
GRANT NUMBER 0105-NEP (SF)

GRANT AGREEMENT
(Special Operations)
(Education Sector Program II)

between

NEPAL

and

ASIAN DEVELOPMENT BANK

DATED 31 MARCH 2008

LPS:NEP 35174

GRANT AGREEMENT (Special Operations)

GRANT AGREEMENT dated 31 March 2008 between NEPAL ("the Recipient") and ASIAN DEVELOPMENT BANK ("ADB").

WHEREAS

(A) ADB has received from the Recipient a development policy letter dated 16 November 2007 (hereinafter called the Policy Letter), setting forth certain objectives, policies and actions, described in Schedule 1 to this Grant Agreement, designed to develop the Recipient's education sector (the "Program");

(B) the Recipient has applied to ADB for a grant from its Special Funds resources for the purposes of the Program; and

(C) ADB has, on the basis inter alia of the foregoing, 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 the provisions of the Special Operations Grant Regulations of ADB, dated 7 February 2005 (the "Grant Regulations"), are hereby made applicable to this Grant Agreement with the same force and effect as if they were fully set forth herein, subject, however, to the following modifications:

(a) Section 2.01(15) is deleted and the following is substituted therefor:

24. The term "Program" means the program for which ADB has agreed to make the Grant, as described in the Grant Agreement and as the description thereof may be amended from time to time by agreement between ADB and the Recipient.

(b) The term "Project" wherever it appears in the Grant Regulations shall be substituted by the term "Program".

(c) Section 2.01(17) is deleted and the following is substituted therefor:

26. The term "Program Executing Agency" means the entity or entities responsible for the carrying out of the Program as specified in the Grant Agreement.

(d) The term "Project Executing Agency" wherever it appears in the Grant Regulations shall be substituted by the term "Program Executing Agency".

(e) Section 5.01(a) is deleted and the following is substituted therefor:

(a) Subject to any conditions or restrictions specified in the Grant Agreement, the Recipient shall be entitled to withdraw from the Grant Account such amounts as shall be required to meet payments for expenditures required for the Program and to be financed under the Grant Agreement.

Section 1.02. The terms defined in the Grant Regulations are incorporated into this Grant Agreement, unless the context requires otherwise. In addition, the following terms have the following meanings:

(a) "1-8 basic education" refers to an expansion of levels 1 to 5 primary education with levels 6 to 8 lower secondary education;

(b) "Counterpart Funds" means the Rupees proceeds accruing to the Recipient and generated from the Grant proceeds under the Program;

(c) "Deposit Account" means the account established in accordance with paragraph 4 of Schedule 2 to this Grant Agreement;

(d) "DOE" means the Recipient's Department of Education, and includes any legal successor thereto;

(e) "EFA JFA" refers to the Education for All Joint Financing Arrangement between the Recipient and the pooling donors supporting the Recipient's EFA, initially established on 24 September 2004 and any amendment thereto;

(f) "Eligible items" means the goods imported under the Program (except those specifically excluded pursuant to the Attachment to Schedule 3 to this Grant Agreement), the foreign exchange costs of which are eligible for financing out of the proceeds of the Grant;

(g) "MOES" means the Recipient's Ministry of Education and Sports, and includes any legal successor thereto;

(h) "MOF" means the Recipient's Ministry of Finance, and includes any legal successor thereto;

(i) "Policy Letter" means the development policy letter dated 16 November 2007 addressed by the Recipient to ADB and referred to in Preamble (A) of this Grant Agreement;

(j) "Policy Matrix" means the policy matrix attached to the Policy Letter and agreed between the Recipient and ADB;

(k) “Program Executing Agency” means, for the purposes of and within the meaning of the Grant Regulations, MOES, and any legal successor thereto acceptable to ADB, which is responsible for the carrying out of the Program;

(l) “Rupees” refers to the Recipient’s currency;

(m) “Single Tranche” means the proceeds of the Grant in an amount not exceeding eight million Dollars (\$8,000,000) to be withdrawn and utilized for the Program; and

(n) “SSR” means school sector reform.

