
GRANT NUMBER 0134-AFG (SF)

GRANT AGREEMENT
(Special Operations)

(Energy Sector Development Investment Program – Project 1)

between

ISLAMIC REPUBLIC OF AFGHANISTAN

and

ASIAN DEVELOPMENT BANK

DATED 1 FEBRUARY 2009

GAS: AFG 42094

GRANT AGREEMENT

(Special Operations)

GRANT AGREEMENT dated 1 February 2009 between the ISLAMIC REPUBLIC OF AFGHANISTAN (hereinafter called the Recipient) and ASIAN DEVELOPMENT BANK (hereinafter called ADB).

WHEREAS

(A) the Recipient and ADB entered into the Framework Financing Agreement dated 22 October 2008 (FFA) for purposes of multitranche financing facility to help the Recipient fund projects and subprojects under its Energy Sector Development Investment Program (Program);

(B) the Recipient has applied to ADB for a grant for the purposes of the Project described in Schedule 1 to this Grant Agreement (hereinafter called the Project);

(C) the Project will be carried out by Da Afghanistan Breshna Sherkat (DABS) and the Ministry of Mines of the Recipient (MOM), and for this purpose the Recipient will make available to DABS and MOM the proceeds of the Grant provided for herein upon terms and conditions satisfactory to ADB; and

(D) ADB has agreed to make a Grant to the Recipient from ADB's Special Funds resources upon the terms and conditions set forth herein and in the Project Agreement of even date herewith between ADB and DABS;

NOW THEREFORE the parties hereto agree as follows:

ARTICLE I

Grant Regulations; Definitions

Section 1.01. All the provisions of the Special Operations Grant Regulations of ADB, dated 7 February 2005 (the "Grant Regulations"), are hereby made applicable to this Grant Agreement with the same force and effect as if they were fully set forth herein.

Section 1.02. Wherever used in this Grant Agreement, unless the context otherwise requires, the several terms defined in the Grant Regulations have the respective meanings therein set forth, and the following additional terms have the following meanings:

(a) "Consulting Guidelines" means ADB's Guidelines on the Use of Consultants by Asian Development Bank and its Borrowers (2007, as amended from time to time);

(b) "DABS" means Da Afghanistan Breshna Sherkat, and any successor thereto acceptable to ADB;

(c) "Goods" means equipment and materials to be financed out of the proceeds of the Grant, including related services such as transportation, insurance, installation, commissioning, training, and initial maintenance, but excluding consulting services;

(d) "IEE" means the initial environmental examination prepared for the Project, or any of its subprojects, by the Recipient dated October 2008 and agreed with ADB;

(e) "JFPR" means Japan Fund for Poverty Reduction administered by ADB;

(f) "kV" means kilovolt;

(g) "LARP" or "Land Acquisition and Resettlement Plan" means the Land Acquisition and Resettlement Plan prepared for the Project, or any of its subprojects, by the Recipient dated October 2008 and agreed with ADB;

(h) "MEW" means the Ministry of Energy and Water of the Recipient, and any successor thereto;

(i) "MOF" means the Ministry of Finance of the Recipient, and any successor thereto;

(j) "MOM" means the Ministry of Mines of the Recipient, and any successor thereto;

(k) "NEPS" means the North East Power System;

(l) "PMO" means the Program Management Office;

(m) "Project Executing Agency" for the purposes of, and within the meaning of, the Grant Regulations means DABS and MOM, which are responsible for the carrying out of the Project as assigned to each pursuant to paragraph 1 of Schedule 4 hereof;

(n) "Project facilities" means the equipment and facilities to be provided or rehabilitated under the Project;

(o) "Procurement Guidelines" means ADB's Procurement Guidelines (2007, as amended from time to time);

(p) "Procurement Plan" means the procurement plan for the Project dated October 2008 and agreed between the Recipient and ADB, as updated from time to time in accordance with the Procurement Guidelines, Consulting Guidelines, and other arrangements agreed with ADB;

(q) "Subsidiary Loan Agreement" means the agreement entered into between the Recipient and DABS referred to in Section 3.01 of this Grant Agreement; and

(r) "Works" means construction or civil works to be financed out of the proceeds of the Grant, including services such as drilling or mapping, and project related services that are provided as part of a single responsibility or turnkey contract, but excluding consulting services.

ARTICLE II

The Grant

Section 2.01. ADB agrees to make available to the Recipient from ADB's Special Funds resources one hundred sixty-four million U.S. dollars (\$164,000,000).

