegrams) and/or local foreign currency, as applicable, with unit of foreign currency spelled-out.

14. CONTRACT LINE ITEM NUMBER--For awards as desired; if not an award, enter "N/A". The alpha-numeric field with dashes and slashes may not exceed 32 spaces. If sufficient space is not available enter "N/A" and insert the contract line item number(s) in Format Item 17.

15. CONTRACT AWARD DATE--For awards; if not an award, enter "N/A". A six-digit entry showing the date the award is made or the contract let, with the month preceding the date and then the year (MMDDYY). All six spaces must be used--use a preceding "0" for months January through September (e.g., 091598).

16. CONTRACTOR--For awards; if not an award, enter "N/A". Name and address of successful offeror. Ninety character spaces are allowed for full identification.

17. DESCRIPTION--This block is open-ended for entry of the substantive description of the contract action. Suggested sequence of content and items for inclusion in a solicitation synopsis are specified in Item 3, Format for Item 17, "Description" below. Do not enter classification code from Block 6. On award notices insert "N/A" or the contract line item number(s) if not listed in Item 14:

#### F. Non-Applicable Format Items

When a format item is not applicable, type the item number, a period, two blank spaces, and "N/A" (e.g., 10. N/A).

#### G. Rejection

CBD will reject synopses that are not in the proper format. Contracting agencies are cautioned to adhere to the format as closely as possible and to direct synopses to USAID/W so that elements of format that cannot be transmitted in international telegrams may be included and the synopses forwarded to CBD.

#### H. Illustrative Request to Publish a Solicitation Synopsis

SEC STATE, WASHDC

ADM USAID

FOR USAID/M/OP/PS/SUP



SUB: SYNOPSIS FOR PUBLICATION IN COMMERCE  
BUSINESS DAILY AND USAID PROCUREMENT  
INFORMATION BULLETIN

1. P!!
2. 0225!!
3. 98!!
4. GPO471AID!!
5. N/A!!
6. 47!!
7. Office of Contracts, Ministry of Water  
Resources, Government of Erewhon, Room  
1776, 1824 Plaza d'Independence,  
Propowog, Erewhon!!
8. 47-Pipe, Valves, and Fittings!!
9. MWR-IFB-98-5678!!
10. 041598!!
11. (a) Juan Smith, MWR, Int'l Tel No. 98-2-34-56789, or (b) Mary Doe, Agency for  
International Development, OSDBU, Washington, DC 20523-1414, (703) 875-  
1551!!
12. N/A!!
13. N/A!!
14. N/A!!
15. N/A!!
16. N/A!!
17. The Ministry of Water Resources, Government of Erewhon, (Propowog,  
Erewhon) requests prequalification data from U.S. and other eligible country  
(Geographic Code 941) firms and joint ventures of such firms who can qualify  
through experience in providing similar equipment for water distribution  
systems. The equipment required includes 650 km of pipe ranging in diameter  
from 50 mm to 1100 mm together with necessary valves, fittings, joints, and  
interconnections to an existing system. The anticipated delivery date is March  
1, 1991. A fixed-price contract is anticipated. Payment will be made in U.S.  
currency. Financing will be under USAID Loan 123-4567. Prequalification  
questionnaires, specifications, and additional information are available from

above contacts. Deadline for submission of questionnaires is June 15, 1998. Late submissions will not be considered. If a joint venture seeks prequalification, information must be submitted for all firms in joint venture.\*\*\*\*\*

### **3. Format for Item 17, "Description"**

A. Prepare the synopsis to ensure that it includes a clear description of the equipment or material to be contracted for, is not unnecessarily restrictive of competition, and will allow a prospective offeror to make an informed business judgment whether to request a copy of a solicitation or a prequalification questionnaire.

B. In order to assist USAID/W in locating synopses of contracting agency requirements that have been published in the CBD, one of the terms "USAID" or "Agency for International Development" should be included in the text of Format Item 17.

C. Include the following elements, to the extent applicable, in sequence. Do not include the numeral designator preceding each element shown below or the service classification code.

- i. Description of equipment and materials.
- ii. Qualification requirements.
- iii. Eligible source country code(s).
- iv. Estimated delivery date.
- v. Type of contract.
- vi. Currency in which payment will be made.
- vii. USAID loan or grant number under which project will be financed.
- viii. Availability of plans, drawings, specifications, or other technical data if not distributed with the solicitation.
- ix. Other special conditions that will assist the offeror in determining whether to pursue interest in procurement, e.g., policy on late submissions, etc.

D. Synopses of contract awards should include a statement of the industries, crafts, processes, or component items for which subcontractors are desired, when requested by the prime contractor.

### **4. Confirmation of Publication**

USAID/W (Office of Procurement, Procurement Support Division) will confirm the date that the synopsis is published in the CBD by telegram to the USAID mission for forwarding to the contracting agency.

## TABLE 3C-1 – SUPPLY CLASSIFICATION CODES

### Code Description

- 12 Fire control equipment
- 15 Aircraft and airframe structural components
- 16 Aircraft components and accessories
- 17 Aircraft launching, landing, and ground handling equipment
- 19 Ships, small craft, pontoons, and floating docks
- 20 Ship and marine equipment
- 22 Railway equipment
- 23 Motor vehicles, trailers, and cycles
- 24 Tractors
- 25 Vehicle equipment components
- 26 Tires and tubes
- 28 Engines, turbines, and components
- 29 Engine accessories
- 30 Mechanical power transmission equipment
- 31 Bearings
- 32 Woodworking machinery and equipment
- 34 Metalworking machinery
- 35 Service and trade equipment
- 36 Special industry machinery
- 37 Agricultural machinery and equipment
- 38 Construction, mining, excavating, and highway maintenance equipment
- 39 Materials handling equipment
- 40 Rope, cable, chain, and fittings

- 41 Refrigeration and air-conditioning equipment
- 42 Fire-fighting, rescue, and safety equipment
- 43 Pumps and compressors
- 44 Furnace, steam plant, drying equipment, and nuclear reactors
- 45 Plumbing, heating, and sanitation equipment
- 46 Water purification and sewage treatment equipment
- 47 Piping, tubing, hose, and fittings
- 48 Valves
- 49 Maintenance and repair shop equipment
- 51 Hand tools
- 52 Measuring tools
- 53 Hardware and abrasives
- 54 Prefabricated structures and scaffolding
- 55 Lumber, millwork, plywood, and veneer
- 56 Construction and building materials
- 58 Communication, detection and coherent radiation equipment
- 59 Electrical and electronic equipment components
- 60 Fiber optic materials, components, assemblies, and accessories
- 61 Electric wire and power distribution equipment
- 62 Lighting fixtures and lamps
- 63 Alarm and signal systems
- 65 Medical, dental, and veterinary equipment and supplies
- 66 Instruments and laboratory supplies
- 67 Photographic equipment
- 68 Chemicals and chemical products

- 69 Training aids and devices
- 70 General-purpose ADP equipment, software, supplies, and support equipment
- 71 Furniture
- 72 Household and commercial furnishings and appliances
- 73 Food preparation and serving equipment
- 74 Office machines
- 75 Office supplies and devices
- 76 Books, maps, and other publications
- 77 Musical instruments, phonographs, and home-type radios
- 78 Recreational and athletic equipment
- 79 Cleaning equipment and supplies
- 80 Brushes, paints, sealers, and adhesives
- 81 Containers, packaging, and packing supplies
- 83 Textiles, leathers, furs, apparel and shoe findings, tents, and flags
- 84 Clothing, individual equipment, and insignia
- 85 Toiletries
- 87 Agricultural supplies
- 88 Live animals
- 89 Subsistence (food)
- 91 Fuels, lubricants, oils, and waxes
- 93 Nonmetallic fabricated materials
- 94 Nonmetallic crude materials
- 95 Metal bars, sheets, and shapes
- 96 Ores, minerals, and their primary products
- 99 Miscellaneous (includes all supplies not covered by any other code)

## Attachment 3D – Sample Prequalification Questionnaire

Bakery Lines for \_\_\_\_\_(Country)\_\_\_\_\_

### A. Invitation to Qualify

The Ministry of Nutrition of the Government of \_\_\_\_\_ invites submission of qualifying information from U.S. manufacturers relative to the supply of bakery equipment for \_\_\_\_\_, including the following items:

1. Flour storage and preparing section, including
  - Sifter
  - Storage bins with aeration blower and bag type filter
  - Feeding system for dough mixers
2. Mixing, dough dividing, and molding section with a capacity of 6,000 dough pieces per hour, including:
  - Electrically controlled 2 speed mixer
  - Extra stainless steel bowls with 200 kg capacity
  - Water metering device with cooling water equipment
  - Dough bowl lifting and tilting device
  - Automatic dough feeding device and dough divider and round molder.
3. Fermentation, dough sheeter, and proofer
4. Automatic tunnel oven
5. Cooling conveyer
6. Electric control panel

All piping, lifting devices, electric cables and switchboard necessary for proper operation of line.

The dollar costs of the procurement will be financed by the Agency for International Development under Loan No. \_\_\_\_\_. Local costs will be paid by the Ministry of Nutrition in (local currency). All equipment must be of USAID Geographic Code 941 source and origin. The Invitations for Bids for this equipment will only be issued to, and bids accepted from, manufacturers or their authorized dealers which are prequalified.

B. The Questionnaire

The attached questionnaire consists of:

- PART I -- AUTHORIZATION OF AFFIDAVITS
- PART II -- DESCRIPTION OF FIRM
- PART III -- EXPERIENCE RECORD
- PART IV -- FINANCIAL STATUS

All sections of the questionnaire must be fully completed. Use additional sheets for responses as necessary. Failure to fully complete the questionnaire may result in disqualification.

C. Submission of the Questionnaire

The deadline for the submission of the prequalification questionnaire will be \_\_\_\_\_. The completed questionnaire, in \_\_\_\_\_ copies should be submitted to \_\_\_\_\_.

---

**Part I: Authorization and Affidavits**

SAMPLE

PREQUALIFICATION QUESTIONNAIRE

MANUFACTURERS OF BAKERY EQUIPMENT

PART I - AUTHORIZATION AND AFFIDAVITS

It is understood and agreed that the following information is to be used by \_\_\_\_\_ (Contracting Agency) in determining, according to its sole judgment and discretion, the qualifications of prospective suppliers to perform work in connection with the project described in the Notice. In consideration of submitting its qualifications as a prospective supplier for review, the undersigned waives any claim against the Contracting Agency that might arise with respect to its decision of a prospective supplier's qualifications. The decision of the Contracting Agency is final and not subject to appeal of any kind.

A prospective supplier will be considered qualified by the Contracting Agency only if it possesses reputation, ability, experience, qualified personnel, availability of equipment, and net current assets or working capital sufficient, in the judgement of the Contracting Agency, to complete the work and meet the contractual obligations, should the contract be awarded to it.

By signing this questionnaire, the prospective supplier guarantees the truth and accuracy of all statements made by it in this questionnaire.

The undersigned hereby authorizes and requests any public official, engineer, architect, surety company, bank, depository, material or equipment manufacturer or distributor or any other person, firm, or corporation to furnish any pertinent information, requested by the Contracting Agency, to verify the information on this form or regarding the competence and general reputation of the prospective supplier.

