

PD - ABC - 951

49603

Limited Scope Grant Agreement No 615-0269

LIMITED SCOPE GRANT AGREEMENT

BETWEEN

THE REPUBLIC OF KENYA

AND THE

UNITED STATES OF AMERICA

FOR

HUMANITARIAN, HEALTH AND ECONOMIC SUPPORT TO
KENYA TO MEET NEEDS RESULTING FROM
NAIROBI BOMB BLAST

DATE 6 NOV 1998

LIMITED SCOPE GRANT AGREEMENT

Between

The Republic of Kenya

and

The United States of America acting through
the Agency for International Development (USAID)

- 1 Activity Title Humanitarian, health and economic support to Kenya to meet needs resulting from Nairobi bomb blast
- 2 USAID Activity Number 615-0269
- 3 Purpose USAID and the Grantee hereby agree to carry out the activity described in this Agreement in accordance with (a) the terms of this Agreement and (b) any general agreement(s) between the two governments regarding economic or technical cooperation
- 4 USAID Contribution USAID, pursuant to the Foreign Assistance Act of 1961, as amended, hereby grants to the Grantee Eight Hundred Fifty Thousand United States Dollars (U S \$850,000) (the "Grant") to be expended as described herein
- 5 Grantee Contribution The Grantee will provide the equivalent of Two Hundred Eighty Thousand and Five Hundred United States Dollars, (U S \$280,500), including in-kind contributions
- 6 Completion Date September 30, 2000
- 7 This Agreement consists of (a) this Title Page, (b) Annex 1, The Activity Description, and (c) Annex 2, the Standard Provisions

8 USAID Mail Address

USAID/Kenya
P O Box 30261
Nairobi, Kenya

Phone 254-2-751-613
Fax 254-2-749-590

9 Grantee Mail Address

Permanent Secretary
Ministry of Finance
P O Box 30007
Nairobi, Kenya

Phone 254-2-338-111
Fax 254-2-217-593

10 Authorized Signatures

For the Republic of Kenya

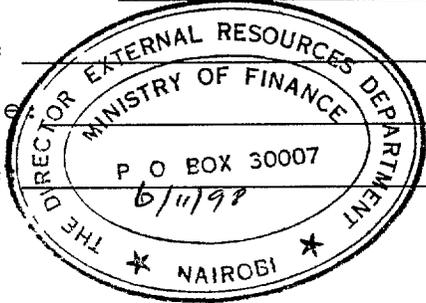
Signature

W. W. Hoeck

Name

Title

Date



For the United States of America

Signature

Lee Ann Ross

Name

Lee Ann Ross

Title

Acting Director, USAID/Kenya

Date

76 NOV 1998

Signature

Name

Prudence Bushnell

Title

United States Ambassador
to Kenya

Date

ANNEX 1

AMPLIFIED DESCRIPTION

I Introduction

This annex describes the activities to be undertaken and the results to be achieved with the funds obligated under this Agreement. Nothing in this Annex 1 shall be construed as amending any of the definitions or terms of the Agreement.

II Background

On August 7, 1998, a bomb explosion outside the American Embassy in Nairobi resulted in the loss of many lives, and in injuries and sufferings to thousands. The emergency resulted in some 5,000 victims arriving at the 16 hospitals in the greater Nairobi area without reference to who could afford to pay. The area hospitals were compelled, on humanitarian grounds, to treat those who appeared at their doorsteps. Many victims, both out-patients and those hospitalized and later released, were able to meet whatever costs were entailed. But many thousands of victims could not meet these costs, creating expenditure deficits for the treating institutions. Of the original 600 people hospitalized there were still about 131 in-patients remaining on August 19, 1998, and 60 still hospitalized on August 25, 1998. These were mainly the more serious and costly cases.

The USG wishes to reimburse Nairobi-area hospitals by making funds available for certain costs, to the extent that funds are made available to USAID for this purpose, aside from medical supplies and bills already paid by individuals, incurred in the treatment of victims of the bombing between August 7 and September 30, 1998. The assistance will also cover other short term medical counselling needs of the victims. Medical supplies consumed by various hospitals during the emergency have been adequately replenished. Bills already paid by individuals should be considered for reimbursement by the Government of Kenya's Disaster Fund. Victims with longer term medical needs, particularly individuals requiring surgery, who have not been reimbursed by the GOK or private interests, are the intended beneficiaries of this assistance.

