

PDBCE 197

COMPLEMENTARY PROJECT GRANT AGREEMENT

BETWEEN

THE UNITED STATES OF AMERICA

AND

THE GOVERNMENT OF THE GAMBIA

FOR

FINANCIAL AND PRIVATE ENTERPRISE DEVELOPMENT SUPPORT

U.S. AGENCY FOR INTERNATIONAL DEVELOPMENT

(USAID/BANJUL)

PROJECT NUMBER 635-0237

DATED: SEPTEMBER 30, 1991

COMPLEMENTARY PROJECT GRANT AGREEMENT ("COMPLEMENTARY AGREEMENT")  
BETWEEN  
THE GOVERNMENT OF THE GAMBIA (THE GRANTEE)  
AND  
THE GOVERNMENT OF THE UNITED STATES OF AMERICA  
ACTING THROUGH  
THE AGENCY FOR INTERNATIONAL DEVELOPMENT (A.I.D.)  
(hereafter collectively referred to as the "Parties")

PROJECT NUMBER 635-0237

DATED: SEPTEMBER 30, 1991

ARTICLE 1. The Agreement

The purpose of this Agreement is to set out the understandings of the parties named above ("Parties") with respect to the undertaking by the Grantee of the Financial and Private Enterprise Development Support Project (the "Project") described below, and with respect to the financing of the Project by the Parties.

ARTICLE 2. The Project

SECTION 2.1: Definition of Project. The Project, which is further described in Annex 1, will consist of enhancing the enabling environment for increased private investment and growth of private enterprises. In particular, the project will give assistance to: the Macroeconomic and Financial Policy Analyses Unit at the Ministry of Finance and Economic Affairs to organize, conduct and disseminate sound economic and financial analyses for national policy consideration and implementation; to the Ministry of Justice to revise existing legislation and draft and implement new legislation and codes to modernize and amplify the statutory regime affecting the operations of private enterprises in The Gambia; and to private sector firms and institutions to eliminate priority constraints to accelerated growth of resource-based enterprises. This project will accomplish the above by providing long and short-term consultants, long and short-term training, in-country training courses, workshops and seminars, commodities and equipment, and support for local operating expenses. Annex 1, attached, amplifies the above definition of the Project. Within the limits of the above definition of the Project, elements of the amplified description stated in Annex 1 may be changed by written agreement of the authorized representatives of the Parties named in Section 8.2., without formal amendment of this Agreement.

SECTION 2.2: Incremental Nature of Project. A.I.D.'s contribution will be provided in tranches the initial one being made available in accordance with Section 3.1 of this Agreement. Subsequent increments up to a total life of project amount of Eight Million Three Hundred and fifty thousand United States dollars (\$8,350,000) will be subject to the availability of funds to A.I.D. for such purpose, and to the mutual agreement of the Parties, at the time of a subsequent increment, to proceed.

SECTION 3. Financing

SECTION 3.1. The Grant

To assist the Grantee to meet the costs of carrying out the Project, A.I.D., pursuant to the Foreign Assistance Act of 1961, as amended, agrees to grant the Grantee under the terms of this Agreement an amount not to exceed one million nine hundred and eight-five thousand United States ("U.S.") dollars (\$1,985,000) ("Grant").

The Grant may be used to finance foreign exchange costs, as defined in Section 6.1., and local currency costs, as defined in Section 6.2., of goods and services required for the Project.

SECTION 3.2. Grantee Resources for the Project. The Grantee agrees to provide or cause to be provided for the Project all funds, in addition to the Grant, and all other resources required to carry out the Project effectively and in a timely manner.

SECTION 3.3: Project Assistance Completion Date

(a) The Project Assistance Completion Date ("PACD") which is June 30, 1996 or such date as the Parties may agree to in writing, is the date by which the Parties estimate that all services financed under the grant will have been performed and all goods financed under the Grant will have been furnished for the Project as contemplated in this Agreement.

