

CHAPTER 4

USE OF PROCUREMENT AGENTS

4A. Scope of Chapter

1. General

This Chapter discusses various aspects of the use of procurement agents for AID-financed programs, with emphasis on their use under project assistance. A procurement agent is a person or entity, other than a government agency, that provides services on behalf of a Borrower/Grantee (B/G) to effect purchase and delivery of commodities needed by the B/G. The Chapter deals with when to use a procurement agent, how to contract for a procurement agent's services, what services should be performed by a procurement agent, and methods of payment for the services and the commodities. For information concerning procurement through U.S. Government Agencies, see Chapter 5.

2. Application To:

a. Host Country Contracting, Project Assistance

(1) The guidance in this Chapter applies when a B/G contracts for the services of a procurement agent to assist in the procurement of AID-financed commodities for a project.

(2) The Chapter is based on the use of U.S. procurement agents. Thus, some of the guidance and procedures may not be appropriate when a non-U.S. procurement agent is used. If a non-U.S. procurement agent is needed for a project, modifications to the procedures consistent with AID's requirements may be adopted. The cognizant Commodity Management Officer, Contracting Officer, Legal Officer, and Controller in the field shall be consulted.

b. AID Direct Contracting

(1) When AID Missions find it expedient to contract directly for the services of a procurement agent for a project, the Office of Procurement will provide guidance upon request.

(2) When AID contracts directly for the services of a procurement agent, the cost of the commodities, their transportation to the project site, and other incidental services will be funded separately from the contract for providing the procurement services. At no time will AID hold title to the commodities being procured. Such contracts are subject to the requirements of the Federal Acquisition Regulations (FAR) and the AID Acquisition Regulations (AIDAR). Nevertheless, the discussions in this Chapter on contracting considerations and on the handling of commodity procurement by the procurement agents may be applied to the extent they do not conflict with FAR/AIDAR requirements.

c. Commodity Import Programs

Procurement agents have not normally been used under Commodity Import Programs (CIPs). Private sector entities, which traditionally accounted for a sizeable portion of CIP procurement, do not need the services of procurement agents since private sector entities usually purchase and import commodities in the regular course of their commercial business activities. However, when a host government entity is purchasing for project-like activities under a CIP, procurement assistance may be appropriate. This creates special problems because AID Regulation 1, the document which normally governs CIP procurement, is designed primarily for application to commercial commodity transactions and does not provide guidance applicable to hiring a procurement agent nor to commodity procurement by such an agent. If procurement services are necessary under a CIP, they must be authorized specifically in the Program Assistance Approval Document (PAAD) or by an official authorized to sign the PAAD. The Office of Procurement (MS/OP) shall be consulted to assist in planning and to establish procedures to be followed in contracting for the procurement agent as well as in purchasing the commodities.

4B. AID Policy on Use of Procurement Agents

1. Using a procurement agent is not a solution to all procurement problems and can be unnecessarily costly and inappropriate in some cases. When the B/G has the capacity and experience to conduct its own procurement for AID-financed projects, there will normally not be a need for the services of a procurement agent. There are circumstances, however, in which it may be more efficient for the B/G to hire the services of a procurement agent who will assist in the purchase of commodities. The need for such services is most likely when there are numerous different line items to be procured as, for example, in the establishment of a medical clinic, an educational institution, or research facility. For a project involving the purchase of a bulk commodity, such as fertilizer or grain, proprietary or noncompetitive procurement of machinery or vehicles, or purchase of U.S. Government-owned property, a procurement agent should normally not be used.

2. The requirement for a procurement agent should be identified during the project design phase and incorporated into the Project Procurement Plan which is prepared in accordance with Handbook 3, App 3H. If it is not incorporated into the Project Paper, a procurement agent should not be used unless the AID project authorizing official determines in writing that the use of a nongovernmental procurement agent is in the best interest of the project. The determination should include an assessment of the B/G's ability to perform the procurement and consideration of whether using a procurement agent is appropriate for the type of commodities being procured and whether the services will be cost effective.

3. AID will, when it is appropriate to project needs, finance the cost of procurement services for an AID-funded project, provided eligibility requirements are met. AID's requirements and other considerations in contracting for such AID-financed services are discussed below. B/Gs may, of course, hire and pay for the services of a procurement agent for an AID project solely with their own funds. In such cases, the AID requirements concerning contracting for the procurement services would not apply, but the usual AID requirements concerning purchasing of commodities by the procurement agent would apply.

4C. Contracting for Procurement Services

1. General

a. There are some basic concepts that apply to any procurement, whether for goods or for services. Among them is the importance of providing for fair and effective competition to the maximum extent practical. Potential offerors should be provided sufficient information about the procurement so that they will have a realistic idea of whether their firm can meet the requirements and will be able to present an appropriate proposal. The same information should be furnished to all firms to assure that no one gains an unfair competitive advantage.

b. In order to provide for fair and effective competition, the solicitation document used, whether formal or informal, should provide an accurate and complete scope of work to be covered by the contract, including information on the extent of the contract (time, amount, etc.), the types of services required and the types of commodities to be procured and any source and origin requirements. The scope of work is discussed in considerable detail in Section 4D of this Chapter. Firms should also be informed of the criteria against which they will be judged. Some criteria which may be useful in determining who should provide procurement services are discussed in Section 4C3, "Contracting Considerations," of this Chapter. Other information that should be included in the solicitation, such as the administrative details concerning submission of proposals, nationality requirements, and the type of contract contemplated, are

noted in Chapter 1 of Handbook 11, Section 3.4, "Contractor Selection."

c. Requirements for noncompetitive selection of procurement services must be documented, justified, and approved in accordance with Chapter 1 of Handbook 11, Section 2.4, Competition, prior to negotiation with an offeror.

d. AID's legal counsel should be consulted on matters of propriety which arise in contracting for procurement services, without regard to the dollar value of the contract, particularly in matters of contractor selection and conflict of interest.

2. Procurement Methods

a. Applicability of Handbook 11

Procurement services fall in the category of professional or technical services, and the contracting procedures are the same as for hiring any other professional or technical services contractors for projects. When the services are to be financed by AID, the B/G implementing agency is required to follow Handbook 11, Chapter 1, "Procurement of Professional and Technical Services." As indicated in Chapter 1, there are two basic procedures for contracting: Formal solicitation, which is used when the cost of the procurement services (as distinct from the cost of commodities the agent will procure) is expected to exceed \$100,000, and informal solicitation, which may be used when the cost of the procurement services is not expected to exceed \$100,000.

b. Formal Solicitation

When the cost of the procurement services is expected to exceed \$100,000, the B/G is required to follow a more formal solicitation procedure. The procurement must be advertised in the Commerce Business Daily, and a Request for Technical Proposal is issued. The list of potential procurement agents may be used, in addition to advertising, to determine whether particular agents should be solicited directly to submit proposals. For the procedural details necessary for undertaking this type of procurement, see the rules and guidance in Handbook 11, Chapter 1.

c. Informal Solicitation

(1) When the cost of the procurement services is not expected to exceed \$100,000, contracting for the services may be undertaken through informal solicitation of several sources. Though not required, formal solicitation procedures may be used, and they are recommended whenever feasible. All procurements where the cost of the services is expected to exceed \$25,000 are to be publicized in the AID Procurement Information Bulletin.

(2) To assist the B/G in making informal solicitations, the Office of Procurement (MS/OP) maintains a list of individuals and companies that have expressed interest in providing procurement services. The list in no way represents prequalification or approval of those listed. B/Gs may solicit and contract with procurement agents that are not included on the list as well as with those that are. The list is designed to give B/Gs an idea of which companies might be willing and able to provide the kind of services they need.

(3) When informal solicitation is allowed, the B/G should request proposals from companies that it chooses as well as from those responding to any advertisement that was issued. The B/G should choose a procurement agent based on an evaluation of the relative merits of the proposals.

d. Noncompetitive Procurement

(1) Noncompetitive selection of a contractor to provide procurement services requires a waiver as specified in Chapter 1 of Handbook 11, Section 2.4.2. This section requires that negotiation with a single source be conducted only when special circumstances limits the possibility for competition. Such circumstances are when: 1) an emergency situation leaves insufficient time for competition; 2) special requirements for services available from only one source; 3) a firm has a unique capability because of special experience or facilities or personnel who are recognized as predominant experts in a required field; 4) there is follow-on work in which a contractor has acquired specialized capability required for performance of an additional requirement; or 5) the foreign assistance program would be impaired.

(2) Contracting for procurement services on a noncompetitive basis should be a rare occurrence. The need for procurement services should be determined as part of the project planning phase, permitting sufficient time to conduct a competitive solicitation. When an emergency situation does arise, using a procurement agent to procure commodities is not usually the most expeditious method of satisfying the requirement. Further, the skills and resources required do not vary significantly from one procurement or geographic area to another, and it would be difficult to make a persuasive argument that one firm was uniquely capable to perform a particular procurement. On the other hand, a combination of circumstances might tip the scales in favor of noncompetitive procurement. A procurement agent who is currently working on a project may have developed special expertise for handling the project's procurement requirements and may have the resources in place to accommodate an emergency need for additional commodities within constraints that competitors could not reasonably be expected to meet.

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(3) If there is adequate justification along the lines described above, a waiver of competition may be authorized to allow the B/G to negotiate with a particular firm or individual in accordance with Handbook 11, Chapter 1, Section 2.4.2.

3. Contracting Considerations

a. General

There are many factors to be considered when deciding which procurement agent would best be able to provide needed services. The prospective agents should be told what criteria will be used for evaluation and what the relative importance of each will be. The following paragraphs discuss some of the factors that should be considered in contracting for procurement services whether or not a formal solicitation document is prepared.

b. Agent's Capabilities

(1) The most important basis on which to choose a firm to provide procurement services is its ability to handle all the necessary work. The capabilities that might be required of an agent include such varied things as technical abilities, e.g., expertise for writing specifications and procurement documents and foreign language capability; financial resources and credit worthiness; a knowledge of industry and export marketing; and physical facilities to provide quick communications. A procurement agent should be evaluated only on those capabilities needed to carry out the required services under the particular project. A discussion of services which might be included in a procurement services contract appears in Section 4D3 of this Chapter. Any firm chosen should be able to assign personnel capable of handling all services covered by the specific scope of work or explain how such services would be provided.

(2) A selection factor that may be considered an element of capability is previous experience. An agent may be judged on his/her previous experience in the general field of procurement, in procurement for overseas projects, and in some cases it may be particularly important for the agent to have knowledge of the rules and regulations concerning AID-financed procurement. This might be true when time is of the essence, and the agent will be expected to start procurement quickly. Even in cases where knowledge of AID's procurement rules is of particular importance, the weight given to such knowledge should not normally be in excess of 10 percent of the technical evaluation matrix.

Previous experience with direct AID or country contracts in itself is not an appropriate selection factor though experience gained under these contracts may be considered as evidence of a procurement agent's technical capabilities and overseas, regional, and/or country experience.

Further, overseas, regional, and/or country experience should not be weighted more than 10 per cent of the technical evaluation matrix without the approval of the Assistant Administrator or Mission Director under whose authority final award will be made. Depending on the circumstances involved, other selection factors could include:

- foreign trade experience, experience in purchasing for foreign governments, experience in consolidating shipments and making transportation arrangements,
- qualifications of key personnel proposed,
- demonstrated ability to prepare specifications and invitations for bids,
- overall reputation for tenacity, effectiveness, and integrity, and
- the general organization and responsiveness of the proposal.

(3) In order to evaluate an offeror's previous experience from the perspective of its clients, the solicitation for procurement services should include a request for business references from at least three present or former clients for whom the offeror has provided services similar to those being solicited. The offeror should be requested to furnish in its business references the names, addresses, telephone and/or telex numbers of the appropriate client contract persons, and descriptions, values, and periods of the services provided. The Solicitation document should include a statement notifying offerors of the intent to verify the business references and employee biographical data submitted.

(4) The selection panel evaluating the offers submitted under the solicitation should contact a sufficient number of references listed by each offeror considered technically acceptable in order to make an assessment of the experience claimed. The AID project officer will provide liaison to the selection panel to check the performance record that an offeror may claim with AID.

(5) When considering U.S. offerors for which AID and the B/G do not have sufficient first-hand information on previous performance, the AID project officer may obtain additional business data for the selection panel's

consideration by cabling PPC/CDIE/DI, AID/W. This office has access to approximately a dozen business data bases, such as Dun and Bradstreet, Standard and Poor's, Moody's, etc. It may be appropriate to liaise with the appropriate AID country desk officer in obtaining business data information from PPC/CDIE/DI.

c. Cost or Price of Services

(1) Cost or price may be a factor in the B/G's selection of professional or technical services contractors only when specifically approved by AID in accordance with the provisions of paragraph 2.3 of Chapter 1, Handbook 11. Even when approved, as may often be appropriate with procurement services, it should not be a predominant factor. Nevertheless, whatever the selection process, cost or price should be carefully negotiated and reviewed to assure that it is reasonable. To determine a reasonable price for procurement services, it is necessary to take into account the different services that the agent will be required to perform. The more services, the greater their complexity, and the more work required, the higher the cost or price will be, of course. It may also be influenced by the type, quantity or assortment of commodities to be procured. When proprietary items are being procured or sole source procurement is necessary, the effort required by the agent is likely to be considerably less than when procurement is unrestricted and fully competitive. Procurement of several hundred line items valued at \$200,000 will likely involve more work than buying a million dollars worth of one or two items, so the cost or price of the commodities may not be an appropriate measure of the value of the procurement services.

