

PD BBD 915

A. I. D. Grant No. 662-K-608

662-0010

GRANT AGREEMENT
Between
UNITED STATES OF AMERICA
And
REPUBLIC OF SEYCHELLES
For
COMMODITY IMPORTS

DATED: May 10, 1989

COMMODITY IMPORT GRANT AGREEMENT

DATE: May 10, 1989

Between

The Republic of the Seychelles ("Grantee")

and

The United States of America, acting through the
Agency for International Development (A.I.D.).

ARTICLE I

The Grant

To finance the foreign exchange costs of certain commodities and commodity related services ("Eligible Items") necessary to promote economic development and stability, the United States, pursuant to the Foreign Assistance Act of 1961, as amended, agrees to grant the Government of the Republic of Seychelles under the terms of this agreement, not to exceed Three Million United States dollars (\$3,000,000) ("Grant").

ARTICLE 2

Conditions Precedent to Disbursement

SECTION 2.1. Conditions Precedent. Prior to the first disbursement under the Grant, or to the issuance by A.I.D. of documentation pursuant to which disbursement will be made, the Grantee will, except as the Parties may otherwise agree in writing, furnish to A.I.D., in form and substance satisfactory to A.I.D.:

(a) An opinion of counsel acceptable to A.I.D. that this agreement has been duly authorized and/or ratified by, and executed on behalf of, the Grantee, and that it constitutes a valid and legally binding obligation of the Grantee, in form and substance satisfactory to A.I.D.

(b) A statement representing and warranting that the named person or persons have the authority to act as the

representative or representatives of the Grantee pursuant to Section 7.2, together with a specimen signature of each person certified as to its authenticity;

SECTION 2.2. Notification. When A.I.D. has determined that the conditions precedent specified in Section 2.1 have been met, it will promptly notify the Grantee by implementation letter issued pursuant to Section 7.1 of this Agreement.

SECTION 2.3. Terminal Date for Meeting Conditions Precedent. If all the conditions specified in Section 2.1 have not been met within ninety (90) days from the date of this Agreement, or such later date as A.I.D. may specify in writing, A.I.D., at its option, may terminate this Agreement by written notice to the Grantee.

ARTICLE 3

Procurement, Eligibility, and Utilization of Commodities

SECTION 3.1. A.I.D. Regulation 1. This Grant and the procurement and utilization of commodities and commodity-related services financed under it are subject to the terms and conditions of A.I.D. Regulation 1 as from time to time amended and in effect, except as A.I.D. may otherwise specify in writing. If any provision of A.I.D. Regulation 1 is inconsistent with a provision of this Agreement, the provision of this Agreement shall govern.

SECTION 3.2. Eligible Items.

(a) The commodities eligible for financing under this Grant shall be medium fuel oil and diesel fuel oil, as further described in Commodity Procurement Instructions issued to Grantee. Commodity-related services as defined in A.I.D. Regulation 1 are eligible for financing under this Grant. Other items shall become eligible for financing only with the written agreement of A.I.D. A.I.D. may decline to finance any specific commodity or commodity-related service when in its judgment such financing would be inconsistent with the purpose of the Grant or of the Foreign Assistance Act of 1961, as amended.

(b) A.I.D. reserves the right in exceptional situations to delete specific commodities or commodity categories. Such right will be exercised at a point in time no later than commodity prevalidation by A.I.D. (Form 11 approval) or, if no commodity prevalidation is required, no later than the date on

which an irrevocable Letter of Credit is confirmed by a U.S. bank in favor of the supplier. If no prevalidation is required and payment is not by Letter of Credit, A.I.D. will exercise this right no later than the date on which it expends funds made available to the Grantee under this Agreement for the financing of the commodity. In any event, however, the Grantee will be notified of any decision by A.I.D. to exercise this right pursuant to a determination that financing the commodity would adversely affect A.I.D. or foreign policy objectives of the United States or could jeopardize the safety or health of people in the importing country.

SECTION 3.3. Procurement Source. The medium fuel oil financed under this Agreement shall have its source and origin from A.I.D. Geographic Code 941 and the diesel fuel oil from A.I.D. Geographic Code 899, except as A.I.D. may otherwise specify in writing.