(b) Except as A.I.D. may otherwise agree in writing, A.I.D. will not issue or approve documentation which would authorize disbursement of the Grant for services performed subsequent to the PACD or for goods furnished for the Project, as contemplated in this Agreement, subsequent to the PACD.

(c) Requests for disbursement, accompanied by necessary supporting documentation prescribed in Project Implementation Letters, are to be received by A.I.D. or any bank described in

Section 7.1. no later than nine (9) months following the PACD, or such other period as A.I.D. agrees to in writing. After such period, A.I.D., giving notice in writing to The Grantee, may at any time or times reduce the amount of the Grant by all or any part thereof for which requests for disbursement, accompanied by necessary supporting documentation prescribed in Project Implementation Letters, were not received before the expiration of said period.

#### ARTICLE 4. Conditions Precedent to Disbursement

SECTION 4.1 First Disbursement. 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 shall, 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 accordance with all of its terms;

(B) A statement of the names of the persons holding or acting in the office of the Grantee specified in Section 8.2., and a specimen signature of each person specified in such statement.

SECTION 4.2. Notification. When A.I.D. has determined that the conditions precedent specified in Section 4.1. have been met, it will promptly notify the Grantee.

SECTION 4.3. Terminal Dates for Conditions Precedent. If all the conditions specified in Section 4.1. have not been met within 90 days from the date of this Agreement, or such later date as A.I.D. may agree to in writing, A.I.D., at its option, may terminate this Agreement by written notice to the Grantee.

#### ARTICLE 5. Special Covenants

SECTION 5.1. Project Evaluation. The Parties agree to establish an evaluation program as part of the Project. Except as the Parties otherwise agree in writing, the program will include, during the implementation of the Project and at one or more points thereafter: (a) an evaluation of the progress towards the objectives of the Project; (b) identification and evaluation of problem areas or constraints that may inhibit such attainment; (c) assessment of how such information may be used to help overcome such problems; and (d) evaluation, to the degree feasible, of the overall development impact of the Project.

SECTION 5.2. Position, Salary, and Benefits of Participants. The Grantee agrees to maintain the position, salary, and benefits of each participant trainee financed under this Grant throughout the duration of his/her training.

SECTION 5.3. Bonding Agreement. The Grantee agrees to provide A.I.D. prior to each participant's departure for training an agreement signed by such participant trainee with the Cooperating Country that he/she shall return to The Gambia immediately upon completing his/her studies to work for the Cooperating Country for a minimum of two (2) years for every one (1) year of training received/financed hereunder.

SECTION 5.4. Employment after Training. The Grantee agrees to give those participants who successfully complete their long-term training immediate employment and salary at a Grade 8 level or higher.

#### ARTICLE 6. Procurement Source

SECTION 6.1. Foreign Exchange Costs. disbursements pursuant to Section 7.1. will be used exclusively to finance the costs of goods and services including ocean transportation required for the Project having, with respect to goods, their source and origin, and with respect to services, their nationality in countries included in A.I.D. Geographic Code 935 as in effect at the time orders are placed or contracts entered into for such goods or services ("Foreign Exchange Costs"), except as A.I.D. may otherwise agree in writing, and except as provided in the Project Grant Standard Provisions Annex, Section C.1 (b) with respect to marine insurance.

SECTION 6.2. Local Currency Costs. Disbursement pursuant to Section 7.2. will be used exclusively to finance the costs of goods and services required for the Project having their source and, except as A.I.D. may otherwise agree in writing, their origin in The Gambia ("Local Currency Costs"). To the extent provided for under this Agreement, "Local Currency Costs" may also include the provision of local currency resources required for the Project.

