
GRANT NUMBER 0768-TON (EF)
(Additional to Grant 0586-TON[SF], Grant 0587-TON[EF] and Grant 0588-TON[EF])

GRANT AGREEMENT
(Externally Financed)

(Outer Island Renewable Energy Project – Additional Financing)

between

KINGDOM OF TONGA

and

ASIAN DEVELOPMENT BANK

DATED 14 DECEMBER 2020

TON 43452

**GRANT AGREEMENT
(Externally Financed)**

GRANT AGREEMENT dated 14 December 2020 between KINGDOM OF TONGA ("Recipient") and ASIAN DEVELOPMENT BANK ("ADB").

WHEREAS

Original Project

(A) by a grant agreement dated 2 December 2013 between the Recipient and ADB ("Original ADB Grant Agreement"), ADB agreed to make a grant to the Recipient from ADB's Special Funds resources in an amount of two million Dollars (\$2,000,000) for the purposes of the project described in Schedule 1 to the Original ADB Grant Agreement ("Original Project");

(B) by a grant agreement dated 2 December 2013 between the Recipient and ADB ("Original Australia Grant Agreement"), ADB agreed to make the proceeds of a grant from the Government of Australia available to the Recipient in an amount equivalent to four million five hundred thousand Dollars (\$4,500,000) for the purposes of cofinancing expenditures under the Original Project;

First Additional Project

(C) by a grant agreement dated 30 October 2015 between the Recipient and ADB ("First Additional ADB Grant Agreement"), ADB agreed to make an additional grant to the Recipient from ADB's Special Funds resources in an amount of one million four hundred forty thousand Dollars (\$1,440,000) for the purposes of the project described in Schedule 1 to the First Additional Grant Agreement ("First Additional Project");

(D) by a grant agreement dated 30 October 2015 between the Recipient and ADB ("First Additional EU Grant Agreement"), ADB agreed to make the proceeds of a grant from the European Union available to the Recipient in an amount of three million five hundred seventy thousand Dollars (\$3,570,000) for the purposes of cofinancing expenditures under the First Additional Project;

(E) by a grant agreement dated 30 October 2015 between the Recipient and ADB ("First Additional SDCF Grant Agreement"), ADB agreed to make the proceeds of a grant from the Second Danish Cooperation Fund for Renewable Energy and Energy Efficiency for Rural Areas available to the Recipient in an amount of seven hundred fifty thousand Dollars (\$750,000) for the purposes of cofinancing expenditures under the First Additional Project;

Second Additional Project

(F) by a financing agreement dated 31 January 2017 between the Recipient and ADB ("Second Additional Financing Agreement"), ADB agreed to provide financing by making a loan in various currencies equivalent to one million eight hundred nine thousand Special Drawing Rights (SDR1,809,000) and a grant in the amount of two million five hundred thousand Dollars (\$2,500,000) to the Recipient from ADB's Special Funds resources, for the purposes of the Project described in Schedule 1 to the Second Additional Financing Agreement ("Second Additional Project");

Third Additional Financing Project

(G) by a grant agreement dated 8 August 2018 between the Recipient and ADB ("Third Additional ADB Grant Agreement"), ADB agreed to make a grant to the Recipient from ADB's Special Funds resources for an amount of five million five hundred thousand Dollars (\$5,500,000) for the purposes of the project described in Schedule 1 of the Third Additional ADB Grant Agreement ("Third Additional Project");

(H) by a grant agreement dated 8 August 2018 between the Recipient and ADB, ADB agreed to make the proceeds of a grant from the Global Environment Facility available to the Recipient in an amount of two million six hundred thirty-nine thousand and two hundred sixty-nine Dollars (\$2,639,269) for the purposes of cofinancing expenditures under the Third Additional Project;

