
GRANT NUMBER 0271-NEP (SF)

GRANT AGREEMENT
(Externally Financed)

(Electricity Transmission Expansion and Supply Improvement Project)

between

NEPAL

and

ASIAN DEVELOPMENT BANK

DATED 23 March 2012

NEP 41155

GRANT AGREEMENT (Externally Financed)

GRANT AGREEMENT dated 23 March 2012 between NEPAL (the "Recipient") and ASIAN DEVELOPMENT BANK ("ADB").

WHEREAS

(A) the Recipient has applied to ADB for a grant (the "Grant") financed by the Government of Norway to be administered by ADB, in an amount equal to one hundred fifty million Norwegian kroner and equivalent to approximately twenty five million Dollars (\$25,000,000) for the purposes of the Project described in Schedule 1 to the Financing Agreement (such expression as defined in Recital B below);

(B) the Recipient has also applied to ADB for a grant from its Special Funds resources in the amount of nineteen million Dollars (\$19,000,000) (the "ADB Grant") for the purposes of the Project and for a loan from ADB's Special Funds resources in an amount equivalent to approximately thirty five million five hundred fifty thousand Special Drawing Rights (SDR 35,550,000) (the "Loan") for the purposes of the Project and ADB has agreed to provide the Loan and the Grant pursuant to the Financing Agreement (the "Financing Agreement");

(C) the Project will be carried out by the Project Executing Agency, and for this purpose the Recipient will make available to the Project Executing Agency the proceeds of the Grant provided for herein upon terms and conditions satisfactory to ADB; and

(D) ADB has agreed to administer the Grant from the Government of Norway to the Recipient 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 Externally Financed Grant Regulations of ADB, dated 8 April 2009 (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, the several terms defined in the Grant Regulations and Financing Agreement have the respective meanings therein set forth unless modified herein or the context otherwise requires.

ARTICLE II

The Grant

Section 2.01. ADB agrees to make the Grant from the Government of Norway available to the Recipient on terms and conditions set forth in this Agreement in an amount equivalent to approximately twenty five million Dollars (\$25,000,000).

ARTICLE III

Use of Proceeds of the Grant

Section 3.01. The Recipient shall make the proceeds of the Grant available to the Project Executing Agency upon terms and conditions satisfactory to ADB and shall cause the Project Executing Agency such proceeds to the financing of expenditures on the Project in accordance with the provisions of this Grant Agreement and the Project Agreement.

Section 3.02. The Goods, Works and Consulting Services and other items of expenditure to be financed out of the proceeds of the Grant and the allocation of amounts of the Grant among different categories of such Goods, Works and Consulting Services and other items of expenditure shall be in accordance with the provisions of Schedule 1 to this Grant Agreement, as such Schedule 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 2 to this Grant Agreement.

Section 3.04. Except as ADB may otherwise agree, the Recipient shall cause all items of expenditure financed out of the proceeds of the Grant to be used exclusively in the carrying out of the Project.

Section 3.05. 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 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 3.06. The Grant Closing Date for the purposes of Section 8.02 of the Grant Regulations shall be 31 December 2017 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 5 to the Financing Agreement.

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

Section 4.03. (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 procedure for 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) 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 4.04. The Recipient shall take all actions which shall be necessary on its part to enable the Project Executing Agency to perform its obligations under the Project Agreement, and shall not take or permit any action which would interfere with the performance of such obligations.

Section 4.05. Notwithstanding any other provision of this Grant Agreement, ADB is neither obligated to make any disbursement from the Grant Account, except to the extent that ADB has received the Government of Norway Grant funds, nor is it acting as a representative of the Government of Norway. As the Grant will be made available in installments over several years, the applicable exchange rate for the conversion of the Grant from Norwegian krone to Dollars shall be reasonably determined by ADB on the dates ADB receives each such installment. The Dollar amounts made available to the Recipient will be adjusted, if necessary, depending on the actual exchange rates used for the Grant funds. ADB assumes no liability for any exchange rate fluctuations during ADB's administration of the Grant.

ARTICLE V

Suspension and Cancellation

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

(a) NEA shall have failed to perform any of its obligations under the Subsidiary Loan Agreement;

(b) NEA shall have failed to perform any of its obligations under the Subsidiary Equity Agreement;

(c) the ADB Grant shall have become liable for suspension or cancellation; or

(d) Substantial progress, satisfactory to ADB, is not being made towards the goal of achieving the Restructuring Target (including average upward tariff revision) by 15 July 2015; as evaluated on (i) 15 July 2013, (ii) 15 July 2014, and (iii) 15 July 2015.

ARTICLE VI

Effectiveness

Section 6.01 The following is specified as an additional condition to the effectiveness of this Grant Agreement for the purposes of Section 9.01(e) of the Grant Regulations: the Financing Agreement, in form and substance satisfactory to ADB, shall have been duly executed and delivered on behalf of the Beneficiary and shall have become fully effective and binding upon the Beneficiary in accordance with its terms; and

Section 6.02 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 VII

Miscellaneous

Section 7.01. The Joint Secretary, Foreign Aid Coordination Division, 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 7.02. The following addresses are specified for the purposes of Section 11.01 of the Grant Regulations:

For the Recipient

The Joint Secretary
Foreign Aid Coordination Division
Ministry of Finance
Singhadurbar, Kathmandu
Nepal

Facsimile Number:

(977-1) 4211165.