(2) Whether or not cost or price is considered as a competitive selection factor, an independent B/G cost estimate should be prepared as part of the procurement requirement, and it should be considered by the selection panel in the ranking of offerors and/or by the contracting agency in the contract negotiations. In order to avoid giving an offeror an unfair competitive advantage or jeopardizing the B/G's bargaining position, the amount and composition of the B/G's estimate must not be disclosed to other than host country and AID personnel with a need to know.

d. Sample Evaluation

As is noted in the paragraph above, there are many factors to consider in choosing a procurement agent. When a solicitation document is prepared, it will be necessary for the B/G to specify what aspects of a procurement services business will be evaluated and what the relative importance of each factor will be in ranking the firms which submit proposals. The evaluation criteria must be included in the solicitation document so all prospective offerors will know the basis on which they will be judged. Following is an example of evaluation criteria. The example assumes that approval has been given to use price as a factor in evaluating. The criteria in the example will not be appropriate for all solicitations for procurement services, and the relative importance given to each factor will vary depending on the amount and type of work to be done.

Sample Evaluation Criteria

The proposals received as a result of this solicitation will be evaluated based on the firm's capability in terms of experience, resources to do the job, and reputation and the proposed cost or price of the services, in that order of importance. The factors will be weighted so that experience will represent 50% of the total possible score, job capacity 30%, reputation 10%, and proposed cost or price 10%. The individual criteria to be evaluated under the larger categories are listed below.

- I. Experience in the following areas:
 1. Purchasing for foreign governments.
 2. Purchasing the types of commodities involved.
 3. Consolidating shipments.
 4. Providing delivery services called for in the solicitation.
- II. Job Resources
 1. Ability and intention to assign qualified personnel.
 2. Ability and intention to perform the work with its own staff.
 3. Current and predictable workload relative to capacity.
 4. Financial resources and stability.
- III. Reputation
 1. Overall professional reputation.
 2. Known cases of prior experience.
- IV. Proposed price of services

e. Conflict of Interest

(1) An additional consideration in contracting is the firm's ability to separate its activities as a procurement agent from any activities which it may carry out as a supplier or supplier's agent or representative. Since the agent will be required to follow AID's competitive procurement requirements, it must not be constrained by any agreements to represent suppliers. In sum, the agent must be able to act free of influence by interests other than those of its principal. The contract with the procurement agent should provide that the firm will act exclusively for the B/G in connection with any actions concerning the contract.

(2) In situations where the agent may use its own subsidiaries or affiliates to provide services to the B/G, such as warehousing, packaging, inspection or freight forwarding, it is required that these services be included within the contract price or that specific costs be provided for within the contract between the agent and the B/G. MS/OP/COMS can provide guidance on the various services usually required and acceptable cost ranges. If the contract does not include the use of subsidiaries or affiliates, then the contract should include a statement that the PSA will not use a subsidiary or affiliate in the performance of the contract. Where a PSA intends to utilize a subsidiary or affiliate for purchases of commodities or commodity-related services from third parties, the contract should require the PSA to either post a bond in accordance with paragraph 4C3G, or specify that any reimbursement to the subsidiary or affiliate for third party expenses in excess of \$2,500 be accompanied by a paid invoice from the vendor and a certification from the subsidiary or affiliate that payment has been made. In this regard, it should be noted that a prepaid bill of lading is not evidence of payment of ocean or air freight. Otherwise, the agent may have an interest in contracting with its subsidiaries or affiliates even though such contracting is not wholly in accord with the interests of its client, the B/G. The solicitation should apprise offerors of the requirements for using its subsidiaries or affiliates to provide services under a PSA contract.

(3) To assure that the agent is motivated to act in the best interest of the B/G, the agent should benefit from its involvement in the procurement only as provided for in the contract. It should receive its remuneration only from the B/G; any fees, commissions, discounts or payments received from other parties should be passed on to the B/G; except that in certain circumstances (e.g., where the agent provides freight forwarding services or brokers marine insurance), it may earn those brokerage commission or fees which by law, regulation, or contractual obligation it may not rebate to the B/G. The agency may be allowed to retain such payments, but the B/G should take into account

the potential for the agent's earning such additional income when it negotiates the price for the contract. In addition, the agent should be required to disclose the details of such payments as it does receive.

f. Selection Panel

The evaluation of the proposals received will be conducted in accordance with the B/G's procedures. Generally, a selection panel should be convened to review the proposals received in response to the solicitation. The panel should be composed of B/G personnel representing the program, contracting, and commodity specialties involved in the project. Outside specialists may be included as requirements dictate. Each panel member's scoring and narrative evaluation of the proposals and a composite scoring sheet for the panel should be incorporated as an attachment to the selection memorandum prepared by the B/G.

g. Bonding

Bonds or guaranties are not normally required under services contracts, but it may be appropriate at times to require them in connection with procurement services contracts. If approval has been given to use a payment procedure under which the agent will be responsible for paying commodity suppliers after it has received funds from AID, a performance bond or guaranty should be required which is sufficient to cover the largest amount of money advanced to the procurement agent at any one time.

h. Contract Approval

After the B/G negotiates a procurement services contract in accordance with Paragraph 3.5.3 of Chapter 1, Handbook 11 (and before contract signature), the B/G shall submit the proposed award for AID approval if it exceeds \$100,000 (or a lesser amount stipulated in the Project Implementation Letter). The submission should include the draft contract, a cost or price analysis that supports the award, the B/G's selection memorandum (unless previously submitted), biographical data on the contractor's proposed key personnel, any bid protests received and their disposition, and any other items required by the Project Implementation Letter. AID Missions may conduct a parallel evaluation of the technical proposals to verify the validity of the conclusions reached. AID approval of the award will be based on the adequacy of the work plan, the reasonableness of cost or price, use of the appropriate selection procedures, the inclusion of the mandatory contract clauses, and the overall effectiveness of the contract to accomplish the stated objective.

4. Procurement Documents

a. Type of Document

(1) Contract

The relationship between the procurement agent and the B/G should be spelled out in sufficient detail so that both will know their rights and responsibilities. There must be an agreement between the parties as to what each will do. That agreement should be documented in writing and signed by both parties. A model contract for procurement services appears in Appendix 4A of Ch. 4. The model is based on the model in Handbook 11, Chapter 1, but modified to apply to procurement services. The model is designed to provide guidance. It is not required that its terms be followed except to the extent that certain clauses are required in all services contracts. The required clauses are noted in the model. A copy of the completed, signed contract should be sent to the Office of Procurement (M/SER/OP/COMS) immediately upon execution.

(2) Small Value Contract

A contract document is necessary between the B/G and procurement agent; it may be more or less formalized and detailed, depending on the amount and cost of the services required. When the services of a procurement agent are needed for a fairly small amount of procurement and the cost of the procurement services (as distinct from the cost of commodities the agent will procure) does not exceed \$10,000, implementation may be facilitated by the use of the short contract format in Appendix 4B coupled with a PIO/C. A copy of the completed, signed contract should be sent to the Office of Procurement immediately upon execution.

(3) The PIO/C as a Contract

The practice which has grown in recent years of relying on the PIO/C alone to serve as the contract between the B/G and the procurement agent is no longer acceptable. Use of either contract format above is intended to take the place of this former practice.

b. Contract Terms

(1) General

The more complex the procurement, the more important an adequate contract is to set forth the rights and responsibilities of both parties. Good contract terms can help assure smooth functioning of the work undertaken. To this end, some discussion of contract terms is included here. Also see the discussion of

clauses in the model contract, Appendix 4A.

(2) Scope of Work

Perhaps the most important purpose of the contract is to detail the work to be performed by the procurement agent. The contract should establish the extent of procurement to be handled by the agent (whether by time, project, or some other measure) and what types of services will be required. The specific elements that should be included in a scope of work are covered in Section 4D.

(3) Additional Contract Terms

Contract should contain appropriate terms such as: payment provisions, a change orders clause, an assignment clause, and disputes and appeals provisions. In addition, AID has certain provisions that must be included in the contract. The procurement agent must be informed of the AID regulations which it is to follow in procuring commodities. There are other required clauses, such as the Legal Effect clause, Taxes, and Worker's Compensation, which must be included in AID-financed contracts. The model contract in Appendix 4A contains sample provisions which are suitable for a procurement services contract. The required clauses are noted. Other clauses are suggested in order to provide for a commercially sound document and to lessen the potential for problems in administering the contract.

c. Subsidiary Documents

(1) Use of Subsidiary Documents

It is not usually possible or desirable to include all detailed instructions to a procurement agent - such as commodity specifications, delivery schedules and the like - in the contract itself. This type of information is generally better contained in a subsidiary document, appended to the contract if possible. When the details are not available at the time of contracting, as is likely in larger, more complicated projects, the contract should specify that the procurement agent will be informed of detailed commodity requirements through the subsequent issuance of one or more subsidiary documents signed by an authorized official of the B/G. Care should be taken to assure that subsidiary documents do not contradict the contract terms. Subsidiary documents may be used to make changes in the contract, but it is important that such changes be made in accordance with the provision in the contract which governs changes.

(2) Type of Document

The subsidiary documents that provide any subsequent detailed information may take any appropriate form. However, the use of the PIO/C (and the form AID 11-94 to provide document distribution shipping information) is encouraged. The PIO/C is useful because, in

addition to providing the agent with needed information, it establishes a record of the agreement between AID and the B/G on the items to be procured and the amount of funds reserved for that purpose, and it serves as a financing request. Therefore, it provides the USAID with a means of monitoring and controlling project implementation. It also has an established distribution pattern within AID and provides a basis for follow up and communication among various AID offices, the B/G and the procurement agent.

5. Type of Contract

Several types of contracts are suitable for procurement services. However, contracts involving compensation to the procurement agent based on a percentage of the actual FAS or FOB cost of commodities procured, which were formerly allowed, are no longer acceptable. Suitable types of contracts include:

a. Fixed Price

A contract specifying a fixed price to pay for the services is the preferred type. A fixed price gives the agent an incentive for efficiency and enable the B/G and AID to know with some certainty how much must be allocated to cover the services. When the requirements can be stated with reasonable accuracy at the time of contracting, i.e., when the list of commodities and required services is fairly well fixed, it should not be difficult to arrive at an appropriate fixed price. A change orders clause in the contract provides for adjustment of the fixed price should the work requirements change substantially. It may be appropriate in certain cases to pay for some services at actual cost rather than including them in the fixed price. For example, if the agent is responsible for having commodities inspected by an independent inspection company when the B/G requests, it would be appropriate to pay for the reasonable costs of inspection as incurred. It is appropriate in this case, because the agent does not have any idea at the time of contract negotiation how often the B/G will request such inspections. The contract should state that all the required services will be included in the contract price except for those items which are specifically mentioned as being reimbursable at cost.

b. Cost-Plus-Fixed-Fee

When the required services cannot be sufficiently defined to use a fixed price contract, a cost-plus-fixed fee contract is appropriate. The costs of performing the services (salaries, other direct costs, overhead, etc.) are paid to the agent at actual cost. A fixed fee, representing the agent's profit, is determined based on the estimated scope and difficulty of the work. This system has not been used by procurement agents to any extent and could be quite difficult to administer. Many potential procurement agents would not be familiar

with the requirements for keeping strict records of their costs. The agent would have to use an accounting system which follows generally accepted accounting principles, and system should be approved before the contract is signed to assure that the costs charged by the agent will be proper and accurate. Such a contract would have to include a limitation on costs that could be reimbursed so as not to exceed the money available to cover the services.

c. Incentive Fee

An incentive fee arrangement may be used with either fixed price or costs type contract. Under this arrangement, the amount of the agent's fee is increased if its performance results in cost or time savings to the project. The development and administration of incentive fee arrangements is complex and requires great care but may be worth considering when the potential for savings is great. The Office of Procurement should be contacted for assistance and further guidance.

d. Indefinite Quantity Contracts

Most contracts will be written to cover a specific scope of work, and the contract will be priced as a whole. However, there may be times when an indefinite quantity contract is desirable. In such cases, a method of pricing would be included in the basic contract, and each work order placed under it would be priced separately in accordance with the basic contract provisions. The contract should contain a guaranteed minimum fee for the procurement that the agent will be requested to undertake, which may be the first work order or PIO/C that is issued with the contract. An approximate maximum amount should also be specified in the contract.

e. Cost Plus Percentage of Cost

A solicitation or contract specifying a cost plus percentage of cost payment arrangement is NOT acceptable for AID financing of the procurement services or the commodities procured.

4D. Scope of Work

I. General

As was pointed out in the general discussion of the contract, one of the most important purposes of a contract is to delineate the scope of work to be performed by the procurement agent. This section covers in more detail the items to be included in a scope of work. Two general categories to be covered in the scope of work are the extent of the contract and the types of services required.

2. Duration of Contract

There are two basic ways in which the duration of the contract can be defined - time and quantity (e.g., project requirements). Most contracts will be defined or limited in terms of both time and quantity.

a. Time

(1) In some instances it may be difficult to establish a specific time for conclusion of a contract. The major portion of an agent's work may be accomplished upon shipment of the commodities, however, there is often reason to extend the contract beyond shipment. The agent's assistance may be necessary in correcting deficiencies or mistakes in shipment and in pursuing insurance claims. These considerations should be taken into account when establishing a contract completion date.