(I) by a grant agreement dated 8 August 2018 between the Recipient and ADB, ADB agreed to make the proceeds of a grant from the Government of Australia, represented by the Department of Foreign Affairs and Trade ("DFAT"), available to the Recipient in an amount equivalent to seven hundred forty thousand Dollars (\$740,000) for the purposes of cofinancing expenditures under the Third Additional Project;

The Project

(J) the Recipient has applied to DFAT for a grant, to be administered by ADB, for the purposes of cofinancing expenditures under the Project described in Schedule 1 to this Grant Agreement;

(K) by a cofinancing agreement dated 6 April 2020 between ADB and DFAT ("Cofinancing Agreement"), DFAT has agreed to provide, and ADB has agreed to administer, the grant provided for the Project upon the terms and conditions set out in the Cofinancing Agreement;

(L) the Project will be carried out by Recipient's Ministry of Finance ("MOF") and implemented by the Recipient's Ministry of Meteorology, Energy, Information, Disaster Management, Climate Change and Communications ("MEIDECC"); and

(M) ADB has agreed to make the proceeds of the grant from DFAT available to the Recipient upon the terms and conditions set forth herein;

NOW THEREFORE the parties agree as follows:

ARTICLE I

Grant Regulations; Definitions

Section 1.01. All the provisions of ADB's Externally Financed Grant Regulations, dated 1 January 2017 ("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 the Third Additional ADB Grant Agreement have the respective meanings therein set forth unless modified herein or the context otherwise requires. Additional terms used in this Grant Agreement have the following meanings: "Australian Dollar" or the sign "A\$" each means the lawful currency of Australia.

ARTICLE II

The Grant

Section 2.01. (a) ADB agrees to make available to the Recipient a grant from DFAT in the amount of one million nine hundred twelve thousand Dollars (\$1,912,000), as such amount may be adjusted from time to time in accordance with subsection (b) hereinafter.

(b) The amount of the Grant shall be adjusted from time to time to account for currency fluctuations, such that the amount of the Grant, denominated in Dollars, shall be equivalent to two million eight hundred eighty five thousand Australian Dollars (A\$2,885,000) at the time that ADB converted the resources made available to ADB by DFAT for the purposes of the Grant.

ARTICLE III

Use of Proceeds of the Grant

Section 3.01. (a) 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.

(b) The Recipient agrees that the proceeds of the Grant may be used to pay ADB's administration fees and other charges pursuant to the Cofinancing Agreement. ADB shall be entitled to withdraw from the Grant Account and pay to itself, on behalf of the Recipient, the amounts required to meet payments, when due, of such administration fees and other charges.

Section 3.02. The proceeds of the Grant shall be allocated and withdrawn 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, the Recipient shall procure, or cause to be procured, the items of expenditure to be financed out of the proceeds of the Grant 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 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 3.05. The Grant Closing Date for the purposes of Section 8.02 of the Grant Regulations shall be 31 July 2022 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 separate accounts and records for the Project; (ii) prepare annual financial statements for the Project in accordance with financial reporting standards acceptable to ADB; (iii) have such financial statements audited annually by independent auditors whose qualifications, experience and terms of reference are acceptable to ADB, in accordance with auditing standards acceptable to ADB; (iv) as part of each such audit, have the auditors prepare a report, which includes the auditors' opinion(s) on the financial statements and the use of the Grant proceeds, and a management letter (which sets out the deficiencies in the internal control of the Project that were identified in the course of the audit, if any); and (v) furnish to ADB, no later than 6 months after the end of each related fiscal year, copies of such audited financial statements, audit report and management letter, all in the English language, and such other information concerning these documents and the audit thereof as ADB shall from time to time reasonably request.

(b) ADB shall disclose the annual audited financial statements for the Project and the opinion of the auditors on the financial statements within 14 days of the date of ADB's confirmation of their acceptability by posting them on ADB's website.

