



U.S. AGENCY FOR
INTERNATIONAL
DEVELOPMENT

APR 29 1999

Mr. Jose A. Hernandez
President
CubaNet News, Inc.
145 Madeira Avenue, Suite 316
Coral Gables, FL 33134

Subject: Award No. IAG-A-00-99-00024-00

Dear Mr. Hernandez:

Pursuant to the authority contained in the Foreign Assistance Act of 1961, as amended, the U.S. Agency for International Development (hereinafter referred to as "USAID" or "Grantor") hereby grants to CubaNet News, Inc. (herein after referred to as CubaNet or "Recipient"), the sum of \$98,000.00 to provide support for a program in the expansion of an internet website for independent Cuban journalists in Cuba, as described in the Schedule of this award and the Attachment 2, entitled "Program Description."

This award is effective and obligation is made as of the date of this letter and shall apply to commitments made by the Recipient in furtherance of program objectives during the period beginning with the effective date and ending 04/28/2000. USAID shall not be liable for reimbursing the Recipient for any costs in excess of the obligated amount.

This award is made to CubaNet, on condition that the funds will be administered in accordance with the terms and conditions as set forth in 22 CFR 226, entitled "Administration of Assistance Awards to U.S. Non-Governmental Organizations"; Attachment 1, entitled "Schedule"; Attachment 2, entitled "Program Description"; and Attachment 3 entitled "Standard Provisions."

[Faint signature]

1300 PENNSYLVANIA AVENUE, NW
WASHINGTON, D.C. 20523

Please sign the original and each copy of this letter to acknowledge your receipt of this award, and return the original and all but one copy to the Agreement Officer.

Sincerely,



Dana P. Doo-Soghoian
Agreement Officer
Office of Procurement
M/OP/B/LA

Attachments:

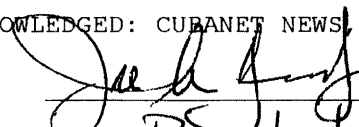
1. Schedule
2. Program Description
3. Standard Provisions

ACKNOWLEDGED: CUBANET NEWS, INC.

BY:

Title:

Date:



President

5/2/99

ORIGINAL

ACCOUNTING AND APPROPRIATION DATA

A. GENERAL

1. Total Estimated USAID Amount: \$ 98,000.00
2. Total Obligated USAID Amount: \$ 98,000.00
3. Cost-Sharing Amount
(Non-Federal): \$ (b)(4)
4. Activity Title: CubaNet
5. USAID Technical Office: AA/LAC-USAID Senior Advisor for Cuba
Room 5.08-036 RRB (David Mutchler)
Washington, DC 20523
6. Tax I.D. Number:
7. DUNS No.: (b)(3) 969534049
8. LOC Number: n/a

B. SPECIFIC

1. Request ID Number: 58
2. Organization ID: 11093
3. Account Number: ES99/00LES999
4. Activity Number: 598-0856
5. Resource Category: 410463

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SCHEDULE

1.1 PURPOSE OF AGREEMENT

The purpose of this Agreement is to provide support for the program described in Attachment 2 of this Agreement entitled "Program Description."

1.2 PERIOD OF AGREEMENT

The effective date of this Agreement is the date of the Cover Letter and the estimated completion date is 04/28/2000.

1.3 AMOUNT OF AWARD AND PAYMENT

- (a) USAID hereby obligates the amount of \$98,000.00 for the purposes of this Agreement.
- (b) *Payment shall be made to the Recipient by Payment - Cost Reimbursement in accordance with procedures set forth in 22 CFR 226.22.

1.4 BUDGET

The following is the Agreement Budget, including local cost financing items, if authorized. Revisions to this budget shall be made in accordance with 22 CFR 226.25.

AGREEMENT BUDGET
04/29/1999 TO 04/28/2000

<u>Cost Line Item</u>	Amount
(b) (4)	
TOTAL ESTIMATED PROGRAM AMOUNT:	\$143,000

*USAID audit team will be reviewing the Recipient's accounting system in May 1999. If the USAID report finds the Recipient's accounting system acceptable, the method of payment for this Agreement will be changed to Periodic Advance effective immediately.

**USAID reserves the right to conduct a followup accounting system audit within six months from the effective date of this Agreement to ensure the Recipient has installed an accounting system adequate for government purposes. Noncompliance will result in suspension or termination in accordance with 22 CFR 226.61.

1.5 REPORTING AND EVALUATION

1.5.1 Financial Reporting

In keeping with the requirements established in 22 CFR 226.52, the Recipient is required to:

(a) Submit an original and two copies of a "Request for Advance or Reimbursement", SF 270, on a monthly basis to:

US AGENCY FOR INT'L DEVELOPMENT
M/FM/CMP/MP
Room 7.07-018 RRB
Washington, DC 20523

(b) Prepare a "Financial Status Report", SF 269a, on an accrual basis and submitted quarterly in an original and two copies to the above address in (a). A final SF269a report shall be submitted within 90 days of the estimated completion date of this Agreement. An additional copy of SF269a shall be submitted to the Cognizant Agreement Officer, M/OP/B/LA, Rm. 7.09-103, RRB, Washington, DC 20523-7100. The Financial Status Reports shall be in accordance with 22 CFR 226.52 entitled, "Financial Reporting."

Additional copies shall be submitted as follows:

One copy of the SF269a to the USAID Senior Advisor for Cuba, AA/LAC, Rm. 5.08-036, RRB, Washington, DC 20523.

1.5.2 Monitoring and Reporting Program Performance

(a) Requirements. The Recipient shall submit an original and one copy of a brief quarterly program report to the USAID Senior Advisor for Cuba, AA/LAC, Rm. 5.08-036, RRB, Washington, DC 20523. In addition, one copy shall be submitted to USAID/PPC/POL/CDIE, Rm. M.01-010, RRB, Washington, DC 20523-1802. A final performance report is also required.