III Results To Be Achieved

The results the Parties intend to achieve under this LSGA are 1) approximately sixteen Nairobi-area medical institutions reimbursed for certain costs except medical supplies and bills already paid

by GOK and others, and 2) certain other future medical counselling expenses that will not be paid by other parties paid to the hospitals, subject to the availability of funds to USAID for this purpose

IV Activities and Activity Selection

The activities to be undertaken will include 1) Retrospective reimbursement of certain accrued medical care costs In the immediate aftermath of the bombing patients were admitted to a variety of hospitals in Nairobi and treated Most have now been discharged, however, some remain under inpatient or outpatient care There is a need to retrospectively reimburse the institutions for certain legitimate costs of providing care to known blast victims, and 2) Prospective managed reimbursement of additional medical care and counselling costs Patients still receiving care will require that their medical care costs be paid for them This process will, however, need to be managed to ensure that quality care is provided to these patients at an appropriate and fair cost

In order to accomplish the above tasks, a contractor (accounting firm) will be competitively procured by USAID to perform the following tasks 1) identify the unpaid costs of hospital in collaboration with Ministry of Health Blast Committee, 2) reimburse hospitals for certain amounts of the victims' legitimate unpaid costs, 3) prepare a summary of accounts to USAID reporting reimbursement made to each hospital, 4) prepare and submit to USAID regular estimates of future patient care cost based upon the progression of the patient, 5) reimburse hospitals for certain future costs to the extent funds are made available to USAID for this purpose, and 6) compile and submit to USAID a final comprehensive report In addition a grant will be given by USAID to a local NGO to administer counselling services

V Indicators/Targets

Approximately 16 hospitals reimbursed for certain medical counselling expenses of the bomb victims who have not been assisted by the GOK nor others About 4,000 Kenyan blast victims who need and/or needed medical attention but who are not or were not assisted by the GOK nor private interests

VI Roles and Responsibilities of the Parties

The activity will be implemented in a collaborative manner among the partners which will include GOK, USAID, Contractors and NGOs USAID will assume the primary responsibility for managing the activity A local contractor will be hired by USAID to manage the reimbursement to hospitals for specified treatment of bomb victim costs The Contractor will report to USAID

VII Monitoring and Evaluation

A performance monitoring plan will be setup that will closely monitor reimbursement to the hospitals and payment of future expenses. It is estimated that approximately 16 hospitals will be reimbursed offsetting the bills for a maximum 5,000 victims. Performance data for the indicators will be tracked and analyzed periodically for decision making. This analysis will guide USAID in determining necessary adjustments in program approaches.

Annex 2

Standard Provisions

Table of Contents

Article A	Definitions
Article B	Implementation Letters
Article C	USAID Contribution
Article D	Grantee Contribution
Article E	Completion Date
Article F	Utilization of Goods and Services
Article G	Taxation
Article H	Reports and Information, Agreement Books and Records, Audits, and Inspections
Article I	Other Payments
Article J	Information and Marking
Article K	Rate of Exchange
Article L	Procurement of Goods and Services
Article M	Suspension, Termination and Other Remedies
Article N	Job Loss, Export Processing Zones and Workers' Rights
Article O	Language of Agreement

Article A Definitions

As used in this Annex, "Agreement" means the Limited Scope Grant Agreement to which this Annex is attached, and any amendments to the Limited Scope Grant Agreement "Cooperating Country" means the country or territory of the Grantee

Terms used in this Annex have the same meaning or reference as in the Agreement

Article B Implementation Letters

To assist the Grantee in the implementation of this Agreement, USAID, from time to time, will issue Implementation Letters ("ILs") that will furnish additional information about matters stated in this Agreement The Parties may also issue jointly agreed-upon ILs to confirm and record their mutual understanding on aspects of the implementation of this Agreement

Article C USAID Contribution

Section C 1 USAID shall expend funds and implement this Agreement only in accordance with the laws and regulations of the United States Government

Section C 2 If at any time USAID determines that its contribution exceeds the amount which reasonably can be committed for achieving the results or activities of this Agreement during the current or next U S fiscal year, USAID may, upon written notice to the Grantee, withdraw the excess amount, thereby reducing the amount of the Grant Actions taken pursuant to this subsection will not revise USAID's contribution, subject to the availability of funds to USAID for this purpose and the mutual agreement of the Parties, at the time of any subsequent increment, to proceed

Article D Grantee Contribution

The Grantee will make available its contribution prior to the Completion Date Services shall be deemed to be contributed when performed and goods shall be deemed to be contributed when furnished In addition, the Grantee agrees to provide or cause to be provided all additional funds, services, property and other resources required to complete, on or before the Completion Date, the Activity