ARTICLE II

The Grant

Section 2.01. ADB agrees to make available to the Recipient from ADB's Special Funds resources an amount of eight million Dollars (\$8,000,000) on terms and conditions set forth in this Grant Agreement.

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 Program in accordance with the provisions of this Grant Agreement.

Section 3.02. The proceeds of the Grant may be withdrawn from the Grant Account only for the purposes of financing expenditures incurred for Eligible Items under the Program in accordance with the provisions of Schedule 2 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 Eligible Items 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 shall be made only on account of expenditures relating to Eligible Items which:

- (a) are produced in, and 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) meet such other eligibility requirements as shall have been specified by ADB from time to time.

Section 3.05. Except as ADB may otherwise agree, no withdrawals shall be made from the Grant Account in respect of expenditures for Eligible Items incurred more than one hundred and eighty (180) days prior to the Effective Date.

Section 3.06. The Grant Closing Date for the purposes of Section 8.02 of the Grant Regulations shall be 30 June 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 Program, 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 maintain, or cause to be maintained, records and documents adequate to identify the Eligible Items financed out of the proceeds of the Grant and to record the progress of the Program.

(b) The Recipient shall enable ADB's representatives to inspect any relevant records and documents referred to in paragraph (a) of this Section.

Section 4.03. (a) As part of the reports and information referred to in Section 6.04 of the Grant Regulations, the Recipient shall furnish, or cause to be furnished, to ADB all such reports and information as ADB shall reasonably request concerning (i) the Counterpart Funds and the use thereof; and (ii) the implementation of the Program, including the accomplishment of the targets and carrying out of the actions set out in the Policy Letter.

(b) Without limiting the generality of the foregoing or Section 6.04 of the Grant Regulations, the Recipient shall furnish, or cause to be furnished, to ADB quarterly reports on the carrying out of the Program and on the accomplishment of the targets and carrying out of the actions set out in the Policy Letter.

ARTICLE V

Effectiveness

Section 5.01. The following are specified as additional conditions to the effectiveness of this Grant Agreement for the purposes of Section 9.01(e) of the Grant Regulations:

- (a) the Recipient shall have issued an Executive Order enabling MOES to restructure, on a pilot basis, 1-8 basic education in Rasuwa District, Dadeldhura District, and Kapilvastu District;

- (b) all policy actions set forth in the Policy Matrix shall have been complied with; and
- (c) the amendments to the EFA JFA, required to use such EFA JFA for financing any SSR related activities, shall have become effective.

Section 5.02. The following is specified as an additional matter, for the purposes of Section 9.02(c) of the Grant Regulations, to be included in the opinion or opinions to be furnished to ADB:

- (a) the Executive Order mentioned in Section 5.01 (a) shall have been issued and shall have become effective; and
- (b) the amendments to the EFA JFA mentioned in Section 5.01 (c) shall have become effective.

Section 5.03. 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 Secretary of MOF 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
Singha Durbar
Kathmandu, Nepal

Facsimile Number

977-1-4211165.

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) 636-2391.

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 

KRISHNA GYAWALI
Authorized Representative

ASIAN DEVELOPMENT BANK

By 

PAUL J. HEYTENS
Country Director
Nepal Resident Mission

SCHEDULE 1

Description of the Program

1. The Program is the second subprogram of the Recipient's overall education sector reform program. The principal objective of the Program is to develop a broadly accepted and adequately financed SSR. The Program aims to: (a) revise the draft SSR core document including an analysis of preferred policy options as well as a program and financing framework for SSR; and (b) strengthen the capacity of the various stakeholders throughout Nepal to support SSR. The Program is described in more detail in the Policy Letter. The Program shall be implemented during the period till December 2011.

2. In support of the Program:

(a) the proceeds of the Grant shall be used to finance the costs of Eligible Items; and

(b) the Counterpart Funds shall be used to finance the local currency costs relating to the implementation of certain programs and other activities consistent with the objectives of the Program, pursuant to the provisions of paragraph 7 of Schedule 4 to this Grant Agreement.

