

11 OCT 1984

A.I.D. Project Number 543-0006

PD-KAG 453

PROJECT  
GRANT AGREEMENT  
BETWEEN  
GRENADA  
and the  
UNITED STATES OF AMERICA  
for  
POINT SALINES AIRPORT  
COMPLETION PROJECT

Dated: May 2, 1984.

RECORD COPY

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PROJECT GRANT AGREEMENT

Dated May 2, 1981

Between

the Government of Grenada ("Grantee")

And

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

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 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 completion of the airport at Point Salines and some related facilities and technical assistance, and replacement of materials lost by contractors working on the Project along with certain costs caused by interruption of the work. 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 8.3, without formal amendment of this Agreement.

Article 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 not to exceed Twenty-one million one hundred thousand United States ("U.S.") Dollars (\$21,100,000) ("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 December 31, 1985, or such other date as the Parties may agree to in writing, is the date by which the Parties estimate that all services financed under the

**Article 3: Financing (Continued)**

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 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 accordance with all of its terms;

(b) A statement of the name of the person holding or acting in the office of the Grantee specified in Section 8.3, and of any additional representatives, together with 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 of the conditions specified in Section 4.1 have not been met within sixty (60) 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 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 evaluation, to the degree feasible, of the overall development impact of the Project.

**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 required for the Project having, with respect to goods, their source and origin, and with respect to services their nationality in the United States (Code 000 of the A.I.D. Geographic Code Book 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. Ocean transportation costs will be financed under the Grant only on vessels under flag registry of the United States, except as A.I.D. may otherwise agree in writing.

**SECTION 6.2 Local Currency Costs.** Disbursements 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 Grenada ("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 disbursements of funds under the Grant for the Foreign Exchange Costs of goods or services required for the Project in accordance with the terms of this Agreement, by such methods as may be mutually agreed upon.

**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 disbursements may be obtained:

(1) by acquisition by A.I.D. with U.S. Dollars by purchase or from local currency already owned by the U.S. Government; or

(2) by A.I.D., (A) requesting the Grantee to make available the 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 appropriate procedures described in Project Implementation Letters.

The U.S. dollar equivalent of the local currency made available hereunder will be, in the case of subsection (b)(1) above, the amount of U.S. Dollars

Article 7: Disbursement (Continued)

(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 opening 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 into Grenada 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 Grenada at the highest rate of exchange which, at the time the conversion is made, is not unlawful in Grenada.

Article 8: Miscellaneous

SECTION 8.1 Investment Guaranty Project Approval. Construction work to be financed under this Agreement is agreed to be a project approved by Grenada pursuant to the agreement between it and the United States of America on the subject of investment guaranties, and no further approval by Grenada will be required to permit the United States to issue investment guaranties under that agreement covering a contractor's investment in that project.

SECTION 8.2 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 addresses:

To the Grantee:      Chairman, Advisory Council of Grenada  
                                 Ministry of Foreign Affairs  
Mail Address:      St. George's  
                                 Grenada  
To A.I.D.:              U.S. A.I.D. Representative/Grenada  
Mail Address:      Agency for International Development  
                                 P. O. Box 445, St. George's  
                                 Grenada, West Indies

All such communications will be in English. Other addresses may be substituted for the above upon the giving of notice. The Grantee, in addition, will provide the USAID Mission with a copy of each communication sent to A.I.D.

SECTION 8.3 Representatives. For all purposes relevant to this Agreement, the Grantee will be represented by the individual holding or acting in the office of the Chairman of the Advisory Council of the Interim Government and A.I.D. will be represented by the individual holding or acting in the office of the U.S.A.I.D. Representative/Grenada, each of whom, by written notice, may designate additional representatives for all purposes other than exercising

Article 8: Miscellaneous (Continued)

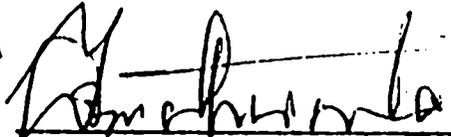
the power under Section 2.1 to revise elements of the amplified description in Annex 1. The names of the representatives of the Grantee, with specimen signatures, will be provided to A.I.D., which may accept as duly authorized any instrument signed by such representatives in implementation of this Agreement, until receipt of written notice of revocation of their authority.

SECTION 8.4 Standard Provisions Annex. 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 first above written.