(b) Contents. The quarterly program report shall present the information contained in 22 CFR 226.51(d). It states:

"Performance reports shall generally contain, for each award, brief information on each of the following:

(1) A comparison of actual accomplishments with the goals and objectives established for the period, the findings of the investigator, or both. Whenever appropriate and the output of programs or projects can be readily quantified, such quantitative data should be related to cost data for computation of unit costs.

1.5.2 (continued)

- (2) Reasons why established goals were not met.
- (3) An illustrative list of titles of publications and videos shall be included in Quarterly Performance Reports.
- (4) Include, as an attachment, a copy of materials distributed such as brochures, books and other publications.
- (5) A copy of any insurance policy(ies) deriving from this Agreement.
- (6) Other pertinent information including, when appropriate, analysis and explanation of cost overruns or high unit costs.

1.5.3 Final Report

Within 90 days following the estimated completion date of this Agreement, (See Section 1.2 above), the Recipient shall submit a final report to the USAID Senior Advisor for Cuba, Rm. 5.08-036, RRB, Washington, DC 20523, who shall forward one copy of the final Report to USAID, CDIE/DI, Washington, DC 20523.

The Recipient shall also submit one copy of the final report to The Cognizant Agreement Officer, M/OP/B/LA, RRB, Rm. 7.09-103, Washington, DC 20523-7100. The report shall cover the entire period Of the Agreement and include all information shown in Section 1.5.2, Specifically including, but not necessarily limited to:

- (1) A summarization of the program's accomplishments or failings;
- (2) An overall description of the activities under the program during the period of this Agreement;
- (3) A description of the methods of work used;
- (4) Comments and recommendations regarding unfinished work and/or program/continuation and direction; and,
- (5) A fiscal report that describes in detail how the Agreement funds were used.

1.5.4 Special Reports

Between the required program performance reporting dates, events may occur that have significant impact upon the program. In such instances, the Recipient shall inform the USAID Senior Advisor for Cuba as soon as the following types of conditions become known:

(1) Problems, delays, or adverse conditions that will materially affect the ability to attain program objectives, prevent the meeting of time schedules and goals, or preclude the attainment of work units by established time periods. This disclosure shall be accompanied by a statement of action taken, or contemplated, and any USAID assistance needed to resolve the situation;

(2) Favorable developments or events that enable time schedules to be met sooner than anticipated or more work units to be produced than originally projected;

(3) If any performance review conducted by the Recipient discloses the need for change in the budget estimates in accordance with the criteria established in 22 CFR 226.25, the Recipient shall submit a request for budget revision to the Agreement Officer and the USAID Senior Advisor for Cuba.

1.6 SUBSTANTIAL INVOLVEMENT UNDERSTANDINGS

It is understood and agreed that USAID will be substantially involved during the performance of this Cooperative Agreement as follows:

Key Personnel: The USAID Senior Advisor for Cuba shall approve in advance, the selection of any key personnel and any alternate(s).

Monitoring and Evaluation Plans: The USAID Senior Advisor for Cuba shall approve evaluation plans, and monitoring progress toward the achievement of program objectives during the course of the Cooperative Agreement.

1.7 KEY PERSONNEL

The following positions and individuals have been designated as key to the successful completion of the objective of this award. In accordance with the Substantial Involvement clause of this Award, these personnel are subject to the Approval of the USAID Senior Advisor for Cuba.

POSITION	NAME
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(b) (6)

The personnel specified above is considered essential to the work being performed hereunder. Prior to selecting or replacing any of the specified individuals, the Recipient shall notify both the cognizant USAID Agreement Officer and the cognizant USAID Senior Advisor for Cuba reasonably in advance and shall submit written justification (including proposed substitutions) in sufficient detail to permit evaluation of the impact on the program. No replacement shall be made by the Recipient without the written consent of the Agreement Officer.

1.8 TITLE TO AND CARE OF PROPERTY

Title to all property financed under this award shall vest in the Recipient subject to the requirements of 22 CFR 226.30 through 37.

The Agreement Officer hereby approves the purchase of tangible nonexpendable general and special purpose personal property (equipment) including exempt property charged directly to the award having a useful life of less than one year and an acquisition cost of \$5,000 or less per unit. The Agreement Officer must approve the purchase of tangible nonexpendable general and special purpose personal property (equipment) including exempt property charged directly to the award having a useful life of more than one year and an acquisition cost of \$5,000 or more per unit. Approval is subject to programmatic constraints as deemed appropriate by the cognizant Agreement Officer.

1.9 AUTHORIZED GEOGRAPHIC CODE

The authorized geographic code for procurement of goods and services under this award is 000.

1.10 LICENSING REQUIREMENTS FOR CUBA

(a) In accordance with the Cuban Democracy Act, Cuba is considered an eligible source for those procurements necessary to carry out the specific, narrow purpose of this Agreement. In addition, the U.S. Treasury Department has issued USAID License No. C-18212 and Amendment No. C-18212-A (attached) thereto, authorizing the Agency to carry out the full range of activities under this Agreement.