(2) There may be instances where the B/G wishes to hire a procurement agent not just for a particular project, but to undertake all of the B/G's AID-financed procurement for a certain amount of time, i.e., a requirements contract. A B/G may also wish to hire an agent under an indefinite quantity contract where the B/G could request procurement assistance as it desires during the time the contract is in effect. In these instances the length of the contract is quite important, and procurement should be initiated in sufficient time to allow their completion within the contract period.

b. Quantity

Contracts for procurement services are generally limited in terms of the quantity of procurement that will be required. While the exact commodities to be procured may not be known when the contract is prepared, the general categories will be known and an approximation of the cost will be available. The scope of work should specify whether the agent will be handling the procurement for just a portion of a project, for the whole project, or perhaps, for more than one project. The contract should also make clear that the agent will handle all procurement transactions within the scope of work regardless of the size of the transaction or the value of individual items. The reason for this is to avoid having the agent undertake only the most desirable or profitable procurement.

3. Services Required

The services that may be required of a procurement agent will differ to some extent depending on the circumstances. The following paragraphs discuss some of type of activities that a procurement agent might be requested to undertake. Careful consideration should be given to the types of work that might be required of an agent for a particular

project. An important thing to remember is that the required services should be well defined in the Request for Technical Proposals so that the offerors will have adequate knowledge upon which to base their offers. This is not meant to be an exhaustive list of services that an agent might perform, merely a discussion of some of the important categories of services. There may be other services required for some projects that are not covered here.

a. Commodity Requirements

In some cases a B/G may wish to hire a procurement agent at an early stage of the project to take on some of the work involved in defining the commodity requirements. This is the type of work that, in a capital project, a consulting engineer might be called upon to do. If there is no appropriate technical consultant for the project, the project implementation agency may decide that it would be beneficial to use a procurement agent. This type of procurement assistance will most likely be needed for a project which involves something such as a research facility, medical clinics, or schools. In such a case, the procurement agent chosen might well be a company with extensive experience in the particular field that could help in determining what kinds of equipment and supplies would be necessary for the particular facilities.

b. Specifications

A procurement agent may frequently be called upon to provide assistance in developing or modifying specifications. At the project development stage, the only specifications available are often catalogue descriptions or merely brand name identifications. When that is the case, the agent could be asked to develop more complete specifications which will allow more open competition and probably result in lower prices.

c. Purchasing

(1) Required Commodities

The major responsibility of the procurement agent is to purchase, for the account of the B/G, the commodities needed by the B/G. In order for the agent to do its job, it must be informed specifically what commodities are to be purchased and the quantity of each. In some cases, the specifics are not yet known at the time of contracting with the procurement agent. When that occurs, the agent should be given available information so it will at least have an idea of the types and amounts of commodities that will be required, and a system should be established at the time of contracting to provide the specific information when it becomes available. This is one situation where the PIO/C might be useful as a subdocument to the contract. The PIO/C can be issued pursuant to the contract to provide details on the commodities to be purchased.

(2) Procurement Rules

(a) Another aspect of purchasing that must be covered in the scope of work is the method to be used by the procurement agent in purchasing the commodities. It is AID policy that when the B/G hires a procurement agent to purchase commodities on its behalf for an AID-financed project, the agent must follow the same rules that the B/G would; it must procure in accordance with AID Handbook 11, Chapter 3, "Procurement of Equipment and Materials." The scope of work should inform the agent that Chapter 3 of Handbook 11 will apply to the commodity purchases.

(b) In addition to informing the agent of the applicability of Handbook 11, Chapter 3, the B/G is responsible for providing specific instructions to the agent whenever the rules of the Chapter depend on specific provisions in the project agreement. This means, for example, that the agent must be informed of the authorized geographic source for procurement of commodities and transportation. The B/G will also need to give instructions regarding the implementation of cargo preference requirements. To simplify requirements in small contracts, the B/G decides to instruct the procurement agent to arrange all shipments on U.S. flag vessels.

d. Followup

The purchasing process includes more than just placing orders, and waiting for the goods to be delivered. Part of the agent's obligation is to assure that the correct goods are delivered in a timely manner. The agent should follow up with the suppliers to assure that procurement moves smoothly. If minor problems arise, the agent may be able to provide some assistance. If a major complication arises that could delay or prevent delivery, the agent should be aware early, so that a timely decision can be made to terminate and reprocur when necessary.

e. Consolidating and Packing for Shipment

It is likely to be of considerable benefit to the B/G to have the procurement agent consolidate goods or arrange for consolidation by a freight forwarder. The agent can arrange for goods to be delivered to its, or the forwarder's, warehouse prior to shipment date. At the warehouse, any repackaging or export packing necessary can be accomplished by the agent or forwarder, and the goods from several suppliers can be consolidated for shipment. Through consolidation of shipments it may be possible to ship in containers, thus reducing the potential for loss through pilferage, poor stowage or handling, or misdelivery. Consolidation may also provide an opportunity for a more favorable freight rate.

f. Arranging Shipment

(1) One of the services that a procurement agent should provide is arranging for shipment of the goods to the cooperating country. A procurement agent may not itself book the freight, effect customs clearance, arrange for pier delivery, issue bills of lading, etc., unless it holds a valid license issued by the Federal Maritime Commission as foreign freight forwarder. However, because of the nature of its business, a procurement agent will generally have a close working relationship with a foreign freight forwarder that may be appointed to attend to all the forwarding details.

(2) A procurement agent is in a central position and may be able to provide reduced ocean transportation cost by negotiating a "project freight rate" or a favorable commodity rate with a carrier or the appropriate shipping conference. The procurement service agent may request its appointed freight forwarder to undertake such negotiations and/or may wish to consult with the Transportation Division of the Office of Procurement (MS/OP/TRANS) for guidance.

(3) Unless explicitly authorized in writing by AID in advance, the procurement agent and its forwarder shall not designate AID as "shipper" on any bill of lading or any other document.

(4) When necessary, the procurement agent may obtain waivers of the flag of registry shipping requirements to utilize ocean transport vessels other than those listed in the PSA contract or implementing PIO/C. Waiver requests should be prepared in accordance with AID Handbook 1B, Chapter 7B4 and submitted to MS/OP/TRANS (Telex no. 248766 COM UR or FAX No. 703/875-1119) for approval.

g. Inspection and Testing

Inspection and testing prior to shipment can help prevent the need for costly and time consuming corrections once the equipment reaches its destination. It can be quite beneficial to have the procurement agent undertake some inspections or arrange for independent inspections. When the procurement agent receives goods prior to shipment, it should be responsible for conducting a visual inspection of the material to check for breakage and to assure that the correct commodities, in the correct amounts, are delivered to the B/G. In some cases, it may be advantageous to provide for more complete inspection and testing of commodities. The agent can be made responsible for hiring an inspection company when such inspection is required. The contract with the procurement agent should carefully spell out what type of inspections will be required, to what extent the agent will be responsible for conducting or arranging the inspections, and whether such costs are included in the agent's fee or are extra.

h. Overseas Services

Procurement agents may be used to provide certain kinds of services in the host country itself or in third countries. For example, in the case of landlocked countries, assistance may be needed in an ocean port of discharge to handle customs clearance, temporary warehousing, and inland delivery. Usually, however, it will be costly and inefficient for the procurement agent to send someone overseas to provide these services; they almost always can be better handled by an entity established in the area where the services are needed. Procurement agents may have connections with such entities through which the services can be arranged. Normally, the B/G makes separate arrangements for such services and informs the procurement services agent. No matter how the services are to be arranged, the requirements should be specified in as much detail as possible, and the costs should be negotiated carefully.

i. Handling Claims

An additional responsibility that the procurement agent may assume is handling claims for lost or damaged cargo. The procurement service agent is generally in a better position to pursue claims because of its location and its background information on the transaction, although the B/G will have to provide the agent with the information concerning the loss or damage which is necessary to pursue the claim.

j. Status Reporting

One of the services that the agent should provide is regular reporting to the B/G on the status of the procurements which it is undertaking. The timing of commodity inputs can affect the implementation of other aspects of a project and it is important that the implementing agency of the B/G know when commodities are scheduled to arrive, in order to know how to proceed with other work under the project. Status reports provide a means of monitoring the progress of the procurement agent. A monthly report is most common, because it updates the status often enough to be useful without overburdening the agent with reporting requirements.

k. Training

(1) Training in procurement and logistics can be an important adjunct to a procurement services contract. By upgrading the skills of B/G officials, the B/G will be better able to manage future procurements itself. The B/G may wish to include a provision covering procurement training in a procurement services contract. Of course, arrangements for procurement training may also be made separately.

(2) When required, training in how to operate and maintain equipment being purchased should normally be included in the purchase contracts with equipment suppliers.

4. Miscellaneous Requirements

There are other things that should be addressed in the scope of work that cannot be strictly defined as required services. Some of these miscellaneous requirements are discussed below.

a. Economies in Procurement

One point to be covered concerns the way in which the services are performed. It should be stressed in the scope of work that the agent is expected to pursue economies in the procurement process - particularly through improved specifications and through soliciting and buying from producers or sources involving the smallest markups, but also through consolidating shipments, obtaining project freight rates, and other sound purchasing practices. It should be the goal of the agent to buy as economically as possible consistent with the requirements of the project. The agent should not rely solely on advertising in Department of Commerce or AID publications to obtain competition, but should assure that competition actually occurs by soliciting appropriate sources even though this may mean more work for the agent and is more time-consuming.

b. Approvals

In addition to the required AID approvals stipulated in Handbook 11, Chapter 3, there may be other approval requirements which AID had imposed on the B/G concerning which the agent must be informed, and frequently the B/G may desire some approval rights of its own. All of the necessary approvals should be spelled out in the contract. The agent should be given specific instructions as to whom it should contact and the procedures for obtaining for approvals.

c. Required Provisions in Commodity Contracts

Chapter 3 of Handbook 11 has limited number of clauses which are required by AID to be included in commodity contracts. There are many additional clauses suggested in the Chapter in order to provide for a commercially sound document, and there are others that are useful only in certain circumstances. The procurement agent will normally use its own judgement in determining what clauses, in addition to the required ones, should be included in a commodity supply contract. If the B/G wants to insure that certain clauses and provisions are included, it can set some guidelines or requirements in its contract with the agent. For example, the B/G may want to have the supplier's or manufacturer's warranty included for certain equipment, or an independent inspection and testing provision may be appropriate. The B/G may also want to insure that termination clauses are included in high value contracts.

d. Communications

Communications between the B/G and the procurement agent should be covered in some detail also. Much communication will probably be necessary concerning specifications, awards, approvals, arranging deliveries, following up on problems, etc. There should be a clear understanding of when commercial cable or telex communication is necessary and when international airmail or courier service will be acceptable. The use of AID channels is discouraged and should be allowed only when the USAID considers this to be essential.

e. Relationship of B/G, Agent and AID

As part of the contract, whether in the scope of work or elsewhere, the agent should be told which B/G personnel it will be dealing with and who will be authorized to issue purchase requests. In addition, there are likely to be approval and waiver requirements which involve AID. The B/G should specify the agent's responsibility for contacting AID. In spite of the potential contacts with AID and the requirements for approvals, the agent should be aware that the B/G, not AID, is its client, and that the agent's authority comes from the B/G.

Unless explicitly authorized in advance, the procurement agent and its forwarder shall not designate AID as a shipper on any bill of lading or any other document, nor shall they in any other way hold themselves out as legal "agents" of AID. Further, the procurement agent and its forwarder shall take such steps as are necessary to inform all parties with which they deal relating to its PSA contract, whether direct or host country, that they are not authorized to act as legal agents for AID and are not purporting to act in such capacity.

4E. Payment Provisions and Procedures

1. Introduction

The payment provisions of the contract must establish in clear and concrete terms:

a. What specific amounts are to be paid or precisely how the amounts are to be computed, for what categories of services and commodities.

b. What limitations, terms, and documentation requirements apply to the payment(s), including whether partial payments are authorized.

c. When payment can be claimed. (This is usually the occurrence of an event rather than a specific date. Payments must be effectively linked to the performance of the services and must not exceed the value of the services performed prior to the disbursement of funds, unless the contract specifically authorizes cash advances.)

d. What procedures and mechanisms are to be used for obtaining payments for the services and the commodities.

To keep these elements in order, to provide flexibility, and to prevent confusion, payment for: (1) the services of the procurement agent, and (2) the commodities and commodity-related services purchased by the procurement agent must be considered and provided for separately. The inclusion of a budget in the procurement services contract is recommended as this will usually clarify what is intended. Payment provisions are discussed in more detail below and are illustrated in the model contract in Appendix 4A.