Article E Completion Date

Section E 1 The Completion Date, which is set forth on the Title Page of this Agreement, or such other date as the Parties may agree to in writing, is the date by which the Parties estimate that the activity will be completed

Section E 2 Except as USAID may otherwise agree in writing, USAID will not issue or approve documentation which would authorize disbursement of the Grant for services performed or goods furnished after the Completion Date

Section E 3 Requests for disbursement, accompanied by necessary supporting documentation prescribed in Implementation Letters, are to be received by USAID no later than nine (9) months following the Completion Date, or such other period to which USAID agrees in writing before or after such period After such period USAID, at any time or times, may give notice in writing to the Grantee and reduce the amount of the Grant by all or any part thereof for which requests for disbursement, accompanied by necessary supporting documentation prescribed in Implementation Letters, were not received before the expiration of such period

Article F Utilization of Goods and Services

Any goods and services financed under this Agreement, unless otherwise agreed in writing by USAID, will be devoted to this Agreement until the completion or termination of this Agreement, and thereafter (as well as during any period of suspension of this Agreement) will be used to further the objectives of this Agreement or as USAID may direct in ILs

Article G Taxation

Section G 1 General Exemption This Agreement and the assistance thereunder are free from any taxes imposed under laws in effect in the territory of the Grantee

Section G 2 Except as provided otherwise in this provision, the General Exemption in section G 1 applies to, but is not limited to (1) any activity, contract, grant or other implementing agreement financed by USAID under this Agreement, (2) any transaction or supplies, equipment, materials, property or other goods (hereinafter collectively "goods") under (1) above, (3) any contractor, grantee, or other organization carrying out activities financed by USAID under this Agreement, (4) any employee of such organizations, and (5) any individual contractor or grantee carrying out activities financed by USAID under this Agreement

Section G 3 Except as provided otherwise in this provision, the General Exemption in section G 1 applies to, but is not limited to, the following taxes imposed by laws in effect in the territory of the Grantee

- (a) Exemption 1 Customs duties, tariffs, import taxes, or other levies on the importation, use and re-exportation of goods or the personal belongings and effects (including personally-owned automobiles) for

the personal use of non-national individuals or their family members Exemption 1 includes, but is not limited to, all charges based on the value of such imported goods, but does not include service charges directly related to services performed to transfer goods or cargo

(b) Exemption 2 Taxes on the income, profits or property of all (i) non-national organizations of any type, (ii) non-national employees of national and non-national organizations, or (iii) non-national individual contractors and grantees Exemption 2 includes income and social security taxes of all types and all taxes on the property, personal or real, owned by such non-national organizations or persons The term "national" refers to organizations established under the laws of the Grantee, and citizens of the Grantee, other than permanent resident aliens in the United States

(c) Exemption 3 Taxes levied on the last transaction for the purchase of goods or services financed by USAID under this Agreement, including sales taxes, value-added taxes (VAT), or taxes on purchases or rentals of real or personal property The term "last transaction" refers to the last transaction by which the goods or services were purchased for use in the activities financed by USAID under this Agreement

Section G 4 If a tax has been levied and paid contrary to the provisions of an exemption, USAID may, in its discretion, (1) require the Grantee to refund to USAID or to others as USAID may direct the amount of such tax with funds other than those provided under this Agreement, or (2) offset the amount of such tax from amounts to be disbursed under this or any other agreement between the Parties

Section G 5 In the event of a disagreement about the application of an exemption, the Parties agree to promptly meet and resolve such matters, guided by the principle that the assistance furnished by USAID is free from direct taxation, so that all of the assistance furnished by USAID will contribute directly to the economic development of the Grantee

Article H Reports and Information, Agreement Books and Records, Audits, and Inspections

Section H 1 Reports and Information The Grantee shall furnish USAID accounting records and such other information and reports relating to the Agreement as USAID may reasonably request

Section H 2 Agreement Books and Records The Grantee shall maintain accounting books, records, documents and other evidence relating to the Agreement, adequate to show, without limitation, all costs incurred under the Agreement, the receipt and use of goods and services acquired under the Agreement, agreed-upon cost sharing requirements, 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 Agreement toward completion ("Agreement books and records") The Grantee shall maintain Agreement books and records in accordance with generally accepted accounting principles prevailing in the United States, or at the Grantee's option, with approval by USAID, other accounting principles, such as those (1) prescribed by the International Accounting Standards Committee (an affiliate of the International Federation of Accountants) or (2) prevailing in the country of the Grantee Agreement books and records shall be maintained for at least three years after the date of last disbursement by USAID or for such longer period, if any, required to resolve any litigation, claims or audit findings