SECTION 3.4. Eligibility Date. No commodities or commodity-related services may be financed under the Grant if they were procured pursuant to orders or contracts firmly placed or entered into prior to the date of this Agreement, except as A.I.D. may otherwise agree in writing.

SECTION 3.5. Procurement for Public Sector. Except as A.I.D. may otherwise agree in writing, procurement under this grant by or for Grantee, its departments and instrumentalities, the provisions of Section 201.22 of A.I.D. Regulation 1 regarding formal competitive bid procedures will apply.

SECTION 3.6. Utilization of Commodities.

(a) Grantee will assure that commodities financed under this Grant will be effectively used for the purposes for which the assistance is made available. To this end, the Grantee will use its best efforts to assure that the following procedures are followed:

(i) accurate arrival and clearance records are maintained by customs authorities; commodity imports are promptly processed through customs at points of entry; such commodities are removed from customs and/or bonded warehouses within ninety (90) calendar days from the date the commodities are unloaded at the point of entry, unless the importer is hindered by force majeure or A.I.D. otherwise agrees in writing; and

(ii) the commodities are consumed or used by the importer not later than one (1) year from the date the

commodities are removed from customs, unless a longer period can be justified to the satisfaction of A.I.D. by reason of force majeure or special market conditions or other circumstances.

(b) Grantee will assure that commodities financed under this Grant will not be re-exported in the same or substantially the same form, unless specifically authorized by A.I.D.

SECTION 3.7. Shipping.

(a) Commodities which are to be transported to the territory of the Grantee may not be financed under this Grant if transported either: (1) on an ocean vessel or aircraft under flag registry of a country which is not included in A.I.D. Geographic Code 935 as in effect at the time of shipment, or (2) on an ocean vessel which A.I.D., by written notice to the Grantee has designated as ineligible, or (3) under an ocean or air charter which has not received prior A.I.D. approval.

(b) Unless otherwise authorized, A.I.D. will finance only those transportation costs incurred on aircraft or ocean vessels under flag registry of a country included in the Geographic Code authorized in Section 3.3 of the Agreement, except that when Code 941 is authorized, A.I.D. will finance only those transportation costs incurred on aircraft or ocean vessels under flag registry of the United States and the cooperation country. When Code 941 is authorized and there is a general unavailability of cooperating country flag aircraft or ocean vessels, A.I.D. will specifically authorize in Implementation letters the financing of transportation costs incurred on aircraft or ocean vessels of any country included in Code 941.

(c) Unless A.I.D. determines that privately owned United States-flag commercial ocean vessels are not available at fair and reasonable rates for such vessels, (1) at least fifty percent (50%) of the gross tonnage of all goods (computed separately for dry bulk carriers, dry cargo liners and tankers) financed by A.I.D. which may be transported on ocean vessels will be transported on privately owned United States-flag commercial vessels, and (2) at least fifty percent (50%) of the gross freight revenue generated by all shipments financed by A.I.D. and transported to the Seychelles on dry cargo liners shall be paid to or for the benefit of privately owned United States-flag commercial vessels. Compliance with the requirements of (1) and (2) of this subsection must be achieved with respect of both cargo transported from U.S ports and cargo



transported from non-U.S. ports, computed separately

Section 3.8 Insurance

(a) Marine insurance on commodities financed by A.I.D. UNDER THIS Grant may also be financed under this Grant provided that such insurance is placed in a country included in the Geographic Code authorized in Section 3.3 of this Agreement, or if Geographic Code 941 is authorized, also in the Grantee country, in accordance with the applicable provisions of A.I.D. Regulation 1, Subparts B and C.

ARTICLE 4

Disbursement

SECTION 4.1. A.I.D. Letters of Commitment to Supplier(s). After satisfaction of the conditions precedent, the Grantee may obtain disbursements of funds under this Grant by submitting Financing Requests to A.I.D. for the issuance of letters of commitment for specified amounts to one or more suppliers designated by Grantee and satisfactory to A.I.D. Such letters will commit A.I.D. to reimburse the suppliers pursuant to such documentaton requirements as A.I.D. may prescribe.

SECTION 4.2. Other Forms of Disbursement Authorizations Disbursements of the Grant may also be made through such other means as the Parties may agree to in writing.