2. Payment for Procurement Agent's Services

a. General

A direct L/Com issued by the USAID is the mechanism of payment for the agent's services under any type of procurement services contract, unless the Accounting and Division of the Office of Financial Management (FM/A/LC) agrees to issue the direct L/Com from AID/W. The amounts of individual payments, limitations and documentation requirements, and the timing of payments depend on the type of contract used and the negotiated agreement between the procurement agent and the B/G. Thus, wide variation is possible. In any case, the procurement agent is usually not willing to wait until the completion of all work before being paid at least a portion of the fixed price for its services.

b. Fixed-Price Contracts

The amounts paid can be based on a formula or payment schedule tied to stages in the procurement process for the various items purchased. The payment schedule should be designed to limit payments to the procurement agent so that, at no time, is the procurement agent paid faster than or in advance of the performance of services. Typically, a portion of the fixed price is paid at the time purchase orders or contracts are placed, a portion is paid at the time of shipment, and a smaller, final portion is paid when all work is completed. AID's cash management policies limit the situations in which advance payments, prior to and without reference to completion of any work, may be made. The model contract in Appendix 4A of Ch. 4 contains language based on

the above concept. It should be adapted to fit the needs of the particular situations. The documentation for payment is the procurement agent's invoice supported by copies of relevant purchase orders or contracts or suppliers' delivery documentation, as applicable, in addition to other documentation, including B/G certification that services have been performed, which is required under Chapter 1 of Handbook 11.

c. Cost-Plus-Fixed Fee Contracts

Payments are made in the amount of actual costs are based on the procurement agent's invoices supported by other documentation required under Handbook 11, Chapter 1, and are submitted periodically (not more often than monthly) for costs which have accrued over the period. Limitations for various categories of costs or line items (e.g., salaries, overhead, travel and per diem, warehousing, packaging, and inspection) are spelled out in a budget. The amounts for the fixed fee portion of the contract are paid on a fixed schedule or in a specified proportion to the salary and overhead costs. The fee payment schedule should be constructed so that an adequate portion of the fee is held back until the latter part of the performance period in order to provide an incentive to the procurement agent to satisfactorily complete all work.

d. Mechanism and Procedures for Payment

The mechanism used for paying the agent is a direct L/Com covering only the services which are the responsibility of the procurement agent. Under the direct L/Com mechanism, the USAID issues a direct L/Com to the procurement agent who submits the required documentation to the USAID when requesting payment. If the USAID does not have a controller and is unable to issue the L/Com itself, it may request FM/A/LC to do so. The L/Com is opened on the basis of a financing request, and a copy of the contract must be included with this request so that the L/Com will not conflict with the contract. For a very small contract, normally where the cost of the agent's services, the commodities, and the commodity-related services does not exceed \$10,000, the agent may be paid under the same L/Com as the commodities.

3. Payment for Commodities

a. General

Payment for commodities and commodity-related services is made at invoiced prices based on documentation specified in Chapter 3 of Handbook 11, including the Form AID 1450-4, and is made at the time of

shipment or, if goods are being consolidated for shipment, at the time of delivery to the agent. The usual mechanism for payment is a bank L/Com with subsidiary letters of credit issued to suppliers based on requests from the procurement agent who is designated the approved applicant. Exceptions are: (1) for small purchases for which individual letters of credit would be prohibitively expensive, the L/Com will provide for the agent to be reimbursed for the purchases it makes; (2) for large value purchases, where the bank charges would be very expensive relative to the function, consideration should be given to having AID issue a direct L/Com to the commodity supplier; and (3) for very small procurements, e.g., when the agent's fee and the commodity costs are only a few thousand dollars, USAID's may pay both the agent's fee and the commodity costs under a direct L/Com, provided the agent is required to present paid invoices from commodity suppliers before being reimbursed for commodity costs. The basis for AID's issuing any L/Coms is a financing request from the B/G. When a PIO/C is used as the implementing document, it may serve as the financing request provided sufficient details are included. Otherwise, a separate financing request is used. USAID's should minimize the number of financing requests and letters of commitment used under a single project so as to avoid burdensome and unnecessary paper work. Therefore, in circumstances where it is anticipated that a series of procurement instructions or PIO/C's will be issued to a procurement agent under a single contract, a single initial financing request should be prepared that will cover all of the anticipated procurement.

In order to monitor compliance with AID's requirements for publicizing procurement transactions, the financing request or PIO/C requesting the issuance of a letter of commitment should be processed only after the PSA has provided a copy of the required publication notices(s), or other evidence that the applicable publication requirements have been met, for the items to be financed under the L/COM.

b. Bank L/Com with Procurement Agent Designated Approved Applicant

(1) This procedure has not been extensively used in the past, but it is now the prescribed method because it relieves AID of some banking functions. It also assures suppliers of prompt payment and relieves them of concern about the credit worthiness of the procurement agent.

(2) Under this mechanism, FM/A/LC issues an L/Com to the bank designated by the B/G in the financing request. (Although designated by the B/G, the procurement agent's preference should be guiding). The procurement agent is named as the Approved Applicant and as such,

requests the bank to issue letters of credit to individual suppliers. Suppliers receive payment from the bank upon submission of required documentation. However, for small value items (normally transactions of \$2,500 or less for which a Supplier's Certificate (AID 1450-4) is not required), the bank L/Com will provide that the procurement agent can purchase small items with its own funds and be reimbursed every month or so as necessary upon presentation of paid invoices to the bank. In all cases, the bank is reimbursed by AID upon submission of the documentation with a voucher, Standard Form 1034, to AID/W-M/FM/PAFD's New York Certifying Office.

(3) FM/A/LC requires that both the PSA contract and the implementing PIO/C or Financing Request be provided prior to issuance of the bank L/Com. This is to insure that funds are available, the L/Com conforms to the AID Geographic Code and PACD, etc. These documents should be sent to MS/OP/COMS for distribution.

c. Direct L/Com's to Suppliers

(1) This mechanism should be used only for very large purchases from a single supplier because, used otherwise, it becomes an intolerable paperwork and coordination burden on AID to issue many small L/Coms and to process payments to many different suppliers. This would be appropriate for bulk commodities and large equipment purchases when the value is greater than \$500,000. It may be used in combination with other mechanisms when a procurement agent is responsible for one or more very large purchases among a myriad of smaller ones. If the B/G has issued a financing request covering all the commodity procurement to be undertaken by the agent, the agent can merely request FM/A/LC to issue a direct L/Com to the successful supplier. In this case, coordination with the procurement agent is required in order to control the total of outstanding commitments within the total amount covered by the financing request. If there is no overall financing request, the B/G must submit a financing request covering the specific transaction.

(2) Under a direct L/Com the supplier submits the required documentation to the specified AID disbursing office which arranges for payment to the supplier. In addition to the documentation called for under Chapter 3 of Handbook 11, the supplier should be required to send copies of its invoice and bill of lading covering the transaction to the procurement agent.

4. Special Considerations

a. Payment for Additional Services

(1) For procurement services contracts other than cost-plus-fixed fee type, it is important to differentiate between those services which are to be performed by the procurement agent and paid for as part of the agent's remuneration and those services which are merely to be arranged by the procurement agent. Charges for services arranged by the agent may be paid for over and above the fixed price. For example, if a procurement agent is to inspect commodities as part of the scope of work under a fixed price contract, it should be clear that it receives no additional compensation for performing the inspections. On the other hand, if the procurement agent is to arrange inspection by and independent firm whose charges are to be paid as an item over and above the fixed price paid to the procurement agent, then this should be specifically provided for. A limitation on the amount of such extra inspection charges should be specified in a contract budget. Similar considerations should be given to such services as warehousing and packaging.

b. Document Handling Fees

In the past, when procurement agents handled payments to suppliers under direct L/Com's from AID, they were generally paid a small document handling fee for each transaction. Since payments to suppliers will now be handled under bank L/Com's, there is no reason to provide for documentation fees for procurement agents. If a procurement agent does handle payments to suppliers, any such fees should be carefully controlled because they provide a disincentive to reduce paperwork and to consolidate requests for payments.

Appendix 4A

Guidance Notes for Use of the Model Contract for Procurement Services

This model contract is intended as guidance for preparing a contract document to record an agreement between a host country and a procurement agent. The model is written to cover a situation where procurement services are being hired for an entire project, but all detailed commodity requirements are not established at the time of contracting. Accordingly, PIO/C's or other purchase requests will be issued to the agent as commodity information becomes available.

The scope of work and the payment provisions in Article I and Article II of this contract are unique to procurement services contracts, but the general provisions in Article III are, for the most part, taken directly from Chapter 1 of Handbook 11, "Procurement of Professional and Technical Services". The sample clauses in each Article are discussed below.

CONTRACT CLAUSES

Introductory Section

This section identifies all the parties to the contract, indicates their willingness to enter into the contract, and covers the time of contract completion.

Definitions

Definitions are provided to enable to use of shortened references in the body of the contract without sacrificing clarity or understanding.

Article I - Scope of Work

A. Project and Commodity Identification

This clause identifies the project for which the Agent will be providing services and indicates the amount of procurement the agent will be asked to undertake. In this sample, the Agent's services are hired for procurement of all the required commodities for the project.

B. Required Procurement Services

The services that will be required of the procurement agent should be spelled out as accurately and in as much detail as possible. The agent should know what it will be expected to accomplish. The model provides some ideas for slightly different requirements that might be adapted for different types of commodities.

C. Commodity Requirements

The model clause eliminates the need to specify in the contract all of the commodity requirements. If a fixed price contract is desired, sufficient commodity information will have to be provided in order to develop a reasonable price. If the contract is to cover a specific amount of procurement which is known at the time of contracting, the information can be included in the contract. Commodity requirements should include the required delivery schedule. If not firm at time of contracting, it should be included with subsequent purchase requests.

D. Procurement Rules

The Agent must be told what procurement rules it will have to follow. An agent will normally be required to procure in accordance with Chapter 3 of Handbook 11, just as the B/G would be required to do. The Agent must also be informed of the authorized geographic source. The model state separate geographic source requirements for commodities, ocean transportation and marine insurance, and air transportation. The model assumes that the project is being financed by a grant to one of the relatively least developed countries since this illustrates the greatest variation in geographic source requirements.

E. Economies in Procurement

The purpose of this clause is to emphasize the Agent's duty to buy economically. If the Agency fails to exert best efforts to obtain the lowest available competitive price, it may be in breach of contract.

F. Cargo Preference

One of the responsibilities of the Buyer under the terms of its Project Agreement with AID is to assure that cargo preference requirements are met. The Buyer must in turn include a provision in the contract to inform the Agent how to handle cargo preference requirements.

G. Communications

In addition to coverage of general communication requirements, this clause describes the type of periodic status report that the Buyer wants to receive and how the reports should be forwarded. The need for expedient communication concerning procurements is stressed.

H. Contract Administration

This clause placed additional emphasis on the Agent's duty to monitor suppliers' performance and expedite deliveries.

I. Required Clauses in Commodity Contracts

The Agent is informed that all the required clauses in Chapter 3 of Handbook 11 must be included in contracts for commodities. Any additional clauses which the Buyer wishes the Agent to include in commodity contracts should be specified.

J. Insurance Claims

The model clause on required services specifies that the Agent will be responsible for handling insurance claims. This clause provides the necessary details on how the claims will be handled.

K. Approvals and Award Notices

Requirements for the Agent to obtain the Buyer's approval are detailed in this clause. The clause also states that the Buyer will be responsible for obtaining AID approval when necessary. If the Buyer wishes the Agent to submit any documents for approval directly to the USAID, it should be stated here. The Buyer may insert additional approval requirements if it so desires. For example, it might specify that awards for particular items or for amounts less than \$100,000 are to be approved by the Buyer.

This clause also covers AID's award notification requirements which are designed to insure that the Congress is informed of large awards and that the Office of Small Business is informed of formal competitive awards so that it can publish them in AID Bulletins. Since such notification is primarily the USAID's responsibility, the model clause suggests that the Agent inform the USAID of the award information. The USAID can then provide it to Small Business and Legislative Affairs. USAID's may request Buyers to modify the clause if they would rather have the Agent notify Small Business and Legislative Affairs. USAID's may request Buyers to modify the clause if they would rather have the Agent notify Small Business and Legislative Affairs directly.

L. Clearance Documentation

The Buyer will need certain documents to arrange for release of the cargo and to obtain customs clearance. Those documentation requirements should be listed in this clause. If the USAID needs copies of the clearance documentation, those requirements should also be set forth. The form AID 11-94 can be used to provide document distribution instructions, either as an attachment to the contract or with separate purchase requests.

Article II - Payment

A. Budget

Since there is a limited amount of money available under any agreement, the Agent needs to be informed of the budget allotments for the commodities and related services. If not handled through some other channel, the amount available to cover banking charges could also be set out in this budget. The budget in this model also provides information on the commodity categories and estimated number of line items and cost. This information delineates the scope of the procurement required by the contract. The requirement for the Agent to notify the Buyer when a certain percentage of funds has been obligated allows the Buyer the opportunity to reallocate funds if necessary.

B. Payment for the Agent's Services

1. Price

This section specifies the total price that the Agent will earn for performing the services called for in the Scope of Work. If there are any services for which the Agent will be reimbursed at cost, those items should be specified along with the amount available to pay for them. In the model contract, all additional services are to be paid under the bank letter of commitment covering commodities and related services, rather than having the Agent pay for them and be reimbursed. Payment to the Agent should not permit additional amounts for document handling or transaction charges.