The undersigned agrees to furnish any further qualifying information at the request of the Contracting Agency. Failure to complete his form adequately may result in disqualification.

The undersigned understands that the Agency for International Development (USAID), an agency of the United States of America, is providing financing in support of the project and that USAID has certain approval rights including approval of the supplier selected and the contract. However, USAID is not a party to the contract.

Dated at \_\_\_\_\_, this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_.

(If corporation, seal)

\_\_\_\_\_  
(Name of Organization)

By \_\_\_\_\_

\_\_\_\_\_  
(Title)

If a corporation, answer this:    If a partnership, answer this:

Capital paid in cash \$            Date of organization \_\_\_\_\_

When incorporated \_\_\_\_\_    State where partnership is general or limited  
Where incorporated \_\_\_\_\_

President's name \_\_\_\_\_

NAME, NATIONALITY & ADDRESS OF PARTNERS

Vice President's name \_\_\_\_\_

Secretary's name \_\_\_\_\_

Treasurer's name \_\_\_\_\_



(1) AFFIDAVIT FOR INDIVIDUAL

\_\_\_\_\_ being duly sworn, deposes, and says that: (a) the financial statement, taken from his/her books, is a true and accurate statement of his/her financial condition as of the date thereof; b) he/she is a citizen of \_\_\_\_\_ or a legal resident of \_\_\_\_\_; and c) all the following prequalification information is true, complete, and accurate.

(2) AFFIDAVIT FOR PARTNERSHIP

\_\_\_\_\_ being duly sworn, deposes and says that: a) he/she is a member of the partnership of \_\_\_\_\_, b) he/she is familiar with the books of said partnership showing its financial condition; that the financial statement, taken from the books of said partnership, is a true and accurate statement of the financial condition of the partnership as of the date thereof; c) the partnership is eligible in accordance with the nationality criteria established by the Agency for International Development; and d) all the following prequalification information is true, complete, and accurate.

(3) AFFIDAVIT FOR CORPORATION

A. \_\_\_\_\_ being duly sworn, deposes and says that he/she is \_\_\_\_\_ of (Full name of corporation); that he/she is familiar with the books of said corporation showing its financial condition; that the financial statement, taken from the books of said corporation, is a true and accurate statement of the financial condition of said corporation as of the date thereof; and that all the following prequalification information is true, complete, and accurate.

B. \_\_\_\_\_ being duly sworn deposes and certifies that he/she is the Corporate Secretary of (Full name of Corporation) and that the corporation is eligible in accordance with the nationality criteria established by the Agency for International Development.

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_, being duly sworn, deposes and says that he/she is \_\_\_\_\_ of (Name of Supplier); that he/she is duly authorized to make the foregoing AFFIDAVIT and that he/she makes it on behalf of ( ) himself/herself; ( ) said partnership; ( ) said corporation.

Sworn before me this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_, in the country of \_\_\_\_\_, state of \_\_\_\_\_.

\_\_\_\_\_  
(Notary Public)  
My commission expires\_\_\_\_\_

Seal

## Part II - Description of Firm

1. Firm name/Business address
2. Year present firm established
3. Name and address of Parent company, if any
4. Former firm name(s), if any, and year(s) established
5. Name of not more than two Principals to contact:  
Title/Telephone
6. Present offices and plants: City/State/Telephone  
Number/Personnel in each office and plant
7. a. Total personnel  
b. Personnel by category: Administrative, Engineers, Technicians, Skilled Craftsmen,  
etc.
8. Firm is categorized as:
  - a. \_\_\_\_\_ Architect-Engineer
  - b. \_\_\_\_\_ Designer/Constructor
  - c. \_\_\_\_\_ Construction Contractor
  - d. \_\_\_\_\_ Manufacturer
  - e. \_\_\_\_\_ Other (Explain)
9. Regarding the manufacture/supply of bakery equipment, what percentage of the following work do you generally do in-house with your employees and plant?
  - a. Design \_\_\_\_\_%
  - b. Manufacture and Supply of Equipment \_\_\_\_\_%
  - c. Procurement and Supply \_\_\_\_\_%
  - d. Erection Supervision \_\_\_\_\_%
  - e. Testing and Startup \_\_\_\_\_%
10. If you were awarded the contract, what percentage of the following work would you intend to do in-house with your own employees and plant?
  - a. Manufacture and supply of equipment \_\_\_\_\_%
  - b. Erection Supervision \_\_\_\_\_%
  - c. Testing and Startup \_\_\_\_\_%

11. If you were awarded the contract, would you intend to subcontract any portion of the work? \_\_\_\_\_. If so, state the nature of the work to be done by subcontractor(s) and, if known, give the name and address of the subcontractor(s).
12. Enclose firm's brochures, annual reports and other materials which may assist in presenting the firm's qualifications.

### **Part III - Experience**

1. How many years has your firm been significantly involved in the manufacture of bakery equipment and what types of equipment does it manufacture?
2. Provide the following information concerning the contracts successfully concluded by your firm for sale of equipment types cited in 1 above, during the past 10 years whose gross contract amount exceeded one million United States Dollars.
  - a. Name and location of purchaser.
  - b. Address of purchaser.
  - c. Type and quantity of equipment sold.
  - d. Gross contract amount.
  - e. Was your firm's contract completed on schedule? If no, explain.
  - f. Were there any penalties imposed on your firm? If yes, explain.
3. List at least three business references from the above record. Include those references where the equipment sold most clearly resembles that being contracted herein. The listing should include:
  - a. Appropriate contact person's:
    - (1) name
    - (2) address
    - (3) telephone or telex number
  - b. Date of the contract

If three references can not be furnished from the above, list business references from other purchasers not otherwise listed and provide the types of information requested above on these sales.

The intent is to verify the references given as part of the prequalification analysis.

4. Has your firm failed to complete any work assigned to it during the past 10 years? If yes, where, and why?
5. State any special qualifications of your firm to undertake the project.
6. For each type of equipment cited in 1 above, please complete the following form.

## MANUFACTURE AND SALES RECORD

Equipment type from 1 above	No. Units produced in past 10 years	No. units sold in past 10 years

### Part IV - Financial Status

#### ASSETS

1. Cash on hand ..... US \$ \_\_\_\_\_  
 Cash on deposit ..... US \$ \_\_\_\_\_  
 Cash elsewhere ..... US \$ \_\_\_\_\_  
  
 Total Cash ..... US \$ \_\_\_\_\_
2. Deposits with bids ..... US \$ \_\_\_\_\_
3. Due from completed contracts ..... US \$ \_\_\_\_\_
4. Earned and billed-uncompleted contracts. \$ \_\_\_\_\_  
 Retention - uncompleted contracts (\$ \_\_\_\_\_)  
  
 Earned but not billed - ..... \$ \_\_\_\_\_ uncompleted contracts.
6. Ordinary accounts receivable ..... \$ \_\_\_\_\_
7. Stocks and bonds at present market value. \$ \_\_\_\_\_  
 Life insurance at cash surrender value  
 (for an individual or partnership only .. \$ \_\_\_\_\_
8. Other quick assets (due in 90 days) ..... \$ \_\_\_\_\_  
  
 TOTAL CURRENT ASSETS \$ \_\_\_\_\_

#### LIABILITIES

1. Notes payable within 12 ..... US \$ \_\_\_\_\_ months (all kinds)
2. Accounts payable ..... US \$ \_\_\_\_\_

3. Other current liabilities ..... US \$ \_\_\_\_\_  
 (including installments due within 12 months on long-term debts)

TOTAL CURRENT LIABILITIES .. \$ \_\_\_\_\_  
 Net current assets ..... \$ \_\_\_\_\_  
 Total lines of credits ..... \$ \_\_\_\_\_  
 TOTAL NET CURRENT ASSET .... \$ \_\_\_\_\_

Certified by \_\_\_\_\_ CPA or equivalent satisfactory to Contracting Agency

Date \_\_\_\_\_

4. Has your firm failed to complete any work assigned to it during the past 10 years? If yes, where, and why?
5. State any special qualifications of your firm to undertake the project.
6. For each type of equipment cited in 1 above, please complete the following form.

**MANUFACTURE AND SALES RECORD**

Equipment type from 1 above	No. Units produced in past 10 years	No. units sold in past 10 years

**Prequalification Questionnaire - Bank Credit Letter**

(To be submitted only where needed to show financial capacity)

Note: Each bank credit letter being submitted must be in this form on regular bank letterhead.

Name of Bank

\_\_\_\_\_

Address

\_\_\_\_\_

Date \_\_\_\_\_

(to be at least as recent as that shown on Part IV)

Dear Sir:

A line of credit in the maximum amount of \$ \_\_\_\_\_ has been placed at the disposal of \_\_\_\_\_ for use when, as and if needed for a period of \_\_\_\_\_ months.

None of the items listed as current assets in Part IV of this questionnaire now being submitted by \_\_\_\_\_ have been pledged to secure the line of credit mentioned above except as follows:

The line of credit mentioned above has been given with full knowledge of accommodations extended by other banks in amounts as follows:

\_\_\_\_\_.

\_\_\_\_\_  
AFFIDAVIT

STATE OF \_\_\_\_\_)

ss:

COUNTY OF \_\_\_\_\_)

\_\_\_\_\_ being duly sworn, deposes and says that he/she is \_\_\_\_\_ of the \_\_\_\_\_, the bank named in and which executed the foregoing statement.

\_\_\_\_\_  
Bank Officer signature and Title

Sworn to before me this \_\_\_\_\_ day of 19\_\_\_\_.

\_\_\_\_\_ My Commission expires \_\_\_\_\_  
(Notary Public)

## **Attachment 3E - Sample Abstract of Bids**

**See 11At3E01.tif**  
(1 page form)

**Attachment 3F – Public Voucher for  
Purchases and Services Other Than Personal**

**See Standard Form 1034**  
(1 page form)



## Attachment 3G – Sample Cover Letter, Inviting Bids

\_\_\_\_\_, 19\_\_\_\_

(Name of Firm)

Re: IFB No.

\_\_\_\_\_

Gentlemen:

The (Contracting Agency) invites you to bid on its contract for the supply of equipment, materials, and related services for the \_\_\_\_\_ project.

Invitation for Bids No. \_\_\_\_\_ consists of the following documents which are enclosed:

- 1) Instructions to Bidders,
- 2) Bid/Award/Contract Form,
- 3) Bid Schedule,
- 4) Forms of Bid and Performance bonds,
- 5) Conditions of Contract, and
- 6) Technical Specifications.

We appreciate your interest in this project.

Sincerely yours,

## **Attachment 3H – Sample Instructions to Bidders\* (Contracting Agency)**

### **1. Introduction**

The (Contracting Agency) invites firms to submit bids for the supply of equipment, materials, and related services as part of the \_\_\_\_\_project. The contract will be financed by USAID under \_\_\_\_\_.

Firms invited by the Contracting Agency to submit bids are under no obligation to do so. At the same time bidders will not be reimbursed for any costs incurred in connection with the preparation and submission of their bids.