#### ARTICLE 7. Disbursement

##### SECTION 7.1. Disbursement for Foreign Exchange Costs.

(a) After satisfaction of conditions precedent, the Grantee may obtain disbursement of funds under the Grant for the Foreign Exchange Costs of goods and services required for the Project in accordance with the terms of this Agreement by such of the following methods as may be mutually agreed upon:

1. by submitting to A.I.D. with necessary supporting documentation as prescribed in Project Implementation Letters, (a) requests for reimbursement for such goods or services, or (b) requests for A.I.D. to procure commodities or services in the Grantee's behalf for the Project; or

2. by requesting A.I.D. to issue Letters of Commitment for specified amounts (a) to one or more U.S. banks, satisfactory to A.I.D., committing A.I.D. to reimburse such bank or banks for payments made by them to contractors or suppliers, committing A.I.D. to pay such contractors or suppliers, through Letters of Credit or otherwise, for such goods or services, or (b) directly to one or more contractors or suppliers, committing A.I.D. to pay such contractors or suppliers, through Letters of Credit or otherwise, for such goods or services.

(b) Banking charges incurred by the Grantee in connection with Letters of Commitment and Letters of Credit will be financed under the Grant unless the Grantee instructs A.I.D. to the contrary. Such other changes as the Parties may agree to may also be financed under the Grant.

#### SECTION 7.2. Disbursement for Local Currency Costs.

(a) After satisfaction of conditions precedent, the Grantee may obtain disbursements of funds under the Grant for Local Currency Costs required for the Project in accordance with the terms of this Agreement, by submitting to A.I.D., with necessary supporting documentation as prescribed in project Implementation Letters, requests to finance such costs.

(b) The local currency needed for such disbursement may be obtained: (1) by acquisition by A.I.D. with U.S. dollars by purchase, or (2) by A.I.D., (a) requesting the Grantee to make available local currency for such costs, and (b) thereafter making available to the Grantee through the opening or amendment by A.I.D. of Special Letters of Credit in favor of the Grantee or its designee, an amount of U.S. dollars equivalent to the amount of local currency made available by the Grantee, which dollars will be utilized for procurement from the United States under the appropriate procedures described in Project Implementation Letters.

(c) The U.S. dollar equivalent of the local currency made available hereunder will be, in the one of subsection(b) (1) above, the amount of U.S. dollars required by A.I.D. to obtain the local currency, and in the case of subsection (b) (2) above, an amount calculated at the rate of exchange specified in the applicable Special Letter of Credit Implementation Memorandum hereunder as of the date of the opinion or amendment of the applicable Special Letter of Credit.

SECTION 7.3. Other Forms of Disbursement. Disbursements of the Grant may also be made through such other means as the Parties may agree to in writing.

SECTION 7.4. Rate of Exchange. Except as may be more specifically provided under Section 7.2., if funds provided under the grant are introduced in The Gambia by A.I.D. or any public or private agency for purposes of carrying out obligations of A.I.D. hereunder, the Grantee will make such arrangements as may be necessary so that such funds may be converted into currency of The Gambia at the highest rate of exchange which, at the time the conversion is made, is not unlawful in The Gambia.

ARTICLE 8. Miscellaneous

SECTION 8.1. Communications. Any notice, request, document or other communication 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: Ministry of Finance and Economic Affairs  
The Quadrangle  
Banjul, The Gambia

To A.I.D.: A.I.D. Representative to The Gambia  
U.S.A.I.D.  
60 Leman Street  
Banjul, The Gambia

Other addresses may be substituted for the above upon the giving of written notice.

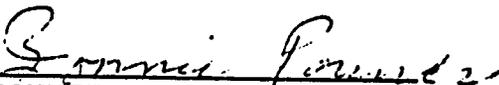
SECTION 8.2. Representatives. For all purposes relevant to this Agreement, the Grantee will be represented by the individual holding or acting in the Office of The Permanent Secretary to the Ministry of Finance and Economic and Affairs, and A.I.D. will be represented by the individual holding or acting in the office of A.I.D. Representative to The Gambia, each of whom, by written notice, may designate additional representatives for all purposes other than exercising the power under Section 2.1. to revise elements of the amplified description in Annex 1. The names of the representatives of the Grantee, with specimen signatures, will be provided to A.I.D., which may accept as dully authorized any instrument signed by such representatives in implementation of this Agreement until receipt of written notice of revocation of their authority.