2. Payment Schedule

The schedule for making payments for the services should be tied to objective indicators of work accomplished, such as the ordering and shipment of commodities. The sample clause includes a retention of 10% to be paid when all work is completed. While a retention is useful in large value contracts that involve complex procurement, it is probably unduly complex for a small value contract. The payment process can be simplified by providing for a lump sum payment upon shipment of complete line items. When the contract is relatively small or is not expected to extend over a long period of time, this would be particularly appropriate. AID's cash management policies limit the situations in which advance payments, prior to and without reference to completion of any work, may be made.

3. Documentation

The documentation requirements are those imposed by Handbook 11, Chapter 1, including the Contractor's Certificate, form AID 1440-3, plus the documents necessary to show partial performance of the Scope of Work. The certification requirements for partial payments and final payment under Handbook 11, Chapter 1, are to be included.

4. Mechanism for Payment

A direct Letter of Commitment issued by the USAID to the Agent, as covered in the sample clause, is the normal mechanism for payment. If the USAID does not have a Controller and FM/A/LC has agreed to issue the Letter of Commitment, the B/G should still submit its Financing Request through the USAID. It is not necessary to change the clause.

C. Payment for Commodities and Commodity-Related Services

This section provides information needed by the Agent to arrange for payment for commodities and commodity-related services as required in the Scope of Work.

1. Amount

This section indicates that the commodities and the commodity-related services which are not covered by the fixed price paid to the Agent will be paid at the price agreed to by the Agent and supplier of the commodity or the commodity-related service.

2. Payment Schedule

This section indicates at what point suppliers of commodities and commodity-related services should be authorized to claim payment. When the Agent will consolidate goods for shipment, suppliers are not responsible for delivery to the Agent. Unless there is a specific stipulation to the contrary in the request to issue a Letter of Commitment, such payment arrangements will be authorized under the bank Letter of Commitment issued by FM/A/LC.

3. Documentation

Documentation requirements for suppliers, including the mandatory "Supplier's Certificate and Agreement for Project Commodities" are indicated here by reference to Handbook 11, Chapter 3. Since specific requirements for commodity-related services are not stated in Handbook 11, Chapter 3, appropriate documentation for such services is set forth in the clause.

4. Mechanism for Payment

The payment mechanism is a single bank Letter of Commitment with subsidiary letters of credit. Unless specifically instructed to the contrary, FM/A/LC will include language in the Letter of Commitment allowing the Agent: (1) to issue letters of credit to freight forwarders to finance commodity-related services called for under the contract and (2) to pay suppliers directly for small dollar value purchases and be reimbursed by the bank upon submission of the supplier's documentation, including evidence that the supplier has been paid. If it is expected that there will be a procurement large enough to merit the use of a direct Letter of Commitment to the supplier, the clause should cover that mechanism also.

Article III - General Provisions

A. Legal Relationships

1. Relationship of Parties

The Agent's duty to act for the Buyer is spelled out, and the Agent is told from whom it should accept instructions. The names of all officials of the Buyer who are authorized to issue instructions to the Agent should be named. If their authorities differ, this provision should include the specific authorities for each.

2. Legal Effect of AID Approvals and Decision

This is a required clause and must be used verbatim.

B. Nationality of Procurement Agent

This is a required clause. Because of the complexity of the subject, any changes should be very carefully worked out. As the clause itself states, these rules apply only to the Agent and any subcontractors the Agent hires to provide services other than commodity-related services.

C. Source and Nationality of Commodities and Commodity-Related Services

This clause is not required but should be included to reemphasized the special requirements of source and nationality for all commodities and commodity-related services to be procured.

D. Air Travel and Transportation

This is a required clause and should be used verbatim; except that when Code 941 is the authorized source under an AID Loan, the references to "U.S. flag air carriers" should be changed to "U.S., Host Country, or Code 941 flag air carriers" and the definition of terms should be changed accordingly. If no air travel or transportation will be authorized, the clause need not be included.

E. Conflict of Interest

This clause should be included to put the Agent on notice of its duty not to be influenced by, or give the appearance of being influenced by, any interest other than those of its client, the Buyer.

F. Taxes

This is a required clause, but it may be adjusted as necessary to fit the circumstances in the host country.

G. Audit and Records

This is an optional clause, but it is a sound contracting procedure for the Buyer to have such audit rights. It has particular significance in a cost reimbursement type contract where the need to audit prices would arise. Regardless of rights retained here by the Buyer, AID derives certain audit rights from the form AID 1440-3, Contractor's Certificate, which is required to be submitted by the Agent in order to receive payment.

H. Change Orders

The inclusion of a clause providing for change orders allows adjustments in the contract provisions to be made quickly when necessary. The more formal requirements necessary for amending the contract can be completed after the change order is issued. In a fixed price contract for procurement services when the commodity requirements are not yet set, the possibility of change orders, and corresponding equitable adjustments, is great. This contract attempts to avoid the need for subsequent minor adjustments by specifying a likely range of line items within which no adjustment will be made. The range should not be too great, however, or the Buyer may pay too much, or the Agent may be undercompensated.

I. Amendments

The clause allows for amendments to the contract and spells out requirements for AID approval.

J. Assignments

This clause limits the Agent's right to assign its obligations under the contract without the written consent of the Buyer and AID. The Buyer should be aware of such changes. Reference to AID should be deleted if AID does not want to approve assignments. The clause may also include the right to approve any assignment of the Agent's right to receive payment. However, such assignments are generally of less concern to the Buyer and AID than an assignment of obligations.

K. Suspension of Work

L. Termination by the Buyer for Convenience and

M. Termination by the Buyer for Default

The clauses provide for suspension or termination of all or a portion of the contract. The clauses are important for good contract administration. The time periods specified are merely suggestions.

The Termination for Convenience clause goes into considerable detail on how termination and subsequent claims will be handled. The Agent will know in advance what its

obligations and rights to compensation will be in the event of a termination for convenience.

The Termination for Default clause is shorter than the one appearing in Chapter 1 of Handbook 11. The longer clause might be useful in a very sizeable or complex contract when a default termination could be quite complicated.

N. Force Majeure

This clause excuses an agent's inability to perform which results from events beyond the control of the Agent. The clause 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.

O. Report of Delays

This clause places responsibility on the Agent to notify the Buyer of known factors which may delay the work and possibly interfere with the contract schedule.

P. Disputes

This clause sets out a procedure for resolving disputes and provides for the creation of a written record. The clause suggests an informal settlement procedure before going to formal arbitration since the latter can be extremely time consuming and costly. While the sample clause suggests using the arbitration rules of the International Chamber of Commerce, other arbitration rules may be used as desired.

Q. Worker's Compensation

A clause on Worker's Compensation Insurance must be included in procurement services contracts. When an employee works outside of the United States, the insurance must be in the form of Defense Base Act insurance. For details on Worker's Compensation Insurance, see the discussion of the clause in Handbook 11, Chapter 1.

R. Language

This clause specifies the governing version of the contract if it is prepared in more than one language. English shall be the official language unless otherwise approved by AID in writing.

S. Law to Govern

This clause specifies the law which will govern interpretation of the contract terms. The governing law may be that of the United States, the host country, or a third country.

T. Notices

This clause states the name and/or title of the person to receive notices on behalf of

each party and provides the complete address. If telex or cable communication is expected, as is generally the case with procurement services contracts, those addresses should also be provided.

U. Signature

A clause must be included that contains the signatures of the duly authorized representatives of the parties to the contract. If AID's approval of the contract is required and has not been obtained prior to signature, the clause should state that the contract will not take effect until AID approval is obtained.

Model Contract for Procurement Services

This contract is entered into as of (date) by the (Name of Buying Agency) and (Name of Procurement Agent) having its principal place of business in (city & state). Services to be provided under this contract shall be performed between the date of the signing of this contract by both parties and (specify date), which is the terminal disbursement date under the Agreement No. (specify number) referenced below.

WHEREAS, the Government of (Host Country) has entered into an Agreement, (specify number), with the United States Agency for International Development; WHEREAS, the (Name of Buying Agency) desires to obtain the services required for the procurement and delivery of the commodities to be purchased under the Agreement to (port of delivery) as specified; and

WHERE, (Name of Procurement Agent) has stated that it is fully qualified and willing to provide such services;

NOW THEREFORE, the parties to this contract agree to the following:

Definitions

1. "AID" means the United States Agency for International Development.
2. "Buyer" means (Name of Host Country Buying Agency).
3. "Agent" means (Name of Procurement Agent).
4. "Supplier" means the firm or individual from which a commodity is procured by the Agent.
5. "Parties to this Contract" means the Buyer and the Agent.
6. "Host Country" means (Name of Country).
7. "Handbook 11" means AID Handbook 11, Country Contracting, as from time to time amended.

Article I - Scope of Work

A. The Buyer has undertaken a project, supported jointly by the Government of (Host Country) and AID, to increase agricultural productivity. The project is identified as (project name and number). The Agent is hereby contracted to perform the services indicated in this scope of work for all the commodities required under the project. The Agent is to handle all procurement transactions as requested, regardless of the size transaction or the value of individual items.

B. Required Procurement Services

1. The Agent is responsible for developing specifications for agricultural and construction equipment based on requirements furnished by the Buyer and for preparing nonrestrictive specifications based on catalogue descriptions of laboratory and office equipment and furnishing which will be provided by the Buyer. Specifications for communication equipment and the vehicles will be provided by the Buyer, and the Agent is responsible for reviewing the specifications to assure their adequacy.

2. The Agent is responsible for purchasing all items needed for the project and obtaining all necessary approvals.

3. The Agent is responsible for following up on orders placed to expedite suppliers' performance, and, if the supplier cannot deliver, to take necessary actions to repro cure.

4. The Agent is responsible for consolidating shipment to the extent possible, packaging for export when necessary, and arranging freight.

5. The Agent is responsible for arranging independent inspection of commodities as requested by the Buyer. The Agent is also responsible for conducting visual inspection of material being consolidated for shipment to assure that all items are accounted for and that there are no obvious discrepancies between commodities contracted for and those shipped.

6. The Agent is responsible for obtaining marine insurance in the name of the Buyer, and for the Buyer's account, on all cargoes on a warehouse to warehouse basis at 120% of the CIF value and for handling any insurance claims arising thereunder.

7. Any repro curement necessary, other than when the original supplier cannot deliver (see paragraph 3 above), will be considered to be additional line items and will be handled in accordance with the provisions in the Change Orders clause.

8. The Agent is responsible for arranging the issuance of letters of credit to suppliers of commodities or commodity-related services under the terms of the bank Letter of Commitment that will be issued by AID to finance the procurement under this contract.

9. In all the work undertaken by the Agent under this Scope of Work, the Agent shall follow appropriate AID Regulations, as specified, including the policies on restricted and prohibited commodities and the eligibility criteria and special provisions for certain commodities set forth in the AID Commodity Eligibility Listing (App. B of AID Handbook 15), as from time to time amended. The Buyer will furnish copies of all applicable regulations.

C. Commodity Requirements

The categories of commodities that will be purchased include agricultural equipment, vehicles, construction equipment, laboratory equipment, office equipment, office and laboratory furnishings, and communication equipment. The expected number of line items and the estimated cost of each category is provided in the Budget clause in Article II - Payment. Sufficient commodity details are not known at this time to provide the Agent with exact information on what it will be asked to procure. From time to time the official designated in the Legal Relationships clause of this contract will send purchase requests to the Agent containing available commodity details and requesting the Agent to proceed with required procurement services. The request will include essential procurement information such as the amount required and estimated cost, shipping instructions, including whether air transportation is authorized, required delivery dates, and whether independent inspection will be required.

D. Procurement Rules

1. For all procurements of commodities and of commodity-related services under the Scope of Work of this contract, the Agent shall follow the rules set forth in Section 2 of Chapter 3 of AID Handbook 11, as from time to time amended, and shall refer to the guidelines in that Chapter. In case of a conflict between the rules in Chapter 3 and this contract, Chapter 3 shall govern unless specific written waivers have been furnished to the agent.

2. Except as otherwise authorized by AID in writing, the authorized sources for procurement are as follows:

(a) For commodities except vehicles, the authorized source is AID Geographic Code 941, as from time to time amended;

(b) For vehicles (restricted commodity under section 2.5 of Chapter 3) the authorized source is AID Geographic Code 000;

(c) For ocean transportation and marine insurance, the authorized source is AID Geographic Code 941, as from time to time amended, and (Host Country); and

(d) For air transportation, the authorized source is AID Geographic code 000.

E. Economies in Procurement

1. The Agent is expected to pursue economies in the procurement process that may be obtained through improved specifications, consolidated shipments, project freight rates, soliciting from producers or sources involving the smallest markups, and other sound purchasing practices.

2. The Agent will seek offers/bids from a reasonable number of the most appropriate types of suppliers, e.g., manufactures , distributors, wholesalers, retailers, in order to obtain the lowest available competitive price. Where appropriate, the Agent will solicit, on behalf of the Buyer, discounts, rebates, or other credits from the supplier or manufacturer of a commodity, the carrier and the insurer and will assure that all such credits are reflected in the supplier's invoice to the Buyer; provided, however, that the Agent shall retain any freight or marine insurance brokerage commissions or fees which it earns and which by law, regulation, or contractual obligation may not be rebated to the Buyer. All such fees or commission shall be disclosed to the Buyer and AID and may not exceed the amount which is customary in the trade. Brokerage commissions in connection with ocean freight services may not exceed 2 1/2 percent of the ocean freight charge.

