
GRANT NUMBER 0077-KGZ(SF)

GRANT AGREEMENT
(Special Operations)

(Tax Administration Reform and Modernization Project)

between

KYRGYZ REPUBLIC

and

ASIAN DEVELOPMENT BANK

DATED 7 AUGUST 2007

FAS:KGZ 39015

GRANT AGREEMENT (Special Operations)

GRANT AGREEMENT dated 7 August 2007 between KYRGYZ REPUBLIC (the "Recipient") and ASIAN DEVELOPMENT BANK ("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; and

(B) ADB has agreed to provide a grant to the Recipient from ADB's Special Funds resources upon the terms and conditions hereinafter set forth;

NOW THEREFORE the parties agree as follows:

ARTICLE I

Grant Regulations; Definitions

Section 1.01. All 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. The definitions set forth in the Grant Regulations are applicable to this Grant Agreement, in each case unless the context requires otherwise. In addition, the following terms have the following meanings:

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

(b) "Component" means any component of the Project as more fully described in Schedule 1 to this Grant Agreement;

(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) "ICT" means information communication technology;

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

(f) "PMO" means the project management office to be established by the Recipient, or any successor thereto, as more fully described in paragraph 5 of Schedule 4 to this Grant Agreement;

(g) "PPMS" means the project performance management system agreed by the Recipient and ADB as more fully described in paragraph 11 of Schedule 4 to this Grant Agreement;

(h) "Project Executing Agency" for the purposes of, and within the meaning of, the Grant Regulations means the Office of the Government of the Recipient, or any successor thereto;

(i) "Project facilities" means the infrastructure, equipment and related facilities to be constructed, rehabilitated, and provided under the Project;

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

(k) "Project Implementing Agency" means SCTC, or any successor thereto;

(l) "Procurement Plan" means the procurement plan for the Project dated 20 March 2007 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;

(m) "Project Steering Committee" or "PSC" means the steering committee as defined in paragraph 2 of Schedule 4 to this Grant Agreement;

(n) "SCTC" means State Committee for Taxes and Collections of the Recipient, or any successor thereto; and

(o) "Works" means construction, rehabilitation or civil works to be financed out of the proceeds of the Grant, and including 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, on terms and conditions set forth in this Grant Agreement, an amount of ten million dollars (\$10,000,000) (the "Grant").

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, consulting services and other items of expenditure to be financed out of the proceeds of the Grant and the respective allocation of amounts of the Grant among different categories of such Goods, Works and 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. 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 3.04. 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 and Works 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 Grant Closing Date for the purposes of Section 8.02 of the Grant Regulations shall be 30 September 2012 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, including separate accounts for the Grant; (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), 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) hereinabove, 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 ninety (90) 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 Ministry 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
58, Erkindik Boulevard
Bishkek, 720040
Kyrgyz Republic

Facsimile Number:

312-66-16-45

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
(632) 636-2424.

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.

KYRGYZ REPUBLIC

By 

TEMIRBEK KURMANBEKOV
Authorized Representative

ASIAN DEVELOPMENT BANK

By 

M. ASHRAF MALIK 7/8/07
Country Director
Kyrgyz Resident Mission

SCHEDULE 1

Description of the Project

Impact and Outcome

1. The Project will reform and modernize SCTC to enable it to attain sustained increases in tax collection. The impact of the Project will be an effective, modern, and efficient SCTC that contributes to economic growth and poverty reduction in the Kyrgyz Republic.

Scope of the Project

2. The Project consists of the following three components:

Component 1: Creation of Central Database and Management Information System

This component involves:

- (i) Acquisition of ICT hardware and software to establish a central database and a management information system at SCTC Headquarters to enable the Kyrgyzstan Integrated Tax Information system to be migrated from a local area network to a wide area network;
- (ii) Procurement of data warehousing and business analytics systems;
- (iii) Development of the capability for electronic filing (to be piloted with large taxpayers); and
- (iv) Establishment of emergency data recovery systems.