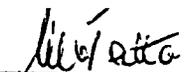
SECTION 8.3. Standard Provisions. A "Project Grant Standard Provisions Annex" (Annex 2) is attached to and forms part of this Agreement.

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 last below written.

THE UNITED STATES OF AMERICA

THE GOVERNMENT OF THE  
REPUBLIC OF THE GAMBIA

  
\_\_\_\_\_  
BONNIE POUNDS  
A.I.D REPRESENTATIVE

  
\_\_\_\_\_  
M'BEMBA JATTA  
MINISTER OF TRADE, INDUSTRY  
AND EMPLOYMENT AND MINISTER  
OVERSEEING THE MINISTRY FINANCE  
AND ECONOMIC AFFAIRS

  
\_\_\_\_\_  
ARLENE RENDER  
AMBASSADOR OF THE UNITED  
STATES OF AMERICA

Amplified Project DescriptionA. Project Goal and Purpose

The FAPE Support Project (635-0237) is a complementary project to the FAPE Program (635-0232) between the Government of The Gambia and the U.S. Government. The FAPE Support Project is intended to provide necessary technical assistance, advisory services, training, equipment, supplies, and other support to ensure successful implementation of the FAPE Program.

The overall goal of the FAPE Program and FAPE Support Project is increased private investment in The Gambian economy from both foreign and domestic sources. To accomplish the goal, the Program and Support Project's purpose is to enhance the enabling environment for increased private investment and growth of private enterprises. While substantial increases in private capital flows are needed in all sectors of the economy, FAPE Program and Support Project resources will be focused specifically toward assisting in the elimination of priority constraints to increased investment in resource based, export-oriented sectors suitable to broad-based participation of the majority of average Gambians. Highest priority will be given to creating new employment and enhanced income generating opportunities in agro-based enterprises including commercial production and processing of traditional and non-traditional oilseeds and grain crops, production and processing of high value horticulture products for export, and capture or culture and processing of salt-water fish and seafood.

B. Conditions Indicative of Achievement of Program Purpose

Successful accomplishment of the FAPE Program and Support Project purpose of enhancing the enabling environment for increased private investment and growth of private enterprises will be indicated by the following end of program conditions:

1. Increased aggregate earnings from and employment in resource-based private enterprises;
2. Enhanced efficiency and profitability of the groundnut industry and increased income opportunities for rural producers of oilseeds.
3. Sustained and deepened macroeconomic policy framework conducive to private investment and growth of private enterprises.

4. Satisfactory implementation of the Public Investment Program and reduction of the role of the public sector in the production and marketing of goods and services.

5. Increased competitiveness of The Gambia's investment climate.

C. Support Project Outputs

FAPE (635-0232) and FAPE Support Project (636-0237) constitute an interrelated program of policy reforms and project interventions aimed at producing conditions conducive to increased private investment in the Gambian economy and growth of private enterprises employing Gambian citizens. In order to achieve the above listed end of program conditions, FAPE Support Project resources will be used to assist the Government of the Gambia and the Gambian private sector to produce the following outputs:

1. Elimination of all artificial barriers to entry of the private sector in transport, processing and marketing of oilseed products.
2. Sustained capacity of the GOTG to formulate and implement sound economic policies and budgeting procedures.
3. Continued reduction of the role of the public sector and state owned enterprises in production and marketing of goods and services.
4. Review and revision of the tax system in favor of increased private investment and expansion of private enterprises including financial institutions.
5. Revision of GOTG private investment incentives policy and investment code to reduce costs and bureaucratic delays, eliminate redundancies, and enhance transparency in the private investment approval process.
6. Modernization, revision, and amplification of the statutory regime affecting financial transactions and formation, operation, and closure of private enterprises including financial institutions.
7. Strengthened capacity of Gambian entrepreneurs to identify and develop new investment opportunities, start up new businesses, expand or diversify existing enterprises, and otherwise increase income and employment opportunities in, or in support of, resource-based industries.