(c) The Recipient shall enable ADB, upon ADB's request, to discuss the financial statements for the Project and the Recipient's financial affairs where they relate to the Project with the auditors appointed pursuant to subsection (a)(iii) hereinabove, and shall authorize and require any representative of such auditors to participate in any such discussions requested by ADB. This is provided that such discussions 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, Works and Consulting Services, and any relevant records and documents.

Section 4.04. The Recipient acknowledges and agrees that this Grant Agreement is entered into by ADB, not in its individual capacity, but as grant administrator for DFAT. Accordingly, the Recipient agrees that (a) it may only withdraw Grant proceeds to the extent that ADB has received proceeds for the Grant from DFAT and such proceeds has not been suspended or cancelled in whole or in part by DFAT pursuant to the Cofinancing Agreement, and (b) that ADB does not assume any obligations or responsibilities of DFAT in respect of the Project or the Grant other than those set out in this Grant Agreement.

ARTICLE V

Effectiveness

Section 5.01. A date 90 days after the date of this Grant Agreement is specified for the effectiveness of this Grant Agreement for the purposes of Section 9.04 of the Grant Regulations.

ARTICLE VI

Termination

Section 6.01. The Grant Agreement and all obligations of the parties thereunder shall terminate on the date on which the Third Additional ADB Grant Agreement terminates.

ARTICLE VII

Miscellaneous

Section 7.01. The Minister for 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

Ministry of Finance
Vuna Road
Nuku'alofa
Kingdom of Tonga

Facsimile Number:

(676) 24040

For ADB

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

Facsimile Numbers:

(632) 8636-2444

(632) 8636-2446.

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 as of the day and year first above written and to be delivered at the principal office of ADB.

KINGDOM OF TONGA


By



TEVITA LAVEMAAU
Minister for Finance

ASIAN DEVELOPMENT BANK

By



LEAH C. GUTIERREZ
Director General
Pacific Department

SCHEDULE 1**Description of the Project**

1. The objective of the Project is to optimize on-grid and off-grid generation systems and increase consumer access to electricity generated by solar power at a reduced cost.
2. The Project shall comprise (a) the rehabilitation of the existing grid network in Vava'u; and (b) provision of Project management, accounting, financial management, gender development and safeguards monitoring support.
3. Consulting Services shall be provided to support activities mentioned in paragraph 2(b) above.
4. The Project is expected to be completed by 31 January 2022.

SCHEDULE 2

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 of the Table.)

Basis for Withdrawal from the Grant Account

2. Except as ADB may otherwise agree, the proceeds of the Grant shall be allocated to items of expenditure, and disbursed on the basis of the withdrawal percentage for each item of expenditure, as 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 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.

Condition for Withdrawals from Grant Account

5. Notwithstanding any other provision of this Grant Agreement, no withdrawals shall be made from the Grant Account for Works until financing allocated to this item under the First Additional Grant Agreement, the First Additional EU Grant Agreement and the Second Additional Financing Agreement has been fully disbursed.

TABLE

ALLOCATION AND WITHDRAWAL OF GRANT PROCEEDS			
Number	Item	Total Amount Allocated for DFAT Financing (\$)	Basis for Withdrawal from the Grant Account
		Category	
1	Works (power distribution networks)**	1,300,000	100% of total expenditure claimed*
2	Project Management Consultants	300,000	100% of total expenditure claimed*
3	Unallocated***	312,000	
	TOTAL	1,912,000	

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

** Subject to the condition for withdrawal described in paragraph 5 of Schedule 2

*** This amount also serves as a reserve for (a) currency fluctuations; and (b) payment of ADB's administration fees and bank charges or other charges pursuant to the Cofinancing Agreement.

