
GRANT NUMBER 0161-AFG(SF)

GRANT AGREEMENT
(Special Operations)

(Hairatan to Mazar-e-Sharif Railway Project)

between

ISLAMIC REPUBLIC OF AFGHANISTAN

and

ASIAN DEVELOPMENT BANK

DATED 30 SEPTEMBER 2009

GAS: AFG 42533

GRANT AGREEMENT

(Special Operations)

GRANT AGREEMENT dated 30 September 2009 between the ISLAMIC REPUBLIC OF AFGHANISTAN (hereinafter called the Recipient) and ASIAN DEVELOPMENT BANK (hereinafter called ADB).

WHEREAS

(A) 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); and

(B) ADB has agreed to make a Grant to the Recipient from ADB's Special Funds resources upon the terms and conditions set forth herein;

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) "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;

(c) "IEE" means the initial environmental examination prepared for the Project by the Recipient dated 25 August 2009 and agreed with ADB;

(d) "LARP" means the land acquisition and resettlement plan prepared for the Project by the Recipient dated 25 August 2009 and agreed with ADB;

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

(f) "MPW" means the Ministry of Public Works of the Recipient, and any successor thereto;

(g) "PIU" means the Project Implementation Unit as described in paragraph 2 of Schedule 4 hereof;

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

(i) "Procurement Plan" means the procurement plan for the Project dated 10 September 2009 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;

(j) "Project area" means the geographic area encompassing the Project facilities;

(k) "Project Executing Agency" for the purposes of, and within the meaning of, the Grant Regulations means MPW, which is responsible for the carrying out of the Project;

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

(m) "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-five million Dollars (\$165,000,000).

ARTICLE III

Use of Proceeds of the Grant

Section 3.01. The Recipient shall cause the proceeds of the Grant to be applied to the financing of expenditures on the Project in accordance with the provisions of this Grant Agreement.

Section 3.02. The Goods, Works, and consulting services 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, and consulting services 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 31 December 2011 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. (a) The Recipient shall (i) maintain, or cause to be maintained, separate accounts for the Project; (ii) have such accounts and related financial statements audited annually, in accordance with appropriate auditing standards consistently applied, by independent auditors whose qualifications, experience and terms of reference are acceptable to ADB; (iii) furnish to ADB, as soon as available but in any event not later than 6 months after the end of each related fiscal year, certified copies of such audited accounts and financial statements and the report of the auditors relating thereto (including the auditors' opinion on the use of the Grant proceeds and compliance with the financial covenants of this Grant Agreement as well as on the use of the procedures for imprest account/statement of expenditures), all in the English language; and (iv) furnish to ADB such other information concerning such accounts and financial statements and the audit thereof as ADB shall from time to time reasonably request.

(b) The Recipient shall enable ADB, upon ADB's request, to discuss the Recipient's financial statements for the Project and its financial affairs related to the Project from

time to time with the auditors appointed by the Recipient pursuant to Section 4.02(a) hereabove, and shall authorize and require any representative of such auditors to participate in any such discussions requested by ADB, provided that any such discussion shall be conducted only in the presence of an authorized officer of the Recipient unless the Recipient shall otherwise agree.

Section 4.03 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.

ARTICLE V

Effectiveness

Section 5.01. 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 VI

Miscellaneous

Section 6.01. 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 6.02. 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) 636-2426.

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 

Dr. OMAR ZAKHILWAL
Minister of Finance

ASIAN DEVELOPMENT BANK

By 

CRAIG STEFFENSEN
Country Director
Afghanistan Resident Mission

SCHEDULE 1

Description of the Project

Impact and Outcome

1. The Project will increase trade between Afghanistan and Uzbekistan. It will also reduce transport costs, increase vehicle operation savings, and create job opportunities in the Project area. The Project will construct a modern, efficient and sustainable railway connection between northern Afghanistan and southern Uzbekistan.

Project Scope

2. The Project activities include the following:
 - (i) Improvement of Hairatan's marshaling yard and railway station;
 - (ii) Construction of a new single track railway line of about 75 km from Hairatan to Mazar-e-Sharif;
 - (iii) Construction of a new transshipment terminal facility at Mazar-e-Sharif;
 - (iv) Installation of signaling and telecommunication systems;
 - (v) Installation of safety features for efficient railway operation;
 - (vi) Institutional capacity development of the railway sector; and
 - (vii) Construction supervision and project management consultancy.