8. Strengthened capacity of NIB and other public, private, or voluntary investment promotion and business associations to promote investment projects and serve better the advocacy and information needs of private enterprises and entrepreneurs.

D. Support Project Inputs

The FAPE Support Project will provide funds for the following inputs.

1. Technical Services to Support GPMB Privatization

Short-term consultancies to assist the GOTG to formulate an action plan, value assets, prepare a prospectus, review offers, and complete the transfer of ownership of the GPMB to the private sector under conditions conducive to sustained private sector competition in the oilseeds industry.

2. Project Assistance to the Ministry of Finance and Economic Affairs

Advisory services, training, and ancillary supplies and equipment to strengthen analytic capacity of the MFEA. Technical advisors will assist the MFEA to develop proposals for adjusting the tax structure, to encourage private investment and growth of resource based enterprises, to examine the current private investment incentives program as encompassed under the Development Act, and to recommend appropriate changes to reduce costs, eliminate redundant approval processes, and increase transparency in the investment approvals process.

The FAPE Support Project will also provide assistance to the GOTG to improve overall tax administration.

3. Project Assistance to the Ministry of Justice

Technical assistance, training, and support equipment and supplies will be provided to assist the Ministry of Justice to strengthen the legal, regulatory, and administrative framework for adjudicating financial transactions, contracts, and other issues affecting private business operations. This will include assistance to:

- a. prepare and implement new legislation to fill statutory gaps for effective adjudication of hire/purchase, mortgage, bills of exchange, and bills of lading, transactions and contracts;

b. to improve the functioning of the business registration system and to improve linkages with other appropriate branches of the government including the Tax and Customs departments; and

c. to relieve excessive delays in the processing of civil claims and preparation of other court records.

4. Investment Promotion and Enterprise Development Assistance

Industry level, firm level, and institutional level assistance to induce accelerated expansion of employment in and output of resource-based private enterprises. This will include technical assistance, advisory services, training, and equipment and supplies as appropriate. Additionally the FAPE Support Project will fund a long-term resident private sector development specialist to assist USAID and the National Investment Board to program, coordinate, and manage industry level, firm level, and institutional level assistance included under the support project and to assist the NIB in its own investment promotion responsibilities. Assistance to private sector firms, industry associations, and private sector support institutions will be programmed jointly by a project implementation committee comprising GOTG representation, a USAID Project Manager, and the long term private sector advisor.

5. Technical Services for Multi-year Divestiture Program.

Technical advisory services to assist the GOTG to undertake up to three studies to identify appropriate privatization targets, assess the feasibility of new privatization efforts, develop a multi-year divestiture plan, and begin implementation of the plan.

6. Program Management

Four years' of Program Management services from a Personal Services Contractor to be employed at the USAID Office in Banjul.

7. Impact Monitoring

Local or other consultancy services to undertake periodic surveys to monitor and evaluate the impact of both the Program and Support Project.

8. Evaluations and Audit

Services needed to complete mid-term and terminal evaluations and a financial audit. Evaluation activities will be used by the Mission as management tools for adapting the program to address changing economic or social circumstances.

ILLUSTRATIVE PROJECT FINANCIAL PLAN

INPUT	CURRENT OBLIGATION	FUTURE YEARS	TOTAL
	(\$000's)	(\$000's)	(\$000's)
1. Advisory Services for GPMB Privatization	200	0	200
2. Support to Ministry of Finance and Tax Admin.	200	2,150	2,350
3. Ministry of Justice	510	340	850
4. Private Sector Advisory Services	500	825	1,325
5. Firm Level Support	115	1,335	1,450
6. Industry Level Support	100	200	300
7. Investment Promotion	200	580	780
8. Program Management	110	190	300
9. Impact Monitoring	50	75	125
10. Evaluations and Audit	0	75	75
11. Contingency	0	595	595
<b>TOTALS</b>	<b>1,985</b>	<b>6,365</b>	<b>8,350</b>

ANNEX 2

Project Grant Standard  
Provisions Annex

Definitions: As used in this Annex, the "Agreement" refers to the Project Grant Agreement to which this Annex is attached and of which this Annex forms a part. Terms used in this Annex have the same meaning or reference as in the Agreement.