Component 2: Development of Communication Infrastructure for Tax Offices

This component involves:

- (i) Development of ICT infrastructure to support nationwide roll-out of the Kyrgyzstan Integrated Information System to tax offices;
- (ii) Site preparation to enable tax offices to adequately house ICT, maintain continuous links with the central database, and operate under an application virtualization and wide area network environment; and
- (iii) Development of electronic interfaces with State Customs Committee, Treasury, Settlement and Savings Company, Financial Police, and Social Fund.

Component 3: Establishment of Modern Central Operations

This component involves the establishment of a Special Services Building to house the central database and the management information system, large

taxpayers unit, the Bishkek tax office, the tax payer service center, and the SCTC staff development center.

3. The Project is expected to be completed by 31 March 2012.

SCHEDULE 2

Allocation and Withdrawal of Grant Proceeds

General

1. The table attached to this Schedule sets forth the Categories of Goods, Works, services and other items 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.

Imprest Account

5. Except as ADB may otherwise agree, the Recipient shall establish immediately after the Effective Date, an imprest account at a bank acceptable to ADB (Grant Imprest Account). The Grant 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 Grant Imprest Account shall be Dollars. The amount of total advances to the Grant Imprest Account are not to exceed

estimated ADB's share of eligible project expenditures to be financed through the imprest account for the next six (6) months or ten (10) percent of the Grant amount, whichever is lower.

Retroactive Financing

6. Withdrawals from the Grant Account may be made for reimbursement of eligible expenditures incurred under the Project before the Effective Date, but not earlier than 2 months before the date of this Grant Agreement, in connection with engaging the project preparation manager as required for Project implementation subject to a maximum amount equivalent \$6,000.

Condition for Grant Disbursement

7. Notwithstanding any other provision of this Grant Agreement, no withdrawals shall be made from the Grant Account for the ultimate benefit of SCTC until the following condition shall have been met: The Recipient shall have established the PMO, which shall be staffed with a general and a financial manager, in each case, with experience and qualifications satisfactory to ADB.

TABLE

ALLOCATION AND WITHDRAWAL OF GRANT PROCEEDS (Tax Administration Reform and Modernization Project)				
CATEGORY				ADB FINANCING
Number	Item	Amount Allocated US\$		Percentage of ADB Financing from the Grant Account*
		Category	Subcategory	
1	Civil Works	1,501,000		87% of expenditure claimed
2	Equipment	2,756,000		100% of expenditure claimed
2A	ICT Equipment		2,064,000	100% of expenditure claimed
2B	Equipment Support, Network Equipment and Other Equipment		692,000	100% of expenditure claimed
3	Software and ICT Licenses	4,112,000		97% of expenditure claimed
4	Consulting Services	712,000		100% of expenditure claimed
5	Training and Consultations	355,000		100% of expenditure claimed
6	Unallocated	564,000		
	TOTAL	10,000,000		

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

SCHEDULE 3

Provisions on Procurement and Services of Consultants

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. (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

(b) The methods of procurement are 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.

4. Domestic Preference. The Recipient 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. The procedures to be followed for national competitive bidding (NCB) shall be for tendering with unlimited participation and the two-stage tendering set forth in the Law of the Kyrgyz Republic on Public Procurement of Goods, Works and Services effective on April 2004 with the clarifications and modifications described in the following paragraphs required for compliance with the provisions of the Procurement Guidelines.

i. Eligibility

The eligibility of bidders shall be as defined under section I of the Procurement Guidelines; accordingly, no bidder or potential bidder should be declared ineligible to ADB-financed contracts for reasons other than the ones provided therein. Bidders must be nationals of member countries of ADB, and offered Goods and Works must be produced in and supplied from member countries of ADB.

ii. Prequalification

Normally, post-qualification shall be used unless explicitly provided for in the Grant Agreement/Procurement Plan. Irrespective of whether post-qualification or prequalification is used, eligible bidders (both national and foreign) shall be allowed to participate.

iii. Registration and Licensing

(a) Bidding shall not be restricted to pre-registered/licensed firms.