3. All procurement transactions shall be conducted in a manner to provide open competition to the maximum extent practical in order to assure the most advantageous prices. Although the Agent may seek information from suppliers in carrying out its contractual responsibilities, the Agent will assure that no supplier receives an unfair advantages.

F. Cargo Preference

1. The Agent is responsible for assuring that the U.S. Government's cargo preference requirements are met for the goods purchased by the Agent in accordance with this contract.

2. For the AID-financed cargo which it purchases in accordance with this contract, the Agent shall ensure that, regardless of the authorized source for procurement, at least 50 percent of the gross tonnage which is shipped on ocean vessels is transported to the Host Country 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 United States. Additionally, at least 50 percent of gross freight revenues generated by dry cargo liner services must be generated by U.S. flag commercial vessels.

3. If U.S. flag commercial vessels are not available, the Agent should contact the Office of Commodity Management, Transportation Support Division, of AID/Washington to request a determination of nonavailability. For more information, see Section 2.7 of Handbook II, Chapter 3.

G. Communications

1. Reports

Each month after receipt of the first purchase request the Agent will submit to the Buyer a status report which indicates, at a minimum, what procurements are currently being advertised or solicited, what commodities have been ordered and their FAS or CIF prices, names of the suppliers and, as available, expected shipping dates, actual shipping dates, and names of vessels.

2. General Communication

The Agent is expected to communicate expeditiously with the Buyer as the need arises concerning procurements under this contract. Contract should be by commercial cable or telex, except that international airmail is acceptable when time is not constrained.

3. Cost

The costs for all communications by the Agent are subsumed in the contract price.

H. Contract Administration

The agent will maintain a system of contract administration to assure supplier's conformance with terms, conditions, and specifications of contracts or purchase orders to assure adequate and prompt deliveries.

I. Required Clauses in Commodity Contracts

In all contracts and purchase orders with suppliers, the Agent will include the clauses required by Section 2.13 of Handbook II, Chapter 3, including the requirement to submit a Supplier's Certificate for Project Commodities, form AID 1450-4, except that the form is not required from commodity suppliers or carriers for transactions not exceeding \$2,500 or from insurers when the premium does not exceed \$50. In addition to those clauses and other provisions necessary to define a sound and complete agreement, the Agent will include the following:

1. A provision specifying that the commodities (including raw material, components, intermediate assemblies and end products) shall be subject to inspection and test by or on behalf of the Buyer and at the expense of the Buyer prior to shipment.

2. a. In the contracts for vehicles, agricultural and construction equipment, and communication equipment, a clause requiring the supplier to provide a warranty which shall, at a minimum, protect the Buyer from any loss due to defective workmanship, material and parts for twelve months after initial delivery to the port of entry, provided that removal from the port of entry takes place not later than two months after discharge from the vessel. The Buyer shall give the supplier prompt notice of any claims under such warranty, and if the supplier fails to remedy defects within a reasonable time, the Buyer shall have the right to take such remedial action as may be necessary and to claim the reasonable cost thereof from the supplier.

b. In all other contracts, a clause requiring a standard manufacturer's warranty.

3. A provision covering termination for default.

J. Insurance Claims

As requested by the Buyer the Agent will handle insurance claims which arise as a result of the shipment of commodities purchased pursuant to this contract. In the event of such a claim, the Buyer will forward to the Agent a copy of the Bill of Lading, the original insurance certificate and a surveyor's report detailing the damage. The Agent will take such steps as may be necessary to collect the claim. All claims honored by the insurance company shall be payable to the Buyer, and proceeds realized shall be utilized for repair or replacement of the lost, destroyed or damaged commodities in accordance with AID requirements. The Agent shall submit to the Buyer a statement of claims honored by the insurance company and received by the Agent.

K. Approvals and Award Notices

1. For all procurements exceeding \$100,000 in value, the Agent will cable the Buyer an evaluation of all responsive/responsible bids or offers, including recommendation for awards, within 15 days after the bid opening or date for receipt of offers. The Agent will also send by registered airmail to the Buyer a copy of each bid or offer received, including any technical literature.

2. The buyer will respond by cable either approving or disapproving the recommendation not later than 20 days from receipt of information. The Buyer will be responsible for obtaining AID approval of contracts valued over \$100,000.

*Required Clause

3. Whenever a contract is awarded under formal competitive procedures and whenever any contract or amendment worth \$100,000 or more is awarded, the Agent is responsible for providing the following information to the USAID immediately upon making the award:

- a. The awardee's name and address and, if known, the place or places of U.S. production;
- b. The awardee's contract name and telephone number;
- c. The name of the Host Government Buyer;
- d. Award number;
- e. Project number and title;
- f. Time of the award;
- g. The total price of the award;
- h. A brief description of the commodities to be provided.

L. Clearance Documentation

The Agent will provide to the Buyer by registered airmail, or as otherwise stipulated in a purchase request, the following import clearance documentation as soon as shipment is made:

- (i) 1 original and 2 copies of clean on board Bill of Lading or Airway bill;
- (ii) 1 copy of supplier's invoice;
- (iii) 2 copies of packing list;
- (iv) 1 copy of original insurance certificate;
- (v) 1 copy of inspection certificate when applicable.

Article II - Payment

A. Budget

1. Availability of Funds

The funds available for the services covered by this contract and for the procurement and delivery of the commodities to be accomplished by the Agent in accordance with this contract total \$6,295,000. Allocations for specific categories of goods and services are established below:

FAS Port of Export Commodity Costs	<u>\$4,695,000</u>
Ocean Transportation	<u>\$1,300,000</u>
Independent Inspection, Warehousing Charges, and Export Packaging Costs	<u>\$ 80,000</u>
Procurement Agent's Services	<u>\$ 220,000</u>
Total	<u>\$6,295,000</u>

2. Commodity Costs

Following is a list of types of commodities to be purchased by the Agent, the number of line items in each category, and the estimated cost.

<u>Commodity Category</u>	<u>No. of Line Items</u>	<u>Estimated Cost</u>
Agricultural equipment	ten (10), plus/minus one (1)	\$680,000 FAS
Vehicles	four (4)	\$275,000 FAS
Construction equipment	five (5)	\$3,100,000 FAS
Laboratory equipment	one hundred, and twenty five (125), plus/ minus twelve (12)	\$325,000 FAS
Office equipment	five (5), plus/minus two (2)	\$70,000 FAS

Office and laboratory	twenty five (25), plus/ minus three (3)	\$160,000 FAS
Communication equipment	three (3)	\$85,000 FAS
	MAXIMUM TOTAL	\$4,695,000 FAS

The Agent will control commitments to suppliers of commodities so as not to exceed the total of \$4,695,000. Commitments for individual categories may be exceeded by up to 20% of the allocation for that category provided the total amount is not exceeded.

3. Limitation of Funds

The Agent shall notify the Buyer when:

- (a) 80 percent of the total estimated cost of commodities has been obligated in Letters of Credit;
- (b) 80 percent of the total estimated cost of ocean transportation has been obligated in Letters of Credit; and
- (c) 90 percent of the total estimated costs for inspection, warehousing and export packaging have been obligated in Letters of Credit.

B. Payment for the Agent's Services

1. Price

The Buyer will pay the Agent the fixed price of \$220,000 as full remuneration for performing the services called for in the Scope of Work, except that the cost of independent inspections required by the Buyer and necessary warehousing and export packaging costs will be paid according to the provisions in the clause for Commodities and Commodity-Related Services.

The Agent's price is apportioned for each of the commodity categories specified above as follows:

Agricultural Equipment	\$75,000
Vehicles	\$15,000
Construction Equipment	\$70,000
Laboratory Equipment	\$40,000
Office Equipment	\$ 4,500
Office & Laboratory Furnishings	\$12,000
Communication Equipment	\$ 3,500

TOTAL \$220,000

2. Payment Schedule

The Agent will earn partial payments according to the following schedule:

- a. 40% of the fixed amount per category will be earned as orders or contracts for commodities are placed. The portion of the 40% payable for individual orders will be calculated as the ratio which the number of line items ordered per category bears to the total number of line items in the particular category to be purchased under the contract.
- b. 50% of the fixed amount per category will be earned as commodities are shipped to the Host Country. The portion of the 50% payable for individual shipments will be calculated as the ratio which the number of line items completely shipped per category bears to the total number of line items in the particular category to be purchased under the contract.
- c. 10% of the total fixed amount will be earned when the Agent has satisfactorily completed all work and all commodities have arrived at destination. This final payment will be paid as a lump sum and will not be paid in portions as individual line items arrive.
- d. Invoices for payments earned will be submitted not more often than monthly.

3. Documentation

Requests for payment will be supported by the following documentation:

- a. Voucher SF 1034 in original and three copies.
- b. One copy of the Agent's invoice with calculations of partial payments earned according to the above schedule.
- c. Original and one copy of the Contractor's Certificate and Agreement with AID, form AID 1440-3.
- d. For partial payments, one of the following:
 - (1) For the 40% payment identified in 2a above, one copy of each relevant purchase order or contract for the commodities;
 - (2) For the 50% payment identified in 2b above, one copy of the relevant bill of lading or air waybill for the commodities. A dock or warehouse receipt is not an acceptable document for receiving this portion of payment.

The Agent shall submit the request for payment and the appropriate documentation to the official of the Buyer specified in the Legal Relationships clause. The official shall provide a "Certification of Performance" or "Certification of Nonperformance of Specific Items" within 30 days after receipt of the request. If neither certification is provided within 30 days, the Agent shall be paid according to the request. If the Buyer provides a certification of nonperformance with respect to specific items, payment with respect to such items shall be withheld.

4. Mechanism for Payment

The Buyer will request that AID issue a direct Letter of Commitment to the Agent. The Letter of Commitment will provide that the Agent will be paid directly by U.S. Government check upon submission of required documentation to the AID office specified in the Letter of Commitment. Normally, this will be the USAID Controller.

C. Payment for Commodities and Commodity-Related Services

1. Amount

The Buyer will pay for commodities and commodity-related services purchased in accordance with this contract at the price agreed to in the purchase order or contract between the Agent and the supplier. The total amount available for commodities is indicated in the Budget.

2. Payment Schedule

a. Suppliers of commodities and freight will be paid on the basis of shipment of the commodities; except that when the Agent consolidates commodities for shipment, the commodity supplier may be paid on the basis of delivery into custody of the Agent.

b. Suppliers of other commodity-related services will be paid on the basis of delivery of services.

3. Documentation

a. Requests for payment for commodities and freight will be supported by the appropriate documentation as covered in Handbook II, Chapter 3, Section 3.10.3.

b. Requests for payment of other commodity-related services which are not covered by the commodity or freight supplier's request for payment will be supported by the following:

- (1) One copy of the invoice for the services.

(2) One copy of the following, as appropriate:

- (i) the inspection certificate;
- (ii) the marine insurance policy;
- (iii) the warehouse receipt.

(3) An original and one copy of the form "Supplier's Certificate and Agreement with AID for Project Commodities", AID 1450-4. For inspection, warehousing and packaging services, the freight forwarder may sign the form if it is responsible for compliance with the terms of the Certificate and Agreement.

4. Mechanism for Payment

The Buyer will request that FM/A/LC issue a bank letter of commitment to (Bank named by Agent) designating the Agent as approved applicant. The Agent will request that the bank issue letters of credit to suppliers who will submit the required documentation to the bank. The bank will pay the suppliers and be reimbursed by AID.

Article III - General Provisions

A. Legal Relationships

1. Relationship of Parties

a. The Agent shall perform the services under this contract for the benefit of the Buyer.

b. The official of the Buyer who has authority to issue purchase requests, PIO/Cs, change orders, etc. is (name & title). He/She shall also provide the "Buyer's Certificate of Performance required in accordance with the payment provisions of this contract.

c. Unless explicitly authorized by AID in advance in writing, the procurement agent shall in no way hold themselves out as legal agents of AID, and shall take such steps as are necessary to inform all parties with whom they deal relating to the PSA contract, that they are not purporting to act in such capacity.

*2. Legal Effect of AID Approvals and Decisions

a. The parties hereto understand that the contract has reserved to AID 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/purchase orders, bid documents, drawings, or other documents related to this contract and the project of which it is a part. The parties hereto further understand and agree that AID, 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 AID to exercise or refrain from exercising these approval rights shall be made as a financing entity in the course of financing this project and shall not be construed as making AID a party to the contract. The parties hereto understand and agree that AID may, from time to time, exercise the foregoing approval rights, or discuss the matters related to these rights and the project of which this contract is a part, with the parties jointly or separately, without thereby incurring any responsibility or liability to the parties jointly or to any of them.

b. Any approval (or failure to disapprove) by AID shall not bar the Buyer or AID from asserting any right, or relieve the Agent of any liability which the Agent may otherwise have to the Buyer or AID.

*B. Nationality of Procurement Agent

1. Eligible Nationality

The eligible nationality for the Agent and any subcontractor providing services under this contract other than commodity-related services shall be those countries listed in AID Geographic Code 941 in effect on the date of this contract. Such Agent or subcontractor must

fit one of the following categories to be eligible to receive AID financing:

*Required Clause

a. Privately Owned Commercial Suppliers

An individual or a privately owned commercial firm is eligible for financing by AID as a subcontractor providing services only if the criteria in subparagraphs (1), (2), or (3) below are met and, in the case of the categories described in (2) and (3), the certification requirements in subparagraph (4) are met.