(b) The Cuban Democracy Act and the Libertad Act, under which the activities financed under this Cooperative Agreement are authorized, provide authority to carry out activities through individuals and nongovernmental organizations to promote a peaceful transition to democracy in Cuba. The Treasury and Commerce Departments regulate trade and traffic in Cuba. The Treasury Department maintains and enforces licensing requirements for travel to Cuba, expenditures of funds on the Island and remittances of cash to Cuba. The Commerce Department maintains and enforces licensing requirements of all U.S.-origin goods to Cuba.

c) The Department of Treasury has provided USAID with a general license to cover USAID recipients/grantees traveling to Cuba under this program and expenses they incur while carrying out grant activities on the Island.

d) The Department of Commerce has not provided USAID a blanket license. Therefore, all USAID grantees/recipients intending to provide any kind of equipment and supplies to recipients in Cuba must apply in advance to the Commerce Department's Bureau of Export Administration and obtain a license prior to providing the equipment or supplies. The address of the pertinent office in the Department of Commerce which grants licenses for transactions concerning Cuba is:

Office of Exporter Services
P.O. Box 273
Bureau of Export Administration
Department of Commerce
Washington, DC 20230
Tel.: (202)482-4811
Fax: (202)482-3617

1.11 INDIRECT COST RATES - No indirect costs are being charged under this agreement.

1.12 RESOLUTION OF CONFLICTS

Conflicts between any of the Attachments of this Agreement shall be resolved by applying the following descending order of precedence:

Attachment 1 - Schedule
22 CFR 226
Attachment 3 - Standard Provisions
Attachment 2 - Program Description

1.13 COST SHARING

The Recipient agrees to expend an amount not less than (b)(4) of the total activity costs.

1.14 COMMUNICATIONS PRODUCTS (OCT 1994)

(a) Definition - Communications products are any printed materials (other than non-color photocopy material), photographic services or video production services.

(b) Standards - USAID has established standards for communications products. These standards must be followed unless otherwise specifically provided in the agreement or approved in writing by the Agreement Officer. A copy of the standards for USAID financed publications and video productions is attached.

(c) Communications products which meet any of the following criteria are not eligible for USAID financing under this agreement unless specifically authorized in the agreement schedule or in writing by the Agreement Officer.

(1) Any communication product costing over \$25,000, including the costs of both preparation and execution. For example, in the case of a publication, the costs will include research, writing and other editorial services (including any associated overhead), design, layout and production costs.

(2) Any communication products that will be sent directly to, or likely to be seen by, a Member of Congress or Congressional staffer; and,

(3) Any publication that will have more than 50 percent of its copies distributed in the United States (excluding copies provided to CDIE and other USAID/W offices for internal use.

1.15 PAYMENT OFFICE

US AGENCY FOR INT'L DEVELOPMENT
M/FM/CMP/MP
Room 7.07-018 RRB
Washington, DC 20523

1.16 GRANT ADMINISTRATION OFFICE

The post-award grant administration office is the U.S. Agency for International Development, M/OP/B/LA, Rm. 7.09-103, RRB, Washington, DC 20523-7100. The cognizant Agreement Officer is Dana P. Doo-Soghoian, and may be contacted at 202-712-5671.

1.17 PROJECT OFFICE

The Project Office is the U.S. Agency for International Development, AA/LAC, RRB, Washington, DC 20523. The cognizant Project Officer is the USAID Senior Advisor for Cuba, David Mutchler, and may be contacted at 202-712-4742.

1.18 SPECIAL PROVISIONS

1. This Cooperative Agreement is made pursuant to the authorities of the Cuban Democracy Act, 22 U.S.C. 6001 et. Seq., Sec. 6004, ("CDA") and the Cuban Liberty and Democratic Solidarity (Libertad) Act of 1996, 22 U.S.C. Sec. 6021 et. Seq., Sec. 6039, ("Libertad Act"). Activities authorized and financed under this Cooperative Agreement are governed and limited by the terms of the CDA and the Libertad Act.

2. The CDA and the Libertad Act authorize assistance through nongovernmental organizations to support individuals and independent nongovernmental organizations to promote peaceful, nonviolent democratic change in Cuba through various types of democracy-building efforts for Cuba. The Recipient agrees that funds made available under this Cooperative Agreement will only be utilized for peaceful, nonviolent activities, in accordance with the CDA and the Libertad Act.

3. No funds or assistance under this Cooperative Agreement may be provided to the Cuban Government, as stated in the Libertad Act. The Libertad Act, 22 U.S.C. Sec. 6023(1) and (5), defines "Cuban Government" as including the government of any political subdivision of Cuba, and also any "agency or instrumentality" of the Government of Cuba, as these terms are further defined in 28 U.S.C. Sec. 1603(b). Section 1603(b) states that an organization which is either a) an "organ of a foreign state or political subdivision thereof" (here an organ of the Cuban Government), or b) "a majority of whose shares or other ownership interest is owned by a foreign state or political subdivision thereof" is an "agency or instrumentality of a foreign state," thus ineligible for funding under this Cooperative Agreement. Employees of the Government of Cuba, as defined above, are also ineligible for assistance under this Cooperative Agreement while working in their official capacities. However, such persons, while not working in their official capacities as employees of the Cuban Government, are considered as individuals and are eligible for assistance. Furthermore, merely providing information on transitions to democracy, human rights, and market economies to individuals who are Cuban Government employees is not considered assistance to the Cuban Government, because the information is offered to these persons as individuals, and does not benefit the current Government of Cuba.

4. The Conference Report to the Libertad Act, H.R. 104-468, page 50, clarifies that "incidental payments or indirect benefits to commercial or regulatory entities of the Cuban Government, e.g., payments for hotels, care rental, travel or transportation to or within the island, purchases of other goods or services in the local economy, customs fees, migraton fees, or other comparable government charges" are not considered to be assistance to the Cuban Government which is prohibited by the Libertad Act.

5. The Recipient shall take all reasonable steps necessary to ensure that the above special provisions 1-4 are followed. Violation of special provisions no. 2 above is grounds for termination of this Cooperative Agreement for cause and disallowance of costs incurred. Violation of special provision 3 may lead to disallowance of costs incurred.