3. The Project is expected to be completed by 30 June 2011.

SCHEDULE 2

Allocation and Withdrawal of Grant Proceeds

General

1. The table attached to this Schedule sets forth the Categories of Goods, Works, and 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 establish immediately after the Effective Date, an imprest account at a bank satisfactory to ADB. The imprest account 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 the Dollar. The amount to be

deposited into the imprest account shall not exceed the lower of (i) the estimated expenditure, eligible for financing from the imprest account, for the forthcoming six months or (ii) 10 percent of the Grant amount.

(b) The statement of expenditures (SOE) procedure may be used for reimbursement of eligible expenditures not exceeding \$100,000 equivalent per individual payment and to liquidate advances provided into the imprest account, 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 before the Effective Date, but not earlier than 12 months before the date of this Grant Agreement in connection with eligible Project expenditures, 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 until ADB has received the Recipient's certification, in form and substance satisfactory to ADB, that the PIU has been duly established and authorized, and has become fully operational to perform its functions to implement the Project.

TABLE

| ALLOCATION AND WITHDRAWAL OF GRANT PROCEEDS (Hairatan to Mazar-e-Sharif Railway Project) | | | | |
|---|----------------------------|-----------------------------|-------------------------------------|---|
| CATEGORY | | | PERCENTAGE OF BANK FINANCING | |
| Number | Item | Amount Allocated \$ '000 | Percentage | Basis for Withdrawal from the Grant Account |
| 1 | Turnkey contract | 130,000 | 100 | of total expenditure* |
| 2 | Consulting Services | 4,700 | 100 | of total expenditure* |
| 3 | Project management support | 500 | 100 | of total expenditure* |
| 4 | Unallocated | 29,800 | | |
| | TOTAL | 165,000 | | |

* Excluding taxes and duties imposed within the territory of the Recipient

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 method of procurement set forth below:

Direct Contracting

4. The method of procurement is subject to, among other things, the detailed arrangements and threshold values set forth in the Procurement Plan. The Recipient 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. The Recipient shall not award a contract for Works until after the updated LARP and IEE (if necessary) shall have been approved by ADB.

D. Recruitment of Consulting Services.

6. Quality- and Cost-Based Selection. Except as ADB may otherwise agree, the Recipient shall apply quality- and cost-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:

Least-Cost Selection for auditing services; or
Consultant Qualifications Selection for auditing services.

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) The Recipient 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) The Recipient 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. The Recipient 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 shall be subject to prior review by ADB, unless otherwise agreed between the Recipient and ADB and set forth in the Procurement Plan.

G. Procurement from Non-member Countries

12. Notwithstanding the provisions of Section 3.03(a) of this Grant Agreement, Goods, such as rail track components, may be procured under the Project from non-member countries of ADB.

SCHEDULE 4

Execution of the Project; Financial and Other Matters

I. IMPLEMENTATION ARRANGEMENTS

1. (a) The Ministry of Public Works (MPW) shall be the Project Executing Agency and shall be responsible for overall execution and coordination of the Project.

(b) An Executive Committee, chaired by a Minister-level public official and comprising representatives from the MOF, MPW, Ministry of Interior, Ministry of Commerce and Industry, and other relevant government ministries and agencies, shall be formed not later than Grant effectiveness to provide policy guidance on the implementation of the Project activities, to monitor its impacts, and to ensure close inter-ministerial coordination.

2. To facilitate Project implementation, the Project Implementation Unit (PIU) shall be established within the MPW to undertake day-to-day Project management and implementation functions including: (i) monitoring the progress of Project implementation, including policy and monitoring activities; (ii) preparing Grant withdrawal applications and Project progress reports to MPW and ADB; (iii) maintaining Project accounts and completing Grant financing records for auditing the Project; (iv) carrying out the due diligence and procurement of consulting services, training, and equipment for the Project activities; and (v) developing the Project Performance Management System and Gender Action Plan and monitoring their implementation.