These Instructions to Bidders shall not form part of the bid or of the Contract. They are intended to aid bidders in the preparation of their bids.

These Instructions to Bidders shall not form part of the bid or of the Contract. They are intended to aid bidders in the preparations of their bids.

For the purposes of interpretation of these Instructions to Bidders, the periods named herein shall be consecutive calendar days.

This Invitation for Bids consists of (1) these Instructions to Bidders, (2) the attached "Bid/Award/Contract Form," (3) the attached "Bid Schedule," (4) the attached "Forms of Bid and Performance Bonds," (5) the attached "Conditions of Contract," and (6) the Technical Specifications attached hereto or incorporated by reference herein.

Bidders should note that the "Supplier's Certificate and Agreement with USAID for Project Commodities/Invoice and Contract Abstract," (Form USAID 1450-4) is required to be submitted by the payment clause in the "Conditions of Contract." This form must be completed in order for the supplier to receive payment.

### **2. Bid Opening**

The original and four completed copies of the bid must be delivered in person or sent by registered mail or other means to the following address:

(Contracting Agency's address, including room number)

\*These Instructions to Bidders may be adapted for use in Requests for Quotations.

All documents must be enclosed in sealed packages marked on the outside with the words "IFB No. \_\_\_\_\_, BID DOCUMENTS: Do not open before \_\_\_\_\_" and must be delivered not later than 12 noon on \_\_\_\_\_, 19\_\_\_. The bids will be opened at that time in the office of the Contracting Agency in the presence of the public. The Bidder's names, the bid prices, and whether a Bid Bond is included will be announced.

### 3. Preparation of Bids

(a) Bidders are expected to examine the specifications and all instructions contained in this Invitation for Bids. Failure to do so will be at the Bidder's risk.

(b) Bids shall be on a (insert shipping terms) basis.\*

(c) The Contracting Agency reserves the right to increase or decrease the quantity of an item duly awarded in accordance with the IFB by 10 percent plus any fraction necessary to equal a whole number of the quantity bid, at the unit price offered. This option shall be exercised, if at all, at the time award is made.\*\*

(d) All correspondence in connection with the bid and the Contract is to be in English.

### 4. Contents of Bids

Bidders are required to complete the following in an original and four copies:

(a) Bid/Award/Contract Form.

(b) The Bid Schedule.

\*When c.& f. or c.i.f. terms are required, the instructions should indicate whether each cost element (commodity price, ocean freight, insurance) is to be shown as a separate item. When f.a.s. or f.o.b. terms are required, the instructions must call for naming the port of shipment. If more than one shipping basis is to be provided, the IFB states which one will be used in determining the low bid.

\*\*Omit this paragraph if the quantity to be purchased is firm.

Bidders shall fill in the unit price for each item in the Bid Schedule. Bidders may bid on any number of the items listed but must bid the full quantity of the item called for. For each item the quantity given in the "Quantity" column shall be multiplied by the unit price, and the result entered in the "Amount" column. In case of any discrepancy between a unit price and an amount, the unit price will be taken as correct and the amount adjusted accordingly. It will be assumed that the Bidder is not bidding on any item for which a unit price or amount is not shown.

The Bidder shall complete the form in type or in indelible ink making no alterations to the form provided. The completed form shall have no interlineations or erasures except those necessary to correct errors made by the Bidder, in which case such corrections shall be initialed by the person or persons signing the bid.

One original copy of the completed bid is to be clearly marked "ORIGINAL BID" and the other completed copies are to be marked "COPY OF BID." In case of any discrepancy, the copy marked "ORIGINAL BID" shall govern.

(c) Bid Bond.

Bids must be accompanied by a bid bond in the amount of \_\_\_\_ percent of the bid price. No bid will be considered unless it is so secured.

The bond provided by unsuccessful bidders will not be repaid or discharged until the expiration of 150 days from the day of bid opening or until such earlier time as a bid shall have been accepted by the Contracting Agency and a Performance Bond shall have been duly provided by the Bidder whose bid is accepted.

The bond provided by the bidder whose bid is accepted shall be discharged when the Performance Bond has been duly entered into and executed.

(d) Manufacturer's Standard Warranty\*

(e) Descriptive Literature

Descriptive literature for the items, including full technical specifications, must be submitted with each copy of the bid. This literature will be used to demonstrate the compliance with the specifications of the bid and will not be considered to amend the bid in any way. Deviations from IFB requirements included in descriptive literature furnished must be fully explained. In case of any conflict between the specifications in the descriptive literature and specifications in the bid, the latter will control.

\*If a warranty clause is included in the Conditions of Contract which requires a warranty other than the Manufacturer's Standard Warranty, this requirement is omitted.

## 5. Bid Acceptance Period

Bids offering less than \_\_\_\_ days for acceptance by the Contracting Agency from the date set for opening will be considered nonresponsive and will be rejected.

## 6. Signature of Bid

The Bid must be signed by a person duly authorized to do so. A bid submitted by a corporation must bear the seal of the corporation.

Associated companies or joint ventures shall jointly designate in one power-of-attorney persons authorized to obligate all the companies of the association or joint venture. A bid submitted by a joint venture must be accompanied by the document of formation of the joint venture, duly registered or authenticated, in which is defined precisely the conditions under which it will function, its period or duration, the persons authorized to represent and obligate it, the participation of the several firms forming the joint venture, the principal member of the joint venture and address for correspondence for the joint venture. Bidders are advised that the joint venture agreement must include a clause stating that the members of the joint venture are severally and jointly bound.

## **7. Late Bids**

Bidders will be held responsible for ensuring that their bids are received in accordance with the instructions stated herein and a late bid will not be considered even though it became late as a result of circumstances beyond the Bidder's control. A late bid will be considered only if the sole cause of its becoming a late bid was attributable to the Contracting Agency, its employees or agents.

## **8. Modification of Bids**

Any Bidder has the right to withdraw, modify, or correct its bid after it has been delivered to the Contracting Agency, provided the request for such a withdrawal, modification, or correction together with full details of such modification or correction is received by the Contracting Agency at the address given above by letter, telegram, or telex before the time set for opening bids. The original bid, as amended by such communication, will be considered as the Bidder's offer. The Contracting Agency may ask any Bidder for a clarification of its bid; nevertheless no Bidder will be permitted to alter its Bid Price or make any other material modification after bids have been opened. However, clarifications which do not change the Bid Price may be accepted. No Bidder may withdraw its bid after the time set for opening bids until and unless a period of days has elapsed after the time set for opening bids except with the written permission of the Contracting Agency.

## **9. Prebid Conference**

A prebid conference will be held on \_\_\_\_\_, 19\_\_, at (time) in the following location:

Bidders are not required to attend but are encouraged to do so. Modification to the Invitation for Bids resulting from the conference will be provided to all Bidders by means of an addendum to the Invitation for bids.

## **10. Addenda to the Invitation for Bids**

If for any reason prior to bid opening it becomes necessary to modify the Bid Documents, an Addendum will be issued to and be binding on all Bidders. Receipt of all Addenda shall be acknowledged by Bidders.

Addenda will be numbered consecutively commencing with No. 1 and Bidders are required to insert the numbers of addenda received in paragraph 3 of the bid.

## **11. Clarifications**

Should any Bidder have questions to ask or should it have any doubt about the means of the Bid Documents, it should refer them in writing to the Contracting Agency not later than \_\_\_ days before the date set for opening of bids.

## **12. Bid Evaluation and Contract Award**

(a) Award will be made to the responsible and responsive Bidder whose bid has been determined to be the lowest evaluated bid in accordance with the following:

(Insert any explanation of how bids will be evaluated, for instance, if a c.& f. or c.i.f. bid is required to be broken down into its component elements, an explanation should be given as to how, if at all, this breakdown will affect the award. If a bulk commodity is being purchased, it may be appropriate to specify that award will be made on the basis of lowest price per unit. If procurement is on f.a.s. or f.o.b. terms with Bidders likely to offer shipment from a variety of ports, it may be appropriate to specify that award will be made on the basis of the lowest landed cost calculated by adding to the commodity price bid the published ocean freight rated from named ports of loading to the port of destination. If factors other than price (such as early delivery) are to be considered in evaluating bids, such factors must be set forth here with an indication of how these factors are to be evaluated.)

(b) A responsive bid is one which complies with all of the terms and conditions of the IFB without material modification. A material modification is one which affects the price, quantity, quality, delivery or installation date of equipment or materials, or which limits in any way any responsibilities, duties, or liabilities of the Bidder or any rights of the Contracting Agency or USAID as any of the foregoing have been specified or defined in the IFB. The Contracting Agency may waive any minor informality in a bid which does not constitute a material modification.

(c) The Contracting Agency will reject any bid that is nonresponsive. The Contracting Agency reserves the right to waive any minor informalities in the bids received if it appears in the Contracting Agency's best interests to do so, to reject the bid of any firm if, in the Contracting Agency's judgment, the firm is not fully qualified to provide the goods and services as specified in the Contract, or to reject all bids.

(d) The Contracting Agency reserves the right to delete any item or group of items.

(e) Failure on the part of the successful Bidder to provide a Performance Bond in accordance with the Conditions of Contract shall be sufficient grounds for the annulment of the award and forfeiture of the Bid Bond. The award may then be made to another Bidder or the Contracting Agency may call for new bids.

(f) The Bid of any Bidder which does not conform to the foregoing instructions may be rejected.

(g) No offer, payment, consideration, or benefit of any kind which constitutes an illegal or corrupt practice shall be made, either directly or indirectly, as an inducement or reward for the award of this contract. Any such practice will be grounds for cancelling the procurement, terminating an offeror's consideration for award, or terminating the award of the contract and for such other additional actions, civil and/or criminal, as may be applicable.

## Attachment 3I – Sample Bid/Award/Contract Form

1. IFB No. \_\_\_\_\_
2. Bidder's Name and Address:
3. In response to Invitation for Bids No. \_\_\_\_\_, as modified by Addenda 1 through \_\_\_\_\_, the Bidder agrees to furnish the items listed in the attached Bid Schedule at the prices quoted therein in accordance with the Conditions of Contract and Technical Specifications. This bid is valid for a period of \_\_\_\_\_ calendar days after the bid opening date established in the IFB.
4. An executed Bid Bond or Guaranty, is also attached to this bid.\*
5. Signature of person authorized to sign bid:  
\_\_\_\_\_

Date:

\_\_\_\_\_  
\_\_\_\_\_.

The \_\_\_\_\_ (hereinafter called the "Contracting Agency") has accepted the bid of \_\_\_\_\_ (hereinafter called the "Supplier") for the supply of equipment, materials, and related services as set forth in this Contract.

This contract consists of the following documents:

- 1) This Bid/Award/Contract Form;
- 2) The Bid Schedule;
- 3) The Conditions of Contract;
- 4) The Technical Specifications; and
- 5) Manufacturer's Standard Warranty\*\*

By:

\_\_\_\_\_  
(Contracting Agency)

\*If the IFB calls for the Manufacturer's Standard Warranty, it should be attached to the bid.

\*\*If the IFB calls for the Manufacturer's Standard Warranty it should be incorporated by reference into the contract.