SECTION 4.3. Terminal Date for Requests for Disbursement Authorizations. Except as A.I.D. may otherwise agree in writing, no Letter of Commitment or other disbursement authorization will be issued in response to a request received by A.I.D. after twelve (12) months, from the date of signature of this Agreement.

Section 4.4. Terminal Date for Requests for Disbursement. Except as A.I.D. may otherwise agree in writing, no disbursement of Grant funds shall be made against documentation submitted after eighteen (18) months from the date of signature of this Agreement.

ARTICLE 5

Covenants

SECTION 5.1. Taxation. This Agreement and the Grant will be free from any taxation or fees imposed under laws in



effect in the Republic of the Seychelles.

SECTION 5.2. Reports and Records. In addition to the requirements in A.I.D. Regulation 1, the Grantee will:

(a) furnish A.I.D. such reports and information relating to the goods and services financed by this Grant and the performance of Grantee's obligations under this Agreement as A.I.D. may reasonably request;

(b) maintain or cause to be maintained, in accordance with generally accepted accounting principles and practices consistently applied, such books and records relating to this Grant as may be prescribed in Implementation Letters. Such books and records may be inspected by A.I.D. or any of its authorized representatives at all times as A.I.D. may reasonably require, and shall be maintained for three years after the date of last disbursement by A.I.D. under this Grant; and

(c) permit A.I.D. or any of its authorized representatives at all reasonable times during the three-year period to inspect the commodities financed under this Grant at any point, including the point of use.

SECTION 5.3. Completeness of Information. The Grantee confirms:

(a) that the facts and circumstances of which it has informed A.I.D., or caused A.I.D. to be informed, in the course of reaching agreement with A.I.D. on the Grant, are accurate and complete, and include all facts and circumstances that might materially affect the Grant and the discharge of responsibilities under this Agreement; and

(b) that it will inform A.I.D. in timely fashion of any subsequent facts and circumstances that might materially affect, or that it is reasonable to believe might so affect, the Grant or the discharge of responsibilities under this Agreement.

SECTION 5.4. Other Payments. Grantee affirms that no payments have been or will be received by any official of the Grantee in connection with the procurement of goods or services financed under the Grant, except fees, taxes, or similar payments legally established in the country of the Grantee.

SECTION 5.5. Minimum Size of Transactions. No foreign exchange allocation or Letter of commitment issued pursuant to this Agreement shall be in an amount less than ten-thousand United States dollars (\$10,000), except as A.I.D.

may otherwise agree in writing.

SECTION 5.6. Generation and Use of Local Currency.

(a) The Grantee will establish a separate, non-commingled Special Account in the Central Bank of the Republic of the Seychelles and will deposit therein currency of the Republic of the Seychelles in amounts equal to each shipment of Eligible Items. The local currency equivalent of the dollar value of each shipment shall be deposited in the Special Account in three consecutive and equal monthly installments. The first such deposit shall be made within ten (10) days after the shipment for which that local currency equivalent is being deposited is off-loaded in the Seychelles, with the second and third deposit thirty (30) and sixty (60) days, respectively, after the first deposit. All deposits will be calculated at the exchange rate prevailing on the date of importation of the Eligible Items which provides the largest number of Seychelles rupees per U.S. dollar that is not unlawful for any purpose in the Republic of the Seychelles. Funds in the Special Account shall be utilized for mutually agreed upon economic development purposes, as shall be specified from time to time in Implementation Letters, provided, however, that such portion of the funds in the Special Account as may be designated by A.I.D, shall be made available to meet the requirements of the United States.

(b) The Grantee will provide A.I.D. with a detailed accounting of the use of such local currency; the timing and format for such reports will be specified in an Implementation Letter.

(c) Any unencumbered balances of funds which remain in the Special Account upon termination of assistance hereunder shall be disbursed for such purposes as may, subject to applicable law, be agreed to between Grantee and A.I.D.

SECTION 5.7. Continuing Consultation. The Grantee and A.I.D. agree to cooperate fully to assure that the purpose of the Grant will be accomplished. To this end, the Grantee and A.I.D. shall from time to time, at the request of either Party, exchange views through their representatives with regard to the Grantee's economic development and its progress in achieving the objectives of its development program, including



the level of current expenditures and its foreign exchange position, and the performance by the Grantee of its obligations under this Agreement, the performance of consultants or suppliers under the Grant, and other matters relating to this Agreement.