(b) Where registration or licensing is required, bidders (i) shall be allowed a reasonable time to complete the registration or licensing process; and (ii) shall not be denied registration/licensing for reasons unrelated to their capability and resources to successfully perform the contract, which shall be verified through post-qualification.

(c) Foreign bidders shall not be precluded from bidding. If a registration or licensing process is required, a foreign bidder declared the lowest evaluated bidder shall be given a reasonable opportunity to register or to obtain a license.

iv. Bidding Period

The minimum bidding period is twenty-eight (28) days prior to the deadline for the submission of bids.

v. Bidding Documents

Procuring entities should use standard bidding documents for the procurement of Goods and Works acceptable to ADB.

vi. Preferences

No domestic preference shall be given for domestic bidders and for domestically manufactured goods.

vii. Advertising

Invitations to bid shall be advertised in at least one widely circulated national daily newspaper or freely accessible, nationally-known website allowing a minimum of twenty-eight (28) days for the preparation and submission of bids. Bidding of contracts estimated at US\$500,000 equivalent or more for Goods or US\$1,000,000 equivalent or more for Works shall be advertised concurrently with the general procurement notices on ADB's website.

viii. Bid Security

Where required, bid security shall be in the form of a bank guarantee from a reputable bank.

ix. Bid Opening and Bid Evaluation

(a) Bids shall be opened in public.

(b) Evaluation of bids shall be made in strict adherence to the criteria declared in the bidding documents and contracts shall be awarded to the lowest evaluated bidder.

(c) Bidders shall not be eliminated from detailed evaluation on the basis of minor, non-substantial deviations.

(d) No bidder shall be rejected on the basis of a comparison with the employer's estimate and budget ceiling without the ADB's prior concurrence.

(e) A contract shall be awarded to the technically responsive bidder that offers the lowest evaluated price and who meets the qualifying requirements set out in the bidding documents.

(f) No negotiations shall be permitted.

(g) Price verification shall not be applied.

x. Rejection of All Bids and Rebidding

Bids shall not be rejected and new bids solicited without ADB's prior concurrence.

xi. Participation by Government-owned enterprises

Government-owned enterprises in the Kyrgyz Republic shall be eligible to participate as bidders only if they can establish that they are legally and financially autonomous, operate under commercial law and are not a dependent agency of the contracting authority. Furthermore, they will be subject to the same bid and performance security requirements as other bidders.

xii. Right to Inspect/Audit

A provision shall be included in all Works and Goods contracts financed by ADB requiring suppliers and contractors to permit ADB to inspect their accounts and records and other documents relating to the bid submission and the performance of the contract, and to have them audited by auditors appointed by ADB.

xiii. Fraud and Corruption

(a) The Recipient shall reject a proposal for award if it determines that the bidder recommended for award has, directly or through an agent, engaged in corrupt, fraudulent, collusive, or coercive practices in competing for the contract in question.

(b) ADB will declare a firm or individual ineligible, either indefinitely or for a stated period, to be awarded a contract financed by ADB, if it at any time determines that the firm or individual has, directly or through an agent, engaged in corrupt, fraudulent,

collusive or coercive practices in competing for, or in executing, an ADB-financed contract.

xiv. National Sanctions List

National sanctions lists may be applied only with prior approval of ADB.

C. Selection of Consulting Services

6. The Recipient shall recruit consultant(s) on an individual basis in accordance with ADB's procedures for recruiting individual consultants.

D. Industrial or Intellectual Property Rights

7. (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.

8. 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.

E. ADB's Review of Procurement Decisions

9. 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 Recipient and ADB and set forth in the Procurement Plan.

SCHEDULE 4

Implementation Arrangements and Project Assurances

I. IMPLEMENTATION ARRANGEMENTS

Project Executing Agency

1. The Office of the Government, as the Project Executing Agency, shall be responsible for overall execution and coordination of the Project.