3. The Recipient shall ensure that at all times throughout Project implementation PIU is adequately staffed with professional and clerical personnel with the necessary experience and expertise in finance, accounting, treasury, information technology (IT) systems, procurement and contract administration.

II. OPERATIONAL COVENANTS

Funding and O&M

4. The Recipient shall ensure that: (a) additional funding will be provided for successful Project completion; and (b) in each fiscal year adequate funds are allocated and/or generated for operation and maintenance (O&M) of the Project facilities in accordance with international best engineering and O&M practices.

Construction quality

5. The Recipient shall ensure or cause MPW to ensure that (i) the Project railway is rehabilitated or constructed in accordance with the design and technical specifications; and (ii) construction supervision, quality control and contract management are performed in accordance with applicable standards and best international practices.

Performance Targets

6. The Recipient shall ensure that the Works contract incorporates specific implementation milestones and targets with appropriate reward and penalty provisions to provide reasonable economic stimuli for timely and qualitative Project completion.

Railway operation and maintenance

7. The Recipient shall use its best efforts to enter into a performance-based time-bound operation and maintenance contract for the railway section between Hairatan and Mazar-e-Sharif by 31 October 2010.

Railway safety

8. The Recipient shall ensure that Works contracts will include the contractor's obligation to comply with safety measures during construction and operation. The Recipient shall ensure that the accident rate after commencement of operation of the Project railway is monitored and reported to ADB.

Financial Management

9. The Recipient shall cause MPW to establish and maintain a sound financial management system, including the establishment of separate Project bank accounts and the maintenance of minimum balances to ensure smooth cash flow and the timely settlement of potential project construction liabilities. The financial management system shall comprise: (a) financial planning, budgeting and budgetary control; (b) accounting consistent with internationally applicable standards; (c) internal control; (d) data processing, and (e) financial reports.

Institutional Reform

10. The Recipient shall ensure that a railway subsector restructuring plan contemplating gradual and phased disassociation from the government to attain the railway system's financial and operational independence is developed by Project's completion.

Change in Ownership and Operation

11. If any of the following is anticipated: (i) any change in ownership of the railway, road facility, or structure financed under the Project; (ii) any sale, transfer, or assignment of interest or control in the railway, road facility, or structure financed under the Project; or (iii) any lease or other contract or modification of the functions and authority of the MPW over operation and maintenance of any railway, road facility, or structure financed under the Project; then the Recipient shall ensure that ADB's consent is obtained at least six (6) months prior to the implementation of such a plan. The Recipient shall ensure that any such changes will be carried out in a legal and transparent manner.

Anticorruption

12. The Recipient shall comply with ADB's *Anticorruption Policy* (1998, as amended to date) for the purposes of the Project. The Recipient, consistent with its commitment to good governance, accountability and transparency, agrees (a) that ADB reserves the right to

investigate, directly or through its agents, any alleged corrupt, fraudulent, collusive or coercive practices relating to the Project and (b) to cooperate fully with any such investigation and to extend all necessary assistance. The Recipient shall ensure or caused to be ensured that all contracts financed by ADB under the Project include provisions specifying the right of ADB to audit and examine the records and accounts of the MPW and all contractors, suppliers, consultants, and other service providers as such records and accounts relate to the Project.

Project monitoring, review, and reporting

13. The Recipient, through MPW, shall monitor and evaluate the Project's benefits and impacts and their distribution in accordance with the design and monitoring framework agreed between the Recipient and ADB.

Security

14. The Recipient shall undertake its best efforts to provide adequate security and de-mining measures for the smooth and uninterrupted implementation of the Project. In addition, the Recipient shall ensure that the Works contracts require an action plan for adequate security and smooth and uninterrupted implementation of the Project, that the cost of implementing such a plan is included in the budget for such Works, and that such a plan is fully implemented.