## Attachment 3J – Sample Bid Schedule

No. \_\_\_\_\_ IFB No. \_\_\_\_\_  
Page \_\_\_\_\_ of \_\_\_\_\_

Name of Bidder \_\_\_\_\_

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Item No.	Description	Quantity	Unit Price	Total Price
	Total Price			
	(U.S.-flag) c.i.f.(U.S. flag	f.o.b.c.i.f.		

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## **Attachment 3K – Bid Bond**

**See 11At2M01.tif**

WHEN USING THE FORM BE SURE TO TYPE IN THE \*\*\*  
IN OBLIGATION AND THEREFORE AND  
ON THE BACK OF THE FORM UNDER INSTRUCTIONS 4(b) AND  
AT THE BOTTOM OF THE FORM AS FOLLOWS

\*\*\*Insert Name of Contracting Agency.

(2 pages)

## **Attachment 3L – Performance Bond**

**See 11At2N01.tif**

SAME INSTRUCTIONS AS ATTACHMENT 3K  
EXCEPT, \*\*\* SHOULD BE PLACED IN OBLIGATION, THEREFORE (1), AND  
INSTRUCTIONS (1) AND 3(b)

(2 pages)

## **Attachment 3M – Payment Bond**

**See 11At2P01.tif**

SAME INSTRUCTIONS AS ATTACHMENT 3K  
EXCEPT, \*\*\* SHOULD BE PLACE IN OBLIGATION

(page 2)

## Attachment 3N – Sample Conditions of Contract

### 1. Definitions (See discussion in paragraph 4.1.6.1 of text.)

Set forth below are terms used in the contract and reference to them shall be interpreted as follows:

- a. "USAID" means the Agency for International Development.
- b. "Authorized Geographic Code" is USAID Geographic Code \_\_\_\_\_.
- c. "Contract" means the "Bid/Award/Contract form" signed by both bidder and Contracting Agency including all attachments and appendices thereto and all documents incorporated by reference therein.
- d. "Contracting Agency" is \_\_\_\_\_.
- e. "Supplier" is the person or firm supplying the equipment and materials called for under this contract. The name of the Supplier is \_\_\_\_\_.

### 2. Governing Law and Language (See discussion in paragraph 4.1.6.2 of text).

- a. This contract shall be interpreted in accordance with the laws of \_\_\_\_\_.
- b. The \_\_\_\_\_ language version of this contract shall govern. All notices pursuant to the provisions of this contract shall be in \_\_\_\_\_.
- c. Shipping terms will be defined in accordance with (specify applicable commercial document).

### 3. Delivery\* (See discussion in paragraph 4.1.6.3 of text.)

Delivery of all equipment and materials to be supplied under this contract to the port of loading in the source country shall be made within \_\_\_\_\_ days from receipt of (an operable financing document).

\*Additional provisions may be appropriate if the supplier has installation or startup responsibilities, e.g. "Equipment shall be installed and fully operational no later than \_\_\_\_\_ days after arrival at the premises of \_\_\_\_\_.

### 4. Responsibilities of other Contractors (See discussion in paragraph 4.1.6.4 of text.)

\_\_\_\_\_ is employed by the Contracting Agency to supervise this contract and is responsible for:

- a. Witnessing tests of equipment prior to shipment to the cooperating country;
- b. Inspecting and accepting or rejecting the commodities at point of delivery;
- c. Requiring replacement of defective equipment or materials;
- d. Issuing change orders. Concurrence of the Contracting Agency is necessary if the value exceeds \$ \_\_\_\_\_.

**5. Legal Effect of USAID Approvals and Decisions (See discussion in Section 2.13.1 and subsection 4.1.6.5 of text.)**

The parties hereto understand that the contract has reserved to USAID certain rights such as, but not limited to, the right to approve the terms of this contract, the Supplier, and any or all plans, reports, specifications, subcontracts, bid documents, drawings, or other documents related to this contract and the project of which it is part. The parties hereto further understand and agree that USAID, in reserving any or all of the foregoing approval rights, has acted solely as a financing entity to assure the proper use of United States Government funds, and that any decision by USAID to exercise or refrain from exercising these approval rights shall be made as a financier in the course of financing this project and shall not be construed as making USAID a party to the contract. The parties hereto understand and agree that USAID may, from time to time, exercise the foregoing approval rights, or discuss matters related to these rights and the project with the parties jointly or separately, without thereby incurring any responsibility or liability to the parties jointly or to any of them. Any approval (or failure to disapprove) by USAID shall not bar the Contracting Agency or USAID from asserting any right, or relieve the Supplier from any liability which the Supplier might otherwise have to the Contracting Agency or USAID.

**6. Payment (See discussion in Sections 2.13.3 and 4.1.6.6 of text.)**

- a. Requests for Payment

Payment due the supplier under this contract shall be made based upon the Supplier's written request accompanied by the following documentation:

- (1) The Supplier's Invoice;
- (2) "Supplier's Certificate and Agreement with USAID for Project Commodities/Invoice and Contract Abstract" (Form USAID 1450-4); and
- (3) For each shipment of equipment or materials for which payment is requested:
  - (a) \*A copy or photostat of the bill of lading (ocean, airway, chapter party, railway, barge or truck) or parcel post receipt evidencing shipment from the source country or a free port or bonded warehouse to the host country

is to be submitted. The bill of lading shall indicate the carrier's complete statement of charges including all relevant weights, cubic measurements, rates, and additional charges whether or not freight is financed by USAID.

b. Partial Payments

The Supplier may request partial payment upon delivery and acceptance of each \_\_\_\_\_ percentage of the total items required by this contract. The supplier shall submit the documentation required by paragraph a. above with the request.

c. Local Currency

Unless directed otherwise by the Contracting Agency, all local currency costs paid or incurred by the Supplier under the contract including, without limitation, all local taxes, duties, and imports, when not exempted, shall be reimbursed to the supplier in local currency and not by payment of United States dollars.

\*When the supplier is responsible for loading the goods on board the vessel (i.e., when delivery terms are c.i.f. or c.& f.), use this clause. In those cases where, under the terms of the contract, the supplier is not responsible for loading the goods on board the vessel (e.g., when delivery terms are f.a.s. port of shipment or f.o.b. factory), the Contracting Agency may use the following paragraph:

(a) (1) A dock or warehouse receipt containing commodity description, weight and cubic measurement, port of loading, and if available, name and flag of vessel and showing consignment of the goods to a person or organization designated by the Contracting Agency; and

(2) A letter from the consignee addressed to USAID undertaking to arrange for shipment of the goods to the host country and to deliver to the Cash Management and Payment Division, Office of Financial Management, USAID, Washington, D.C., 20523-0209, within 45 days from the date of the dock or warehouse receipt, a copy of ocean or airway bill of lading evidencing shipment to the host country.

(b) In addition, when shipment is effected from a free port or bonded warehouse, the Supplier is to submit a copy of the bill of lading, bearing a notation of the freight costs, covering shipment from the source country to the free port or bonded warehouse and, if the free port or bonded warehouse is located within the host country, accompanied by a delivery receipt evidencing release from the free port or bonded warehouse to the Supplier. The date of the delivery receipt will be considered as the shipment date for the transaction and, therefore, must be dated within such delivery period as may be specified in the Letter of Commitment.

Except as otherwise approved in writing by the Contracting Agency, when it is necessary for purposes of this contract for the supplier to convert United States dollars to local currency, such conversion shall be made through arrangements with the U.S. Disbursing Office.

## **7. Audit and Records (See discussion in 4.1.6.7 of text.)**

- a. The Supplier shall maintain books, records, documents, and other evidence and shall apply consistent accounting procedures and practices sufficient to reflect properly all transactions under or in connection with the contract. The foregoing constitute "records" for the purpose of this clause.
- b. The Supplier shall maintain such records during the contract term and for a period of 3 years after final payment. However, records which relate to appeals under the "Disputes and Appeals" clause or litigation or the settlement of claims arising out of the performance of this contract shall be retained until such appeals, litigation, or claims have been finally settled.
- c. All records shall be subject to inspection and audit by the Contracting Agency (or its authorized agents) at all reasonable times. The Supplier shall afford the Contracting Agency proper facilities for such inspection and audit. If this is a fixed price contract, it is not subject to audit of costs (except for any cost-reimbursable items) but is subject to audit for compliance with other provisions of this contract.
- d. The supplier further agrees to include in all its subcontracts hereunder a provision that the subcontractor agrees that the contracting Agency or any of its authorized agents, shall, until the expiration of 3 years after final payment under the subcontract, have access to and the right to examine any records of such subcontractor involving transactions related to the subcontract.

## **8. Assignment (See discussion in subsection 4.1.6.8 of text.)**

The Supplier may not assign its obligation to perform under the contract except with the prior written consent of both the Contracting Agency and USAID. The supplier may not assign its rights to receive payment under the contract except with the prior written consent of both the Contracting Agency and USAID.

## **9. Host Country Taxes (See discussion on 2.13.6 and 4.1.6.9 of text.)**

- a. Pursuant to bilateral agreement between the United States Government and the host country government, the Supplier and those of its employees who are not citizens or permanent residents of the host country shall be free of all taxes, fees, levies, customs, or impositions imposed under laws in effect in the host country with respect to all equipment and

\*The SOAG reserves the right for USAID to review expenditures made under the loan or grant. USAID also reserves the right to audit contracts in the "Supplier's Certificate and Agreement for Project Commodities" (Form USAID 1450-4), which is submitted by the supplier with each request for payment. The right of USAID to audit the contract may be reiterated in this clause, but it is not mandatory.

materials supplied and services performed under this contract. This exemption includes all customs, duties, and registration fees.

b. The Government will allow the Supplier to import free of customs and duties such materials and equipment as may be required under this contract.

c. Any taxes, fees, levies, customs, or impositions within the scope of paragraph a. and b. above paid by the Supplier shall be reimbursed by the Contracting Agency.

## **10. Nationality and Source (See discussion in Sections 2.13.2 and 4.1.6.10 of text.)**

### **a. Eligibility of Suppliers**

(1) No equipment, materials or services shall be eligible for USAID financing if offered by a supplier or subcontractor included on any list of suspended, debarred, or ineligible bidders used by USAID.

(2) The supplier\* must be:

(a) An individual who is a citizen or legal resident of a country or area included in the authorized geographic code, except as stated in subparagraph (3)(a);

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

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

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

(3) Citizens of any country or area or firms or organizations located in or organized under the laws of any country or area not included in USAID Geographic Code 935, or firms or organizations owned in any part by citizens or organizations of any country or area not included in USAID Geographic Code 935, are ineligible for financing by USAID as suppliers of commodities or agents in connection with the supply of commodities. There are limited exceptions to this policy:

(a) Non-U.S. citizens lawfully admitted for permanent



\*The source and nationality rules do not apply to suppliers of incidental services related to the procurement of equipment when these services are included as part of this contract. Incidental services are defined as the installation or erection of USAID-financed equipment, or the training of personnel in the maintenance, operation or use of such equipment. However, citizens or firms of any country not included in USAID Geographic Code 935 are ineligible to supply incidental services.

residence in the United States are eligible as individuals or owners, regardless of their citizenship, and

(b) USAID may authorize the eligibility of organizations having minimal ownership by citizens or organizations of non-Code 935 countries.

b. Eligibility of Commodities

(1) Definitions

(a) Source

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

(b) Origin

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

(c) Componentry

"Components" are the goods that go directly into the production of a produced commodity.