SCHEDULE 3

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. Except as ADB may otherwise agree, Goods and Works shall be procured and Consulting Services shall be selected and engaged only on the basis of the procurement methods and the selection methods set forth below. These methods are subject to, among other things, the detailed arrangements and threshold values set forth in the Procurement Plan. The Recipient may only modify the procurement methods and the selection methods or threshold values with the prior agreement of ADB, and modifications must be set out in updates to the Procurement Plan.
3. 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

4. Goods and Works shall be procured on the basis of the procurement methods set forth below:
 - (i) International Competitive Bidding;
 - (ii) National Competitive Bidding;
 - (iii) Shopping;
 - (iv) Direct Contracting; and
 - (v) Force Account.

National Competitive Bidding

5. 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

6. The Recipient shall not award any Works contracts which involve environmental impacts until:

- (a) The Recipient has granted the final approval of the relevant IEE; and
- (b) The Recipient has incorporated the relevant provisions from the EMP into the Works contract.

Consulting Services

7. Except as set forth in the paragraph below, the Recipient shall apply Quality- and Cost-Based Selection for Consulting Services.
8. The Recipient shall apply the following selection method for the specified Consulting Services, in accordance with, among other things, the procedures set forth in the Procurement Plan: Fixed Budget Selection for project management services.
9. The Recipient shall recruit the individual consultants for project management and implementation services in accordance with procedures acceptable to ADB for recruiting individual consultants.

Industrial or Intellectual Property Rights

10. (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.
11. 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

12. 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

Execution of Project

Implementation Arrangements

1. The Recipient, through MOF and MEIDECC, shall ensure that the Project is implemented in accordance with the detailed arrangements set forth in the PAM. Any subsequent change to the PAM shall become effective only after approval of such change by the Recipient and ADB. In the event of any discrepancy between the PAM and this Grant Agreement, the provisions of this Grant Agreement shall prevail.

Environment

2. The Recipient, through MOF and MEIDECC, shall ensure that the preparation, design, construction, implementation, operation and decommissioning of the Project and all Project facilities comply with (a) all applicable laws and regulations of the Recipient relating to environment, health and safety; (b) the Environmental Safeguards; and (c) all measures and requirements set forth in the IEE, the EMP, and any corrective or preventative actions set forth in a Safeguards Monitoring Report.

Land Acquisition and Involuntary Resettlement

3. The Recipient, through MOF and MEIDECC, shall ensure that the Project does not have any involuntary resettlement impacts, within the meaning of the SPS. In the event that the Project does have any such impact, the Recipient shall take all steps required to ensure that the Project complies with the applicable laws and regulations of the Recipient and with the SPS.

Indigenous Peoples

4. The Recipient, through MOF and MEIDECC, shall ensure that the Project does not have any indigenous peoples impacts, within the meaning of the SPS. In the event that the Project does have any such impact, the Recipient shall take all steps required to ensure that the Project complies with the applicable laws and regulations of the Recipient and with the SPS.

Human and Financial Resources to Implement Safeguards Requirements

5. The Recipient shall make available necessary budgetary and human resources to fully implement the EMP.

Safeguards – Related Provisions in Bidding Documents and Works Contracts

6. The Recipient, through MOF and MEIDECC, shall ensure that all bidding documents and contracts for Works contain provisions that require contractors to:

- (a) comply with the measures relevant to the contractor set forth in the IEE and the EMP, and any corrective or preventative actions set forth in a Safeguards Monitoring Report;

- (b) make available a budget for all such environmental measures; and
- (c) provide the Recipient with a written notice of any unanticipated environmental, resettlement or indigenous peoples risks or impacts that arise during construction, implementation or operation of the Project that were not considered in the IEE and the EMP.

Safeguards Monitoring and Reporting

7. The Recipient, through MOF and MEIDECC, shall do the following:
- (a) submit semi-annual Safeguards Monitoring Reports to ADB and disclose relevant information from such reports to affected persons promptly upon submission;
 - (b) if any unanticipated environmental and/or social risks and impacts arise during construction, implementation or operation of the Project that were not considered in the IEE and the EMP, promptly inform ADB of the occurrence of such risks or impacts, with detailed description of the event and proposed corrective action plan; and
 - (c) report any actual or potential breach of compliance with the measures and requirements set forth in the EMP promptly after becoming aware of the breach.