Article A: Project Implementation Letters

To assist Grantee in the implementation of the Project, A.I.D., from time to time, will issue Project Implementation Letters that will furnish additional information about matters stated in this Agreement. The parties may also use jointly agreed-upon Project Implementation Letters to confirm and record their mutual understanding on aspects of the implementation of this Agreement. Project Implementation Letters will not be used to amend the text of the Agreement, but can be used to record revisions or exceptions which are permitted by the Agreement, including the revision of elements of the amplified description of the Project in Annex 1.

Article B: General Covenants

SECTION B.1. Consultation. The Parties will cooperate to assure that the purpose of this Agreement will be accomplished. To this end, the Parties, at the request of either, will exchange views on the Agreement, the performance of any consultants, contractors, or suppliers engaged on the Project, and other matters relating to the Project.

SECTION B.2. Execution of Project. The Grantee will:

(a) carry out the Project or cause it to be carried out with due diligence and efficiency, in conformity with sound technical, financial, and management practices, and in conformity with those documents, plans, specifications, contracts, schedules or other arrangements, and with any modifications therein, approved by A.I.D. pursuant to this Agreement; and

(b) provide qualified and experienced management for, and train such staff as may be appropriate for the maintenance and operation of the Project, and, as applicable for continuing activities, cause the Project to be operated and maintained in such manner as to assure the continuing and successful achievement of the purposes of the Project.

SECTION B.3. Utilization of Goods and Services.

(a) Any resources financed under the Grant will, unless otherwise agreed in writing by A.I.D., be devoted to the Project until the completion of the Project, and thereafter will be used so as to further objectives sought in carrying out the Project.

(b) Goods or services financed under the Grant, except as A.I.D. may otherwise agree in writing, will not be used to promote or assist a foreign aid project or activity associated with or financed by a country not included in Code 935 of the A.I.D. Geographic Code Book as in effect at the time of such use (See HB 18.)

SECTION B.4. Taxation.

(a) This Agreement and the Grant will be free from any taxation or fees imposed under laws in effect in the territory of the Grantee.

(b) To the extent that (1) any contractor, including any consulting firm, any personnel of such contractor financed under the Grant, and any property or transaction relating to such contracts and (2) any commodity procurement transaction financed under the Grant, are not exempt from identifiable taxes, tariffs, duties or other levies imposed under laws in effect in the territory of the Grantee, the Grantee will, as and to the extent provided in and pursuant to Project Implementation Letters, pay or reimburse the same with funds other than those provided under the Grant.

SECTION B.5. Reports, Records, Inspections, Audit.

The Grantee will:

(a) furnish A.I.D. such information and reports relating to the Project and to 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, books and records relating to the Project and to this Agreement, adequate to show, without limitation, the receipt and use of goods and services acquired under the Grant. Such books and records will be audited regularly, in accordance with generally accepted auditing standards, and maintained for three years after the date of last disbursement by A.I.D.; such books and records will also be adequate to show the nature and extent of solicitations of prospective suppliers of goods and services acquired, the basis of award of contracts and orders, and the overall progress of the Project toward completion; and

(c) afford authorized representatives of a Party the opportunity at all reasonable times to inspect the Project, the utilization of goods and services financed by such Party, and books, records, and other documents relating to the Project and the Grant.

SECTION B.6. Completeness of Information. The Grantee confirms:

(a) that the facts and circumstances of which it has informed A.I.D., or cause 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 Project and the discharge of responsibilities under this Agreement.

(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 Project or the discharge of responsibilities under this Agreement.

SECTION B.7. 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 B.8. Information and Marking. The Grantee will give appropriate publicity to the Grant and the Project as a program to which the United States has contributed, identify the Project site, and mark goods financed by A.I.D., as described in Project Implementation Letters.