(2) Rule

All equipment and materials shall have their "Source" and "Origin" in an authorized country. Any component from a foreign policy restricted country makes the commodity ineligible for USAID financing.

c. Motor Vehicles

Motor vehicles must be manufactured in the United States to be eligible for USAID financing, i.e. the source may be any eligible country, the origin must be the United States, and componentry must meet the criteria in b. (2) above. Vehicles which have been assembled in the United States but then subjected to minor disassembly to reduce shipping cost are considered U.S. manufactured vehicles. However, so called "knocked-down" vehicles consisting of parts or subassemblies of vehicles shipped for final assembly elsewhere are not considered vehicles. Such parts or subassemblies are subject to the source rule in paragraph b. above.

d. Delivery Services

(1) With respect to ocean or air freight, "source" means the flag of the vessel or aircraft.

(2) Ocean Freight

\*(a) Except as provided in (b) or (c) below, all goods covered by this contract which are transported on ocean vessels shall be transported on privately owned U.S. flag commercial vessels to the extent they are available at fair and reasonable rates for U.S. flag commercial vessels. If such flag vessels are not available, the Supplier may request a waiver from the Office of Procurement, Transportation Division, USAID, Washington, D.C. 20523-1419.

\*B/G's are responsible for issuing instructions regarding which flag vessels may be used to transport goods under the contract in order to comply with USAID's cargo preference and eligibility rules. Contracts for some or all of the goods for the project should specify shipment on U.S. flag vessels to assure compliance with the cargo preference requirements set forth in Section 2.7. When USAID finances transportation costs, contractors for the remainder of the goods for the project should specify shipment on flag vessels which are eligible in accordance with Sections 2.6.4.2 and 2.6.4.4. When the B/G finances transportation costs, it may allow use of Code 935 vessels for any shipments which are not required to be on U.S. flag vessels in accordance with the cargo preference provisions. The provision of paragraph (2a) should be modified accordingly.

(b) When the authorized Geographic Code for commodities is other than Code 000, ocean transportation costs may be incurred on vessels under flag registry of the United States or any other country in Code 935.

(c) When shipment is made under a through bill of lading issued by a U.S. flag carrier, ocean transportation costs may be incurred on vessels under flag registry of any country in Code 935 if the costs are part of the total cost paid to the eligible flag carrier.

(d) Not later than 30 days from the date of shipment, the Contractor shall mail a legible copy of all rated Ocean Bill(s) of Lading to: (i) Maritime Administration, Division of National Cargo, 400 Seventh St., S.W.,

Washington, D.C. 20590-0001 and (ii) Office of Procurement,  
Transportation Division, A.I.D., Washington, D.C. 20523-1419.

(3) Air Freight

The Supplier will use U.S. flag air carriers\*\* to the extent they are available as set forth in the clause of this contract entitled "Air Travel and Transportation." When U.S. flag air carriers are not available, preference should be given to the use of host country or Code 941 flag air carriers before using Code 899 flag air carriers.

(4) Charters

All air or ocean charters, covering full or part cargo, for the transport of equipment, materials, or other goods procured for the performance of this contract must be approved by USAID in writing prior to shipment.

(5) General Transportation

Unless otherwise authorized, USAID will not finance any transportation costs:

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

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

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

\*\* The reference to U.S. flag air carriers is appropriate in loan-financed contracts when the authorized source code is 000 or in any grant-financed contract. When Code 941 is authorized for procurement under a loan, the clause should read: "The supplier will use U.S., host country, or Code 941 flag carriers to the extent they are available as set forth in the clause entitled 'Air Travel and Transportation'." Code 899 flag carriers may be used when the others are not available.

d. Under any ocean or air charter covering full or part cargo which has not received prior approval by the Office of Procurement, Transportation Division, USAID/W.

e. Source of Marine Insurance

(1) The eligibility of marine insurance is determined by the country in which it is "placed." Insurance is placed in a country if payment of the insurance premium is made to and the insurance policy is issued by, an office located in the country. Insurance must be placed in a country included in the authorized geographic

code, or when the authorized geographic code is other than 000, it may be placed in the cooperating country.

(2) If at any time USAID determines that the government of the host country by statute, decree, rule or regulation discriminates, with respect to USAID-financed procurement, against any marine insurance company authorized to do business in any state of the United States, then USAID shall require that any USAID-financed goods thereafter shipped to the host country shall be insured against marine risks, and that such insurance shall be placed in the United States with a company or companies authorized to do insurance business in any state of the United States.

#### **11. Air Travel and Transportation\* (See discussion in Sections 2.13.4 and 4.1.6.11 of the text.)**

a. The Supplier shall utilize U.S. flag carriers for international air transportation of personnel (and their personal effects) or property to the extent service by such carrier is available, in accordance with the following criteria:

(1) If a U.S.-flag air carrier cannot provide the international air transportation needed, or if the use of a non-U.S. flag carrier is approved by USAID in order to accomplish the Agency's mission, foreign-flag air carrier service may be deemed necessary.

(2) Passenger or freight service by a U.S.-flag air carrier is considered available even though:

(a) Comparable or a different kind of service can be provided at less cost by a foreign-flag air carrier;

(b) Foreign-flag air carrier service is preferred by, or is more convenient for, the contractor or traveler; or

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

\*This clause must be used verbatim in all grant-financed contracts and in loan-financed contracts when the authorized geographic code is 000. In loan-financed contracts, where the authorized geographic code is 941, the clause is used verbatim except to substitute "U.S., host country, or Code 941" for "U.S." wherever it appears.

(3) Except as provided in paragraph (1) above, U.S.-flag air carrier service shall be used for commercial foreign air travel under this contract if service provided by U.S.-flag air carriers is available. In determining availability of a U.S.-flag air carrier, the following scheduling principles shall be followed unless their

application would result in the last or first leg of travel to or from the United States being performed by a foreign flag air carrier.

(a) U.S.-flag air carrier service available at point of origin shall be used to destination, or in the absence of direct or through service, to the farthest interchange point on a usually traveled route.

(b) When an origin or interchange point is not served by a U.S.-flag air carrier, foreign-flag air carrier service shall be used only to the nearest interchange point on a usually traveled route to connect with U.S.-flag air carrier service.

(c) When a U.S. flag air carrier involuntarily reroutes the traveler via a foreign-flag air carrier, the foreign-flag air carrier may be used notwithstanding the availability of alternative U.S.-flag air carrier services.

(4) For travel between a gateway airport in the United States and a gateway airport abroad, passenger service by U.S. flag air carrier shall not be considered available if:

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

(b) The gateway airport abroad is an interchange point and the use of U.S.-flag air carrier service would require the traveler to wait 6 hours or more to make connections at that point, or if delayed departure from, or accelerated arrival at, the gateway airport in the United States would extend time in a travel status by at least 6 hours more than travel by a foreign-flag air carrier.

(5) For travel between two points outside the United States, the rules in paragraphs (1), (2), and (3) shall be applicable, but passenger service by a U.S.-flag air carrier shall not be considered to be available if:

(a) Travel by a foreign-flag air carrier would eliminate two or more aircraft changes en route;

(b) One of the two points abroad is the gateway airport en route to or from the United States and the use of a U.S.-flag air carrier would extend the time in a travel status by at least 6 hours more than travel by a foreign-flag air carrier, including accelerated arrival at the overseas destination or delayed departure from the overseas origin, as well as delay at the gateway airport or other interchange point abroad; or

(c) The travel is not part of the trip to or from the United States and the use of a U.S.-flag air carrier would extend the time in a travel status by at least 6 hours more than travel by a foreign-flag air carrier including delay at origin, delay en route, and accelerated arrival at destination.

(6) For all short distance travel under either paragraph (4) or paragraph (5) above, U.S. air carrier service shall not be considered available when the elapsed travel time on a scheduled flight from origin to destination airport by foreign-flag air carrier is 3 hours or less and service by a U.S.-flag air carrier would involve twice such travel time.

b. Freight service by a U.S. flag air carrier will be considered to be unavailable:

(1) When no U.S. flag air carrier provides scheduled air freight service from the airport serving the shipment's point of origin and a non-U.S. flag air carrier does;

(2) When the U.S. flag air carrier(s) serving the shipment's point of origin decline to issue a through airway bill for transportation at the shipment's final destination airport;

(3) When use of a U.S.-flag air carrier would result in delivery to final destination at least seven days later than delivery by means of a non-U.S. flag air carrier;

(4) When the total weight of the consignment exceeds the maximum weight per shipment which the U.S.-flag air carrier will accept and transport as a single shipment and a non-U.S. flag air carrier will accept and transport the entire consignment as a single shipment.

(5) When the dimensions (length, width, or height) or one or more of the items of a consignment exceed the limitations of the U.S.-flag aircraft's cargo door opening, but do not exceed the acceptable dimensions for shipment on an available non-U.S. flag scheduled air carrier.

c. In the event that the Supplier selects a carrier other than a U.S. flag air carrier for international air transportation, it will include a certification on vouchers involving such transportation which is essentially as follows:

#### CERTIFICATION OF UNAVAILABILITY OF U.S. FLAG CARRIER

I hereby certify that transportation service for personnel (and their personal effects) or property by U.S. flag air carriers was unavailable for the following reasons:

(state reasons)

d. If travel is by indirect route or the traveler otherwise fails to use available U.S.-flag air carrier service, and the certification required by paragraph c. above is not attached to the applicable voucher, USAID will not finance the amount determined under the following formula:

Sum of U.S.-flag carrier segment mileage authorized x Fare payable by USAID  
Sum of all segment mileage authorized

MINUS

Sum of U.S.-flag carrier segment mileage traveled x Through fare paid  
Sum of all segment mileage traveled

e. The terms used in this clause have the following meanings:

(1) "Gateway airport abroad" means the airport from which the traveler last embarks en route to the United States or at which the traveler first debarks incident to travel from the United States.

(2) "Gateway airport in the United States" means the last U.S. airport from which the traveler's flight departs or the first U.S. airport at which the traveler's flight arrives.

(3) "International air transportation" means transportation of persons (and their personal effects) or property by air between a place in the United States and a place outside the United States.

\*(4) "U.S. flag air carrier" means an air carrier holding a certificate under Section 401 of the U.S. Federal Aviation Act of 1958 (49 U.S.C. 1371).

*This paragraph should be appropriately modified when U.S., host country, and Code 941 flag carriers are eligible.
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f. The Supplier shall include the substance of this clause, including this paragraph f., in each subcontract or purchase order hereunder, which may involve international air transportation.