6. However, no USAID funding made available under this grant or cooperative agreement will be used for cash assistance to individuals or groups residing in Cuba.

7. At the request of Catholic Church officials in Cuba, no USAID-funded material assistance is to be provided directly or indirectly to the Cahtolic Church in Cuba, with the exception of books and other informational material. Exceptions may be authorized, if requested in writing by the CARITAS Director in Cuba, but the authorization must acknowledge the assistance requested will be funded by USAID.

LAG-A-00-99-00024-00

ATTACHMENT 2

PROGRAM DESCRIPTION

The Recipient's proposal entitled "CUBANET" and dated 10/30/98 is made part of the award file and the Program Description (Attachment 2) is made a part of this Award.

PROGRAM DESCRIPTION

BACKGROUND

Founded in 1994, CubaNet is a non-profit, tax-exempt, non-partisan organization that disseminates the work of independent journalists in Cuba through the Internet and also seeks to increase contact between other independent sectors in Cuba and the international community. CubaNet's efforts are directed to the development of a civil society in Cuba.

OBJECTIVES

1. CubaNet proposes to provide, through its Internet web site, an expanded outlet for publishing worldwide the reports and analyses of independent Cuban journalists.
2. The CubaNet webpage will also carry reports from independent labor unions in Cuba. The CubaNet webpage currently receives approximately 325,000 hits per month, and has become an important information source on Cuban issues for U.S. and international news organizations.
3. CubaNet will transcribe the reports from independent journalists in Cuba and display the resulting information by e-mail and by newsletter to a list of over 1,000 subscribers. Many of these subscribers are in a position to communicate information back to the Cuban population on the Island.



ATTACHMENT 3

STANDARD PROVISIONS

3.1 APPLICABILITY OF 22 CFR PART 226 (APR 1998)

- (a) All provisions of 22 CFR Part 226 and all Standard Provisions attached to this agreement are applicable to the recipient and to subrecipients which meet the definition of "Recipient" in Part 226, unless a section specifically excludes a subrecipient from coverage. The recipient shall assure that subrecipients have copies of all the attached standard provisions.
- (b) For any subawards made with entities which fall outside of the definition of "Recipient" (such as Non-US organizations) the Recipient shall include the applicable "Standard Provisions for Non-US Nongovernmental Grantees" except for the "Accounting, Audit and Records" Standard Provision. Recipients are required to ensure compliance with subrecipient monitoring procedures in accordance with OMB Circular A-133 and shall insert an appropriate provision on accounting, audit and records.

3.2 INELIGIBLE COUNTRIES (MAY 1986)

Unless otherwise approved by the USAID Agreement Officer, funds will only be expended for assistance to countries eligible for assistance under the Foreign Assistance Act of 1961, as amended, or under acts appropriating funds for foreign assistance.

3.3 NONDISCRIMINATION (MAY 1986)

(This provision is applicable when work under the grant is performed in the U.S. or when employees are recruited in the U.S.)

No U.S. citizen or legal resident shall be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity funded by this grant on the basis of race, color, national origin, age, handicap, or sex.

3.4 INVESTMENT PROMOTION (JAN 1994)

No funds or other support provided hereunder may be used in a project or activity reasonably likely to involve the relocation or expansion outside of the United States of an enterprise located in the United States if non-U.S. production in such relocation or expansion replaces some or all of the production of, and reduces the number of employees at, said enterprise in the United States.

3.4 (Continued)

No funds or other support provided hereunder may be used in a project or activity the purpose of which is the establishment or development in a foreign country of any export processing zone or designated area where the labor, environmental, tax, tariff, and safety laws of the country would not apply, without the prior written approval of USAID.

No funds or other support provided hereunder may be used in a project or activity which contributes to the violation of internationally recognized rights of workers in the recipient country, including those in any designated zone or area in that country.

This provision must be included in all subagreements.

3.5 NONLIABILITY (NOV 1985)

USAID does not assume liability for any third party claims for damages arising out of this Agreement.

3.6 AMENDMENT (NOV 1985)

The Agreement may be amended by formal modifications to the basic agreement document or by means of an exchange of letters between the Agreement Officer and an appropriate official of the Recipient.

3.7 NOTICES (NOV 1985)

Any notice given by USAID or the recipient shall be sufficient only if in writing and delivered in person, mailed, or cabled as follows:

To the USAID Agreement Officer, at the address specified in the agreement.

To recipient, at recipient's address shown in the agreement or to such other address designated within the agreement.

Notices shall be effective when delivered in accordance with this provision, or on the effective date of the notice, whichever is later.

3.8 OMB APPROVAL UNDER THE PAPERWORK REDUCTION ACT (APR 1998)

Information collection requirements imposed by this grant are covered by OMB approval number 0412-0510; the current expiration date is 11/30/2000. Identification of the Standard Provision containing the requirement and an estimate of the public reporting

3.8 (Continued)

burden (including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information) are set forth below.

Standard Provision	Burden Estimate
Air Travel and Transportation	1 (hour)
Ocean Shipment of Goods	.5
Patent Rights	.5
Publications	.5
Negotiated Indirect Cost Rates - Predetermined and Provisional	1
Voluntary Population Planning	.5
Protection of the Individual as a Research Subject	1

22 CFR 226	Burden Estimate
22cfr 226.40-.49 Procurement of Goods and Services	1
22 CFR 226.30 - .36 Property Standards	1.5

Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Procurement, Policy Division (M/OP/P), U.S. Agency for International Development, Washington, DC 20523-7801 and to the Office of Management and Budget, Paperwork Reduction Project (0412-0510), Washington, DC 20503.