#### Article C: Procurement Provisions

##### SECTION C.1. Special Rules.

(a) The source and origin of ocean and air shipping will be deemed to be the ocean vessel's or aircraft's country of registry at the time of shipment.

(b) Premiums for marine insurance placed in the territory of the Grantee will be deemed an eligible Foreign Exchange Cost, if otherwise eligible under Section C.7(a).

(c) Any motor vehicles financed under the Grant will be of United States manufacture, except as A.I.D. may otherwise agree in writing.

(d) Transportation by air, financed under the Grant, of property or persons, will be on carriers holding United States certification, to the extent service by such carriers is available. Details on this requirement will be described in a Project Implementation Letter.

SECTION C.2. Eligibility Date. No goods or services may be financed under the Grant which are procured pursuant to orders or contracts firmly placed or entered into prior to the date of this Agreement, except as the Parties may otherwise agree in writing.

SECTION C.3. Plans, Specifications, and Contracts. In order for there to be mutual agreement on the following matters, and except as the Parties may otherwise agree in writing:

(a) The Grantee will furnish to A.I.D. upon preparation,

(1) any plans, specifications, procurement or constructions schedules, contracts, or other documentation relating to goods or services to be financed under the Grant, including documentation relating to the prequalification and selection of contractors and to the solicitation of bids and proposals. Material modifications in such documentation will likewise be furnished A.I.D. on preparation;

(2) such documentation will also be furnished to A.I.D., upon preparation, relating to any goods or services, which, though not financed under the Grant, are deemed by A.I.D. to be of major importance to the Project. Aspects of the Project involving matters under this subsection (a)(2) will be identified in Project Implementation Letters;

(b) Documents related to the prequalification of contractors, and to the solicitation of bids or proposals for goods and services financed under the Grant will be approved by A.I.D. in writing prior to their issuance, and their terms will include United States standards and measurements;

(c) Contracts and contractors financed under the Grant for engineering and other profession services, for construction services, and for such other services, equipment or materials as may be specified in Project Implementation Letters, will be approved by A.I.D. in writing prior to execution of the contract. Material modifications in such contracts will also be approved in writing by A.I.D. prior to execution; and

(d) Consulting firms used by the Grantee for the Project but not financed under the Grant, the scope of their services and such of their personnel assigned to the Project as A.I.D. may specify, and construction contractors used by the Grantee for the Project but not financed under the Grant, shall be acceptable to A.I.D.

SECTION C.4. Reasonable Price. No more than reasonable prices will be paid for any goods or services financed, in whole or in part, under the Grant. Such items will be produced on a fair and, to the maximum extent practicable, on a competitive basis.

SECTION C.5. Notification to Potential Suppliers. To permit all United States firms to have the opportunity to participate in furnishing goods and services to be financed under the Grant, the Grantee will furnish A.I.D. such information with regard thereto, and at such times, as A.I.D. may request in Project Implementation Letters.

SECTION C.6. Shipping.

(a) Goods which are to be transported to the territory of the Grantee may not be financed under the Grant if transported either: (1) on an ocean vessel or aircraft under the flag 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) Costs of ocean or air transportation (of goods or persons) and related delivery services may not be financed under the Grant, if such goods or persons are carried: (1) on an ocean vessel under the flag of a country not, at the time of shipment, identified under the paragraph of the Agreement entitled "Procurement Source: Foreign Exchange Costs," without prior written A.I.D. approval or on a non-U.S. flag air carrier if a U.S. flag carrier is available (in accordance with criteria which may be contained in Project Implementation Letters) without prior written notice to the Grantee, has designated as ineligible; or (3) under the ocean vessel or air charter which has not received prior A.I.D. approval.

(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 territory of the Grantee 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 sub-section must be achieved with respect to both any cargo transported from U.S. ports and any cargo transported from non-U.S. ports, computed separately.