3. The proceeds of the Grant are expected to be utilized by 31 December 2011.

SCHEDULE 2

Allocation and Withdrawal of Grant Proceeds

1. Except as ADB may otherwise agree, the following provisions of this Schedule shall apply to the withdrawal of Grant proceeds from the Grant Account.

2. (a) Withdrawals from the Grant Account shall be made for the financing of the cost of Eligible Items.

(b) No withdrawals from the Grant Account shall be made in respect of any expenditures which have been financed by credits from official international or bilateral aid agencies or any other grants or loans made by ADB.

3. (a) An application for withdrawal from the Grant Account shall be submitted to ADB by the Recipient and shall be in a form satisfactory to ADB.

(b) Such withdrawal applications shall be accompanied by a certificate of the Recipient confirming that with respect to each year during which the proceeds of the Grant are expected to be disbursed, the value of the Eligible Imports is expected to be equal to or greater than the amount of the Grant expected to be disbursed during such year.

(c) For the purposes of this paragraph, the term "Eligible Imports" means the total imports of the Recipient during the relevant period minus the following imports during the same period:

- (i) imports from countries which are not members of ADB;
- (ii) imports for ineligible items specified in Attachment 1 to this Schedule; and
- (iii) imports financed from credits from official international or bilateral aid agencies or any other loans or grants made by ADB.

(d) The Recipient shall allow experts appointed by ADB to verify the value of Eligible Imports during any period in respect of which the Recipient has certified the value of Eligible Imports in its withdrawal application.

4. (a) The pooled Foreign Exchange Account, held by MOES at the Nepal Rastra Bank, and established under the EFA JFA, shall function as the deposit account into which all withdrawals from the Grant Account shall be deposited. The Deposit Account shall be established, managed and liquidated in accordance with terms and conditions satisfactory to ADB.

(b) Separate accounts and records in respect of the Deposit Account shall be maintained in accordance with consistently maintained sound accounting principles. Upon ADB's request, the Recipient shall have the Deposit Account audited by independent auditors, whose qualifications, experience and terms of reference are acceptable to ADB, in accordance with appropriate auditing standards. Promptly after their preparation but in any

event not later than six (6) months after the date of ADB's request, certified copies of such audited accounts and records shall be furnished to ADB, all in the English language.

(c) Throughout the Program implementation period, the Recipient shall submit trade statistics and any other information as ADB may require from time to time to assess the Recipient's compliance with the formula for determining Eligible Imports.

Attachment to Schedule 2**List of Eligible Items**

1. No withdrawals shall be made of the Grant Account in respect of:
- (i) expenditures for goods included in the following groups or sub-groups of the United Nations Standard International Trade Classification, Revision 3 (SITC, Rev. 3), or any successor groups or sub-groups under future revisions to the SITC, as designated by ADB by notice to the Recipient:

Table: Ineligible Items

Chapter	Heading	Description of Items
112		Alcoholic beverages
121		Tobacco, unmanufactured; tobacco refuse
122		Tobacco, manufactured (whether or not containing tobacco substitute)
525		Radioactive and associated materials
667		Pearls, precious and semiprecious stones, unworked or worked
718	718.7	Nuclear reactors, and parts thereof, fuel elements (cartridges), nonirradiated for nuclear reactors
728	728.43	Tobacco processing machinery
897	897.3	Jewelry of gold, silver or platinum-group metals (except watches and watch cases) and goldsmiths' or silversmiths' wares (including set gems)
971		Gold, nonmonetary (excluding gold ore and concentrates)

- (ii) expenditures in the currency of the Recipient or of goods supplied from the territory of the Recipient;
- (iii) expenditures for goods supplied under a contract that any national or international financing institution or agency will have financed or has agreed to finance, including any contract financed under any loan or grant from the ADB;
- (iv) expenditures for goods intended for a military or paramilitary purpose or for luxury consumption;
- (v) expenditures for narcotics;
- (vi) expenditures for environmentally hazardous goods, the manufacture, use or import of which is prohibited under the laws of the Recipient or international agreements to which the Recipient is a party; and
- (vii) expenditures on account of any payment prohibited by the Recipient in compliance with a decision of the United Nations Security Council taken under Chapter VII of the Charter of the United Nations.