3.9 INTERNATIONAL AIR TRAVEL AND TRANSPORTATION (DEC 1995)**(a) PRIOR BUDGET APPROVAL**

In accordance with OMB Cost Principles, direct charges for foreign travel costs are allowable only when each foreign trip has received prior budget approval. Such approval will be deemed to have been met when:

- (1) The trip is identified. Identification is accomplished by providing the following information: the number of trips, the number of individuals per trip, and the

3.9 (Continued)

destination country(s);

- (2) The information noted at (a) (1) above is incorporated in: the proposal, the program description or schedule of the award, the annual workplan (initial or revisions), or amendments to the award; and
- (3) The costs related to the travel are incorporated in the approved budget of the award.

The Agreement Officer may approve travel which has not been incorporated in writing as required by paragraph (a)(2). In such case, a copy of the Agreement Officer's approval must be included in the agreement file.

(b) NOTIFICATION

- (1) As long as prior budget approval has been met in accordance with paragraph (a) above, a separate Notification will not be necessary unless:
 - (i) The primary purpose of the trip is to work with USAID Mission personnel, or
 - (ii) The recipient expects significant administrative or substantive programmatic support from the Mission.

Neither the USAID Mission nor the Embassy will require Country Clearance of employees or contractors of USAID Recipients.

- (2) Where notification is required in accordance with paragraph (1) (i) or (ii) above, the recipient will observe the following standards:
 - (i) Send a written notice to the cognizant USAID Technical Office in the Mission. If the recipient's primary point of contact is a Technical Officer in USAID/W, the recipient may send the notice to that person. It will be the responsibility of the USAID/W Technical Officer to forward the notice to the field.
 - (ii) The notice should be sent as far in advance as possible, but at least 14 calendar days in advance of the proposed travel. This notice may be sent by fax or e-mail. The recipient should retain proof that notification was made.
 - (iii) The notification shall contain the following

3.9 (Continued)

information: the award number, the cognizant Technical Officer, the traveler's name (if known), date of arrival, and the purpose of the trip.

- (iv) The USAID Mission will respond only if travel has been denied. It will be the responsibility of the Technical Officer in the Mission to contact the recipient within 5 working days of having received the notice if the travel is denied. If the recipient has not received a response within the time frame, the recipient will be considered to have met these standards for notification, and may travel.
- (v) If a subrecipient is required to issue a Notification, as per this section, the subrecipient may contact the USAID Technical Officer directly, or the prime may contact USAID on the subrecipient's behalf.

(c) SECURITY ISSUES

Recipients are encouraged to obtain the latest Department of State Travel Advisory Notices before traveling. These Notices are available to the general public and may be obtained directly from the State Department, or via Internet.

Where security is a concern in a specific region, recipients may choose to notify the US Embassy of their presence when they have entered the country. This may be especially important for longterm posting.

(d) USE OF U.S. - OWNED LOCAL CURRENCY

Travel to certain countries shall, at USAID's option, be funded from U.S. - owned local currency. When USAID intends to exercise this option, USAID will either issue a U.S. Government S.F. 1169, Transportation Request (GTR) which the grantee may exchange for tickets, or issue the tickets directly. Use of such U.S.-owned currencies will constitute a dollar charge to this grant.

(e) THE FLY AMERICA ACT

- (1) The Fly America Act requires that all air travel and shipments under this award must be made on U.S. flag air carriers to the extent service by such carriers is available. The Comptroller General of the United States, by Decision B-138942 of June 17, 1975, as amended March 31, 1981, provided guidelines for implementation of Section 5 of the International Air Transportation Fair

3.9 (Continued)

Competitive Practices Act (Fly America Act) of 1974 (49 U.S.C. 1517, as amended by Section 21 of Public Law 96-192).

- (2) U.S. flag air carrier service is considered available even though:
 - (i) Comparable or a different kind of service can be provided at less cost by a foreign air carrier;
 - (ii) Foreign air carrier service is preferred by or is more convenient for the agency or traveler; or
 - (iii) Service by a foreign air carrier can be paid for in excess foreign currency, unless U.S. flag air carriers decline to accept excess or near excess foreign currencies for transportation payable only out of such monies.
- (3) In determining availability of a U.S. flag air carrier, the following scheduling principles should be followed unless their application results in the last or first leg of travel to or from the United States being performed by foreign air carrier:
 - (i) U.S. flag air carrier service available at point of origin shall be used to destination or in the absence of direct or through service to the farthest interchange point on a usually traveled route;
 - (ii) Where an origin or interchange point is not served by U.S. flag air carrier, a foreign air carrier shall be used only to the nearest interchange point on a usually traveled route to connect with U.S. flag air carrier service; or
 - (iii) Where a U.S. flag air carrier involuntarily reroutes the traveler via a foreign air carrier, the foreign air carrier may be used notwithstanding the availability of alternative U.S. flag air carrier service.
- (4) Travel to and from the United States: For travel between a gateway airport in the United States (the last U.S. airport from which the traveler's flight departs or the first U.S. airport at which the traveler's flight arrives) and a gateway airport abroad (that airport from which the traveler last embarks enroute to the U.S. or at which the traveler first debarks incident to travel from the U.S.), passenger service by U.S. flag air carrier

3.9 (Continued)

will not be considered available if:

- (i) The gateway airport abroad is the traveler's origin or destination airport, and the use of U.S. flag air carrier service would extend the time in a travel status including delay at origin and accelerated arrival at destination, by at least 24 hours more than travel by foreign air carrier; or
 - (ii) The gateway airport abroad is an interchange point, and the use of U.S. flag air carrier service would require the traveler to wait six hours or more to make connections at that point or, delayed departure from or accelerated arrival at the gateway airport in the U.S. would extend the time in a travel status by at least six hours more than travel by foreign air carrier.
- (5) Travel Between Points Outside the United States: Use of a foreign-flag air carrier is permissible if:
- (i) Travel by foreign air carrier would eliminate two or more aircraft changes enroute;
 - (ii) Where one of the two points abroad is the gateway airport enroute to or from the United States and the use of a U.S. flag air carrier would extend the time in a travel status by at least six hours more than travel by foreign air carrier; including accelerated arrival at the overseas destination or delayed departure from the overseas origin as well as delay at the gateway airport or other interchange point abroad; or
 - (iii) The travel is not part of a trip to or from the United States and the use of a U.S. flag air carrier would extend the time in a travel status by at least six hours more than travel by foreign air carrier including delay at origin, delay enroute and accelerated arrival at destination.
- (6) Short Distance Travel: Use of a foreign-flag air carrier is permissible, regardless of origin and destination, if the elapsed travel time on a scheduled flight from origin to destination airport by a foreign flag air carrier is three hours or less and service by a US flag air carrier would double the travel time.
- (7) Use of foreign air carrier service may be deemed necessary if a U.S. flag air carrier otherwise available cannot provide the foreign air transportation needed, or

3.9 (Continued)

if use of such service will not accomplish the agency's mission. Travel and transportation on non-free world air carriers are not reimbursable under this award.

- (8) Where U.S. Government funds are used for reimbursement on other than U.S. flag air carriers for international transportation, the recipient shall include a certification in their own files involving such transportation which is essentially as follows:

"CERTIFICATION OF UNAVAILABILITY OF U.S. FLAG AIR CARRIERS. I hereby certify that the transportation service for personnel (and their personal effects) or property by certificated air carrier was unavailable for the following reason(s)." (State appropriate reason(s) as set forth above).

(f) COST PRINCIPLES

The recipient will be reimbursed for travel and the reasonable cost of subsistence, post differentials and other allowances paid to employees in international travel status in accordance with the recipient's applicable cost principles and established policies and practices which are uniformly applied to federally financed and other activities of the grantee.

If the recipient does not have written established policies regarding travel costs, the standard for determining the reasonableness or reimbursement for overseas allowance will be the Standardized Regulations (Government Civilians, Foreign Areas), published by the U.S. Department of State, as from time to time amended. The most current subsistence, post differentials, and other allowances may be obtained from the Agreement Officer.

(g) SUBAWARDS

This provision will be included in all subawards and contracts which require air travel and transportation under this award.

3.10 OCEAN SHIPMENT OF GOODS (APR 1998)

(This provision is applicable when goods purchased with funds provided under this award are transported to cooperating countries on ocean vessels whether or not grant funds are used for the transportation.)

- (a) At least 50% of the gross tonnage of all goods purchased under this agreement and transported to the cooperating countries

3.10 (Continued)

shall be made on privately owned U.S. flag commercial ocean vessels, to the extent such vessels are available at fair and reasonable rates for such vessels.

- (b) At least 50% of the gross freight revenue generated by shipments of goods purchased under this agreement and transported to the cooperating countries on dry cargo liners shall be paid to or for the benefit of privately owned U.S. flag commercial ocean vessels to the extent such vessels are available at fair and reasonable rates for such vessels.
- (c) When U.S. flag vessels are not available, or their use would result in a significant delay, the grantee may request a determination of non-availability from the USAID Transportation Division, Office of Procurement, Washington, D.C. 20523, giving the basis for the request which will relieve the grantee of the requirement to use U.S. flag vessels for the amount of tonnage included in the determination. Shipments made on non-free world ocean vessels are not reimburseable under this grant.
- (d) The recipient shall send a copy of each ocean bill of lading, stating all of the carrier's charges including the basis for calculation such as weight or cubic measurement, covering a shipment under this agreement to:
 - U.S. Department of Transportation, Maritime Administration,
Division of National Cargo, 400 7th Street, S.W.,
Washington, D.C. 20590, and
 - U.S. Agency for International Development,
Office of Procurement, Transportation Division
1300 Pennsylvania Avenue, N.W.
Washington, DC 20523-7900
- (e) Shipments by voluntary nonprofit relief agencies (i.e., PVOs) shall be governed by this standard provision and by USAID Regulation 2, "Overseas Shipments of Supplies by Voluntary Nonprofit Relief Agencies" (22 CFR Part 202).
- (f) Shipments financed under this grant must meet applicable eligibility requirements set out in 22 CFR 228.21.

**3.11 USAID ELIGIBILITY RULES FOR GOODS AND SERVICES
(APR 1998)**

(This provision is not applicable to goods or services which the recipient provides with private funds as part of a cost-sharing requirement, or with Program Income generated under the award.)

- (a) Ineligible and Restricted Goods and Services: USAID's

3.11 (Continued)

policy on ineligible and restricted goods and services is contained in ADS Chapter 312.

- (1) Ineligible Goods and Services. Under no circumstances shall the recipient procure any of the following under this award:
 - (i) Military equipment,
 - (ii) Surveillance equipment,
 - (iii) Commodities and services for support of police or other law enforcement activities,
 - (iv) Abortion equipment and services,
 - (v) Luxury goods and gambling equipment, or
 - (vi) Weather modification equipment.
- (2) Ineligible Suppliers. Funds provided under this award shall not be used to procure any goods or services furnished by any firms or individuals whose name appears on the "Lists of Parties Excluded from Federal Procurement and Nonprocurement Programs." USAID will provide the recipient with a copy of these lists upon request.
- (3) Restricted Goods. The recipient shall not procure any of the following goods and services without the prior budget approval of the Agreement Officer:
 - (i) Agricultural commodities,
 - (ii) Motor vehicles,
 - (iii) Pharmaceuticals,
 - (iv) Pesticides,
 - (v) Used equipment,
 - (vi) U.S. Government-owned excess property, or
 - (vii) Fertilizer.