## 12. Subcontracts (See discussion in subsection 4.1.6.12 of text.)

a. Subcontracts must comply with the nationality, source, origin, and componentry requirements of this contract. The Supplier agrees to include the following provisions of this contract in all subcontracts hereunder:

"Host Country Taxes"

"Air Travel Transportation"

"Nationality and Source"

"Worker's Compensation Insurance" if incidental services are to be performed under the subcontract, and (Specify any additional provision by clause title).

b. All subcontracts and purchase orders in excess of \$100,000 shall only be awarded with the prior written consent of the Contracting Agency and USAID and such consent, if given, shall not relieve the Supplier from any liability or obligation under this contract.

## 13. Change Orders (See discussion in subsection 4.1.6.13 of text.)

The Contracting Agency may at any time, by a written order, and without notice to the sureties, make changes within the general scope of this contract, in any one or more of the following:

- (a) drawings, designs, or specifications, where supplies to be furnished under this contract are to be specially manufactured for the Contracting Agency;
- (b) method of shipment or packing; or
- (c) place of delivery.

If any such change causes an increase or decrease in the cost of, or the time required for, the performance of any part of the work under this contract, whether changed or not changed by any such order, an equitable adjustment shall be made in the contract price or delivery schedule, or both, and the contract shall be modified in writing accordingly. Any claim by the Supplier for adjustment under this clause must be asserted within 30 days from the date of receipt by the Supplier of the modification or change. Change Orders which exceed \$ \_\_\_\_\_ must be approved by USAID.

#### **14. Amendments (See discussion in subsection 4.1.6.14 of text.)**

Modification of the terms of this contract shall be made by amendment signed by the parties. Any amendments, including letter amendments, which increase the contract amount or extend the completion date of the contract must be approved by USAID.

#### **15. Settlement of Disputes (See discussion in 4.1.6.15.)**

- a. In the event of a disagreement under this contract, the Supplier shall submit a written statement to the Contracting Agency, briefly describing the nature of the problem, the position of the Supplier regarding the issue and a narrative of facts in support of the Supplier's position.
- . Within 10 days after receipt of the Supplier's statement, the Contracting Agency shall decide the issue and deliver a written statement of the decision to the Supplier, including the reasons supporting the decision, if adverse to the Supplier.
- . Within 30 days after receipt of the Contracting Agency's decision or the date such decision was due, the Supplier may submit to the Contracting Agency a written Notice of Appeal including a detailed description of the facts of the dispute with the dates of events, names of persons involved, references to documentation bearing on the matter (with copies attached), the relevant contract provision(s), the Supplier's contentions and conclusions, and a statement of why the Contracting Agency's decision is being questioned.
- d. If within 30 days after delivery of a Notice of Appeal, the parties can not mutually agree to a satisfactory settlement, the matter shall be presented for arbitration following the rules of Conciliation and Arbitration of the International Chamber of Commerce (ICC) (or the Arbitration Rules of the United Nations Commission on International Trade Law (UNCITRAL)).



\*Use the following paragraphs d., e., and f. if the ICC or UNCITRAL rules are not utilized.

d. Within 30 days after delivery of a Notice of Appeal, each party will select at least one arbitrator of its choice (non-nationals of the parties are permitted) who will select another arbitrator to chair the panel, and arbitration will be conducted under the rules of \_\_\_\_\_ (an established, impartial institution). At the request of one of the parties, the arbitration will be conducted in \_\_\_\_\_ (a third country). If the panel is not fully constituted within 20 days, either party may apply to a court of competent jurisdiction. Such court may fill the vacancy and in its discretion, charge all costs of the court proceeding to the other party.

e. The panel shall examine the claims and all documentation or witnesses offered in support of the positions of the parties and shall resolve the issue by a written decision which may include a monetary award (but not a penalty) as appropriate.

f. Judgment upon the award rendered may be entered in a Court having jurisdiction or application may be made to such Court for a judicial acceptance of the award and an order for enforcement.

#### **16. Marking (See discussion in Sections 2.13.5 and 4.1.5.16 of text.)**

a. The supplier shall be responsible for assuring that all commodities are furnished under this contract and their shipping containers carry the official USAID emblem and for correctly marking goods and shipping containers. Emblems shall be affixed by metal plates, decal, stencil, label, tag, or other means depending upon the type of commodity or shipping container and the nature of the surface to be marked.

b. The emblem placed on the commodities shall be as durable as the trademark, company or brand name affixed by the manufacturer and the emblem on each shipping container must be affixed in a manner which assures that it will remain legible until the container reaches its destination. Such containers shall display the last set of digits of the identification number of the pertinent implementing document in characters equal in height to the shipper's marks.

#### **17. Inspection (See discussion in subsection 4.1.6.17.)**

a. All supplies (including raw material, components, intermediate assemblies and end products) shall be subject to inspection and test by or on behalf of the Contracting Agency at the expense of the Contracting Agency prior to shipment. The Contracting Agency will notify the supplier in writing of the names of any inspectors or inspection firms. It is understood that inspection and testing shall not in any way release the Supplier from any warranty or other obligations under this contract.

b. If any inspection or test is made by or on behalf of the Contracting Agency on the premises of the Supplier, the Supplier shall provide all reasonable facilities and

assistance for the safety and convenience of the Contracting Agency or its inspectors in the performance of their duties without additional charge.

#### **18. Force Majeure (See discussion in subsection 4.1.6.18.)**

a. Except with respect to default of subcontractors, the Supplier shall not be liable for any excess costs if the failure to perform the contract arises out of causes beyond the control and without the fault or negligence of the Supplier (Force Majeure) and if the supplier, within 20 days from the beginning of any such Force Majeure notifies the Contracting Agency of such prevention of performance and the cause thereof. Such causes may include, but are not restricted to, acts of the Borrower/Grantee in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, and unusually severe weather, but in every case the failure to perform must be beyond the control and without the fault or negligence of the supplier. If the failure to perform is caused by the fault of a subcontractor and if such default arises out of causes beyond the control of both the supplier and the subcontractor and without the fault or negligence of either of them (Force Majeure) and the Supplier, within 20 days from the beginning of such Force Majeure notifies the Contracting Agency of such prevention of performance and the cause thereof, the supplier shall not be liable for any excess costs due to the failure to perform, unless the supplies or services to be furnished by the subcontractor were obtainable from other sources in sufficient time to permit the Supplier to meet the required delivery schedule.

b. In the event of a Force Majeure, the Supplier, unless otherwise directed by the Contracting Agency in writing, shall continue to undertake and perform the duties set forth in this contract as far as is reasonably practical.

c. In the event of a Force Majeure resulting in a suspension of work, this contract shall be extended by a period equal to that for which the supplier was prevented from performing.

d. The Supplier shall be entitled to reasonable costs incurred as a consequence of a Force Majeure.

e. If the Supplier's inability to perform by reason of the Force Majeure lasts for more than 45 days after notice has been given to the Contracting Agency, either party may terminate this contract and the Supplier shall be entitled to any sums which would be payable in case of termination of this contract by the Contracting Agency for convenience.

#### **19. Termination by the Contracting Agency for Default (See discussion in Section 4.1.6.19 of text.)**

a. The Contracting Agency may, by written notice of default sent to the Supplier by registered mail, terminate in whole or part this contract:

- 1) If the Supplier fails to make delivery of the equipment within the time specified herein or any extension thereof, or

2) If the Supplier fails to perform any of the other provisions of this contract, or so fails to make progress as to endanger performance of this contract in accordance with its terms, and, in either of these two circumstances, does not cure such failure within a period of ten days (or such longer period as the Contracting Agency may authorize in writing) after receipt of notice from the Contracting Agency specifying such failure.

b. In the event the Contracting Agency terminates this contract in whole or in part as provided in paragraph a. of this clause, the Contracting Agency may procure upon such terms and in such manner as the Contracting Agency may deem appropriate, supplies similar to those so terminated, and the Supplier shall be liable to the Contracting Agency for any excess costs for such similar supplies. However, the Supplier shall continue performance of this contract to the extent not terminated under the provisions of this clause.

## **20. Liquidated Damages (See discussion in Section 4.1.6.20 of text.)**

If the Supplier fails to deliver and install the commodities as scheduled in this contract, the Contracting Agency will assess the Supplier liquidated damages of \$ \_\_\_\_\_ per day, not to exceed a total of \$\_\_\_\_\_.

## **21. Termination by the Contracting Agency for Convenience (See discussion in subsection 4.1.6.21 of text.)**

a. This contract may be terminated by the Contracting Agency in whole, or from time to time in part, in accordance with this clause, whenever the Contracting Agency shall determine that such termination is in the best interest of the Contracting Agency.

b. Termination shall be effected by Notice of Termination to the Supplier, specifying that termination is for the convenience of the Contracting Agency, the extent to which performance of work under the contract is terminated, and the date upon which such termination becomes effective.

c. After receipt of a Notice of Termination and except as otherwise directed by the Contracting Agency, the Supplier shall:

(1) Stop work under the contract on the date and to the extent specified in the Notice of Termination, and place no further orders or subcontracts except as may be necessary for completion of the portion of the work under the contract which is not terminated;

(2) Terminate all orders and subcontract to the extent that they relate to the performance of work terminated by the Notice of Termination;

(3) Assign to the Contracting Agency as it may direct, all of the right, title, and interest of the Supplier under the orders and subcontracts so terminated, in

which case the Contracting Agency shall have the right to settle or pay any claims arising out of the termination of such orders and subcontracts;

(4) With the approval or ratification of the Contracting Agency, to the extent the Contracting Agency may require, which approval or ratification shall be final and conclusive for all purposes of this clause, settle all outstanding liabilities and all claims arising out of such termination of orders and subcontracts;

(5) Transfer title to the Contracting Agency and deliver as directed by the Contracting Agency, the completed or partially completed equipment, material, and parts which would be required to be furnished to the Contracting Agency under this contract;

(6) Complete performance of the part of the work which has not been terminated by the Notice of Termination; and

(7) Take such action as may be necessary for the protection of the property related to this contract which is in the possession of the Supplier and to which the Contracting Agency has title.

d. The Supplier shall submit to the Contracting Agency its written claim promptly but not later than three months from the effective date of termination, except as the Contracting Agency may agree in writing.

e. The Supplier and the Contracting Agency shall consult within 30 days of the submission of the claim concerning the whole or any part of the amount to be paid to the supplier by reason of the termination of work. The contract shall be amended accordingly, and the Supplier shall be paid the agreed amount.

f. In deciding the amount due the Supplier, all settled claims which the Contracting Agency may have against the supplier in connection with this contract, and the agreed price for, or the proceeds of sale of property acquired by the Supplier or sold not otherwise recovered by or credited to the Contracting Agency, shall be deducted.

g. Any disagreement regarding termination amounts or procedures shall be settled under the clause of this contract entitled "Settlement of Disputes".

## **22. Worker's Compensation Insurance (See discussion in Sections 2.13.7 and 4.1.6.22 of text.)**

\*a. The Contractor shall provide and thereafter maintain Worker's Compensation Insurance in accordance with the Defense Base Act (DBA) (42 U.S.C. 1651) for overseas employment under this Contract of all employees who are hired in the United States or who are American citizens or bona fide residents of the United States.

\*This clause assumes that a waiver has been obtained for Defense Base Act insurance requirements.