ARTICLE III

Use of Proceeds of the Grant

Section 3.01. (a) The Recipient shall lend a portion of the proceeds of the Grant in the amount of one hundred thirty-eight million six hundred thousand dollars (\$138,600,000) to DABS under a Subsidiary Loan Agreement upon terms and conditions satisfactory to ADB. Except as ADB shall otherwise agree, the terms for lending the proceeds of the Grant shall include a term of 32 years, with 8 year grace period, and interest at the rate of 1% per annum during grace period and 1.5% per annum thereafter, with the foreign exchange risk being borne by DABS.

(b) The Recipient shall make available a portion of the proceeds of the Grant in the amount of twenty-five million four hundred thousand dollars (\$25,400,000) to MOM for purposes of implementation of the subproject described in sub-clause 3.g of Schedule 1 hereto.

(c) The Recipient shall cause DABS and MOM to apply the proceeds of the Grant to the financing of expenditures on the Project, within the scope of their responsibility, in accordance with the provisions of this Grant Agreement and the Project Agreement.

Section 3.02. The Goods, Works, consulting services, and other items of expenditure to be financed out of the proceeds of the Grant and the allocation of amounts of the Grant among different categories of such Goods, Works, consulting services and other items of expenditure shall be in accordance with the provisions of Schedule 2 to this Grant Agreement, as such Schedule 2 may be amended from time to time by agreement between the Recipient and ADB.

Section 3.03. Withdrawals from the Grant Account in respect of Goods, Works and consulting services shall be made only on account of expenditures relating to:

- (a) Goods which are produced in and supplied from, and Works and services which are supplied from, such member countries of ADB as shall have been specified by ADB from time to time as eligible sources for procurement, and
- (b) Goods, Works and consulting services which meet such other eligibility requirements as shall have been specified by ADB from time to time.

Section 3.04. Except as ADB may otherwise agree, all Goods, Works and consulting services to be financed out of the proceeds of the Grant shall be procured in accordance with the provisions of Schedule 3 to this Grant Agreement.

Section 3.05. The Grant Closing Date for the purposes of Section 8.02 of the Grant Regulations shall be 30 June 2014 or such other date as may from time to time be agreed between the Recipient and ADB.

ARTICLE IV

Particular Covenants

Section 4.01. In the carrying out of the Project and operation of the Project facilities, the Recipient shall perform, or cause to be performed, all obligations set forth in Schedule 4 to this Grant Agreement.

Section 4.02. The Recipient shall enable ADB's representatives to inspect the Project, the Goods and Works financed out of the proceeds of the Grant, and any relevant records and documents.

Section 4.03. The Recipient shall take all action which shall be necessary on its part to enable DABS to perform its respective obligations under the Project Agreement, including the establishment and maintenance of tariffs as stipulated in Schedule 6 of the FFA, and to enable MOM to perform its respective obligations hereunder, and shall not take or permit any action which would interfere with the performance of such obligations.

Section 4.04. (a) The Recipient shall exercise its rights under the Subsidiary Loan Agreement in such a manner as to protect the interests of the Recipient and ADB and to accomplish the purposes of the Grant.

(b) No rights or obligations under the Subsidiary Loan Agreement shall be assigned, amended, or waived without the prior concurrence of ADB.

ARTICLE V

Suspension; Cancellation; Acceleration of Maturity

Section 5.01. The following are specified as additional events for suspension of the right of the Recipient to make withdrawals from the Grant Account for the purposes of Section 8.01(k) of the Grant Regulations or cancellation of the Grant pursuant to section 8.02 of the Grant Regulations:

(a) the Recipient or DABS shall have failed to perform any of their respective obligations under the Subsidiary Loan Agreement, or the Subsidiary Loan Agreement or any provision thereof shall have been transferred, assigned, amended, suspended, abrogated or waived without the prior approval of ADB; and

(b) DABS's organizational structure shall have been significantly altered in such a manner that in the reasonable opinion of ADB will or may adversely affect the carrying out of the Project or the operation of the Project facilities.

ARTICLE VI

Effectiveness

Section 6.01. The following are specified as additional conditions to the effectiveness of this Grant Agreement for the purposes of Section 9.01(e) of the Grant Regulations: the Subsidiary Loan Agreement, in form and substance satisfactory to ADB, shall have been duly executed and delivered on behalf of the Recipient and DABS and shall have become fully effective and binding upon the parties in accordance with its terms, subject only to the effectiveness of this Grant Agreement.