ARTICLE 6

Termination; Remedies

SECTION 6.1. Termination. This Agreement may be terminated by mutual agreement of the Parties at any time. Either Party may terminate this Agreement by giving the other Party thirty (30) days written notice.

SECTION 6.2. Suspension. If at any time:

(a) Grantee shall fail to comply with any provision of this Agreement; or

(b) Any representation or warranty made by or on behalf of Grantee with respect to obtaining this Grant or made or required to be made under this Agreement is incorrect in any material respect; or

(c) An event occurs that A.I.D. determines to be an extra-ordinary situation that makes it improbable either that the purposes of the Grant will be attained or that the Grantee will be able to perform its obligations under this Agreement; or

(d) Any disbursement by A.I.D. would be in violation of the legislation governing A.I.D.; or

(e) A default shall have occurred under any other agreement between Grantee or any of its agencies and the Government of the United States or any of its agencies;

Then, in addition to remedies provided in A.I.D. Regulation 1, A.I.D. may:

(1) suspend or cancel outstanding commitment documents to the extent that they have not been utilized through irrevocable commitments to third parties or otherwise, or to the extent that A.I.D. has not made direct reimbursement to the Grantee thereunder, giving prompt notice to Grantee thereafter;

(2) decline to issue additional commitment documents or to make disbursements other than under existing ones; and

(3) at A.I.D.'s expense, direct that title to goods financed under the Grant be vested in A.I.D. if the goods are in a deliverable state and have not been offloaded at points of entry in Seychelles

SECTION 6.3. Cancellation by A.I.D. If, within sixty (60) days from the date of any suspension of disbursements pursuant to Section 6.2, the cause or causes thereof have not been corrected, A.I.D. may cancel any part of the Grant that is not then disbursed or irrevocably committed to third parties.

SECTION 6.4. Refunds.

(a) In addition to any refund otherwise required by A.I.D. pursuant to A.I.D. Regulation 1, if A.I.D. determines that any disbursement is not supported by valid documentation in accordance with this Agreement, or is in violation of United States law, or is not made or used in accordance with the terms of this Agreement, A.I.D. may require the Grantee to refund the amount of such disbursement in U.S. dollars to A.I.D. within sixty (60) days after receipt of request therefore. Refunds paid by the Grantee to A.I.D. resulting from violations of the terms of this Agreement shall be considered as a reduction in the amount of A.I.D.'s obligation under the Agreement and shall be available for reuse under the Agreement if authorized by A.I.D. in writing

(b) The right to require such a refund of a disbursement will continue notwithstanding any other provision of this Agreement, for three (3) years from the date of the last disbursement under this Agreement.

SECTION 6.5. Nonwaiver of Remedies. No delay in exercising or omitting to exercise, any right, power, or remedy accruing to A.I.D. under this Agreement will be construed as a waiver of such rights, powers, or remedies.

ARTICLE 7

Miscellaneous

SECTION 7.1. Implementation Letters. From time to time, for the information and guidance of both parties, A.I.D. will issue Implementation Letters and Commodity Procurement Instructions describing the procedures applicable to the implementation of the Agreement. Except as permitted by particular provisions of this Agreement, Implementation Letters and Commodity Procurement Instructions will not be used to amend or modify the text of this Agreement.



Section 7.2. Representatives. For all purposes relevant to this agreement, the Grantee will be represented by the individual holding or acting in the office of the Secretary of State, Department of Planning and External Relations and A.I.D. will be represented by the individual holding or acting in the office of Director, REDSO/ESA, each of whom, by written notice, may designate additional representatives. The names of the representatives of the Grantee, with specimen signatures, will be provided to A.I.D., which may accept as duly authorized any instrument signed by such representatives in implementation of this agreement, until receipt of written notice of revocation of their authority.