SCHEDULE 3**Procurement**

1. Except as ADB may otherwise agree, the procedures referred to in the following paragraphs of this Schedule shall apply in the procurement of Eligible Items to be financed out of the proceeds of the Grant.

2. (a) Except as provided in subparagraph (b) of this paragraph, each contract for Eligible Items shall be awarded on the basis of either the purchaser's normal commercial procurement practices, in the case of procurement by the private sector, or the Recipient's prescribed procurement procedures, in the case of procurement by the public sector, having due regard for the principles of economy and efficiency.

(b) Each supply contract for Eligible Items which are commonly traded commodities shall be awarded on the basis of procedures appropriate to the trade and acceptable to ADB.

SCHEDULE 4

Program Management, Implementation and Other Matters

Program Management, Implementation, Coordination and Monitoring

1. MOES shall be the Program Executing Agency responsible for the overall and timely implementation of the Program. Within MOES the DOE shall be the Implementing Agency. MOES and DOE shall implement, manage, coordinate and monitor the Program in accordance with the goals, responsibilities, funding mechanism, fiduciary requirements and other Program management and implementation arrangements as set forth in the draft SSR core document and agreed in the EFA JFA.
2. Within one month of the Effective Date, MOES shall have established a central level coordination committee (CCC), chaired by the Joint Secretary of the Planning Division of MOES and comprising representatives of MOF, National Planning Commission, MOES, DOE and relevant line agencies. The CCC shall be responsible for (a) coordinating and monitoring all SSR capacity development activities; (b) overseeing the technical support, provided by the MOES technical secretariat, for developing a 1-8 basic education model; and (c) reporting to MOES and the Education Policy Committee on all SSR policy implementation activities.

Implementation of the Policy Letter

3. The Recipient shall: (a) ensure that the objectives achieved, policies adopted, and actions taken prior to the date of this Grant Agreement, as set forth in the Policy Letter, shall continue to be in full force and effect for the duration of the Program period and subsequently; (b) carry out the policies and actions in accordance with the schedule of policy reforms contained in the Policy Matrix and ensure sustainability of the reforms beyond the Program period; (c) carry out all of its obligations as stipulated under this Schedule and the Grant Agreement, in a timely manner.

Policy Dialogue

4. The Recipient shall keep ADB informed of, and the Recipient and ADB shall from time to time exchange views on, sector issues, policy reforms and additional reforms during the Program Period that may be considered necessary or desirable, including the progress made in carrying out the Program.
5. The Recipient shall engage in policy dialogue with ADB, in a timely manner, on problems and constraints encountered during Program implementation and on desirable changes to overcome or mitigate such problems and constraints.
6. The Recipient shall keep ADB informed of policy discussions with other multilateral or bilateral agencies that have implications for implementation of the Program, and shall provide ADB with an opportunity to comment on any resulting policy proposals. The Recipient shall take ADB's views into consideration before finalizing and implementing any such proposals.

Counterpart Funds

7. The Recipient shall ensure that the Counterpart Funds shall be used to support the costs associated with the implementation of SSR.

Vulnerable Communities Development Framework

8. The Recipient shall ensure that the implementation and management of the Program shall be done in accordance with the Vulnerable Communities Development Framework agreed upon between MOES and ADB for the first Education Sector Subprogram under the Program Cluster of which this Program is the second Subprogram.

Resettlement and Environment

9. The Recipient shall ensure that no activities under the Program shall entail any land acquisitions or other resettlement activities subject to ADB's Resettlement Policy (1995, as amended from time to time).

10. The Recipient shall ensure that all activities under the Program shall be implemented in accordance with the Recipient's applicable environmental laws and regulations as well as with the ADB's Environment Policy, 2002.

Sector Financing

11. The Recipient shall ensure that throughout the Program period, the budget allocations for education shall remain, at least, at the level of fiscal year 2008, while all efforts shall be made to increase the budget allocation.