
GRANT NUMBER 0164-LAO(SF)

GRANT AGREEMENT
(Special Operations)

(Private Sector and SME Development Program Cluster - Subprogram 2)

between

LAO PEOPLE'S DEMOCRATIC REPUBLIC

and

ASIAN DEVELOPMENT BANK

DATED 23 OCTOBER 2009

LPS:LAO 35304

GRANT AGREEMENT (Special Operations)

GRANT AGREEMENT dated 23 October 2009 between LAO PEOPLE'S DEMOCRATIC REPUBLIC (the "Recipient") and ASIAN DEVELOPMENT BANK ("ADB").

WHEREAS

(A) ADB has received from the Recipient a development policy letter dated 27 August 2009, which updates and supplements the development policy letter dated 20 August 2007, (collectively, the "Policy Letter"), setting forth certain objectives, policies and actions described in Schedule 1 to this Grant Agreement, designed to increase the efficiency and effectiveness of the private sector and in particular, small and medium enterprises ("SMEs") sector; under a cluster of two subprograms forming the Private Sector and SME Development Program Cluster (the "Program Cluster"), some of which have been implemented under the second subprogram of the Program Cluster (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:

15. "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:

17. "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) "BOL" means the Bank of the LAO PDR of the Recipient and any successor thereto;

- (b) "Counterpart Funds" means the Kip proceeds accruing to the Recipient and generated from the Grant proceeds under the Program and referred to in Schedules 1 and 4 to this Grant Agreement;

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

- (d) "Eligible Items" means the goods imported under the Program (except those specifically excluded pursuant to the Attachment to Schedule 2 to this Grant Agreement), the costs of which are eligible for financing out of the proceeds of the Grant;

- (e) "Implementing Agencies" means BOL, MOF and MPI;

- (f) "Kip" or the sign "KN" means kip in the currency of the Recipient;

- (g) "MOF" means the Recipient's Ministry of Finance and any successor thereto;

- (h) "MOIC" means the Recipient's Ministry of Industry and Commerce and any successor thereto;

- (i) "MPI" means the Recipient's Ministry of Planning and Investment and any successor thereto;

- (j) "Policy Matrix" means the policy matrix attached to the Policy Letter, as agreed between the Recipient and ADB, which sets forth actions accomplished or to be accomplished by the Recipient under the Program Cluster;

(k) "PPMF" means the post program monitoring framework as agreed between the Recipient and ADB which sets forth actions accomplished or to be accomplished by the Recipient following completion of the Program Cluster Period;

(l) "Program Cluster" has the meaning specified in Recital (A) to this Grant Agreement;

(m) "Program Cluster Period" means the period from 1 November 2005 to 31 December 2009 during which the Program Cluster will be implemented;

(n) "Program Executing Agency" means, for the purposes and within the meaning of the Grant Regulations, MOIC, which is responsible for the carrying out of the Program;

(o) "Program Period" means the period from 1 October 2007 to 30 September 2009;

(p) "PSME Steering Committee" means the Program steering committee referred to in paragraph 2 of Schedule 4 to this Grant Agreement; and

(q) "Subprogram One" means the first subprogram under the Program Cluster.

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 fifteen million Dollars (\$15,000,000).

ARTICLE III

Use of Proceeds of the Grant

Section 3.01. The Recipient shall cause the proceeds of the Grant to be applied to the financing of expenditures on the 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 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 31 March 2010 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 Cluster and PPMF.

(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 the implementation of the Program Cluster and PPMF, 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 Cluster and PPMF, 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 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 Deposit Account shall have been established as provided in paragraph 4(a) of Schedule 2 to this Grant Agreement.

Section 5.02. 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 VI**Miscellaneous**

Section 6.01. The Minister of Finance of the Recipient is designated as representative of the Recipient for the purposes of Section 11.02 of the Grant Regulations.

Section 6.02. The following addresses are specified for the purposes of Section 11.01 of the Grant Regulations:

For the Recipient

Ministry of Finance
PO Box 46
23 Singha Road
Vientiane, Lao PDR

Facsimile Number:

(856-21) 41-2142

For ADB

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

Facsimile Numbers:

(632) 636-2444
(632) 636-2331.

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.

LAO PEOPLE'S DEMOCRATIC
REPUBLIC

By 
H.E. VIENGTHONG SIPHANDONE
Authorized Representative

ASIAN DEVELOPMENT BANK

By 
GIL-HONG KIM
Country Director
Lao Resident Mission

SCHEDULE 1

Description of the Program

1. The principal objectives of the Program Cluster are to expand the private sector, reduce poverty, and increase job creation, and the scope includes support for institutional development for SME policy formulation and implementation, access to finance, enhancement of the investment climate, strengthening trade policy and capacity, and maintaining a stable macroeconomic environment. The Program Cluster is described in more detail in the Policy Letter and the Policy Matrix.
2. The Program scope includes reforms to: (a) strengthen the institutional framework for SME policy formulation and improve SME access to credit; (b) enhance the investment climate, including implementing the Recipient's Law on Enterprises; and (c) support development of trade policy and institutional capacity. The Program actions are being implemented during the Program Period.
3. 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.
4. The proceeds of the Grant are expected to be disbursed in a single tranche and utilized by 31 March 2010.