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

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

(i) The corporation or partnership is more than 50% beneficially owned by individuals who are citizens of a country or area included in the authorized geographic code or non-U.S. citizens lawfully admitted for permanent residence in the United States. In the case of corporations, "more than 50% beneficially owned" means that more than 50% of each category of partnership interest (e.g., general, limited) is owned by such individuals. (With respect to stock or interest held by companies, funds or institutions, the ultimate beneficial ownership by individuals is controlling.)

(ii) The corporation or partnership:

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

(b) has performed within the United States similar administrative and technical, professional, or construction services under a contract or contracts for services and derived revenue therefrom in each of the 3 years prior to the date described in the preceding paragraph, and

(c) employs United States citizens and non-U.S. citizens lawfully admitted for permanent residence in the U.S. in more than half its permanent full-time positions in the United States, and

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

(3) The supplier is a joint venture or unincorporated association consisting entirely of individuals, corporations, partnerships, or non-profit organizations which are eligible under a(1) or a(2) above, or b. below.

(4) A duly authorized officer of a firm or non-profit organization shall certify that the participating firm or non-profit organization meets either the requirements of subparagraphs a(2)(i) or (ii), or b. In the case of corporations, the certifying officer shall be the corporate secretary. With respect to the requirements of subparagraph a(2)(i), the certifying officer may presume citizenship on the basis of the stockholder's record address, provided the certifying officer certifies, regarding any stockholder (including any corporate fund or institutional stockholder) whose holdings are material to the corporation's eligibility, that the certifying officer knows of no fact which might rebut that presumption.

b. Nonprofit Organizations

Nonprofit organizations, such as educational institutions, foundations, and associations, are eligible for financing by AID as contractors or subcontractors for services if they meet all of the criteria listed in subparagraphs (1), (2) and (3) below, and the certification requirement in a(4) above is met.

Any such institution must:

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

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

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

c. Government-Owned Organizations

Firms operated as commercial companies or other organizations (including nonprofit organizations other than public educational institutions) which are wholly or partially owned by governments or agencies thereof are not eligible for financing by AID as subcontractors, except if their eligibility has been established by a waiver approved by AID.

d. Joint Ventures

A joint venture or unincorporated association is eligible only if each of its

members is eligible in accordance with 2a, b, or c above.

2. Ineligible Suppliers of Services

Citizens or firms of any country not included in AID Geographic Code 935 are ineligible as suppliers, contractors, subcontractors, or agents in connection with AID-financed contracts for services. However, non-U.S. citizens lawfully admitted for permanent residence in the United States are eligible.

3. Nationality of Employees under Contracts and Subcontracts for Services

The nationality policy of paragraph 2 above does not apply to the employees of contractors or subcontractors, but all contractor and subcontractor employees engaged in providing services under AID-financed contracts must be citizens of countries included in AID Geographic Code 935 or non-U.S. citizens lawfully admitted for permanent residence in the United States.

C. Source and Nationality of Commodities and Commodity-Related Services

1. Commodities

Commodities must meet the source, origin, and componentry requirements in Handbook 11, Chapter 3, Sections 2.6.1. and 2.6.2. Suppliers of commodities must meet the nationality requirements in Handbook II, Chapter 3, Section 2.6.3. If any change in the eligible source noted in Article I has been authorized by AID, it will be noted on the relevant purchase request or the Agent will receive a copy of the waiver authorized by AID.

2. Commodity-Related Services

Commodity-related services must meet the requirements in Handbook II, Chapter 3, Section 2.6.4. If any change in the eligible source noted in Article I has been authorized by AID, it will be noted on the relevant purchase request or the Agent will receive a copy of the Waiver authorized by AID.

*D. Air Travel and Transportation

1. The Agent shall utilize U.S. flag air 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:

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

(1) Service by a non-U.S. flag air carrier can be paid for in excess foreign currency, or

*Required clause whenever air travel and transportation may be authorized. This version is for use when procurement is funded by grants or Code 000 loans. For Code 941 loans, appropriate modifications must be made. See guidance notes.

(2) Service by a non-U.S. flag air carrier is preferred by the Agent, Supplier or traveler needing air transportation, or

(3) Service by a non-U.S. flag air carrier is more convenient for the Agent, Supplier or traveler needing air transportation.

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

(1) When U.S. flag air carriers offer only first class service, and less than first class service is available from non-U.S. flag air carriers, or

(2) When the traveler, while en route, has to wait 6 hours or more to transfer to a U.S. flag air carrier to proceed to the intended destination, or

(3) When any flight by a U.S. flag air carrier is interrupted by a stop anticipated to be 6 hours or more for refueling, reloading, repairs, etc., and no other flight by a U.S. flag air carrier is available during the 6 hour period, or

(4) When by itself or in combination with other U.S. flag or non-U.S. flag air carriers (if U.S. flag air carriers are unavailable) it takes 12 or more hours longer from the origin airport to the destination airport to accomplish the mission than would service by a non-U.S. flag air carrier or carriers.

(5) When the elapsed travel time on a scheduled flight from origin to destination airports by non-U.S. flag air carrier(s) is 3 hours or less, and service by U.S. flag air carrier(s) would involve twice such scheduled travel time.

(c) 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 air waybill for transportation to 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) of 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.

2. In the event that the Agent or 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 AIR CARRIERS

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

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

(a) "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 thereof or between two places both of which are outside the United States.

(b) "U.S. flag air carrier" means one of a class of air carriers holding a certificate of public convenience and necessity issued by the Civil Aeronautics Board, approved by the President, authorizing operations between the United States and/or its territories and one or more foreign countries.

E. Conflict of Interest

No employees, officers or representatives of the Agent shall participate in the selection, award or administration of a contract where, to their knowledge, they or any immediate family member or partner have a financial or future employment interest. The Agent's officers, employees, and representatives shall neither solicit nor accept gratuities, favors or anything of monetary value from suppliers or potential suppliers, carriers or insurers, nor shall they engage in any activity which is or gives the appearance of being conflict of interest.

*F. Taxes

All commodities and services shall be exempt from all taxes, fees, levies, customs, or impositions imposed under laws in effect in the host country, or the Buyer shall make payment for or reimbursement for such taxes to the extent specified in the Agreement signed between the government of the host country and AID.

G. Audit and Records

1. The Agent 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.

2. The Agent 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" 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.

3. All records shall be subject to inspection and audit by the Buyer (or its authorized agents) at all reasonable times. The Agent shall afford the Buyer 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 provisions of this contract.

*Required Clause

4. The Agent further agrees to include in all its subcontracts hereunder a provision that the subcontractor agrees that the Buyer 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.

H. Change Orders

The Buyer may at any time by written order, make changes within the scope of work of this contract. If any change causes an increase or decrease in the cost of, or the time required for, performance of any part of the work under the contract, an equitable adjustment shall be made in the contract price, completion date, or both, and in any other affected provisions; except that there shall be no adjustment in price for changes in the number of line items unless the change is more than the range specified in the scope of work for the specific type of commodity. The contract shall be amended to reflect the change. Any disagreement concerning changes shall be settled in accordance with the provisions of the "Disputes" clause of this contract.

I. Amendments

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

J. Assignments

The Agent may not assign its obligation to perform under the contract except with the prior written consent of both the Buyer and AID.

K. Suspension of Work

1. The Buyer may, at any time, by written order to the Agent (Suspension of Work Order), require the Agent to stop all, of any part, of the work required by the contract for a period of up to 90 days from the specified effective date.

2. Upon receipt of such an order, the Agent shall immediately comply with its terms and take all reasonable steps to minimize the incurrence of costs allocable to the work covered by the order.

3. Within the period of the Suspension of Work Order, the Buyer shall either:

- (a) Cancel the Suspension of Work Order, or
- (b) Terminate the work covered by such Order as provided in the termination clause of the contract.

4. If the Suspension of Work Order is cancelled or the Order expires, the Agent shall resume work. An equitable adjustment shall be made as necessary in the time schedule, the budget, or a combination thereof, or any other provisions of the contract that may be affected, and the contract shall be amended accordingly if the Contractor 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" clause of the contract.

L. Termination by the Buyer for Convenience

1. The performance of work under the contract may be terminated by the Buyer in whole, or from time to time in part, in accordance with this clause whenever the Buyer shall determine that such termination is in the best interest of the Buyer.

2. Termination shall be effected by Notice of Termination to the Agent, specifying that termination is for the convenience of the Buyer, the extent to which performance of work under the contract is terminated, and the date upon which such termination becomes effective.

3. After receipt of a Notice of Termination and except as otherwise directed by the Buyer, the Agent shall:

(a) 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;

(b) Terminate all orders and subcontracts to the extent that they relate to the performance of work terminated by the Notice of Termination;

(c) Assign to the Buyer as it may direct, all of the right, title, and interest of the Agent under the orders and subcontracts so terminated, in which case the Buyer, shall have the right to settle or pay any claims arising out of the termination of such orders and subcontracts;

(d) With the approval or ratification of the Buyer, to the extent the Buyer 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;

(e) Transfer title to the Buyer and deliver, as directed by the Buyer, the completed or partially completed specifications, information, and other property which would be required to be furnished to the Buyer under the contract, except that this requirement shall not apply to goods for which the

Agent has not been reimbursed.

(f) Complete performance of the part of the work which has not been terminated by the Notice of Termination; and

(g) Take such action as may be necessary for the protection of the property related to this contract which is in the possession of the Agent and to which the Buyer has title.

4. The Agent shall submit to the Buyer its written claim promptly but not later than three months from the effective date of termination, except as the Buyer may agree in writing.

5. The Agent and the Buyer 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 Agent by reason of the termination of work. The contract shall be amended accordingly, and the Agent shall be paid the agreed amount.

6. If the Agent and the Buyer fail to agree to the amounts to be paid to the Agent pursuant to this clause, the Buyer shall pay the amount, if any, it determines to be due the Agent considering:

(a) Costs and expenses reimbursable in accordance with this contract, not previously paid, for the performance of this contract prior to the effective date of the Notice of Termination, and such costs as may continue for a reasonable time thereafter with approval of or as directed by the Contracting Agency.

(b) The cost incurred by the Agent in settling and paying claims arising out of the termination of work under subcontracts or orders which are properly chargeable to the terminated portion of the contract;

(c) The reasonable costs of the preparation of settlement claims and supporting data with respect to the terminated portion of the contract and for the termination and settlement of subcontracts, together with reasonable costs incurred in connection with the protection or disposition of termination inventory;

(d) The percentage of the total fee proportionate to the percentage of the work completed prior to termination related to the estimated cost of the contract. Subcontractor effort included in subcontractor's termination claims, and fee payments previously made are not included.

7. In deciding the amount due the Agent, all unliquidated advance or other payments made to the Agent applicable to the terminated portion of this contract; all settled claims which the Buyer may have against the Agent in connection with this contract; and the agreed price for, or the proceeds of sale of property acquired by the Agent or sold and not otherwise recovered

by or credited to the Buyer, shall be deducted.

8. If the total of payments in connection with the terminated portion of the contract exceeds the amount determined to be due under this clause, such excess shall be payable by the Agent to the Buyer upon demand, together with interest computed at the rate of ___ percent per annum, for the period from the date such excess payment was received by the Agent to the date on which such excess is repaid to the Buyer.

9. Any disagreement regarding termination amounts or procedures shall be settled under the clause of this contract entitled "Disputes".

M. Termination by the Buyer for Default

1. The Buyer, subject to the provisions of this contract, by written notice of default to the Agent sent by registered mail, may terminate the whole or any part of this contract in one of the following circumstances:

(a) If the Agent fails to perform the work called for by this contract within the period specified, or

(b) If the Agent fails to perform any of the other provisions of this contract, or so fails to prosecute the work 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 (10) days (or such other period as the Buyer may authorize in writing) after receipt of notice from the Buyer specifying such failure.

2. In the written Notice of Termination, the Buyer will specify what steps the Agent should take concerning ongoing procurements under the terminated portion of the contract.

3. The Agent shall complete performance of the part of the work which has not been terminated by the Notice of Termination, and take such action as may be necessary for the protection of the property related to this contract which is in the possession of the Agent and to which the Buyer has title.

4. In the event the Buyer terminates this contract in whole or in part as provided in paragraph 1 of this clause, the Buyer may procure upon such terms and in such manner as the Buyer may deem appropriate, work similar to the work so terminated and the Agent shall be liable to the Buyer for any excess costs for similar work. However, the Agent shall continue performance of this contract to the extent not terminated under the provisions of this clause.

N. Force Majeure

1. The term "Force Majeure" means any cause beyond the control of the

Agent, which the Agent could not foresee and/or reasonably provide against and which prevents the Agent from wholly or partly performing any duties under the contract. Force majeure includes, but is not limited to, any of the following:

- War, revolution, insurrection or hostilities (whether declared or not);
- Riot, civil commotion or civil uprising (other than among the Agent's employees);
- Earthquake, flood, tempest, hurricane, lightning, or other natural disaster;
- Any fire of major proportions, or explosion;
- Epidemic;
- Strike or lockout; or
- Act of the Government.

2. If any event occurs constituting force majeure, the Agent shall give written notice to the Buyer as soon as possible after the occurrence but within 15 days, including a statement describing the force majeure and its effect upon the performance of this contract. The parties shall, within 10 days after such notice, consult regarding action to be taken.