GRENADA

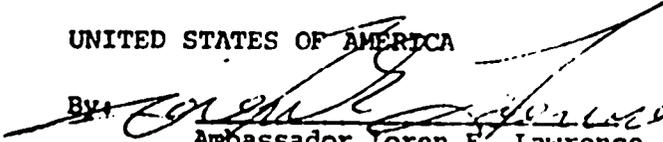
By:

  
Nicholas Brathwaite

Title: Chairman, Advisory Council

UNITED STATES OF AMERICA

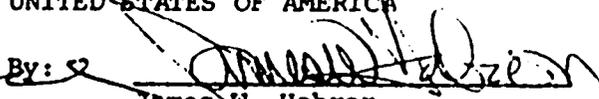
By:

  
Ambassador Loren F. Lawrence

Title: Charge d'Affairs, A.I.

UNITED STATES OF AMERICA

By:

  
James W. Habron

Title: A.I.D. Representative/Grenada

Amplified Description of the Project

AMPLIFIED PROJECT DESCRIPTION

Project Title: Point Salines Airport Completion  
A. I. D. Project No.: 543-0006

Elements of this Amplified Project Description may be changed by written agreement of the authorized representatives of the parties named in the Project Grant Agreement without formal amendment of the agreement, provided that such changes are within the general scope of the Project as set forth in the text of the agreement.

I. General Project Description:

- a. The purpose of this Project is to fund part of a multi-donor effort to complete the construction of, and place into operation, the international airport at Point Salines in Grenada.
- b. The funds obligated under this Agreement will be used for the following project activities: (i) A.I.D. to contract directly with a United States firm to finish the site, and to manage and carry out remaining civil construction work required for completion of the airport facilities; (ii) the establishment in Grenada of a Project Office to monitor and facilitate progress of the main civil works contractor; and (iii) financing amendments to the Grantee's present contracts with Plessey Airports, Ltd., and with Metex Corporation for additional contract time and some commensurate additional cost for work not yet completed.
- c. The Project Assistance Completion Date (PACD), which is December 31, 1985, or such other date as the Parties agree in writing, is the date by which the Parties estimate that all portions of the Project will have been performed, and that all goods and services financed under the Project will have been furnished as contemplated in this agreement. The Parties agree that work schedules will be set so that the airport can be opened for commercial day/night Visual Flight Rules (VFR) operation by October 15, 1984. Except as A.I.D. may otherwise agree in writing, A.I.D. will not issue or approve documentation which would authorize disbursement of funds for goods or services delivered or completed subsequent to the PACD.

II. Responsibilities of the Participants:a. Main Civil Works Contract

1. A.I.D. will contract directly with a United States firm to finish the site, and to manage and carry out remaining civil construction work required for completion of the airport facilities.

2. The Grantee will provide the Main Civil Works Contractor with access to all necessary locations required by project activities, and will provide utilities such as power and water to all sites where project activities are being carried out. The Grantee will authorize the Main Civil Works Contractor to have the exclusive use of all equipment and facilities heretofore used on airport construction at Point Salines to include, without limiting, the rock crusher and asphalt plant. This exclusive use will continue until such equipment is no longer needed for completion of the airport construction or other work except as otherwise specified by A.I.D. The Grantee will request all other contractors working on the site to cooperate with A.I.D. and Main Civil Works Contractor in all respects, and to furnish to A.I.D. and the Main Civil Works Contractor all information and documents which will facilitate timely completion of the Project.

3. The Main Civil Works Contractor will finish the site and manage and carry out remaining civil construction work required for completion of the facilities, including but not limited to design and start up activities, finishing the runway paving, completion of adequate terminal facilities, construction and paving of parking areas and road access to the city of St. George's, a fuel farm, a sewage treatment plant, earth moving and seawall protection activities, landscaping, training, a perimeter fence, and other airport related work. The Main Civil Works Contractor will move materials, tools and other items required by Plessey and Metex in completing their contract responsibilities on the airport construction. This movement will include movement of materials from the port of St. George's to the site storage area and from site storage to the installation point.

b. Project Office

1. A.I.D. will finance the establishment in Grenada of a Project Office to monitor and facilitate progress of the Main Civil Works Contractor. A.I.D. will contract directly with individuals or a company to staff the office. The Project Office will approve estimates, plans and financing of specific project construction elements to be accomplished by the Main Civil Works Contractor on a cost reimbursement basis. Those separate activities could include design and start up activities, finishing the runway paving, completion of adequate terminal facilities, construction and paving of parking areas and road access to the city of St. George's, a fuel farm, sewage treatment plant, earth moving and seawall protection activities, landscaping, training, a perimeter fence, and other airport related work.

