

PDKA1341

A.I.D. Project Number: 528-0137

PROJECT

GRANT AGREEMENT

BETWEEN

THE GOVERNMENT OF ST. LUCIA

and the

UNITED STATES OF AMERICA

for

ST. LUCIA GEOTHERMAL

**BEST AVAILABLE DOCUMENT**

Dated: August 15, 1985

**CONFORMED COPY**

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BEST AVAILABLE DOCUMENT

PROJECT GRANT AGREEMENT

Dated: August 15, 1985

Between

The Government of St. Lucia ("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 I, consists of assisting the Grantee, as part of a multi-donor effort, in its program of exploring and developing geothermal energy production. Annex I, 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 I 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) A.I.D.'s contribution to the Project will be provided in increments, the initial one being made available in accordance with Section 3.1 of this agreement. Subsequent increments will be subject to availability of funds to A.I.D. for this purpose, and to mutual agreement of the Parties, at the time of a subsequent increment, to proceed.

(b) Within the overall Project Assistance Completion Date stated in this Agreement, A.I.D., based upon consultation with the Cooperating Country, may specify in Project Implementation Letters appropriate time periods for the utilization of funds provided by A.I.D. under an individual increment.

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 One Million Five Hundred Thousand ("U.S.") Dollars (\$1,500,000).

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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

(a) 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.

(b) The resources provided by Grantee for the Project as described in Annex I will be not less than the equivalent of Eighty Thousand United States United States ("U.S.") Dollars (US\$80,000) including costs borne on an "in-kind" basis.

SECTION 3.3. Project Assistance Completion Date

(a) The "Project Assistance Completion Date" (PACD), which is August 31, 1987, 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 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; and

(b) A statement of the name of the person holding or acting in the office of representative of the Grantee specified in Section 4.1., and of any additional representatives, together with a specimen signature of each person specified in such statement.

SECTION 4.2. Disbursement for Civil Works and Drilling Activities.  
Prior to any disbursement under the grant, or to issuance by A.I.D. of documentation pursuant to which disbursement will be made for civil works and drilling activities, 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) A detailed, time phased implementation plan for the drilling activities, civil works and repair of pre-existing geothermal wells;

(b) Evidence that the Grantee has obtained or has set in motion procedures to obtain all lands for the Project, including all necessary easements or other rights in property, to carry out the activity.

(c) (1) an AID-approved environmental assessment (EA) prepared according to A.I.D. Reg. 16 (22 CFR Part 216) and (2) an environmental monitoring and safety plan designed to protect the human and physical environment in and around the proposed drilling sites.

(d) Evidence that the Grantee will provide necessary pad preparation, storage ponds and water supply for the drilling sites; and

(e) Evidence of an executed contract or firm arrangement to secure such a contract for the technical services required to prepare a plan and parameters for private investment in geothermal exploitation, including, but not limited to, documents that could provide a description of the proposed institutional, technical and financial relationships between the private investor, the Government of St. Lucia and the St. Lucia Electric Company (LUCELEC). The final outcome of this technical assistance effort will be a Request for Proposals for the selection of private sector investment and participation in the development of geothermal resources.

SECTION 4.3. Notification. When A.I.D. has determined that the conditions precedent specified in Section 4.1. and 4.2. have been met, it will promptly notify the Grantee.

SECTION 4.4. Terminal Dates for Conditions Precedent

If all of 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 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) evaluation of progress toward attainment of the objectives of the Project;

(b) identification and evaluation of problem areas or constraints which 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. Environment. The Grantee agrees to take steps to adhere to recommendations stemming from the environmental assessment and monitoring procedures to be carried out as part of the Project.

SECTION 5.3. Private Investment Plan. The Grantee agrees to make its best efforts to carry out the plan prepared pursuant to Section 4.2(e), except to the extent that any aspects of the plan are not endorsed by the Grantee and notification of the Grantee's specific objections are provided to A.I.D. in writing within 30 days of the Grantee's receipt of the plan.

SECTION 5.4. Power Grid Linkage. The Grantee agrees to develop (a) a plan for transmission of 11 KV lines between the geothermal power house site and the southern grid and (b) a plan for interconnection of the two grids on St. Lucia.

SECTION 5.5. LUCELEC Purchase of Electricity. Except as A.I.D. may otherwise agree in writing, the Grantee will enter into an agreement with LUCELEC for the purchase of the electricity produced from the geothermal resource.

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 ("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 6.1. Local Currency Costs. Disbursements pursuant to Section 7.1 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 St. Lucia ("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 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 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, under 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 for such goods or services.

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

(1) by acquisition by A.I.D. with U.S. Dollars by purchase; and

(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 of 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.

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The U.S. Dollar equivalent of the local currency made available hereunder will be, in the case of subsection (b)(i) above, the amount of U.S. Dollars required by A.I.D. to obtain the local currency, and in the case of subsection (b)(ii) 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 St. Lucia 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 St. Lucia at the highest rate of exchange which, at the time the conversion is made, is not unlawful.

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 addresses:

To the Grantee:	DEPUYTY DIRECTOR, FINANCE & PLANNING (PLANNING)
Mail Address:	Government Headquarters P.O. Box 709 Castries, St. Lucia
Cable Address:	PMSLU 6243 LC
To A.I.D.:	MISSION DIRECTOR
Mail Address:	Regional Development Office/Caribbean P.O. Box 302 Bridgetown, Barbados
Cable Address:	2259 USEMB BGI-WB

All such communications will be in English, unless the Parties otherwise agree in writing. Other addresses may be substituted for the above upon the giving of 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 Deputy Director of Finance and Planning (Planning) and A.I.D. will be represented by the individual holding or acting in the office of Mission Director, each of whom, by written notice, may designate additional

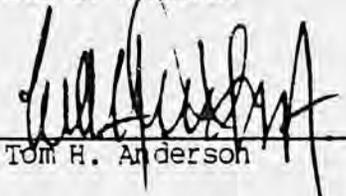
representatives for all purposes other than exercising the power under Section 2.1. to revise elements of the amplified description in Annex 1. The names of the representatives of the Grantee, with specimen signatures, will be provided to A.I.D., which may accept as duly authorized any instrument signed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

SECTION 6.3. Standard Provisions Annex. A "Project Grant Standard Provisions Annex" (Annex II) 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.