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 application shall be accompanied by a certificate of the Recipient confirming that (i) in case the proceeds of the Grant will finance imports already made, the value of Eligible Imports in the period concerned exceeded the amount of the requested withdrawal, or (ii) in case the proceeds of the Grant will finance items to be imported, the value of Eligible Imports in the immediately preceding one hundred eighty (180) days was equal to or greater than the amount of the requested withdrawal plus all other amounts expected to be withdrawn from the Grant Account during the succeeding one-year period.

(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 the Attachment to this Schedule; and
- (iii) imports financed from credits from official international or bilateral aid agencies or any other loans 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) Prior to submitting the first application to ADB for withdrawal from the Grant Account, the Recipient shall open an account (the Deposit Account) at the Bank of the Lao PDR 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) 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.

5. Notwithstanding any other provisions of this Grant Agreement or the Grant Regulations and except as ADB may otherwise agree, no withdrawals shall be made from the Grant Account unless ADB shall be satisfied based on evidence satisfactory to ADB and after consultation with the Recipient, that there has been no action which materially reverses the objectives of the Program Cluster.

List of Ineligible Items

1. Grant proceeds will finance the foreign currency expenditures for the reasonable cost of imported goods required during the Program.
2. No withdrawals will be made for the following:
 - (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 Borrower:

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)

Source: United Nations.

- (ii) expenditures in the currency of the Borrower or of goods supplied from the territory of the Borrower;
- (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; and
- (vi) expenditures for environmentally hazardous goods, the manufacture, use or import of which is prohibited under the laws of the Borrower or international agreements to which the Borrower is a party; and
- (vii) expenditures on account of any payment prohibited by the Borrower in compliance with a decision of the United Nations Security Council taken under Chapter VII of the Charter of the United Nations.

SCHEDULE 3**Provisions on Procurement and Consulting Services**

1. Except as ADB may otherwise agree, the procedures referred to in the following paragraph 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

1. MOIC as the Program Executing Agency shall be responsible for: (a) coordinating, monitoring, and supervising Program and PPMF implementation activities detailed in the Policy Letter and Policy Matrix; (b) providing guidance and direction to the relevant line agencies of the Recipient which are implementing the Program and the PPMF; and (c) reporting to ADB. MOF, which shall be responsible for administering and disbursing the Grant proceeds and maintaining accounts, BOL and MPI shall be the Implementing Agencies (collectively, the "Implementing Agencies"). MOIC shall be responsible for day to day implementation of the Program and the PPMF, in coordination with the Implementing Agencies.

2. The PSME Steering Committee chaired by the Recipient's Minister of Industry and Commerce and comprising senior officials from BOL, MOF and MPI, shall be responsible for coordinating the implementation and the sustaining of the Program actions. The PSME Steering Committee shall meet semi-annually to monitor progress and oversee the implementation of the Program Cluster and the PPMF and provide guidance and direction to MOIC, the Implementing Agencies, and relevant line agencies of the Recipient involved in actions under the Program Cluster and the PPMF. The PSME Steering Committee may invite ADB to participate in its meetings as an observer. The PSME Steering Committee shall ensure that English translations of the minutes of its meetings are forwarded to ADB within 2 weeks after each meeting.

Implementation of the Policy Letter

3. The Recipient shall ensure that the policies adopted and actions taken prior to the date of this Grant Agreement under the Program as described in the Policy Letter and the Policy Matrix, continue in effect.

Policy and Sector 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 arising during the implementation of the Program Cluster and the PPMF, that may be considered necessary or desirable, including the progress made in carrying out policies and actions set out in the Policy Letter and the Policy Matrix.

5. The Recipient shall promptly discuss with ADB problems and constraints encountered during implementation of the Program Cluster and the PPMF and appropriate measures 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 Cluster and the PPMF, 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 are used to finance the local currency costs relating to the implementation of the Program and other activities consistent with the objectives of the Program and shall provide the necessary budget appropriations to finance the structural adjustment costs relating to the implementation of reforms under the Program and the PPMF, and related developmental reform actions.

Monitoring of the Program Cluster and PPMF

8. The Recipient shall ensure that: (a) MOIC shall be responsible for maintaining all monitoring data and evaluating benefits of the Program and the PPMF; and (b) quarterly reporting on progress of the Program and the PPMF through periodic meetings is made by the Implementing Agencies to MOIC, which in turn, will report to ADB. MOIC shall, as needed, hold consultative meetings with the private sector and development partner community to solicit their feedback on the impact of the evolving private sector and SME regulation and Program Cluster and PPMF implementation.

9. The Recipient and ADB shall jointly assess the impact and evaluate the benefits of the Program within 8 months after the Effective Date, in accordance with the agreed Program Performance Management System prepared for the Program Cluster. The Recipient shall cause the MOIC and the Implementing Agencies to submit a review and completion report to ADB that assesses compliance with, and impact of, the agreed actions under the Program Cluster, taking into account the findings of the completion report for Subprogram One. The Recipient shall encourage partner donor agencies, business groups and other sector stakeholders participating in the Lao Business Forum to support private sector monitoring of the reforms and agreed actions under the Program Cluster and the PPMF.