2. The Grantee will designate one individual who will act as its official technical liaison with the Project Office, and another senior official to act as expediter in obtaining permissions and approvals required to ensure timely project completion. The Grantee will provide suitable space for a Project Office at Point Salines with electricity, water, and basic items of furniture. This space will be adequate for a "permanent" staff of three with provision for occasional use by an additional three "as needed" project personnel.

c. Plessey Airports, Ltd. and Metex Corporation Contract Amendments

1. The work now contemplated for completion by a United States firm was begun in late 1979 and continued until the U.S. intervention in October of 1983. Supplementing the civil works construction effort, a contract was let by the Grantee to Plessey Airports Ltd., a British firm, in May 1982 for furnishing and installing electrical, electronic and miscellaneous additional equipment essential to the

operation of the airport. Also in 1982, a contract was let by the Grantee to a Finnish Firm, METEX Corporation, covering mainly airport lighting and emergency/fire fighting equipment. Completion of the procurement/installation work undertaken by Plessey Airports Ltd., and by METEX Corporation is essential to the opening of the international airport at Point Salines. Because of the forced cessation of all work at the airport in October of 1983, the contracts of the Grantee with Plessey Airports Ltd. and with METEX Corporation are far behind schedule. Additional contract time and some commensurate additional cost will be required for work not yet completed.

2. At the time of the October 1983 intervention, both Plessey Airports Ltd. and METEX Corporation had procured and shipped the greater part of the electrical, electronic, navigational, lighting and miscellaneous equipment required for the airport. Installation was in progress but was far short of completion. A considerable portion of this equipment, stored at the airport site, was lost or damaged during the intervention. Also lost or damaged were tools, equipment, and goods belonging to the contractors or their employees. This initial loss was increased due to lack of ability of the contractors to secure the on-site goods and equipment for some time after the intervention.

3. When the situation at the airport site was normalized, both contractors incurred additional costs, not anticipated under their contracts, to survey damage, secure equipment, and assisting the Grantee in preparing to resume contract work at the airport. This project will finance the replacement of equipment and materials which were lost or damaged during the intervention or at the time immediately subsequent thereto. Tools and equipment belonging to the contractor and its employees which were lost will also be replaced. Some items of cost for work on the airport project conducted subsequent to the intervention, which would not be considered regular anticipated contract costs, will also be reimbursed to the contractor. The present contracts between the Grantee and METEX Corporation and Plessey Airports Ltd. will be amended to accomplish this result. A.I.D. will finance with project funds those contract amendments. The Grantee will negotiate those amendments, with A.I.D. participation, and will instruct both contractors to cooperate with A.I.D. in all possible ways and to furnish to A.I.D. all information and documents requested by A.I.D. to facilitate these contract amendments and other activities designed to effect a prompt completion of the airport construction.

### III. Illustrative Financial Plan:

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 not to exceed Twenty-One Million One Hundred Thousand United States ("U.S.") Dollars (\$21,100,000) ("Grant"). A detailed financial plan will be developed by the Parties.

#### IV. Evaluation:

To evaluate the impact of a modern, large air facility on the economy of a small Caribbean island, baseline data will be gathered in October (the date the airport becomes operational) for comparison with data collected three years later, adjusted for normal growth. Such data should include the normal economic indicators (GDP, per capita income, foreign exchange accounts, etc.) as well as data relative to the tourist industry (number of tourists, numbers and types of accommodations, average monies spent on the island, etc.). A.I.D. will monitor the first data collection and the three-year follow-up. All costs of collecting, analyzing, publicizing and distributing the results of evaluation will be covered by funds made available under the project.

Project Grant Standard Provisions

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Project Grant StandardProvisions 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 progress of the Project, the performance of obligations under this 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 the 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.

Article B: General Covenants (Continued)

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. Completion 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.

Article B: General Covenants (Continued)

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 construction 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

Article C. Procurement Provisions (Continued)

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 professional 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 A.I.D. approval; 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 vessel or air charter which has not received prior A.I.D. approval.

Article C: Procurement Provisions (Continued)

(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 Grantee (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 thirty (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

Article D: Termination; Remedies (Continued)

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 in 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 (60) 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.