Project Steering Committee

2. The PSC will oversee the Project and coordinate issues related to the Project's implementation. PSC will also review annual work plans, progress reports, and midterm evaluations. A representative of Office of the Prime Minister will be the Director of the PSC, the Chairman of SCTC, the Deputy Director, the Deputy Chairman of SCTC will be the Project Director, with overall responsibility for day-to-day management. PSC will also include representatives from other Government agencies and private stakeholders, including MOF, Ministry of Economic Development and Trade, Ministry of Transport and Communication, State Customs Committee, Treasury, Settlement and Savings Company, Kyrgyz telecoms, and business and tax service professionals. PSC will provide overall policy guidance, facilitate interagency coordination, serve as a mechanism for private sector participation, and resolve any institutional problems affecting project implementation. PSC will meet twice a year or more if needed. ADB will attend PSC meetings as an observer.

Project Management

3. SCTC, shall be the Project Implementing Agency with respect to the Project.

4. A PMO shall carry out the day to day Project Implementation and serve as the secretariat of the PSC.

5. The PMO shall carry out the day to day Project implementation and serve as the secretariat of PSC.

(a) The PMO shall be headed by a qualified general manager and a qualified financing manager. The general manager and financial manager will be assisted by qualified technical and administrative specialists, who may include a finance officer/accountant, procurement specialist, information and communication technology and training specialist, office manager and interpreter.

(b) The PMO shall have the following responsibilities: (i) planning and scheduling of activities; (ii) administration of procurement activities and selection of consultants; (iii) bookkeeping and maintenance of Project accounts, and preparation and consolidation of liquidation reports; (iv) supervision and monitoring of the work program and Project performance; (v) coordination of field activities; (vi) engagement of consultants or firms to conduct audits of the Project accounts and financial statements; (vii) liaison with ADB, concerned Government agencies, and private sector stakeholders; and (viii) preparation of quarterly and annual Project monitoring and progress report.

II. ASSURANCES

6. The Recipient shall cause SCTC to establish a PSC within 3 months after the Effective Date.

7. The Recipient shall allocate in a timely manner adequate funding for the counterpart funding of the Project, and shall provide ADB with information on such allocations annually. The Recipient shall make adequate budget allocations based on SCTC operational plan for the operation and maintenance of: the rehabilitated tax offices and the Special Service Building; the information and communication technology equipment, including consumables, servicing, connectivity, maintenance, electricity, software licenses; and the costs of their replacement.

8. The Recipient shall ensure that SCTC conducts an independent audit on the Project's accounts and financial statements within 6 months after the close of each fiscal year.

9. The Recipient shall ensure that Kyrgyz Telecoms provides adequate and sufficient digital subscriber lines to connect the SCTC tax offices to the central database.

Anticorruption

10. The Recipient shall comply with and shall cause MOEF and SCTC to comply with ADB's *Anticorruption Policy* (1998, as amended to date). The Recipient 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 and to cause MOEF and SCTC to cooperate fully with any such investigation and to extend all necessary assistance, including providing access to all relevant books and records, as may be necessary for the satisfactory completion of any such investigation. In particular, the Recipient shall (a) ensure that each of MOEF and SCTC conducts periodic inspections on the contractors' activities related to fund withdrawals and settlements; and (b) ensure that, and shall cause MOEF and SCTC to 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 MOEF and SCTC, and all contractors, suppliers, consultants and other service providers as they relate to the Project.

11. The Recipient through the PMO shall establish within one year of the Effective Date a PPMS within the PMO acceptable to ADB to monitor the progress of the Project in achieving its outcome and outputs. A matrix of Indicators shall be developed in a participatory manner to substantiate the performance indicators agreed with ADB. Baseline data shall be gathered for the indicators, and shall be updated on a semi-annual basis during Project implementation.

12. Two reviews of all aspects of the Project shall be carried out by the Recipient, SCTC and ADB after the Effective Date and one review the years thereafter. A midterm review of all aspects of the Project shall be carried out by the Recipient, SCTC and ADB three years after the Effective Date. The results of the midterm review, including an evaluation of the progress made in relation to the targets set, shall be discussed by the relevant parties and if required, appropriate corrective measures shall be formulated to ensure successful Project implementation and achievement of the Project outputs.