- b. The Contractor agrees to procure the DBA insurance required by this clause from the DBA insurance carrier under contract with USAID unless the Contractor has a DBA self insurance program approved by the Department of Labor or has an approved retrospective rating agreement for DBA. Information on obtaining coverage under the USAID requirements contract and the list of countries for which USAID has secured waiver of DBA coverage for Contractor's employees who are not citizens of, residents of, or hired in the United States, is shown in USAID Country Contracting Handbook, Chap 3, Section 4.1.6.22.
- c. The Contractor agrees to provide employees who are not citizens of, residents of, or hired in the United States with worker's compensation benefits as required by the laws of the country in which the employees are working, or by the laws of the employee's native country, whichever offers greater benefits, or in the absence of such law, employer's liability insurance.
- d. With respect to all employees who are hired for employment outside the country in which they are to be employed, this insurance coverage shall be provided prior to the departure for overseas employment under this Contract.
- e. The Contractor shall insert a clause similar to this clause, including this sentence, in all subcontracts except those exclusively for furnishing equipment and/or materials.

### **23. Performance Bond or Guaranty (See discussion in 3.10 and 4.1.6.23.)**

- a. The Supplier shall furnish to the Contracting Agency within 15 days after award, a Performance and Payment Bond or Performance Guaranty fully protecting the Contracting Agency against any excess costs incurred by it as a result of any failure to the Supplier to perform any of its obligations under this contract.
- b. Such Bonds or Guaranty shall be satisfactory to the Contracting Agency and, at the option of the Supplier, shall be in the form of a surety bond, certified check, cashier's check, bank guaranty, or irrevocable letter of credit. If a performance guaranty in the form of a certified check, cashier's check, bank guaranty or irrevocable letter of credit is used, it shall be in an amount equivalent to 15 percent of the contract value. If a Performance Bond is used, the bond shall be in an amount equivalent to 100 percent of the total amount of the contract value. The Performance Guaranty shall be drawn in favor of the Contracting Agency and shall be collectible upon receipt of the Contracting Agency's written certification and verification of supplier's default hereunder.
- c. The bonds or guaranty shall be released not later than 30 days following the date of completion of the contract performance.

### **24. Warranty (See discussion in subsection 4.1.6.24 of text.)**

The Supplier shall provide a warranty under which it will replace or repair the equipment to be supplied under this contract, or repair or replace any parts of such equipment, found to be defective due to faulty workmanship or materials. Replacements and repairs shall be made without cost to the Contracting Agency other than the cost of transportation from the port of entry to the project site. Such warranty shall be effective for twelve months after the installation

of the equipment is completed or eighteen months from arrival of the equipment at the port of entry, whichever is earlier. The Contracting Agency shall give the Supplier prompt notice of any claims under such warranty and, if the supplier fails to remedy defects within a reasonable time, shall have the right to take such remedial action as may be necessary and to claim the reasonable cost thereof from the Supplier.

**25. Packing (See discussion in subsection 4.1.6.25 of text.)**

All materials and equipment must be properly prepared for export to withstand exposure to the elements and rough handling during ocean or air shipment. Such packing must be sufficient to insure safe arrival at destination and fully cover such hazards as extreme temperature and/or possible corrosion due to salt air or open space.

**26. Incidental Services (See discussion in subsection 4.1.6.26 of text.)**

Upon delivery of equipment to the site, the Supplier agrees to furnish the services of a fully qualified mechanic or serviceman to supervise the assembly and perform the initial start-up and to ensure that the equipment will be completely adjusted, lubricated with the type and grade of lubricant recommended by the manufacturer, battery fully charged, and made ready for continuous operation. All materials required for the foregoing operations shall be furnished by the Supplier.

**27. Spare Parts (See discussion in subsection 4.1.6.27 of text.)**

The supplier shall furnish to the Contracting Agency a representative list of all spare parts and components necessary for proper and continuing functioning of each unit for a period of two years. The list will be prepared in such form so that each line item can be readily identified by the manufacturer's part number, nomenclature, and unit.

**28. Suspension of Work (See discussion in subsection 4.1.6.28 in text.)**

- a. The Contracting Agency may, at any time, by written order to the Supplier (Suspension of Work Order), require the Supplier to stop all, or any part, of the work required by the contract for a period of up to 90 days from the specified effective date.
- b. Upon receipt of such an order, the Supplier shall immediately comply with its terms and take all reasonable steps to minimize the incurrence of costs related to the work covered by the Order.
- c. Within the period of the Suspension of Work Order, the Contracting Agency shall either:
  - (1) Cancel the Suspension of Work Order; or
  - (2) Terminate the work covered by such Order as provided in the "Termination by the Contracting Agency" for convenience clause of the contract.

d. If the Suspension of Work Order is cancelled or the Order expires, the Supplier shall resume work. An equitable adjustment shall be made as necessary in the time schedule, the price, or a combination thereof, or any other provisions of the contract that may be affected and the contract shall be amended accordingly, if the Supplier asserts a claim for such adjustment within 30 days after the end of the period of work suspension. Failure to agree to any adjustment shall be a dispute under the "Disputes and Appeals" clause of the contract.

**29. Equal Employment Opportunity (See discussion in Sections 2.13.8 and 4.1.6.29 of text.)**

The Supplier will not discriminate in recruitment or employment conditions of personnel hired in the United States because of race, religion, color, sex, or national origin and is in compliance with its equal employment opportunity obligations under Executive Order 11246 dated September 24, 1965.

**30. Vesting of Title and Diversion Rights (See discussion in Sections 2.13.9 and 4.1.6.30 of text.)**

USAID reserves the right to vest in itself title to the goods financed under this contract, provided that such goods are in a deliverable state and have not yet been off loaded in ports of entry in the cooperating country. USAID may direct the carriers to divert these goods to alternative destinations.

**31. Escalation\* (See discussion in subsection 4.1.6.31 of text.)**

Freight costs will be paid in accordance with those submitted in the bid if there is no change in bunker or congestion surcharges between bid opening date and shipping date. The Bidder will furnish with its bid, a copy of the page(s) of the prevailing tariff in effect on the bid opening date showing the bunker and/or congestion surcharges applicable to the shipping period(s) of the intended shipments which are on file with the U.S. Federal Maritime Commission and have been published in the applicable shipping conference tariff. If bunker or congestion surcharges are increased or decreased subsequent to bid opening date, calculation of the increase or decrease will be the difference between the tariff rates submitted with the Supplier's bid and the applicable effective tariff rate at the time of shipment. The Contracting Agency agrees to make payment on the basis of the cost of goods delivered at destination adjusted in accordance with the above procedure. In order that the Contracting Agency may make necessary amendments to the financing documents prior to shipment, the Supplier will provide information to the Contracting Agency concerning any increases in bunker or congestion surcharges that the carrier has filed with the Federal Maritime Commission subsequent to the bid opening date.

\*This clause covers an increase or decrease in bunker or congestion surcharges in c.&f. or c.i.f. contracts only. Clauses covering other increases or decreases in costs should be used when appropriate.

### **32. Marine Insurance (See discussion in subsection 4.1.6.32 of text.)**

The Supplier shall provide all risk marine insurance on a warehouse to warehouse basis at 110 percent of the c.i.f. value of each shipment. The premiums shall not exceed the prevailing rate for similar coverage, and all loss payments proceeds shall be payable in any freely convertible currency. The source of any goods financed by loss payments which are used to repair or replace goods procured under this contract shall be USAID Geographic Code 935.

### **33. Notices (See discussion in subsection 4.1.6.33 of text.)**

Any notice given by either party will be in writing or by telegram or cable and will be deemed duly given or sent when delivered to the following addresses:

To Supplier: at address shown on the  
Bid/Contract/Award form

To Contracting Agency:

Notices shall be effective when delivered or on the effective date of the notice, whichever is later.

### **34. Audit and Records (See discussion in subsection 4.1.6.34 of text.)**

a. The Contractor shall maintain books, records, documents, and other evidence to substantiate, without limitation, all costs incurred under or in connection with the contract and to substantiate the other contract requirements in accordance with generally accepted accounting principles prevailing in the United States, the Cooperating Country, or the International Accounting Standards Committee (an affiliate of the International Federation of Accountants) to substantiate properly all transactions under or in connection with the contract. This clause does not apply to cost records for nonreimbursable cost items incurred under fixed-price (lump sum or unit price) contracts, but it does apply to records concerning source of goods and other comparable contract requirements applicable to such items. The foregoing constitute "records" for the purpose of this clause.

b. The Contractor shall maintain such records during the contract term and for a period of 3 years after final payment. However, records which relate to appeals under the "Disputes and Appeals" clause or litigation or the settlement of claims arising out of the performance of this contract shall be retained until such appeals, litigation, or claims have been finally settled.

c. All records shall be subject to inspection and audit by the United States Government, the Contracting Agency, or its authorized agents at all reasonable times. The Contractor shall afford the auditor proper facilities for such inspection and audit.

d. The Contractor further agrees to include in all its subcontracts hereunder a provision that the subcontractor agrees to maintain such records and that the U.S. Government,



the Contracting Agency, or any of its authorized agents shall, until the expiration of 3 years after final payment under the subcontract, have access to and the right to examine any records of such subcontractor involving transactions related to the subcontract.

**\*35. Anti-Corruption Provisions (See discussion in subsection 4.1.6.35 of text.)**

No offer, payment, consideration, or benefit of any kind which constitutes an illegal or corrupt practice shall be made, either directly or indirectly, as an inducement or reward for the award of this contract. Any such practice will be grounds for cancelling the award of this contract and for such other additional actions, civil and/or criminal, as may be applicable.

## Attachment 30 – Reserved

## Attachment 3P – Sample Purchase Order Format

[This Purchase Order is designed to be used for small value procurement (see 2.2.4 of text) of commodities when no incidental services are included. It would be most appropriate for procurement of catalog items where detailed specifications are not necessary. The clauses on the following pages are suggestions which may be adapted as required as long as the mandatory clauses are included in the purchase order (see Section 2.13 of text).]

### PURCHASE ORDER (Purchaser's Name and Address)

Issued to: \_\_\_\_\_ Date: \_\_\_\_\_

Supplier's Name \_\_\_\_\_ Purchase Order No: \_\_\_\_\_  
And Address: \_\_\_\_\_ USAID Loan/Grant No: \_\_\_\_\_

Item No.	Quantity (inc. unit)	Description/Specification of Commodities	Unit Price	Total Price

Authorized Source for: \_\_\_\_\_ Terms of Delivery: \_\_\_\_\_  
specify whether C.i.f., f.a.s., etc.  
Name point of deliver

Commodities: USAID Code \_\_\_\_\_

Transportation: USAID Code \_\_\_\_\_

Insurance: USAID Code \_\_\_\_\_

Instructions: (Export packing instructions, including any marking requirements in addition to the USAID requirements.

Specify where shipping documents, including original bill of lading, are to be sent.

Specify payment method - whether bank or direct L/COM will be used.

Specify any other special instructions)

This order is subject to the terms and conditions on the reverse hereof.

\_\_\_\_\_(Purchaser)\_\_\_\_\_ by \_\_\_\_\_

PLEASE SIGN AND RETURN ACKNOWLEDGEMENT COPY PROMPTLY.