For ADB

Asian Development Bank
6 ADB Avenue
Mandaluyong City
1550 Metro Manila
Philippines

Facsimile Numbers:

(632) 636-2444
(632) 636-2446.

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.

NEPAL

By 

LAL SHANKER GHIMIRE
Joint Secretary and Chief of the
Foreign Aid Coordination Division
Ministry of Finance

ASIAN DEVELOPMENT BANK

By 

PAOLO SPANTIGAN
Officer-in-Charge
Nepal Resident Mission

SCHEDULE 1

Allocation and Withdrawal of Grant Proceeds

General

1. The table attached to this Schedule sets forth the Categories of items of expenditure to be financed out of the proceeds of the Grant and the allocation of the Grant proceeds to each such Category ("Table"). (Reference to "Category" in this Schedule is to a Category or Categories of the Table.)

Percentages of Grant 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 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 Grant 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 shall be disbursed in accordance with the Loan Disbursement Handbook.

Statement of Expenditures

5. The statement of expenditures procedure may be used for reimbursement of eligible expenditures in accordance with the Loan Disbursement Handbook and detailed arrangements agreed upon between the Recipient and ADB. Any individual payment to be reimbursed under the statement of expenditures procedure shall not exceed the equivalent of \$100,000.

Condition for Withdrawals from Grant Account

6. Notwithstanding any other provision of this Grant Agreement, no withdrawals shall be made from the Grant Account until such time as (i) the Council of Ministers of the Beneficiary shall have resolved to adopt the NEA Financial Restructuring Plan, containing the Key Features, and (ii) until the Electricity Retail Tariff Regulator shall have determined an average upward revision in tariffs, and it shall have entered into force in accordance with the Electricity Tariff Fixation Rules, 1993.

TABLE

ALLOCATION AND WITHDRAWAL OF GRANT PROCEEDS (Nepal Electricity Transmission Expansion and Supply Improvement Project)				
CATEGORY				ADB FINANCING
Number	Item	Total Amount Allocated for ADB Financing \$US million		Percentage and Basis for Withdrawal from the Grant Account
		Category	Subcategory	
1	Equipment and Materials	24.50		
1A	Part A-1**		9.80	100 % of total expenditure claimed*
1B	Part A-2***		14.70	100 % of total expenditure claimed*
2	Unallocated****	0.50		
	Total	25.00		

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

**Equipment (Part A-1) is financed by the Loan and Grant, with front-loading of the Grant hereunder until fully disbursed. The remaining cost of Part A-1 will be financed 100% from proceeds of the Loan.

***Equipment (Part A-2) is financed by the Loan, ADB Grant and Grant, with front-loading of the Grant hereunder until fully disbursed. The remaining cost of Part A-2 will be financed 43% from proceeds of the Loan and 57% from proceeds of the ADB Grant.

****May be used toward administration fees, audit costs, bank charges, and provision for foreign exchange fluctuations (if any), to the extent that these items are not covered by the interest and investment income earned on this grant.

SCHEDULE 2

Procurement of Goods, Works and Consulting Services

General

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

Goods and Works

3. Except as ADB may otherwise agree, Goods and Works shall only be procured on the basis of the methods of procurement set forth below:
 - (a) International Competitive Bidding;
 - (b) National Competitive Bidding; and
 - (c) Shopping.
4. 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.

Domestic Preference

5. 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.

National Competitive Bidding

6. The Recipient and ADB shall ensure that, prior to the commencement of any procurement activity under national competitive bidding, the Recipient's national competitive bidding procedures are consistent with the Procurement Guidelines. Any modifications or clarifications to such procedures agreed between the Recipient and ADB shall be set out in the Procurement Plan. Any subsequent change to the agreed modifications and clarifications shall become effective only after approval of such change by the Recipient and ADB.

Conditions for Award of Contract

7. The Recipient shall not award, and shall ensure that the Project Executing Agency shall not award, any Works contract which involves environmental impacts until:
 - (a) The Ministry of Energy has granted the final approval of the IEE updated for the relevant Facility Site (or, if applicable, the Ministry of

- (b) Environment has granted the final approval of any environmental impact assessment); and
- (c) the Recipient acting through the Project Executing Agency has incorporated the relevant provisions from the relevant EMP into the Works contract.

8. The Recipient shall not award, and shall ensure that the Project Executing Agency shall not award, any Works contract which involves involuntary resettlement impacts; provided however that in the event that Works in respect of any Facility Site are later determined to potentially involve any involuntary resettlement impacts, as determined under the Safeguard Policy Statement, no Works contract shall be awarded until the Recipient has prepared and submitted to ADB a final RP based on the Project's detailed design for such Works and obtained ADB's clearance of such RP.

9. The Recipient shall not award, and shall ensure that the Project Executing Agency shall not award, any Works contract which involves impacts on indigenous peoples; provided however that in the event that Works in respect of any Facility Site are later determined to potentially involve any impacts on indigenous peoples, as determined under the Safeguard Policy Statement, no Works contract shall be awarded until the Recipient has prepared and submitted to ADB a final IPP and obtained ADB's clearance of such IPP.

Consulting Services

10. Except as ADB may otherwise agree, and except as set forth in the paragraph below, the Recipient shall apply quality- and cost-based selection for selecting and engaging Consulting Services.

11. The Recipient shall recruit the individual Consultants for Output 3 in accordance with the Procurement Plan and procedures acceptable to ADB for recruiting individual consultants.

Industrial or Intellectual Property Rights

12. (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.

13. 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.

ADB's Review of Procurement Decisions

14. 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.