Section 6.02. The following is specified as an additional matter, for the purposes of Section 9.02(c) of the Grant Regulations, to be included in the opinion or opinions to be furnished to ADB: that the Subsidiary Loan Agreement has been duly authorized by or ratified by, and executed and delivered on behalf of, the Recipient and DABS, and is legally binding upon the parties in accordance with its terms, subject only to the effectiveness of this Grant Agreement.

Section 6.03. A date thirty (30) days after the date of this Grant Agreement is specified for the effectiveness of the Grant Agreement for the purposes of Section 9.04 of the Grant Regulations.

ARTICLE VII

Delegation of Authority

Section 7.01. The Recipient hereby designates DABS and MOM, each within the area of its responsibility, as its agent for the purposes of taking any action or entering into any agreement required or permitted under Sections 3.02 and 3.05 of this Grant Agreement and under Sections 5.01, 5.02, 5.03 and 5.04 of the Grant Regulations.

Section 7.02. Any action taken or any agreement entered into by DABS and MOM, within the area of their responsibility, pursuant to the authority conferred under Section 7.01 of this Grant Agreement shall be fully binding on the Recipient and shall have the same force and effect as if taken by the Recipient.

Section 7.03. The authority conferred on DABS and MOM under Section 7.01 of this Grant Agreement may be revoked or modified by agreement between the Recipient and ADB.

ARTICLE VIII

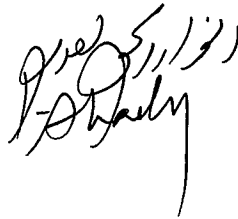
Miscellaneous

Section 8.01. The Minister of Finance of the Recipient is designated as representative of the Recipient for the purposes of Section 11.02 of the Grant Regulations.

Section 8.02. The following addresses are specified for the purposes of Section 11.01 of the Grant Regulations:

For the Recipient

Ministry of Finance
Pashtunistan Watt
Kabul, Afghanistan



Facsimile Number:

+93 (20) 210-3258

For ADB

Asian Development Bank
P.O. Box 789
0980 Manila, Philippines

Facsimile Numbers:

+63 (2) 636-2444
+63 (2) 636-2428.

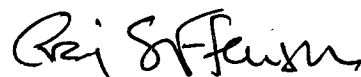
IN WITNESS WHEREOF the parties hereto, acting through their representatives thereunto duly authorized, have caused this Grant Agreement to be signed in their respective names and to be delivered at the principal office of ADB, as of the day and year first above written.

ISLAMIC REPUBLIC OF AFGHANISTAN

By 

Authorized Representative

ASIAN DEVELOPMENT BANK

By 

CRAIG STEFFENSEN
Country Director
Afghanistan Resident Mission

SCHEDULE 1

Description of the Project

Impact and Outcome

1. The Project will promote economic development and will contribute to poverty reduction by ensuring sustainable and reliable electricity supply. It will improve power transmission and distribution infrastructure through rehabilitation, augmentation and expansion of the primary high-voltage and low-voltage transmission networks, and will promote rural electrification and development of renewable energy.
2. The outcome of the Project will be improved power supply in the northern and eastern areas of Afghanistan.

Project Scope

3. The Project comprises the following subprojects:
 - (a) **NEPS 220 kV Transmission Line: Kunduz-Taloqan**
Consulting services and construction of approximately 67 km dual-circuit high-voltage (220kV) transmission line with ancillary equipment linking Kunduz and Taloqan cities;
 - (b) **NEPS Distribution Network: Kunduz**
Consulting services and rehabilitation and upgrade of electricity distribution system in Kunduz city;
 - (c) **NEPS Distribution Network: Baghlan**
Consulting services and rehabilitation and upgrade of electricity distribution system in Baghlan city;
 - (d) **Baharak Small Hydropower Plant and Mini-Grid**
Consulting services and construction and installation of a run-of-river hydropower plant on the Warduj River near Baharak city, and construction of a small distribution grid connecting the hydro plant to Baharak and Jurm districts;
 - (e) **Emergency Restoration System**
Pre-construction of emergency replacement towers with ancillary equipment ready for deployment and installation in the event of full or partial destruction of electrified grid towers;
 - (f) **NEPS 220 kV System Operations and Maintenance**
Provision of necessary equipment and spare-parts and funding 3-year management contract for maintenance of the NEPS;