Section 7.3 Communications. Any Notice, request, document or other communications submitted by either party to the other under this Agreement will be in writing or by telegram or cable, and will be deemed duly given or sent when delivered to such party at the following address:

To the Grantee:

Mail Address: Secretary of State
Department of Planning and External
Relations
Mahe, Seychelles

Alternate address for cables:

Department of Planning and External
Relations
Mahe, Seychelles

To A.I.D.:

Mail Address: Director
REDSO/ESA
c/o Ambassador
American Embassy
Mahe, Seychelles

Alternate address for cables:

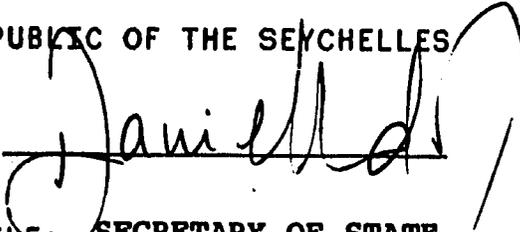
Amembassy
REDSO/ESA
Nairobi, Kenya

IN WITNESS WHEREOF, the Grantee and the United States of America, each acting through its duly authorized representative, have caused this Agreement to be signed in their names and delivered as of the day and year first above written.

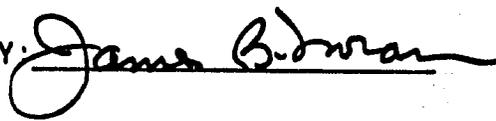
REPUBLIC OF THE SEYCHELLES

UNITED STATES OF AMERICA

BY:



BY:



TITLE: SECRETARY OF STATE

TITLE: Ambassador of the United States of America

APPROPRIATION: 72-119/01037

BUDGET PLAN CODE: GES9-89-31662-KG32

ALLOWANCE: 970-61-662-00-59-91

PROJECT NO.: 662-0010.00

RESERVATION NO.: G590001

FUNDS AVAILABLE

.....RWG.....

RFMC-NAIROBI / KENYA

DATE.....5/5/89.....

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INSTRUMENT OF FULL POWERS

I, **FRANCE ALBERT RENE**, President of the Republic of Seychelles do hereby authorise Mrs. Danielle de St. Jorre, Secretary of State, Department of Planning and External Relations to sign on behalf of the Republic of Seychelles the Grant Agreement between the Government of the Republic of Seychelles and the Government of the United States of America for Commodity Imports.

IN WITNESS WHEREOF, I have signed this Instrument.

GIVEN at State House, Victoria this *eight* day of *May* 19*89*

A handwritten signature in cursive script, appearing to read "F. Albert Rene".

FRANCE ALBERT RENE
PRESIDENT OF THE REPUBLIC OF SEYCHELLES

PRESIDENT'S OFFICE

Department of Legal Affairs, P.O. Box 58, National House, Republic of Seychelles
Telex: 2280 SEYGOV SZ Telegrams: ATTGEN, Seychelles, Telephone: 24041



Please address all correspondence to the Attorney-General

Your Ref: ERC/110/8/6/2

Our Ref: SLO/404

Enquiries To:

Telephone Ext:

Date: 9th May 1989

The Principal Secretary
Department of External Relations
National House

**AID GRANT AGREEMENT BETWEEN THE UNITED STATES OF AMERICA AND THE
REPUBLIC OF THE SEYCHELLES FOR COMMODITY IMPORTS.**

AID GRANT No. ~~██████████~~

OPINION

1. Having considered the above document and have spoken and discussed pertinent material with Mr. Jame Melville, the Vice Consul and Second Secretary to the American Embassy, and Mr Robert Stader, Regional Commodity Management Officer, I am pleased to advise you that in my opinion;

(a) This Agreement has been duly executed by the Secretary of State in the Department of Planning and External Relations as authorised by the President of the Republic of Seychelles as per instructions dated 8th of May 1989, on behalf of the grantee and the obligations contained in the said Agreement are valid, legal and binding upon the said Grantee.

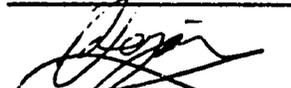
(b) The Secretary of State in the Department of Planning and External Relations has the authority to act as the representative of the Grantee. A specimen of her signature, which I certify as being authentic, is contained herein.

(c) At Article 2.1.(a) "of constituter" should read "it constitutes".

(d) Section 7.2
Princiap Secretary should read as "Secretary of State".

I have no other comments to make of a legal nature.

SECRETARY OF STATE
DEPT. OF PLANNING & EXTERNAL RELATIONS


A G DERJACQUES
STATE COUNSEL
for ATTORNEY GENERAL