Prior budget approval will be deemed to have been met when:

- (i) the item is of US source/origin;
- (ii) the item has been identified and incorporated in the

3.11 (Continued)

program description or schedule of the award (initial or revisions), or amendments to the award; and

- (iii) the costs related to the item are incorporated in the approved budget of the award.

Where the item has not been incorporated into the award as described above, a separate written authorization from the Agreement Officer must be provided before the item is procured.

- (b) Source and Nationality: The eligibility rules for goods and services based on source and nationality are divided into two categories. One applies when the total procurement element during the life of the award is over \$250,000, and the other applies when the total procurement element during the life of the award is not over \$250,000, or the award is funded under the Development Fund for Africa (DFA) regardless of the amount. The total procurement element includes procurement of all goods (e.g., equipment, materials, supplies) and services. Guidance on the eligibility of specific goods or services may be obtained from the Agreement Officer. USAID policies and definitions on source, origin and nationality are contained in 22 CFR Part 228, Rules on Source, Origin and Nationality for Commodities and Services Financed by the Agency for International Development, which is incorporated into this Award in its entirety.

- (1) For DFA funded awards or when the total procurement element during the life of this award is valued at \$250,000 or less, the following rules apply:

- (i) The authorized source for procurement of all goods and services to be reimbursed under the award is USAID Geographic Code 935, "Special Free World," and such goods and services must meet the source, origin and nationality requirements set forth in 22 CFR Part 228 in accordance with the following order of preference:

- (A) The United States (USAID Geographic Code 000),
- (B) The Cooperating Country,
- (C) USAID Geographic Code 941, and
- (D) USAID Geographic Code 935.

- (ii) Application of order of preference: When the recipient procures goods and services from other than U.S. sources, under the order of preference in

3.11 (Continued)

paragraph (b)(1)(i) above, the recipient shall document its files to justify each such instance. The documentation shall set forth the circumstances surrounding the procurement and shall be based on one or more of the following reasons, which will be set forth in the grantee's documentation:

- (A) The procurement was of an emergency nature, which would not allow for the delay attendant to soliciting U.S. sources,
 - (B) The price differential for procurement from U.S. sources exceeded by 50% or more the delivered price from the non-U.S. source,
 - (C) Compelling local political considerations precluded consideration of U.S. sources,
 - (D) The goods or services were not available from U.S. sources, or
 - (E) Procurement of locally available goods and services, as opposed to procurement of U.S. goods and services, would best promote the objectives of the Foreign Assistance program under the award.
- (2) When the total procurement element exceeds \$250,000 (unless funded by DFA), the following applies: Except as may be specifically approved or directed in advance by the Agreement Officer, all goods and services financed with U.S. dollars, which will be reimbursed under this award must meet the source, origin and nationality requirements set forth in 22 CFR Part 228 for the authorized geographic code specified in the schedule of this award. If none is specified, the authorized source is Code 000, the United States.
- (e) Printed or Audio-Visual Teaching Materials: If the effective use of printed or audio-visual teaching materials depends upon their being in the local language and if such materials are intended for technical assistance projects or activities financed by USAID in whole or in part and if other funds including U.S.-owned or U.S.-controlled local currencies are not readily available to finance the procurement of such materials, local language versions may be procured from the following sources, in order of preference:
- (1) The United States (USAID Geographic Code 000),
 - (2) The Cooperating Country,

3.11 (Continued)

- (3) "Selected Free World" countries (USAID Geographic Code 941), and
 - (4) "Special Free World" countries (USAID Geographic Code 899).
- (d) If USAID determines that the recipient has procured any of these goods or services under this award contrary to the requirements of this provision, and has received payment for such purposes, the Agreement Officer may require the recipient to refund the entire amount of the purchase.
- (e) This provision will be included in all subagreements which include procurement of goods or services which total over \$5,000.

3.12 SUBAGREEMENTS (APR 1998)

Subrecipients and subawardees have no relationship with USAID under the terms of this agreement. All required USAID approvals must be directed through the recipient to USAID.

3.13 LOCAL PROCUREMENT (APR 1998)

- (a) Financing local procurement involves the use of appropriated funds to finance the procurement of goods and services supplied by local businesses, dealers or producers, with payment normally being in the currency of the cooperating country.
- (b) Locally financed procurements must be covered by source and nationality waivers as set forth in 22 CFR 228, Subpart F, except as provided for in mandatory standard provision, "USAID Eligibility Rules for Goods and Services," or when one of the following exceptions applies:
- (1) Locally available commodities of U.S. origin, which are otherwise eligible for financing, if the value of the transaction is estimated not to exceed \$100,000 exclusive of transportation costs.
 - (2) Commodities of geographic code 935 origin if the value of the transaction does not exceed the local currency equivalent of \$5,000.
 - (3) Professional Services Contracts estimated not to exceed \$250,000.
 - (4) Construction Services Contracts estimated not to exceed \$5,000,000.

3.13 (Continued)

- (5) Commodities and services available only in the local economy (no specific per transaction value applies to this category). This category includes the following items:
- (i) Utilities including fuel for heating and cooking, waste disposal and trash collection;
 - (ii) Communications - telephone, telex, fax, postal and courier services;
 - (iii) Rental costs for housing and office space;
 - (iv) Petroleum, oils and lubricants for operating vehicles and equipment;
 - (v) Newspapers, periodicals and books published in the cooperating country;
 - (vi) Other commodities and services and related expenses that, by their nature or as a practical matter, can only be acquired, performed, or incurred in the cooperating country, e.g., vehicle maintenance, hotel accommodations, etc.
- (c) The coverage on ineligible and restricted goods and services in the mandatory standard provision "USAID Eligibility Rules for Goods and Services," also apply to local procurement.
- (d) This provision will be included in all subagreements where local procurement of goods or services is a supported element.