ACKNOWLEDGEMENT: The undersigned acknowledges receipt of this purchase order and agrees to supply the above described items in accordance with the terms and conditions herein.

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Printed Name and Title	Signature	Date
---------------------------	-----------	------

for \_\_\_\_\_  
Name of Supplier

### TERMS AND CONDITIONS

1. DEFINITIONS:

- a. "USAID" means the U.S. Agency for International Development.
- b. "Host Country" means \_\_\_\_\_.
- c. "Purchaser" means \_\_\_\_\_.
- d. "Supplier" means the person or firm supplying the equipment and materials called for under this purchase order.

2. CONTRACT: This form, when properly signed, bearing an order number and acknowledged, is the only form which will be recognized by the Purchaser and will constitute the contract. No terms stated by the Supplier in accepting or acknowledging this order shall be binding on the Purchaser unless accepted in writing by the Purchaser. Supplier may not assign this order without the Purchaser's prior written consent. No waiver of a breach of any provision of this order shall constitute a waiver of such provision or of any subsequent breach thereof.

3. GOVERNING LAW: This contract shall be interpreted in accordance with the laws of \_\_\_\_\_.

4. CHANGES: The Purchaser may at any time, by written order, and without notice to the sureties, make changes within the general scope of this contract. If any such changes cause an increase or decrease in the cost, or the time required for the performance, of any part of the work under this contract, an equitable adjustment shall be made in the contract price or delivery schedule, or both, and the contract shall be modified in writing accordingly. Any claim by the Supplier for adjustment under this contract must be asserted within thirty (30) days from the date of receipt by the Supplier of the modification or change.

\*5. PAYMENT: Payment shall be made in accordance with the terms of the financing document and will require the submission of the following documentation: Supplier's invoice; "Supplier's Certificate and Agreement with USAID for Project Commodities" (Form USAID 1450-4) if this purchase order exceeds \$2,500; a copy or photostat of the rated bill of lading or parcel post receipt evidencing shipment to the Host Country; and if shipment is made from a free port

or bonded warehouse, a copy of the bill of lading covering shipment from the source country to the free port or bonded warehouse.

\*These clauses are mandatory in accordance with Section 2.13 of the text.

\*6. ELIGIBILITY OF SUPPLIES: No equipment, materials or services shall be eligible for USAID financing if offered by a Supplier included on any list of suspended, debarred, or ineligible bidders used by USAID. The Supplier must be a citizen or legal resident of, or a corporation or partnership organized under the laws of a country included in the authorized geographic code; a U.S. controlled foreign corporation within the meaning of Section 957 et. seq. of the Internal Revenue Code (26 USC 957); or a joint venture or unincorporated association consisting entirely of entities which fit the foregoing categories.

\*7. ELIGIBILITY OF COMMODITIES:

a. Commodities must be shipped from an authorized source country (one included in the authorized geographic code specified on the face of this Purchase Order). However, commodities may be shipped to such port or bonded warehouse in the form in which received therein. Commodities also must be mined, grown, or produced in an authorized source country.

b. In addition to the foregoing, a produced commodity will not be eligible for financing if:

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

(ii) It contains components which are imported into the country of production from free world countries not included in USAID Geographic Code 941 and such components were acquired by the producer in the form in which they were imported and the total cost of such components (delivered at the point of production) amounts to more than 50 percent of the lowest price (excluding the costs of ocean transportation and marine insurance) at which the Supplier makes the commodity available for export sale (whether or not financed by USAID). If Geographic Codes 899 or 935 are the authorized source, this 50 percent componentry limitation does not apply.

\*8. ELIGIBILITY OF TRANSPORTATION: Ocean and air shipments must be made on carriers under flag registry of countries included in the USAID Geographic Code specified on the face of this Purchase Order as the authorized source for transportation. If such vessels are not available, notify Purchaser and request further instructions.

\*These clauses are mandatory in accordance with Section 2.13 of the text.

9. MARINE INSURANCE: If delivery terms of this Purchase Order are c.i.f., the Supplier shall provide all risk marine insurance on a warehouse to warehouse basis at 110 percent of the c.i.f. value of each shipment. The policy must be issued by, and the premium payable to, an insurance company located in an authorized source country. The premiums shall not exceed the prevailing rate for similar coverage, and all loss proceeds shall be payable in U.S. dollars.

\*10. MARKING: The supplier shall be responsible for assuring that all commodities to be furnished under this Purchase Order and their shipping containers, carry the official USAID emblem. Emblems shall be affixed by metal plate, decal, 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 on commodities shall be as durable as the trademark, company or brand name affixed by the producer and the emblem on each shipping container must be affixed in a manner which assures that it will remain legible until the container reaches its destination. Such containers shall display the last set of digits of the identification number of the pertinent implementing document in characters equal in height to the shipper's markers.

\*11. DISPUTES: In the event of disputes arising in connection with this contract, the parties shall make reasonable attempts to reach an amicable settlement among themselves prior to invoking arbitration. In the event that the parties fail to reach an amicable settlement among themselves within forty days, the dispute shall be decided under the Rules of Conciliation and Arbitration of the International Chamber of Commerce.\*\*

12. FORCE MAJEURE: Except with respect to default of a subcontractor, the Supplier shall not be liable for any excess costs if the failure to perform the contract arises out of causes beyond the control and without the fault or negligence of the Supplier and if the Supplier within twenty (20) days from the beginning of any such Force Majeure notifies the Purchaser of such prevention of performance and the cause thereof. Such causes may include, but are not restricted to, acts of the Purchaser in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, and unusually severe weather, but in every case the failure to perform must be beyond the control and without the fault or negligence of the Supplier. If the failure to perform is caused by the fault

\*This clause is mandatory in accordance with Section 2.13 of the text.

\*\*See Section 4.1.6.15 of the text for discussion of the permissible alternatives for settlement of disputes procedures.

To a subcontractor and if such default arises out of causes beyond the control of both the Supplier and the subcontractor and without the fault or negligence of either of them and if the Supplier within twenty (20) days from the beginning of any such Force Majeure notifies the Purchaser of such prevention of performance and cause thereof, the Supplier shall not be liable for any excess costs for failure to perform, unless the supplies or services to be furnished by the subcontractor were obtainable from other sources in sufficient time to permit the Supplier to meet the required delivery schedule.

13. TERMINATION BY THE PURCHASER FOR CONVENIENCE: This contract may be terminated by the Purchaser in whole, or from time to time in part, whenever the Purchaser shall determine that it is in its best interest to do so. Termination shall be effected by registered letter to the Supplier. The letter shall specify the extent to which performance is terminated, the effective date of termination, and what steps should be taken by the Supplier. With respect to goods which are completed and ready for delivery by the effective termination date, Purchaser agrees to accept delivery thereof at the contract price and terms. Purchaser may elect to accept delivery of material which is not complete and pay Supplier a prorated amount of the contract price. No payment shall be made by Purchaser for any material not yet in process of manufacture on the effective date of termination. Other arrangements may be agreed upon between Supplier and Purchaser. Supplier shall submit to Purchaser its written claim within

three months of the effective date of termination. In deciding the amount due, all settled claims which the Purchaser may have against the Supplier in connection with this contract will be deducted. Any disagreement regarding termination amounts or procedures shall be settled under the clause of this contract entitled "Disputes".

14. TERMINATION FOR DEFAULT:

(a) The Purchaser may, by registered mail to the Supplier terminate the whole or part of this contract in any one of the following circumstances:

(i) If the Supplier fails to make delivery of the equipment within the time specified herein or any extension thereof, or

(ii) If the Supplier fails to perform any of the other provisions of this contract or so fails to make progress as to endanger performance of this contract in accordance with the terms, and in either of these two circumstances does not cure such failure within a period of ten (10) days (or such longer period as the Purchaser may authorize in writing) after receipt of notice from the Purchaser specifying such failure.

(b) In the event the Purchaser terminates this contract in whole or in part as provided in (a) of this clause, the Purchaser may procure, upon such terms and in such manner as the Purchaser may deem appropriate, supplies similar to those so terminated, and the supplier shall be liability to Purchaser for any excess costs for such similar supplies. Supplier shall continue performance of this contract to the extent not terminated.

\*15. TAXES: The loan or grant agreement under which this transaction is financed does not permit the use of USAID funds to finance any taxes, tariffs, duties, or other levies imposed by any laws in effect in the Host Country.

16. WARRANTY: All equipment must be covered by the manufacturer's standard export warranty which shall, at a minimum, protect the Purchaser from any loss due to defective workmanship, material and parts for twelve months after initial delivery to the port of entry. In the event that the warranty is breached, the Purchaser may require, and the Supplier is bound, to remedy all defects and faults, including both workmanship and materials within a reasonable time of notification. In the event of the Supplier's refusal or inability to remedy any such condition, the Purchaser may remedy such defects on its own and claim the reasonable cost of such remedial action from the Supplier.

17. INSPECTION: All commodities supplied under this Purchase Order (including raw materials, components, intermediate assemblies and end products) shall be subject to inspection and test at the request of the Purchaser.

\*This clause is mandatory in accordance with Section 2.13 of the text.

\*18. EQUAL EMPLOYMENT OPPORTUNITY: If the supplier is a U.S. firm, it shall not discriminate in recruitment or employment conditions of personnel hired in the U.S. because of race, religion, color, sex or national origin and must be in compliance with its equal employment opportunity obligations under Executive Order 11246 dated September, 1965.

\*19. VESTING OF TITLE AND DIVERSION RIGHTS: USAID reserves the right to vest in itself title to the goods financed under this Purchase Order, provided that such goods are in a deliverable state and have not yet been off loaded in ports of entry in the Host Country. USAID may direct the carriers to divert these goods to alternative destinations.

\*20. LEGAL EFFECT OF USAID APPROVALS AND DECISIONS: The parties hereto understand that the contract has reserved to USAID certain rights such as, but not limited to, the right to approve the terms of this contract, the Supplier and any or all plans, reports, specifications, subcontracts, bid documents, drawings, or other documents related to this contract and the project of which it is part. The parties hereto further understand and agree that USAID, in reserving any or all of the foregoing approval rights, has acted solely as a financing entity to assure the proper use of United States government funds, and that any decision by USAID to exercise or refrain from exercising these approval rights shall be made as a financier in the course of financing this project and shall not be construed as making USAID a party to the contract. The parties hereto understand and agree that USAID may, from time to time, exercise the foregoing approval rights, or discuss matters related to these rights and the project with the parties jointly or separately, without thereby incurring any responsibility or liability to the parties jointly or to any of them. Any approval (or failure to disapprove) by USAID shall not bar the Purchaser or USAID from asserting any right, or relieve the Supplier from any liability which the Supplier might otherwise have to the Purchaser or USAID.

\*These clauses are mandatory in accordance with Section 2.13 of the text.



## **Attachment 3Q - Memorandum from John F. Hicks, February 1, 1993**

Subject: Update and Reissuance of Africa Bureau Instructions on Implementing Special Procurement Policy Rules Governing the Development Fund for Africa (DFA

RESERVED