Prohibited List of Investments

8. The Recipient, through MOF and MEIDECC, shall ensure that no proceeds of the Grant are used to finance any activity included in the list of prohibited investment activities provided in Appendix 5 of the SPS.

Labor Standards, Health and Safety

9. The Recipient, through MOF and MEIDECC, shall ensure that the core labor standards and the Recipient's applicable laws and regulations are complied with during Project implementation. The Recipient shall include specific provisions in the bidding documents and contracts financed by ADB under the Project requiring that the contractors, among other things:
- (a) comply with the Recipient's applicable labor law and regulations and incorporate applicable workplace occupational safety norms;
 - (b) do not use child labor;
 - (c) do not discriminate workers in respect of employment and occupation;
 - (d) do not use forced labor;
 - (e) allow freedom of association and effectively recognize the right to collective bargaining; and
 - (f) disseminate, or engage appropriate service providers to disseminate, information on the risks of sexually transmitted diseases, including HIV/AIDS, to the employees of contractors engaged under the Project and to members of the local communities surrounding the Project area, particularly women.

10. The Recipient, through MOF and MEIDECC, shall strictly monitor compliance with the requirements set forth in paragraph 9 above and provide ADB with regular reports.

Gender and Development

11. The Recipient shall ensure that (a) the GAP is implemented in accordance with its terms; (b) the bidding documents and contracts include relevant provisions for contractors to comply with the measures set forth in the GAP; (c) adequate resources are allocated for implementation of the GAP; and (d) progress on implementation of the GAP, including progress toward achieving key gender outcome and output targets, are regularly monitored and reported to ADB.

Counterpart Support

12. The Recipient shall make available, through budgetary allocations or other means, all counterpart funds required for the timely and effective implementation of the Project, including funds required to (a) meet additional costs arising from design changes, price escalation in construction costs or other unforeseen circumstances; (b) ensure MOF and MEIDECC have sufficient funds to satisfy liabilities arising from any Works, Goods and/or Consulting Services contract; and (c) ensure effective and periodic operation and maintenance of the Project facilities, both during and after completion of the Project.

Project Website

13. The Recipient, through MOF and MEIDECC, shall maintain a Project website which shall be regularly updated. The Project website shall include information on (a) bidding procedures, bidders and contract awards; (b) use of the funds disbursed under the Project; and (c) physical progress of the Project.

Governance and Anticorruption

14. The Recipient, including MOF and MEIDECC, shall (a) comply with ADB's Anticorruption Policy (1998, as amended to date) and acknowledge that ADB reserves the right to investigate directly, or through its agents, any alleged corrupt, fraudulent, collusive or coercive practice relating to the Project; and (b) cooperate with any such investigation and extend all necessary assistance for satisfactory completion of such investigation.

15. The Recipient, including MOF and MEIDECC, shall ensure that the anticorruption provisions acceptable to ADB are included in all bidding documents and contracts, including provisions specifying the right of ADB to audit and examine the records and accounts of the executing and implementing agencies and all contractors, suppliers, consultants, and other service providers as they relate to the Project.

Combating Money Laundering and Financing of Terrorism

16. The Recipient shall ensure that (a) MOF and MEIDECC comply with applicable laws and regulations of the Recipient on combating money laundering and financing of terrorism; and (b) Grant proceeds are not used, directly or indirectly, in money laundering or financing of terrorism, including payment to persons and entities that are subject to financial sanctions of United Nations Security Council resolutions on combating the financing of terrorism.

17. ADB shall inform DFAT in a timely manner if, during the implementation of this Agreement, ADB becomes aware that the Grant proceeds are being used for money laundering

or financing of terrorism, including any payment to persons or entities that is prohibited by a decision of the United Nations Security Council taken under Chapter VII of the Charter of the United Nations.