UNITED STATES OF AMERICA

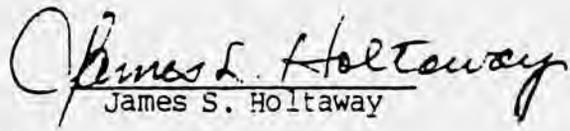
ST. LUCIA

BY:   
Tom H. Anderson

BY:   
John Compton

TITLE: Ambassador

TITLE: Prime Minister

BY:   
James S. Holtaway

TITLE: Director

## PROJECT DESCRIPTION

### A. Summary Project Description

The objective of the St. Lucia Geothermal project is to accelerate the economic development of St. Lucia through the exploitation of an indigenous source of geothermal energy for the production of electricity. This project, which will be co-financed by AID and the United Nations Revolving Fund for Natural Resources Exploration (UNRFNRE), supports AID's other infrastructure and private sector projects in St. Lucia.

The availability of an indigenous source of energy will help St. Lucia attract private investment in productive enterprises and will diminish the foreign exchange burden of importing diesel oil for the generation of electricity. The objectives will be achieved by drilling up to three production-sized exploratory geothermal wells in the Qualibou Caldera near Soufriere. Management services will be provided by the UNRFNRE. The quality of the effluent and the effects of the geothermal activity on the environment will be monitored, and mitigative measures will be taken as needed. Technical assistance will be provided to the GOSL to prepare a private sector investment package for geothermal exploitation.

### B. Project Elements

#### 1. Other Donors

The project will be co-financed by A.I.D. and the UNRFNRE. The UNRFNRE will finance the engineering, management and supervision aspects of the project along with subcontracts for cementation, mud engineering, mud logging and chemical analysis, and the provision of supplies. The Government of St. Lucia will contribute the preparation of the required drilling pads, and the provision of water and water storage to the drilling sites. The GOSL will also assure the acquisition of easements and rights of way.

#### 2. AID-Financed Components

##### a. Drilling contract

A.I.D. will finance the preparation of drilling specifications, the procurement of insulated casings, and a drilling contract for production sized exploitation wells in the Belfond, Sulphur Springs and/or Etangs areas of the Qualibou Caldera. The aggregate depth of the wells is expected to be between 4,500 and 6,500 meters. The drilling contract will include the civil works (e.g. alterations to roads, bridges and harbor) necessary to transport the drilling equipment.

c. Environmental Program

The project will finance an environmental assessment study, a plan for environmental monitoring during the drilling phase which includes the analysis of geothermal fluids, and an environmental protection plan for the post-project phase.

d. Training

The project will finance the training of up to six St. Lucians in the administrative aspects of the operation of geothermal power systems, including planning for future well drilling and well field maintenance.

e. Technical Assistance

Technical Assistance will be provided to assist the Grantee prepare a plan for the private sector development of the geothermal well field and assist in the evaluation of proposals from interested private investors.

f. Evaluation and Repair of Existing Geothermal Wells

Several of the existing geothermal wells require repair and reinforcement. A.I.D will finance repairs of the old wells based upon the technical consultant recommendations.

C. Project Administration and Implementation

Overall project management will be carried out by a technical consultant contracted by the UNRFNRE. The chief of party of the technical consultant will act as project manager and supervise all UNRFNRE-financed subcontractors and the A.I.D-financed drilling contractor. On major technical and financial matters, the project manager will consult with a tripartite management unit compiled of equal members of UNRFNRE, A.I.D, and the GOSL. The establishment of this management unit does not indicate a waiver of A.I.D.'s approval rights as set out in this Agreement, including Annex II, Standard Provisions.

D. Financial Plan

Summary costs estimates are as follows:

	AID	UNRFNRE	GOSL
1. Personnel and Travel	-	84,000	-
2. Civil Works (Harbor, Roads and Bridges)	170,000	-	-
3. Pad Preparation, Ponds, Water Relocation of Utilities and Land Acquisition	-	-	80,000
4. Pre-project Expenditure	-	65,000	-
5. Project Supervision & Management	-	625,000	-
6. Well Drilling & Casing	2,167,070	-	-
7. Materials, cementation, mud engineering, well completion, testing and other works		1,418,500	
8. Environmental Assessment and Monitoring	75,000	-	-
9. Equipment Freight and Insurance (less residual)	-	4,400	-
10. Technical Support, Management Services (fee to UNRFNRE)	65,000	14,000	-
11. Technical Assistance and Training	90,000	-	-
12. Repairs to Existing Wells	30,000	-	-
13. Contingency	402,930	169,200	-
TOTAL	<u>3,000,000</u>	<u>2,380,100</u>	<u>80,000</u>

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 I.

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.

SECTION B.4. Taxation

- (a) This Agreement and the Grant will be free of 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 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 Project and the discharge of responsibilities under this Agreement;

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- (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 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 the Grant, are deemed by A.I.D. to be of major importance to the Project. Aspects of the Project involving matters under this sub-section (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 or aircraft 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 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.

- (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 subsection 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, 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 replacement 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 non-cancellable 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 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 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 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. Non-Waiver 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.