**SECTION C.7. Insurance.**

(a) Marine insurance on goods financed by A.I.D. which are to be transported to the territory of the Grantee may be financed as a Foreign Exchange Cost under this Agreement provided (1) such insurance is placed at the lowest available competitive rate, and

(2) claims thereunder are payable in U.S. dollars or, as A.I.D. may agree in writing, in the currency in which such goods were financed or in any freely convertible currency. If the Guarantee (or government of Grantee), by statute, decree, rule, regulation, or practice discriminates with respect to A.I.D.-financed procurement against any marine insurance company authorized to do business in any State of the United States, then all goods shipped to the territory of the Grantee financed by A.I.D. hereunder will be insured against marine risks and such insurance will be placed in the United States with a company or companies authorized to do a marine insurance business in a State of the United States.

(b) Except as A.I.D. may otherwise agree in writing, the Grantee will insure, or cause to be insured, goods financed under the Grant imported for the Project against risks incident to their transit to the point of their use in the Project; such insurance will be issued on terms and conditions consistent with sound commercial practice and will insure the full value of the goods. Any indemnification received by the Grantee under such insurance will be used to replace or repair any material damage or any loss of the goods insured or will be used to reimburse the Grantee for the replacement or repair of such goods. Any such replacements will be of source and origin of countries listed in A.I.D. Geographic Code 935 as in effect at the time of replacement, and, except as the Parties may agree in writing, will be otherwise subject to the provisions of the Agreement.

**SECTION C.8. U.S. Government-Owned Excess Property.** The Grantee agrees that wherever practicable, United States Government-owned excess personal property, in lieu of new items financed under the Grant, should be utilized. Funds under the Grant may be used to finance the costs of obtaining such property for the Project.

**Article D: Termination; Remedies.**

**SECTION D.1. Termination.** Either Party may terminate this Agreement by giving the other Party 30 days written notice. Termination of this Agreement will terminate any obligations of the Parties to provide financial or other resources to the Project pursuant to this Agreement, except for payment which they are committed to make pursuant to noncancellable commitments entered into with third parties prior to the termination of this Agreement. In addition, upon such termination A.I.D. may, at

A.I.D.'s expense, direct that title to goods financed under the Grant be transferred to A.I.D. if the goods are from a source outside Grantee's country, are in a deliverable state and have not been offloaded in ports of entry of Grantee's country.

SECTION D.2. Refunds.

(a) In the case of any disbursement which is not supported by valid documentation in accordance with this Agreement, or which is not made or used in accordance with this Agreement, or which was for goods or services not used accordance with this Agreement, A.I.D., notwithstanding the availability or exercise of any other remedies under this Agreement, 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 a request therefor.

(b) If the failure of Grantee to comply with any of its obligations under this Agreement has the result that goods or services financed under the Grant are not used effectively in accordance with this Agreement, A.I.D. may require the Grantee to refund all or any part of the amount of the disbursements under this Agreement for such goods or services in U.S. Dollars to A.I.D. within sixty days after receipt of a request therefor.

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

(d) (1) Any refund under subsection (a) or (b), or (2) any refund to A.I.D. from a contractor, supplier, bank or other third party with respect to goods or services financed under the Grant, which refund relates to an unreasonable price for or erroneous invoicing of goods or services, or to goods that did not conform to specifications, or to services that were inadequate, will (A) be made available first for the cost of goods and services required for the Project, to the extent justified, and (B) the remainder, if any, will be applied to reduce the amount of the Grant.

(e) Any interest or other earnings on Grant funds disbursed by A.I.D. to the Grantee under this Agreement prior to the authorized use of such funds for the Project will be returned to A.I.D. in U.S. Dollars by the Grantee.

SECTION D.3. Nonwaiver of Remedies. No delay in exercising any right or remedy accruing to a Party in connection with its financing under this Agreement will be construed as a waiver of such right or remedy.

SECTION D.4. Assignment. The Grantee agrees, upon request, to execute an assignment to A.I.D. of any cause of action which may accrue to the Grantee in connection with or arising out of the contractual performance or breach of performance by a party to a direct U.S. Dollar contract with A.I.D. financed in whole or in part out of funds granted by A.I.D. under this Agreement.