3.14 NEGOTIATED INDIRECT COST RATES - PROVISIONAL (NONPROFIT) (APR 1998)

(This provision is applicable to any nonprofit organizations whose indirect cost rates under this award are on a provisional basis.)

- (a) Provisional indirect cost rates shall be established for each of the recipient's accounting periods during the term of this award. Pending establishment of revised provisional or final rates, allowable indirect costs shall be reimbursed at the rates, on the bases, and for the periods shown in the schedule of this award.
- (b) Within the earlier of 30 days after receipt of the A-133 audit report or nine months after the end of the audit period, the recipient shall submit to the cognizant agency for audit the required OMB Circular A-133 audit report, proposed final indirect cost rates, and supporting cost data. If USAID is

3.14 (Continued)

the cognizant agency or no cognizant agency has been designated, the recipient shall submit four copies of the audit report, along with the proposed final indirect cost rates, and supporting cost data, to the Overhead, Special Costs, and Closeout Branch, Office of Procurement, USAID, Washington, DC 20523-7802. The proposed rates shall be based on the recipient's actual cost experience during that fiscal year. Negotiations of final indirect cost rates shall begin soon after receipt of the recipient's proposal.

- (c) Allowability of costs and acceptability of cost allocation methods shall be determined in accordance with the applicable cost principles.
- (d) The results of each negotiation shall be set forth in a written indirect cost rate agreement signed by both parties. Such agreement is automatically incorporated into this award and shall specify (1) the agreed upon final rates, (2) the bases to which the rates apply, (3) the fiscal year for which the rates apply, and (4) the items treated as direct costs. The agreement shall not change any monetary ceiling, award obligation, or specific cost allowance or disallowance provided for in this award.
- (e) Pending establishment of final indirect cost rate(s) for any fiscal year, the recipient shall be reimbursed either at negotiated provisional rates or at billing rates acceptable to the Agreement Officer, subject to appropriate adjustment when the final rates for the fiscal year are established. To prevent substantial overpayment or underpayment, the provisional or billing rates may be prospectively or retroactively revised by mutual agreement.
- (f) Failure by the parties to agree on final rates is a 22 CFR 226.90 dispute.

3.15 REGULATIONS GOVERNING EMPLOYEES (AUG 1992)

(The following applies to the grantee's employees who are not citizens of the cooperating country.)

- (a) The grantee's employees shall maintain private status and may not rely on local U.S. Government offices or facilities for support while under this grant.
- (b) The sale of personal property or automobiles by grantee employees and their dependents in the foreign country to which they are assigned shall be subject to the same limitations and prohibitions which apply to direct-hire AID personnel employed by the Mission, including the rules contained in 22 CFR Part 136, except as this may conflict with host government

3.15 (Continued)

regulations.

- (c) Other than work to be performed under this grant for which an employee is assigned by the grantee, no employee of the grantee shall engage directly or indirectly, either in the individual's own name or in the name or through an agency of another person, in any business, profession, or occupation in the foreign countries to which the individual is assigned, nor shall the individual make loans or investments to or in any business, profession or occupation in the foreign countries to which the individual is assigned.
- (d) The grantee's employees, while in a foreign country, are expected to show respect for its conventions, customs, and institutions, to abide by its applicable laws and regulations, and not to interfere in its internal political affairs.
- (e) In the event the conduct of any grantee employee is not in accordance with the preceding paragraphs, the grantee's chief of party shall consult with the AID Mission Director and the employee involved and shall recommend to the grantee a course of action with regard to such employee.
- (f) The parties recognize the rights of the U.S. Ambassador to direct the removal from a country of any U.S. citizen or the discharge from this grant of any third country national when, in the discretion of the Ambassador, the interests of the United States so require.
- (g) If it is determined, under either (e) or (f) above, that the of such employee shall be terminated, the grantee shall use its best efforts to cause the return of such employee to the United States, or point of origin, as appropriate.

3.16 PUBLIC NOTICES (AUG 1992)

(This provision is applicable when the cognizant technical office determines that the grant is of public interest and requests that the provision be included in the grant.)

It is USAID's policy to inform the public as fully as possible of its programs and activities. The grantee is encouraged to give public notice of the receipt of this grant and, from time to time, to announce progress and accomplishments. Press releases or other public notices should include a statement substantially as follows:

"The U.S. Agency for International Development administers the U.S. foreign assistance program providing economic and humanitarian assistance in more than 80 countries worldwide."

3.16 (Continued)

The grantee may call on USAID's Office of External Affairs for advice regarding public notices. The grantee is requested to provide copies of notices or announcements to the cognizant technical officer and to USAID's Office of External Affairs as far in advance of release as possible.

3.17 COMMUNICATIONS PRODUCTS (OCT 1994)

- (a) Definition - Communications products are any printed materials (other than non-color photocopy material), photographic services or video production services.
- (b) Standards - USAID has established standards for communications products. These standards must be followed unless otherwise specifically provided in the agreement or approved in writing by the agreement officer. A copy of the standards for USAID financed publications and video productions is attached.
- (c) Communications products which meet any of the following criteria are not eligible for USAID financing under this agreement unless specifically authorized in the agreement schedule or in writing by the agreement officer:
 - (1) Any communication product costing over \$25,000, including the costs of both preparation and execution. For example, in the case of a publication, the costs will include research, writing and other editorial services (including any associated overhead), design, layout and production costs.
 - (2) Any communication products that will be sent directly to, or likely to be seen by, a Member of Congress or Congressional staffer; and
 - (3) Any publication that will have more than 50 percent of its copies distributed in the United States (excluding copies provided to CDIE and other USAID/W offices for internal use.