Environment

15. The Recipient shall ensure that potential adverse environmental impacts arising from the Project are minimized by implementing all the mitigation measures presented in the IEE and environmental management plan (EMP). The Recipient shall also ensure that the design, construction, and operation of the Project are in accordance with ADB's *Environment Policy* (2002) and applicable environmental laws and regulations. Specifically, the Recipient shall ensure and shall cause MPW to ensure that:

- (a) The contractor has primary responsibility for implementing the mitigation measures and EMP. The PIU head has access to sufficient resources to draft suitable conditions of contract to ensure that all environmental management provisions are included in the tender and design-build documents.
- (b) The PIU monitors and records the implementation of the EMP prepared for the purposes of the Project, under the guidance of the State Committee for Environmental Protection – National Environment Protection Agency (NEPA).
- (c) The PIU with the assistance of the project management and supervision consultant prepares semiannual environmental reports and submits to ADB, within 3 months of the close of each half of the calendar year, from the start of project implementation and until completion of the Project. The report will include, among other things, a review of progress made on environmental measures detailed in the IEE, EMP, and monitoring thereof; and problems encountered and remedial measures taken.

- (d) Detailed engineering designs, Works, and other contracts for the project facilities incorporate applicable environmental measures identified in the IEE, summary IEE, and EMP.
- (e) Works contractors are supervised to ensure compliance with the requirements of the IEE and EMP.

Labor, gender, health, and social protection

16. The Recipient, through MPW, shall ensure that Works contractors (a) comply with applicable core labor standards, labor laws, and incorporate applicable workplace occupational safety norms; (b) do not differentiate payment between men and women for work of equal value; (c) do not employ child labor in the construction and maintenance activities; (d) eliminate forced or compulsory labor; (e) eliminate discrimination in respect of employment; (f) allow freedom of association; and (g) to the extent possible, maximize employment of local poor and disadvantaged persons for Project construction purposes, provided that the requirements for job skills and efficiency are adequately met. The Recipient shall ensure that appropriate entities—for example nongovernment organizations—disseminate information on the risks of sexually transmitted infections, including HIV/AIDS, to the employees engaged under the Project and to members of the local communities in the Project area. Relevant Works contracts financed under the Project must include specific clauses on these undertakings, and compliance will be strictly monitored during implementation.

17. The Recipient, through MPW, shall ensure that the (i) Project is implemented in compliance with ADB's *Policy on Gender and Development* (1998); (ii) necessary steps are taken to encourage women living in the Project area to participate in the Project related activities; and (iii) in consultation with local governments and communities, and nongovernment organizations, independent monitoring is carried out of the social impacts throughout implementation of the Project.

18. The Recipient shall ensure that relevant government agencies provide strict border controls and road patrols to prevent trafficking of humans, wildlife, endangered species, and illegal substances on roads, where construction, rehabilitation or improvement is financed by the Project.

Land acquisition and resettlement

19. The Recipient shall ensure that the Project will implement LARP and follow ADB's *Involuntary Resettlement Policy* (1995). Specifically, the Recipient shall cause MPW to ensure that, after the award of Works contract under the Project, no notice to proceed is issued to contractors until after the applicable provisions of the LARP (including in particular the timely delivery of compensation to affected families) and EMP have been implemented in accordance with their terms.

20. The Recipient shall ensure that the Project is carried out in accordance with the Government's applicable laws and regulations, ADB's *Involuntary Resettlement Policy* including the following provisions:

- (a) LARP shall be prepared in consultation with, and disclosed to, the affected persons;

- (b) All land and rights of way required by the Project shall be acquired and made available in a timely manner;
- (c) All compensation and resettlement assistance shall be provided to affected persons prior to their displacement and dispossession;
- (d) Efficient grievance mechanisms shall be in place in accordance with the LARP to assist affected persons resolve queries and complaints if any, in a timely manner;
- (e) Adequate staff and resources shall be made available for supervising and monitoring implementation of the LARP. An independent monitor acceptable to ADB shall be engaged to carry out external monitoring and evaluation of the LARP and to report the outcomes to ADB on a semi-annual basis. Semi-annual reports shall be submitted to ADB within three (3) months of the end of each period covered. The internal monitoring shall be carried out by MPW;
- (f) If during implementation of the LARP, any changes to the location, land alignment of railroads, or additional environmental and/or resettlement impacts are identified, the LARP shall be updated and prior approval by ADB and the relevant government agency shall be obtained before further implementation of the LARP; and
- (g) Any changes to the location, land alignment of railway, or environmental impacts on account of detailed designs of the Project will be subject to prior approval by ADB and the relevant government agency.