3. In the event of a force majeure, the Agent, unless otherwise directed by the Buyer in writing, shall continue to undertake and perform the duties set forth in this contract as far as is reasonably practicable.

4. 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 Agent was prevented from performing.

5. The Agent shall be entitled to reasonable costs incurred as a consequence of a force majeure.

6. If the Agent's inability to perform by reason of the force majeure lasts for more than 45 days after notice has been given to the Buyer, either party may terminate this contract and the Agent shall be entitled to any sums which would be payable in case of termination of this contract for convenience of the Buyer.

O. Report of Delays

The Agent agrees to keep the Buyer fully informed by telegram or cable about any delays in the procurement or shipment of commodities under this contract and the corrective action being taken. The Agent shall also report

by telegram or cable to the Buyer any other event or condition which might delay progress or prevent completion of the work under this contract as soon as the facts are known to the Agent.

P. Disputes

1. In the event of a disagreement under this contract, the Agent shall submit a written statement to the Buyer, briefly describing the nature of the problem, the position of the Agent regarding the issue, and a narrative of facts in support of the Agent's position.

2. Within 10 days after receipt of the Agent's statement, the Buyer shall decide the issue and deliver a written statement of the decision to the Agent, including the reasons supporting the decision if adverse to the Agent.

3. Within 30 days after receipt of the Buyer's decision or the date such decision was due, the Agent may submit to the Buyer 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 Agent's contentions and conclusions, and a statement of why the Buyer's decision is being questioned.

4. 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 resented for arbitration following the rules of the International Chamber of Commerce.

*Q. Worker's Compensation Insurance

1. The Agent, before commencing performance under this contract, shall maintain coverage through worker's compensation insurance or security covering each employee to the extent required by the Defense Base Act of the United States, if applicable, but in any event equivalent to coverage required by law or custom in the location where the contractor employee is performing services.

2. The Agent shall obtain all Defense Base Act insurance required by this clause from the Insurance Company of North America through Wright & Company, 1001 Connecticut Avenue, N.W., Washington, D.C. 20036, U.S.A.

3. The Agent agrees to insert this clause in all subcontracts hereunder except those exclusively furnishing materials or supplies.

R. Language

The English language version of this contract shall govern. All notices pursuant to the provisions of this contract shall be in English.

S. Law to Govern

This contract shall be interpreted in accordance with the laws of the United States of America.

*Required clause

T. Notices

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 Agent: (Name of individual) Telex No: _____
 (Title of individual) Cable: _____
 (Name of Company)
 (Address)

To Buyer: (Name of individual) Telex No: _____
 (Title of individual) Cable: _____
 (Name of Agency or other entity)
 (Address)

U. Signature

The parties hereto, through their duly authorized representatives, hereby agree to the provisions of this contract.

(Name of Buyer)

By: (Signature of authorized representative)

Name and _____

Title: _____

Date: _____

(Name of Agent)

By: (Signature of authorized representative)

Name and _____

Title: _____

Date: _____

Appendix 4B

Guidance Notes

For Small Value Procurement Services Agreement

1. Application

This agreement is designed to be a standardized short form contract which, it is hoped, will expedite and simplify compliance with A.I.D.'s contracting rules when a procurement agent is needed to purchase commodities having relatively small total value. Because of its much simplified format, its use is subject to the following restrictions:

- (a) it may be used only when the estimated cost of the procurement agent's services (note that this does not include commodity costs) is not expected to exceed \$10,000;
- (b) it must be signed and issued with an attached, valid PIO/C because the agreement itself does not contain all needed information;
- (c) it may be used only where personnel of the procurement agent will not travel to the Host Country because it does not contain the provisions necessary to cover travel or worker's compensation overseas;
- (d) the selection process must establish that the procurement agent is eligible (not a debarred or suspended firm) and meets A.I.D.'s nationality requirements for services contractors because, for brevity, the contract excludes the long and complex definitions in the A.I.D. rule.

USAIDs are cautioned that procurements are not to be divided in order to use the small value agreement. Also, competitive selection is still required (unless waived), although this may be done informally.

2. Instructions for Completing the Form

(a) Completing the Agreement

Completing the standard form requires only filling in several blanks: the names of the Buyer and Agent, the PIO/C number, the amount of the contract, the name of the L/COM bank, and again the names of the Buyer and Agent, this time with addresses, signatures and dates of signing. A place is provided to fill in the USAID address so that the Agent can send copies of the signed contract directly to the USAID rather than relying on the Buyer to send the USAID a copy. The copy required to be sent to the

Office of Procurement (MS/OP/COMS) may also be sent directly by the Agent.

(b) Alternative Terminal Date

Note that the form specifies that the Project Assistance Completion Date in the PIO/C is the terminal date. If desired, this may be altered to specify an earlier calendar date instead.

(c) Alternative Schedule for Paying Agent

The model contract provides for payments in two parts. Other payment schedules may be established. In fact, a lump sum payment upon completion of all services is simpler and would be particularly appropriate when procurement is to be completed quickly.

(d) Alternative Mechanism, Place of Payment

If FM/A/LC has agreed to issue the Letter of Commitment, the clause should be changed accordingly.

3. Instructions for Completing the PIO/C

The instructions in Appendix D7 for completing PIO/Cs should be followed carefully as the PIO/C and its related Form 11-94 are being relied on to cover such items as commodity source and origin, shipping instructions, and document distribution. The Special Provisions block of the PIO/C should be used to specify:

(a) Any special approval requirements.

(b) Any limitations on amounts to be spent for commodity-related services such as inspection, warehousing and packaging.

(c) Whether or not air transportation of commodities is allowed. (If a grant, use of U.S. air carriers must be specified.)

(d) Flag registry requirements for ocean transportation. Even under project agreements which make other than U.S. flag vessels eligible, it may be simpler to specify that only U.S. flag be used to the extent available in order to assure that Cargo Preference requirements are met.

4. Procedures and Distribution

Use of the Small Value Procurement Services Agreement does not alter established procedures for using and handling PIO/Cs. The Agreement serves only as a means of establishing and documenting the legal relationship and responsibilities of the Buyer and the Agent. Thus, the relevant PIO/C is issued, signed by the B/G and AID and distributed within AID in the usual manner. A copy of the contract and PIO/C should also be sent to the Office of Commodity Management.

Note that AID/W will require instructions concerning the issuance of the Bank L/COM for commodities. This is best provided by the USAID's sending a copy of both the contract and the PIO/C. Additional distribution of the contract is optional. However, USAID's should note that distributing copies of the contract to all PIO/C recipients will facilitate communications should problems or questions arise later.

Index of Contract Clauses

Small Value Agreement for Procurement Services

- I. Scope of Work
- II. Payment of Agent's Services
 - A. Amount
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 - C. Mechanism, Place of Payment
- III. Payment for Commodities and Commodity-Related Services
 - A. Amount
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 - A. Legal Effect of AID Approvals and Decisions
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Small Value Agreement for Procurement Services

Whereas ____, the "Buyer", desires to obtain services required for the procurement and delivery of commodities as described in the attached "PIO/C" (Project Implementation Order/Commodities No. ____) which are to be financed by the Agency for International Development (AID); and

Whereas ____, the "Agent", states that it is qualified and willing to provide such services;

Now therefore, the Buyer and Agent, effective from the date of the Agent's signature below until the Project Assistance Completion Date shown on the PIO/C, agree as follows:

I. Scope of Work

The Agent will procure all of the items listed in the PIO/C and arrange for their expeditious and safe delivery to destination following the instructions in the PIO/C, its attachments and any subsequent amendments. In doing so, the Agent will act on behalf of the Buyer, will purchase all commodities and commodity-related services in accordance with the rules and procedures in AID Handbook II, Chapter 3, "Procurement of Equipment and materials", and will pursue economies in procurement and delivery as appropriate. The Agent will conduct itself at all times so as to protect and further the interests of the Buyer. The Agent will assure that all commodities purchased are covered by marine insurance in the name of the Buyer and for the Buyer's account on a warehouse to warehouse basis at 120% of the CIF value and will handle any insurance claims that arise.

The Agent will communicate expeditiously with the Buyer on any problems that arise and will submit monthly reports indicating the status of all items.

II. Payment for Agent's Services

A. Amount

The Buyer will pay the Agent the total fixed amount of \$____. This amount is the entire payment called for in the Scope of Work and no additional payments will be made to the Agent for purchasing or arranging for commodity-related services as may be required.

B. Schedule and Documentation

The Agent will be paid in two parts. One half of the fixed price will be due upon shipment of half (measured by dollar value) of the commodities to be purchased in accordance with this contract. The second half

will be due upon completion of performance under the contract. Requests for payment will be supported by the following documentation:

1. Voucher SF 1034 in original and three copies.
2. One copy of the Agent's invoice.
3. Original and one copy of the "Contractor's Certificate and Agreement with AID", Form AID 1440-3.
4. Supplier invoices for all commodities shipped.
5. One copy of each relevant bill of lading or airway bill for the commodities shipped.

The Agent shall submit the request for payment and the appropriate documentation to the Buyer. The Buyer shall provide a "Certification of Performance" or "Certification of Nonperformance of Specific Items" within 30 days after receipt of the request. If neither certification is provided within 30 days, the Agent shall be paid according to the request.

C. Mechanism, Place of Payment

Upon request of the Buyer, the USAID named in the PIO/C will issue a direct Letter of Commitment to the Agent which will provide that the Agent will be paid directly by U.S. Government check upon submission of required documentation and Buyer's certification to the USAID Controller.

III. Payment for Commodities and Commodity-Related Services

A. Amount

The Buyer will pay for commodities and commodity related services purchased in accordance with this contract at the price agreed to in the purchase order or contract between the Agent and supplier of the commodity or related service.

B. Schedule

1. Suppliers of commodities and freight will be paid on the basis of shipment of the commodities; except that when the Agent consolidates commodities for shipment, the commodity supplier may be paid on the basis of delivery into custody of the Agent. Suppliers of other commodity-related services will be paid on the basis of delivery of services.

C. Documentation

1. Requests for payment for commodities and freight will be supported by the appropriate documentation required under Chapter 3 of Handbook II.

2. Requests for payment of other commodity-related services which are not covered by the commodity supplier's request for payment will be supported by the following:

- (a) One copy of the invoice for the services
- (b) One copy of the following as appropriate:
 - (i) the inspection certificate; or
 - (ii) the marine insurance policy
 - (iii) the warehouse receipt.
- (c) An original and one copy of the "Supplier's Certificate and Agreement with AID for Project Commodities", Form AID 1450-4. For commodity-related services other than freight and insurance the freight forwarder may sign the form if it is responsible for compliance with the terms of the Certificate and Agreement.

D. Mechanism

FM/A/LC will issue a bank letter of commitment to (bank, named by Agent) designating the Agent as approved applicant. The Agent will request that the bank issue letters of credit to suppliers who will submit the required documentation to the bank. The bank will pay the suppliers and be reimbursed by AID.

IV. General Provisions

A. Legal Effect of AID Approvals and Decisions

1. The parties hereto understand that the contract has reserved to AID 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/purchase orders, bid documents, drawings, or other documents related to this contract and the project of which it is a part. The parties hereto further understand and agree that AID, 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 AID to exercise or refrain from exercising these approval

rights shall be made as a financing entity in the course of financing this project and shall not be construed as making AID a party to the contract. The parties hereto understand and agree that AID may, from time to time, exercise the foregoing approval rights, or discuss the matters related to these rights and the project of which this contract is a part, with the parties jointly or separately, without thereby incurring any responsibility or liability to the parties jointly or to any of them.

2. Any approval (or failure to disapprove) by AID shall not bar the Buyer or AID from asserting any right, or relieve the Agent of any liability which the Agent may otherwise have to the Buyer or AID.

B. Taxes

All commodities and services shall be exempt from all taxes, fees, levies, customs, or impositions imposed under laws in effect in the host country, or the Buyer shall make payment for or reimbursement for such taxes to the extent specified in the Agreement signed between the government of the host country and AID.

C. Termination

The Buyer may terminate this agreement in whole or in part by written notice to the Agent. In the event of termination, the Agent will follow the Buyer's instructions with respect to the cancellation of purchase orders or contracts issued to suppliers, assignment, etc. Barring evidence to the contrary, the Agent shall be presumed to have earned payment for one half of that portion of its remuneration which is attributable to line items for which purchase orders or contracts have already been issued to suppliers.

D. Change Orders

The Buyer may at any time, by written order, make changes within the scope of work of this contract. If any change causes an increase or decrease in the cost of, or the time required for, performance of any part of the work under this contract, an equitable adjustment shall be made in the contract price, completion date, and any other affected provision.

E. Applicable Law and Language

This contract shall be interpreted in accordance with the laws of the United States of America. All notices pursuant to this contract shall be English.

F. Signature

The parties hereto, through their duly authorized representatives, hereby agree to the provisions of this contract.

(Name and Address of Buyer)

By: (Signature of Authorized Representative)

Name: _____

Title: _____

Date: _____

(Name of Agent)

By: (Signature of Authorized Representative)

Name: _____

Title: _____

Date: _____

Upon signature, the Agent will send a copy of this agreement to the Buyer and to the parties named below:
