
LOAN NUMBER 2409-BAN(SF)

LOAN AGREEMENT
(Special Operations)

(Emergency Disaster Damage Rehabilitation (Sector) Project)

between

PEOPLE'S REPUBLIC OF BANGLADESH

and

ASIAN DEVELOPMENT BANK

DATED 4 FEBRUARY 2008

LAS:BAN 41657

LOAN AGREEMENT (Special Operations)

LOAN AGREEMENT dated 4 February 2008 between PEOPLE'S REPUBLIC OF BANGLADESH (the "Borrower") and ASIAN DEVELOPMENT BANK ("ADB").

WHEREAS

(A) the Borrower has applied to ADB for a loan for the purposes of part of the Project described in Schedule 1 to this Loan Agreement;

(B) the Government of Bangladesh has also applied for a technical assistance grant of equivalent of two hundred thousand dollars (\$200,000) for the purpose of enhancing financial management of the Project and monitoring of the use of Project funds and by a Technical Assistance Letter, the ADB has agreed to provide a grant to the Borrower for such purposes;

(C) the Project will be carried out by: (i) the Finance Division (hereinafter called FD) under the Ministry of Finance; (ii) the Local Government Engineering Department (hereinafter called LGED) organized under the Ministry of Local Government, Rural Development and Cooperatives of the Borrower; (iii) the Roads and Highways Department (hereinafter called RHD) organized under the Ministry of Communications of the Borrower; and (iv) the Borrower's Bangladesh Water Development Board (hereinafter called BWDB) and for this purpose the Borrower will make available to BWDB a portion of the proceeds of the Loan provided for herein upon terms and conditions satisfactory to ADB; and

(D) ADB has agreed to make a loan to the Borrower from ADB's Special Funds resources upon the terms and conditions hereinafter set forth and in the Project Agreement of even date herewith between ADB on the one part and BWDB on the other part;

NOW THEREFORE the parties agree as follows:

ARTICLE I

Loan Regulations; Definitions

Section 1.01. All provisions of the Special Operations Loan Regulations of ADB, dated 1 January 2006 (the "Loan Regulations"), are hereby made applicable to this Loan Agreement with the same force and effect as if they were fully set forth herein.

Section 1.02. The definitions set forth in the Loan Regulations are applicable to this Loan Agreement unless the context requires otherwise. In addition, the following terms have the following meanings:

(a) "Bangladesh Bank" means the central bank of the Borrower;

(b) "BWDB" means Bangladesh Water Development Board organized under President's Order No. 59 of 1972 and succeeded by Bangladesh Water Development Board Act, 2000, as amended from time to time;

(c) "Consulting Guidelines" means ADB's Guidelines on the Use of Consultants by Asian Development Bank and its Borrowers (2006, as amended from time to time);

(d) "EIA" means an environmental impact assessment prepared specifically for a particular Subproject;

(e) "Eligibility Criteria" means the selection criteria for Subprojects specified in Schedule 5 paragraph 4 hereto;

(f) "Eligible Items" means the goods imported under the Project as described in Attachment 2 to Schedule 3 to this Loan Agreement, the foreign exchange costs of which are eligible for financing out of the Loan proceeds and as agreed between the Borrower and ADB from time to time;

(g) "FD" means the Finance Division of MOF;

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

(i) "Government" means the government of the Borrower;

(j) "IEE" means an initial environmental examination prepared specifically for a particular Subproject;

(k) "IMED" means Implementation, Monitoring & Evaluation Division in the Borrower's Ministry of Planning;

(l) "ISA" means an initial social assessment prepared specifically for a particular Subproject;

(m) "LGED" means Local Government Engineering Department organized under the Borrower's Ministry of Local Government, Rural Development and Cooperatives, or any legal successor thereof;

(n) "MLGRDC" means the Ministry of Local Government, Rural Development, and Cooperatives of the Borrower or any successor thereto;

(o) "MOF" means the Ministry of Finance of the Borrower or any successor thereto;

(p) "NGO" means non-government organization;

(q) "Part" means each part of the Project as listed in Schedule 1 hereto;

(r) "PMU" means a Project management unit established within each of the Project Executing Agencies for the purposes of the Project as more fully described in paragraph 3 of Schedule 5 hereto;

(s) "PPR" means Public Procurement Regulations of the Borrower;

(t) "Procurement Guidelines" means ADB's Procurement Guidelines (2006, as amended from time to time);

(u) "Procurement Plan" means the procurement plan for the Project dated 12 December 2007 and agreed between the Borrower and ADB, as updated from time to time in accordance with Procurement Guidelines, Consulting Guidelines, and other arrangements agreed with ADB;

(v) "Project Area" means the areas where Subprojects will be undertaken;

(w) "Project Executing Agencies" mean for the purposes of, and as amended from time to time within the meaning of, the Loan Regulations, (i) the FD, responsible for carrying out Part A of the Project, (ii) the LGED, responsible for carrying out Parts B and C of the Project; (iii) the RHD, responsible for carrying out Part D of the Project; and (iv) the BWDB, responsible for carrying out Part E of the Project; or any successor to any of the above agencies, acceptable to ADB;

(x) "Project facilities" means facilities and services to be rehabilitated and restored or provided under the Project;

(y) "PSC" means Project Steering Committee established for the purposes of the Project as more fully described in Schedule 5 hereto;

(z) "Resettlement Framework" or "RF" means the Resettlement Framework prepared for the Project and endorsed by the Borrower;

(aa) "Resettlement Plan" means any of the Resettlement Plans prepared specifically for the Subprojects and endorsed by the Borrower from time to time;

(bb) "RHD" means Roads and Highways Department organized under the Ministry of Communications of the Borrower, or any legal successor thereof;

(cc) "RRP" means the ADB's Report and Recommendation of the President for this Project;

(dd) "Rural Roads" means rural roads maintained by LGED;

(ee) "Subproject" means any of the Subprojects under Parts B to E which was, or is to be selected in accordance with the Eligibility Criteria or as otherwise agreed on by the Borrower and ADB, and financed under the Project;

(ff) "Taka" means taka in the currency of the Borrower;

(gg) "Technical Assistance Letter" means the Technical Assistance Letter referred to in Recital B hereto; and

(hh) "Works" means construction or civil works to be financed out of the proceeds of the Loan, 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 Loan

Section 2.01. ADB agrees to lend to the Borrower from ADB's Special Funds resources an amount in various currencies equivalent to seventy five million eight hundred ninety nine thousand Special Drawing Rights (SDR75,899,000).

Section 2.02. (a) The Borrower shall pay to ADB an interest charge at the rate of one percent (1%) per annum on the amount of the Loan withdrawn from the Loan Account and outstanding from time to time. Repayment of principal shall be at two percent (2%) per annum for the first 10 years after the grace period, and four percent (4%) for the balance of the repayment period in accordance with the amortization schedule set forth in Schedule 2 to this Loan Agreement.

(b) The term "grace period" as used in paragraph (a) of this Section means the period prior to payment of the first principal amount of the Loan on the payment date in accordance with the amortization schedule set forth in Schedule 2 to this Loan Agreement.

Section 2.03. The interest charge and any other charge on the Loan shall be payable semiannually on 15 April and 15 October in each year.

Section 2.04. The Borrower shall repay the principal amount of the Loan withdrawn from the Loan Account in accordance with the amortization schedule set forth in Schedule 2 hereto.

Section 2.05. The currency of repayment of the principal of the Loan and the currency of payment of the interest charge for the purposes of Sections 4.03(a) and 4.04 of the Loan Regulations shall be Dollar.

ARTICLE III

Use of Proceeds of the Loan

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

Section 3.02. The Goods, Works, and consulting services and other items of expenditure to be financed out of the proceeds of the Loan and the allocation of

amounts of the Loan among different categories of such Goods, Works, and consulting services and other items of expenditure shall be in accordance with the provisions of Schedule 3 hereto, as such Schedule may be amended from time to time by agreement between the Borrower and ADB.

Section 3.03. Except as ADB may otherwise agree, all Goods, Works, and consulting services to be financed out of the proceeds of the Loan shall be procured in accordance with the provisions of Schedule 4 hereto.

Section 3.04. Withdrawals from the Loan 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 consulting 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 3.05. The Loan Closing Date for the purposes of Section 8.02 of the Loan Regulations shall be 31 December 2010 or such other date as may from time to time be agreed between the Borrower and ADB.

ARTICLE IV

Particular Covenants

Section 4.01. In the carrying out of the Project and operation of the Project facilities, the Borrower shall perform, or cause to be performed, all obligations set forth in Schedule 5 hereto.

Section 4.02. (a) The Borrower 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 Loan proceeds and compliance with the financial covenants of this Loan Agreement as well as on the use of the procedures for imprest accounts and 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 Borrower shall enable ADB, upon ADB's request, to discuss the Borrower's financial statements for the Project and its financial affairs related to the Project from time to time with the auditors appointed by the Borrower 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 Borrower unless the Borrower shall otherwise agree.

Section 4.03. The Borrower shall enable ADB's representatives to inspect the Project, the Goods and Works financed out of the proceeds of the Loan, and any relevant records and documents.

ARTICLE V

Suspension; Cancellation; Acceleration of Maturity

Section 5.01. The following is specified as an additional event for suspension of the right of the Borrower to make withdrawals from the Loan Account for the purposes of Section 8.01(m) of the Loan Regulations: the Borrower shall have failed to perform any of its obligations under the Technical Assistance Letter.

Section 5.02. The following is specified as an additional event for the event for acceleration of maturity for the purposes of Section 8.07(d) of the Loan Regulations: the event specified in Section 5.01 of this Loan Agreement.

ARTICLE VI

Effectiveness

Section 6.01. A date ninety (90) days after the date of this Loan Agreement is specified for the effectiveness of the Loan Agreement for the purposes of Section 9.04 of the Loan Regulations.

ARTICLE VII

Miscellaneous

Section 7.01. The Secretary, or any Additional Secretary, Joint Secretary, Joint Chief, Deputy Secretary, Deputy Chief, Senior Assistant Secretary, Senior Assistant Chief, Assistant Secretary or Assistant Chief of the Economic Relations Division of the Borrower is designated as representative of the Borrower for the purposes of Section 11.02 of the Loan Regulations.

Section 7.02. The following addresses are specified for the purposes of Section 11.01 of the Loan Regulations:

For the Borrower

Economic Relations Division
Ministry of Finance
Sher-e-Bangla Nagar
Dhaka, Bangladesh

Cable Address:

BAHISAMPAD
DHAKA

Telex Number:

642226 SETU BJ

Facsimile Number:

(880 2) 8113088

For ADB

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

Cable Address:

ASIANBANK
MANILA

Telex Numbers:

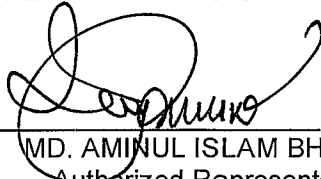
29066 ADB PH (RCA)
42205 ADB PM (ITT)
63587 ADB PN (ETPI)

Facsimile Numbers:

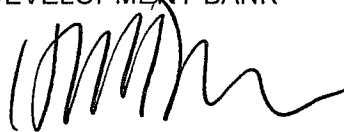
(632) 636 2444
(880 2) 815 6018

IN WITNESS WHEREOF the parties hereto, acting through their representatives thereunto duly authorized, have caused this Loan 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.

PEOPLE'S REPUBLIC OF BANGLADESH

By 
MD. AMINUL ISLAM BHUIYAN
Authorized Representative

ASIAN DEVELOPMENT BANK

By 
HUA DU
Country Director
Bangladesh Resident Mission

SCHEDULE 1

Description of the Project

1. The main objective of the Project is to support the efforts to accelerate economic growth and poverty alleviation in the flood and cyclone affected areas by assisting in the restoration of livelihoods, especially of the poor, and complementary rehabilitation and reconstruction of damaged public infrastructure in the Project Area.

2. The Project includes the following Parts:

Part A: Quick-Disbursing Component

Support for import financing of specified essential commodities and inputs particularly for agriculture needed to mitigate the adverse impact of the 2007 floods and cyclone, particularly of the crop loss in affected areas, and to implement quick recovery measures.

Part B: Rural infrastructure

- (i) Rehabilitation and restoration of flood and cyclone damaged rural infrastructure, in about 23 districts, including about 3,000 km of rural roads being maintained by LGED and about 9,000 meters of bridges and culverts;
- (ii) improved slope protection works at vulnerable points and provision of additional flood damage preventative drainage facilities; and
- (iii) repair and construction of flood and cyclone shelters including flood and livestock shelters, and the provision of water and sanitation.

Part C: Municipal infrastructure

Rehabilitation of flood and cyclone damaged urban infrastructure, including about 700 km of roads being maintained by LGED, 65 km of drains, and 850 meters of bridge/culverts, and footpaths and drains located in about 30 municipalities.

Part D: Roads

Rehabilitation of about 800 km being part of the disaster-damaged national, regional, and district roads and about 64 bridges and culverts, within the country's seven road zones.

Part E: Water resources

Rehabilitation and improvement of part of disaster damaged works to large and medium-scale infrastructure flood control, drainage, and irrigation facilities including embankments, flood control, drainage, and irrigation canal and structures, and protective works including groynes, spurs and hard points in the Borrower's Disaster Management Bureau declared 47 districts, plus continuous works in adjacent districts.

Restoration works in terms of:

- (i) filling embankment breaches;

- (ii) resectioning and/or replacement;
- (iii) undertaking protective works;
- (iv) protecting damaged embankments connections for un-bridged crossings;
- (v) repair and/or replacement of water control structures;
- (vi) re-excavation of irrigation/drainage channels; and
- (vii) replacing temporary crossing arrangements or river crossing ferries from a disaster prevention perspective.

3. The Project includes the provision of Project management and implementation support including providing consulting services in:

- (i) project management and monitoring;
- (ii) planning and design of Subprojects;
- (iii) contract structuring, tendering, execution, and management; and
- (iv) construction supervision.

4. The Project is expected to be completed by 30 June 2010.

SCHEDULE 2

Amortization Schedule (Emergency Disaster Damage Rehabilitation (Sector) Project)

| <u>Date Payment Due</u> | <u>Payment of Principal</u> (expressed in Special Drawing Rights)* |
|-------------------------|--|
| 15 April 2018 | 759,000 |
| 15 October 2018 | 759,000 |
| 15 April 2019 | 759,000 |
| 15 October 2019 | 759,000 |
| 15 April 2020 | 759,000 |
| 15 October 2020 | 759,000 |
| 15 April 2021 | 759,000 |
| 15 October 2021 | 759,000 |
| 15 April 2022 | 759,000 |
| 15 October 2022 | 759,000 |
| 15 April 2023 | 759,000 |
| 15 October 2023 | 759,000 |
| 15 April 2024 | 759,000 |
| 15 October 2024 | 759,000 |
| 15 April 2025 | 759,000 |
| 15 October 2025 | 759,000 |
| 15 April 2026 | 759,000 |
| 15 October 2026 | 759,000 |
| 15 April 2027 | 759,000 |
| 15 October 2027 | 759,000 |
| 15 April 2028 | 1,518,000 |
| 15 October 2028 | 1,518,000 |
| 15 April 2029 | 1,518,000 |
| 15 October 2029 | 1,518,000 |
| 15 April 2030 | 1,518,000 |
| 15 October 2030 | 1,518,000 |
| 15 April 2031 | 1,518,000 |
| 15 October 2031 | 1,518,000 |
| 15 April 2032 | 1,518,000 |
| 15 October 2032 | 1,518,000 |
| 15 April 2033 | 1,518,000 |
| 15 October 2033 | 1,518,000 |
| 15 April 2034 | 1,518,000 |
| 15 October 2034 | 1,518,000 |
| 15 April 2035 | 1,518,000 |
| 15 October 2035 | 1,518,000 |
| 15 April 2036 | 1,518,000 |
| 15 October 2036 | 1,518,000 |
| 15 April 2037 | 1,518,000 |
| 15 October 2037 | 1,518,000 |

| <u>Date Payment Due</u> | <u>Payment of Principal</u> (expressed in Special Drawing Rights)* |
|-------------------------|--|
| 15 April 2038 | 1,518,000 |
| 15 October 2038 | 1,518,000 |
| 15 April 2039 | 1,518,000 |
| 15 October 2039 | 1,518,000 |
| 15 April 2040 | 1,518,000 |
| 15 October 2040 | 1,518,000 |
| 15 April 2041 | 1,518,000 |
| 15 October 2041 | 1,518,000 |
| 15 April 2042 | 1,518,000 |
| 15 October 2042 | 1,518,000 |
| 15 April 2043 | 1,518,000 |
| 15 October 2043 | 1,518,000 |
| 15 April 2044 | 1,518,000 |
| 15 October 2044 | 1,518,000 |
| 15 April 2045 | 1,518,000 |
| 15 October 2045 | 1,518,000 |
| 15 April 2046 | 1,518,000 |
| 15 October 2046 | 1,518,000 |
| 15 April 2047 | 1,518,000 |
| 15 October 2047 | <u>1,517,000</u> |
| Total | <u><u>75,899,000</u></u> |

* The figures in this column represent SDR equivalents determined as of the respective dates of withdrawal. The arrangements for payment of each maturity are subject to the provisions of Sections 3.04 and 4.03 of the Loan Regulations.

SCHEDULE 3

Allocation and Withdrawal of Loan 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 Loan and the allocation of amounts of the Loan 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 and reference to "Subcategory" or "Subcategories" in this Schedule is to a Subcategory or Subcategories of a Category.

Percentages of ADB Financing

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

Interest Charge

3. The amount allocated to Category 7 is for financing the interest charge on the Loan during the implementation period of the Project.

Reallocation

4. Notwithstanding the allocation of Loan proceeds and the withdrawal percentages set forth in the Table,

(a) if the amount of the Loan allocated to any Category appears to be insufficient to finance all agreed expenditures in that Category, ADB may, by informing or in consultation with the Borrower, (i) reallocate to such Category, to the extent required to meet the estimated shortfall, amounts of the Loan 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 Loan then allocated to any Category appears to exceed all agreed expenditures in that Category, ADB may, by informing or in consultation with the Borrower, reallocate such excess amount to any other Category.

Disbursement Procedures

5. Except as ADB may otherwise agree, the Loan 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.

Part A Quick Disbursing Component

6. Except as ADB may otherwise agree, the following provisions of this Schedule shall apply to the withdrawal of Loan proceeds from the Loan Account with respect to Part A, the Quick Disbursing Component:

- (a) Withdrawals from the Loan Account shall be made for the financing of the foreign exchange cost of Eligible Items.
- (b) No withdrawals from the Loan Account shall be made in respect of (i) any local expenditures; or (ii) any foreign exchange expenditures which have been financed by credits from official international or bilateral aid agencies or donations from foreign governments or any other loans or grants made by ADB.
- (c) An application for withdrawal from the Loan Account shall be submitted to ADB by the Borrower and shall be in a form satisfactory to ADB.
- (d) Such withdrawal applications shall be accompanied by a certificate of the Borrower confirming that the value of the Eligible Imports is greater than the amount of the Loan claimed for disbursement.
- (e) For the purposes of this paragraph, the term "Eligible Imports" means the total imports of the Borrower during the relevant period (not earlier than 27 September 2007) minus the following imports during the same period:
 - (i) imports from countries which are not members of ADB;
 - (ii) imports for ineligible items; and
 - (iii) imports financed from credits from official international or bilateral aid agencies or donations from foreign governments or any other loans or grants made by ADB .
- (f) The Borrower shall allow experts appointed by ADB to verify the value of Eligible Imports during any period in respect of which the Borrower has certified the value of Eligible Imports in its withdrawal application.
- (g) For the purposes of disbursement, submission of supporting documents will not be required. However, these documents shall be audited during the annual audit and a separate audit opinion shall be provided on the use of the Loan proceeds under Part A, the Quick Disbursing Component.

Imprest Account; Statement of Expenditures

7. (a) Except as ADB may otherwise agree, the Borrower shall establish immediately after the Effective Date, three imprest accounts at the Bangladesh Bank for Parts B, C, and E. 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 Borrower and ADB. The currency of the imprest accounts shall be Dollar. The initial amounts to

be deposited into each imprest account shall be an amount not exceeding the lower of (i) the estimated expenditure to be financed from the imprest account for the first six months of the relevant Project implementation, or (ii) the equivalent of twenty percent (20%) of the Loan amount portion for the respective Part.

(b) The statement of expenditures (SOE) procedure may be used for reimbursement of eligible expenditures not greater than \$100,000 and to liquidate advances provided into the imprest accounts, in accordance with ADB's Loan Disbursement Handbook and detailed arrangements agreed upon between the Borrower and ADB.

Retroactive Financing

8. (a) Withdrawals from the Loan Account may be made for reimbursement of reasonable expenditures incurred under the Project before the Effective Date, but not earlier than 27 September 2007, in connection with items to be retroactively financed, subject to a maximum amount equivalent to thirty percent (30%) of the Loan amount.

(b) Reimbursement of reasonable expenditures incurred shall only be approved where it is: (i) in accordance with agreed procedures, (ii) verified by ADB, and (iii) certified by the relevant Executing Agency, and the certification is acceptable to ADB.

TABLE

| ALLOCATION AND WITHDRAWAL OF LOAN PROCEEDS (Emergency Disaster Damage Rehabilitation (Sector) Project) | | | | |
|---|------------------------------------|---|--------------------|--|
| CATEGORY | | | | ADB FINANCING |
| Number | Item | Amount Allocated SDR ('000s) | | Percentage and Basis for Withdrawal from the Loan Account |
| | | Category | Subcategory | |
| 1 | Part A Quick Disbursing | 31,625 | | 100 percent of total expenditure* |
| 2 | Part B Rural Infrastructure | 9,323 | | 66 percent of total expenditure |
| 3 | Part C Municipal Infrastructure | 5,901 | | 66 percent of total expenditure |
| 4 | Part D Roads | 12,764 | | 66 percent of total expenditure |
| 5 | Part E Water Resources | 8,791 | | 66 percent of total expenditure |
| 6 | Project Implementation Support | 6,230 | | 100 percent of total expenditure* |
| 7 | Interest Charge | 1,265 | | 100 percent of amount due |
| | Total | 75,899 | | |

* Exclusive of taxes and duties imposed within the territory of the Borrower.

LIST OF ELIGIBLE ITEMS

| No. | Description |
|------------|--------------------------------------|
| 1. | Food grain (rice and wheat) |
| 2. | Fertilizer (raw, processed and urea) |

SCHEDULE 4

Procurement of Goods and Works, and Consulting Services

A. General

1. All Goods, Works, and consulting services to be financed out of the proceeds of the Loan 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 Loan Agreement have the meanings provided in the Procurement Guidelines and/or the Consulting Guidelines, as applicable.

B. Procurement for Goods and Works

3. (a) 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 |
| Community Procurement |

(b) The methods of procurement are subject to, among other things, the detailed arrangements and threshold values set forth in the Procurement Plan. The Borrower 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.

4. Domestic Preference. The Borrower may grant a margin of preference in the evaluation of bids under international competitive bidding in accordance with paragraphs 2.55(a) and 2.56 of the Procurement Guidelines for domestically manufactured goods and paragraphs 2.55(b) and 2.56 of the Procurement Guidelines for domestic works.
5. National Competitive Bidding. No procurement may be undertaken under National Competitive Bidding (NCB) procedures unless ADB and the Borrower have agreed in writing to any necessary modifications or clarifications to the Borrower's NCB procedures for purposes of this Project to ensure consistency with ADB's Procurement Guidelines. Any such modifications or clarifications shall be subsequently reflected in the Procurement Plan and are hereby incorporated by reference hereto.
6. Community Participation in Procurement. The Borrower may use community participation in procurement for works contracts for minor routine maintenance on rehabilitated infrastructure in accordance with the agreed procedures set out in the Procurement Plan.

C. Selection of Consulting Services

7. The Borrower, or ADB on behalf of the Borrower, shall apply the following methods for selecting and engaging the specified consulting services, in accordance with, among other things, the procedures set forth in the Procurement Plan:

| |
|---|
| Single Source Selection for design and construction supervision |
| Least-Cost Selection for contracts less than \$100,000 |
| Consultants' Qualifications Selection for contracts less than \$200,000 |

8. The Borrower, or ADB on behalf of the Borrower, shall recruit: (a) the consultants using single source selection based on the following general conditions whereby the consultant shall: (i) be currently engaged in ongoing ADB-financed projects within the EA concerned or have prior substantial and satisfactory experience in past ADB-financed flood damage rehabilitation projects in Bangladesh, (ii) have capacity to deploy needed expertise of relevance and quality at short notice, and (iii) have been selected for ongoing projects following the Consulting Guidelines and have performed satisfactorily pursuant to the terms of such prior engagements; and

(b) the individual consultants for Project implementation support in accordance with procedures acceptable to ADB for recruiting individual consultants.

D. Industrial or Intellectual Property Rights

9. (a) The Borrower 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 Works procured) do not violate or infringe any industrial property or intellectual property right or claim of any third party.

(b) The Borrower 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.

10. The Borrower 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.

E. 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 the Borrower and ADB and set forth in the Procurement Plan.

SCHEDULE 5

Execution of Project and Operation of Project Facilities; Financial Matters

Project Management

1. FD shall be the Project Executing Agency for Part A; LGED shall be the Project Executing Agency for Parts B and C; RHD shall be the Project Executing Agency for Part D; and BWDB shall be the Project Executing Agency for Part E. Each Project Executing Agency shall be responsible in its respective sector/subsector for (a) selecting and approving Subprojects not exceeding \$200,000 equivalent, (b) designing civil works, (c) preparing tender documents for civil works and goods, (d) appointing consultants, and (e) submitting progress reports to the PSC and ADB.

2. The Emergency Disaster Damage Rehabilitation Project Steering Committee (PSC), chaired by the Member, Programming Division, Planning Commission of the Borrower, and comprising representatives, at joint secretary or above level, from MLGRDC, the Borrower's Ministries of Water Resources, Food and Disaster Management, Communications, the Economic Relations Division, and the Agriculture and Physical Infrastructure Divisions of the Planning Commission shall be responsible for monitoring overall implementation of the Project, overseeing all Project governance-related matters, including any issues that may arise relating to mismanagement and breach of quality standards in design or execution of the Project, resolving interagency issues and procedural matters, and ensuring timely counterpart funding. The PSC shall meet at regular intervals but at least once every 60 days to review progress of the Project. The PSC may, from time to time, invite independent experts drawn from reputable national institutions to assist it in the discharge of its responsibilities. The Chairman or any member of the PSC may request for enlistment of such an expert. The cost of enlisting such expert participation, if any, shall be borne out of the unallocated funds in the Project budget.

3. Each of FD, LGED, RHD, and BWDB shall be responsible for implementing its designated Part or Parts of the Project through their respective Project Management Units (PMUs). Each PMU shall be responsible for (a) detailed assessments, surveys and planning of reconstruction including public consultation and input from recipient local entities and beneficiaries; (b) preparing and evaluating Subproject proposals; (c) prioritizing works, preparing detailed designs, specifications, schedule of quantity, contracts and related bid documents; (d) day to day implementation, supervision and quality control of reconstruction activities, approving payments to contractors; and (d) maintaining progress reports, records and accounts for Subprojects. Each PMU shall report on the progress of their respective Part(s) of the Project at least once every month to the PSC.

Project Implementation

Subproject Selection Criteria and Approval Process

4. The Borrower shall ensure that:

- (a) all Subprojects: (i) are identified and selected in accordance with the Eligibility Criteria and any sector-specific criteria agreed between the Borrower and ADB, (ii) comply with the implementation arrangements, and (iii) are properly controlled and monitored to the satisfaction of ADB;
- (b) irrespective of the sector, each Subproject proposal is subject to evaluation on the basis of the following Eligibility Criteria:
 - (i) The Subproject will rehabilitate or restore damaged infrastructure and facilities caused by the 2007 floods based on the damage and needs assessment set out in Appendix 2 of the RRP and be validated by ADB;
 - (ii) Baseline data of Subproject conditions is available, performance indicators can be or are established, and a risk assessment has been or will be undertaken before Project start;
 - (iii) When professional expertise of ADB, and/or cofinanciers or their related technical assistance on flood resistant design is available, it is or will be appropriately reflected in the design of the Subproject;
 - (iv) The Subproject:
 - i. does not involve deferred maintenance, unless such maintenance will substantially reduce the prospect of damage from recurrence of floods;
 - ii. will incorporate appropriate cost-effective flood-resistant design standards, to the extent possible, with adequate provision for quality control;
 - iii. is technically feasible, cost-effective, and represents a least-cost alternative with appropriate adjustment for incorporating flood resistant designs;
 - iv. incorporates beneficiary consultation and input in the selection process;
 - v. will be completed within the Project implementation period;
 - vi. will not be financed by another non Government agency, unless ADB is a cofinancer; and
 - vii. will be in compliance with the Government's environmental protection regulations and ADB's environmental policies. For Subprojects that require an IEE, the IEE shall be prepared and included in the Subproject proposal;
- (c) Priority is given to Subprojects that rehabilitate ADB-financed projects which are completed;
- (d) Subproject proposals are prepared by the relevant Project Executing Agency in formats agreed between the Borrower and ADB; and
- (e) the relevant PMU will be responsible for the preparation, submission, approval, implementation and benefits monitoring and evaluation stages.

5. Prior to the detailed design commencing for the first two Subprojects selected by each PMU, the Borrower shall obtain ADB's concurrence on the inclusion of the Subproject for financing under the Project, based on a review of the appraisal and selection criteria agreed between the Borrower and ADB. For all subsequent Subprojects, the Borrower and ADB shall agree on the evaluation, selection, and approval procedures. Any Subproject approval process that is found not to have followed the requirements of this Loan Agreement shall not be eligible for ADB financing.

Technical assistance

6. The Borrower shall ensure that, within two (2) months of Loan Effectiveness, the Technical Assistance Letter is duly signed by the Borrower's representatives.

Borrower's Commitment to Operation and Maintenance of Project Facilities (O&M)

7. The Borrower shall ensure that: (a) all facilities rehabilitated under the Project are properly operated and maintained by the relevant Project Executing Agency in accordance with sound practices; (b) within six months of the date of Loan Effectiveness, each of the relevant Project Executing Agencies shall prepare an action plan that will include financial requirements and management/monitoring procedures and other pertinent elements for year-round effective maintenance of rehabilitated facilities; (c) the action plan shall be submitted to PSC and ADB for monitoring; and (d) the necessary funds for operation and maintenance of all facilities supported under the Project are available, on a timely basis, during the Project, with arrangements in place for continuing O&M funding in the period after implementation of this Project.

Counterpart Funds

8. The Borrower shall allocate, on a timely basis, adequate counterpart funds from its budget for each fiscal year during Project implementation including the requisite funds required for implementation of resettlement, environment measures, and other specific actions.

Enhanced Beneficiary Participation

9. The Borrower shall ensure that active beneficiary participation occurs in the selection, design, implementation, and O&M of all Subproject rehabilitation works carried out under the Project.

Environment/ Land Acquisition and Resettlement

10. The Borrower shall ensure that: (a) adequate environmental mitigation measures in accordance with the Borrower's environmental laws and regulations and ADB's *Environment Policy* (2002) are incorporated into all Subproject designs and implementation arrangements; (b) the agreed environmental assessment framework is implemented; (c) all Subprojects for which governmental environmental clearance is required receives such clearance prior to the award of any civil works contracts for the subject Subproject; (d) the initial environment examination or environment impact assessment and the preliminary environmental management and monitoring plan (EMMP) are prepared in accordance with the Environment Assessment and Review Procedures (EARP), reviewed and updated at the engineering design stage and submitted to ADB for approval; (e) the Project complies with the EMMP reflected in the updated IEE or EIA; (f) the EMMP is reflected as part of bidding documents and civil works

contracts; and (g) civil works contractors are closely supervised to ensure that any adverse environmental impacts arising from the Project are minimized by implementing the agreed mitigating measures and standard operating practices are changed to avoid their recurrence.

11. The Borrower shall ensure that, to the extent possible, Subprojects will not require land acquisition or involuntary resettlement. In the event that land acquisition or involuntary resettlement is required for any Subproject, then the Borrower shall ensure the Resettlement Plan (RP) (including any revisions thereto on account of detailed designs) is prepared in accordance with the Borrower's applicable laws and regulations, ADB's *Policy on Involuntary Resettlement* (1995) and the Resettlement Framework and submit to ADB for review and approval before any land acquisition is initiated. The Borrower shall ensure that: (a) no construction activities begin until ADB has reviewed and approved the RP; and (b) if impacts on indigenous peoples are identified under a Subproject, such impacts shall be addressed in accordance with ADB's *Indigenous Peoples Policy (1998)* and the Borrower's applicable laws and regulations, through actions outlined in the Resettlement Framework and such actions shall require approval of ADB's, prior to award of civil works contract under the Subproject.

12. The Borrower shall ensure that RPs are prepared and implemented in close consultation with the stakeholders and involve focus group discussions and meetings, particularly with the Project affected people (AP). The RPs formulated according to the approved RF shall be disclosed and made available to the affected peoples during focus group discussion meetings at the village/community level and posted on both the relevant Project Executing Agency's and ADB's websites. Complaints and grievance procedures shall be outlined in the RPs and grievance redress committees shall be established to ensure stakeholders' participation in the implementation process. Through public consultations, the APs shall be informed that they have a right to grievance redressal. Other institutional arrangements shall also be spelled out in the RPs, including involvement of NGOs in the implementation process. The EAs shall provide a bi-annual review and report to the ADB on land acquisition and all aspects of resettlement management. Besides, an annual report stipulating all aspects of land acquisition and resettlement outcomes shall be prepared by the EAs for ADB.

Gender and Employment

13. The Borrower shall: (a) encourage Project contractors to employ women in rehabilitation and labor-intensive maintenance; (b) provide equal pay to men and women for work of equal type, in accordance with national laws and international treaty obligations; (c) provide safe working conditions for male and female workers; and (d) ensure that Project contractors comply with applicable labor laws and abstain from child labor. Specific provisions to this effect shall be included in the bidding documents.

14. The Borrower shall ensure that, in accordance with ADB's *Policy on Gender and Development* (1998): (a) Project interventions take into account the different impacts and needs of women and men; (b) special features are built into Subprojects to facilitate and encourage women's involvement and to ensure tangible benefits to women; (c) specific women-related interventions include activities that uplift women from situations of vulnerability to positions of stability; and (d) Project reporting reflects how gender-related needs are being addressed under the Project, and details the successes encountered, constraints met, and measures adopted to overcome them.

15. The Borrower shall ensure that no Subproject shall adversely affect vulnerable population groups, such as indigenous peoples. In the event of involvement of indigenous people in any of the Subprojects, the Borrower shall take necessary actions required under ADB's *Policy on Indigenous Peoples (1998)*.

Designs for Part D

16. The Borrower shall ensure that design standards: (a) for Subprojects under Part D are based on improved RHD standards as developed by the Project, which includes where technically feasible and justified, improvements to mitigate impact of future floods, e.g. improved slope protection, raising of road level above highest flooding level or allowing additional vents where water logging leads to overtopping; and (b) and implementation guidelines for Subprojects under Part D are based on those developed under ADB's ongoing Second Small-Scale Water Resources Development Project [Loan 1831-BAN(SF)].

Achieving Good Governance

17. Consistent with its commitment to good governance, accountability and transparency, ADB reserves the right to investigate any possible financial or management impropriety in conducting the Project. The Borrower shall ensure or cause the relevant Project Executing Agency to cooperate with any such investigation and extend all necessary assistance, including access to all relevant books and records as well as agree to the engagement of independent experts that may be needed for satisfactory completion of such investigations. All external costs related to such investigations shall be borne by the Project.

Audits

18. The Office of the Director of Accounts (or an officer with equivalent functions) in each of the Project Executing Agencies shall be responsible for coordinating all accounts activities and ensuring compliance with the Bank's audit and accounting requirements, which shall be followed up in regular reviews by the Bank.

19. The Borrower shall permit a special audit on the terms to be agreed with ADB.

Reports

20. Without limiting the generality of Section 4.03 of this Loan Agreement, the Borrower shall cause the supervision consultant to be engaged under the Project to submit monthly progress statements and quarterly progress reports to each of the Project Executing Agency, the PSC and ADB throughout the Project implementation period.

Project Performance Monitoring and Evaluation

21. Within three months of the Effective Date, the Borrower, through each Project Executing Agency, shall finalize and adopt a project performance and monitoring system acceptable to

ADB, based on indicators and procedures agreed between the Borrower and ADB. The Project Executing Agencies shall: (a) monitor the indicators according to the agreed framework on a quarterly basis to determine the efficiency and effectiveness of the Project; (b) provide to ADB monitoring reports from the commencement of project implementation until completion; and (c) conduct a sample survey to establish a baseline (Baseline) for subsequent Project performance monitoring unless accurate and reliable Baseline is already available in documented form and is made available to the Project consultants who are satisfied with their contents. The Borrower shall ensure that the relevant Project Executing Agency carries out Project performance monitoring upon completion of civil works carried out under the Project and the monitoring results are reviewed against the Baseline.

Anticorruption Measures

22. The Borrower shall: (a) undertake necessary measures to create and sustain a corruption-free environment; (b) ensure that its anticorruption laws and regulations and ADB's *Anticorruption Policy* (1998) are strictly enforced and are being complied with during Project implementation, and that relevant provisions of ADB's *Anticorruption Policy* (1998) are included in all bidding documents for the Project; (c) facilitate ADB's exercise of its right to investigate, directly or through its agents, any alleged corrupt, fraudulent, collusive or coercive practices relating to the Project; (d) ensure that the Project Executing Agency conducts periodic inspections on the contractors' activities related to fund withdrawals and settlements; and (e) ensure that all contracts financed by ADB in connection with the Project include provisions specifying the right of ADB to audit and examine the records and accounts of the Project Executing Agency and all contractors, suppliers, consultants and other service providers as they relate to the Project.