- (g) **Sherberghan Gas Fields Rehabilitation**
Rehabilitation of existing gas field at Sherberghan by providing: (i) two mobile rigs to carry out workover activities for 12 gas wells; (ii) two complete well wire line units to carry out down-hole flow tests; (iii) supply and installation of one skid-mounted gas sweetening plant; (iv) two containerized gas production testing laboratories; (v) chemicals, tools, equipment, spare parts, and instrumentation (vi) consulting services for design, engineering, contract management, and construction supervision; (vi) gas well rehabilitation; and (vii) institutional strengthening and training of MOM; and

- (h) **Mini Hydropower Plants in Badakhshan and Bamyan Provinces** (financed by JFPR)
Consulting services and development of up to four 500 kilowatt hydropower plants in Badakhshan and Bamyan Provinces;

4. The Project is expected to complete by 31 December 2013.

SCHEDULE 2

Allocation and Withdrawal of Grant Proceeds

General

1. The table attached to this Schedule sets forth the Categories of Goods, Works, consulting services to be financed out of the proceeds of the Grant and the allocation of amounts of the Grant to each such Category (hereinafter called the Table). (Reference to "Category" or "Categories" in this Schedule is to a Category or Categories of the Table.)

Percentages of ADB Financing

2. Except as ADB may otherwise agree, the items of the Categories listed in the Table shall be financed out of the proceeds of the Grant on the basis of the percentages set forth in the Table.

Reallocation

3. Notwithstanding the allocation of Grant proceeds and the withdrawal percentages set forth in the Table,

(a) if the amount of the Grant allocated to any Category appears to be insufficient to finance all agreed expenditures in that Category, ADB may, by notice to the Recipient, (i) reallocate to such Category, to the extent required to meet the estimated shortfall, amounts of the Grant which have been allocated to another Category but, in the opinion of ADB, are not needed to meet other expenditures, and (ii) if such reallocation cannot fully meet the estimated shortfall, reduce the withdrawal percentage applicable to such expenditures in order that further withdrawals under such Category may continue until all expenditures thereunder shall have been made; and

(b) if the amount of the Grant then allocated to any Category appears to exceed all agreed expenditures in that Category, ADB may, by notice to the Recipient, reallocate such excess amount to any other Category.

Disbursement Procedures

4. Except as ADB may otherwise agree, the Grant proceeds for financing Goods, Works, and consulting services shall be disbursed in accordance with ADB's "Loan Disbursement Handbook" dated January 2007 (ADB's Loan Disbursement Handbook), as amended from time to time, primarily utilizing direct payment procedure and commitment procedure.

Imprest Account; Statement of Expenditures

5. (a) Except as ADB may otherwise agree, the Recipient shall cause each of DABS and MOM to establish immediately after the Effective Date, an imprest account at a bank satisfactory to ADB. The imprest accounts shall be established, managed, replenished and liquidated in accordance with ADB's Loan Disbursement Handbook, and detailed arrangements agreed upon between the Recipient and ADB. The currency of the imprest

account shall be US Dollar. The amount to be deposited into the imprest accounts shall not exceed the lower of (i) the estimated expenditure for the first six months of Project implementation, as relevant to DABS or MOM, or (ii) \$100,000 equivalent.

(b) The statement of expenditures (SOE) procedure may be used for reimbursement of eligible expenditures not exceeding \$50,000 equivalent per individual payment for contracts awarded under Shopping procedure and for recurrent and minor PMO expenses and to liquidate advances provided into the imprest accounts, in accordance with ADB's Loan Disbursement Handbook and detailed arrangements agreed upon between the Recipient and ADB.

Retroactive Financing

6. Withdrawals from the Grant Account may be made for reimbursement of reasonable expenditures incurred under the Project, other than the subproject under sub-clause 3.h of Schedule 1 hereto, before the Effective Date, but not earlier than 12 months before the date of this Grant Agreement in connection with eligible consulting services, Works and Goods, subject to a maximum amount equivalent to 20 percent of the Grant amount.

Condition of Withdrawals from Grant Account

7. Notwithstanding any other provision of this Grant Agreement, no withdrawals shall be made from the Grant Account for the Works on any subproject provided in Schedule 1 until after an updated LARP with respect to such subproject has been approved by ADB and implemented in a manner satisfactory to ADB.

TABLE

ALLOCATED ADB WITHDRAWAL OF GRANT PROCEEDS				
(Energy Sector Development Investment Program – Project 1)				
CATEGORY			PERCENTAGE OF BANK FINANCING	
Number	Item	Amount Allocated \$ '000	Percentage	Basis for Withdrawal from the Grant Account
1	Turnkey	61,900	100	of expenditure claimed*
2	Civil Works	2,200	100	of expenditure claimed*
3	Goods	33,100	100	of expenditure claimed*
4	PMO support	3,000	100	of expenditure claimed*
5	Consulting Services	25,200	100	of expenditure claimed*
6	Unallocated	38,600		
	TOTAL	164,000		

* Excluding local taxes and duties.

SCHEDULE 3

Procurement of Goods and Works, and Consulting Services

A. General

1. All Goods and Works, and consulting services, to be financed out of the proceeds of the Grant shall be subject to and governed by the Procurement Guidelines, and the Consulting Guidelines, respectively.
2. All terms used and not otherwise defined in this Grant Agreement have the meanings provided in the Procurement Guidelines and/or the Consulting Guidelines, as applicable.

B. Procurement for Goods and Works

3. Except as ADB may otherwise agree, Goods and Works shall only be procured on the basis of the methods of procurement set forth below:

International Competitive Bidding
National Competitive Bidding
Shopping
Limited International Bidding

4. The method of procurement is subject to, among other things, the detailed arrangements and threshold values set forth in the Procurement Plan. DABS may only modify the methods of procurement or threshold values with the prior agreement of ADB, and modifications must be set out in updates to the Procurement Plan.

C. Conditions for Award of Contract

5. DABS shall not award a contract for Works under any subproject until after the updated LARP with respect to such subproject has been approved by ADB.

D. Recruitment of Consulting Services.

6. Quality-Based Selection. Except as ADB may otherwise agree, DABS shall apply quality-based selection for recruiting consulting services.
7. The Recipient shall apply the following method for selecting and engaging the specified consulting services, in accordance with, among other things, the procedures set forth in the Procurement Plan:

<u>Single-Source Selection</u> for supervision services on the Sherberghan Gas Fields Rehabilitation subproject; and
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<u>Least-Cost Selection</u> for auditing services.
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8. The Recipient may recruit individual consultant for evaluation and monitoring and for technical support in accordance with ADB's procedures for recruiting individual consultants.

E. Industrial or Intellectual Property Rights

9. (a) DABS and MOM shall ensure that all Goods and Works procured (including without limitation all computer hardware, software and systems, whether separately procured or incorporated within other goods and services procured) do not violate or infringe any industrial property or intellectual property right or claim of any third party.

(b) DABS and MOM shall ensure that all contracts for the procurement of Goods and Works contain appropriate representations, warranties and, if appropriate, indemnities from the contractor or supplier with respect to the matters referred to in subparagraph (a) of this paragraph; and that all ADB-financed contracts with consultants contain appropriate representations, warranties and, if appropriate, indemnities from the consultants to ensure that the consulting services provided do not violate or infringe any industrial property or intellectual property right or claim of any third party.

10. DABS and MOM shall ensure that all ADB-financed contracts with consultants contain appropriate representations, warranties and, if appropriate, indemnities from the consultants to ensure that the consulting services provided do not violate or infringe any industrial property or intellectual property right or claim of any third party.

F. ADB's Review of Procurement Decisions

11. All contracts procured under international competitive bidding procedures and contracts for consulting services shall be subject to prior review by ADB, unless otherwise agreed between DABS, MOM and ADB and set forth in the Procurement Plan.

SCHEDULE 4**Execution of the Project;
Financial and Other Matters****I. Implementation Arrangements**

1. (a) DABS as a Project Executing Agency (EA) shall be responsible for carrying out the Project, except for the subproject listed under sub-clause 3.g of Schedule 1 hereto.

(b) MOM as a Project EA shall be responsible for carrying out the Sherberghan Gas Fields Rehabilitation Subproject described under sub-clause 3.g of Schedule 1 hereto.

(c) Implementation arrangements agreed under the FFA are made applicable hereto with the same force and effect as if they were fully set forth herein.

II. Operational Covenants

2. The Recipient's representations and warranties provided under the FFA remain true and valid as of the date hereof.

3. The Recipient's undertakings provided under the FFA are hereby made applicable to this Grant Agreement, *mutatis mutandis*, with the same force and effect as if they were fully set forth herein.

4. The Project as a whole and particularly the subprojects listed under clause 3 of Schedule 1 hereof remain Recipient's development priority under the Program and meet criteria agreed under the FFA.