Section H 3 Grantee Audit If \$300,000 or more is expended directly by the Grantee in a year under the Agreement, the Grantee, except as the Parties may otherwise agree in writing, shall have financial audits made of the expenditures in accordance with the following terms

(1) With USAID approval, the Grantee shall use its Supreme Audit Institution or select an independent auditor in accordance with the "Guidelines for Financial Audits Contracted by Foreign Recipients" issued by the USAID Inspector General ("Guidelines"), and the audits shall be performed in accordance with the "Guidelines", and

(2) The audit shall determine whether the receipt and expenditure of the funds provided under the Agreement are presented in accordance with generally accepted accounting principles agreed to in section H 2 above and whether the Grantee has complied with the terms of the Agreement Each audit shall be completed no later than nine months after the close of the Grantee's year under audit

Section H 4 Sub-recipient Audits The Grantee, except as the Parties may otherwise agree in writing, shall submit to USAID, in form and substance satisfactory to USAID, a plan for the audit of the expenditures of "covered" subrecipients

(a) A "covered" subrecipient is one who expends \$300,000 or more in a year in "Federal awards" as defined in OMB Circular A-110,

(b) The plan shall describe the methodology to be used by the Grantee to satisfy its audit responsibilities for covered subrecipients. The Grantee may satisfy such audit responsibilities by relying on independent audits of the subrecipients, expanding the scope of the independent financial audit of the Grantee to encompass testing of subrecipients' accounts, or a combination of these procedures.

(c) The plan shall identify the funds made available to covered subrecipients that will be covered by audits conducted in accordance with other audit provisions that would satisfy the Grantee's audit responsibilities (a nonprofit organization organized in the United States is required to arrange for its own audits, a for-profit contractor organized in the United States that has a direct contract with USAID is audited by the cognizant U S Government Agency, a private voluntary organization organized outside the United States with a direct grant from USAID is required to arrange for its own audits, and a host-country contractor should be audited by the cognizant Grantee contracting agency)

(d) The Grantee shall ensure that recipients take appropriate and timely corrective actions, consider whether subrecipients' audits necessitate adjustment of its own records, and require each subrecipient to permit independent auditors to have access to records and financial statements as necessary.

Section H 5 Audit Reports The Grantee shall furnish or cause to be furnished to USAID an audit report for each audit arranged for by the Grantee in accordance with this Section within 30 days after completion of the audit and no later than nine months after the end of the period under audit.

Section H 6 Cost of Audits Subject to USAID approval in writing, costs of audits performed in accordance with the terms of this Section may be charged to the Agreement.

Section H 7 Audit by USAID USAID may, at its discretion, perform the audits required under this Agreement on behalf of the Grantee by utilizing funds under the Agreement or other resources available to USAID for this purpose.

Section H 8 Opportunity to Audit or Inspect The Grantee shall afford authorized representatives of USAID the opportunity at all reasonable times to audit or inspect activities financed under the Agreement, the utilization of goods and services financed by USAID, and books, records and other documents relating to the Agreement.

12

Article I 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 this Agreement, except fees, taxes, or similar payments legally established in the country of the Grantee

Article J Information and Marking

The Grantee will give appropriate publicity to the agreement as a program to which the United States has contributed, identify agreement activity sites, and mark goods financed by USAID, as described in ILs

Article K Rate of Exchange

If funds provided under this Agreement are introduced into the Cooperating Country by USAID or any public or private agency for purposes of carrying out obligations of USAID hereunder, the Grantee will make such arrangements as may be necessary so that such funds may be converted into local currency at the highest rate of exchange which, at the time the conversion is made, is not unlawful in the country of the Grantee to any person for any purpose

Article L Procurement of Goods and Services

Section L 1 Any goods and services financed by USAID under this Agreement may be procured pursuant only to an Acquisition and Assistance Request Document (AARD) or Implementation Letter (IL) issued by USAID

Section L 2 Title to goods or other property financed by USAID under this Agreement shall be in the Grantee or other entity as the Grantee may designate, except as the parties agree or as specified by USAID in an AARD or IL

Article M Suspension, Termination and Other Remedies

Section M 1 Suspension and Termination

(a) Either Party may terminate this Agreement in its entirety by giving the other Party 30 days written notice USAID also may terminate this Agreement in part by giving the Grantee 30 days written notice, and suspend this Agreement in whole or in part upon giving the Grantee written notice In addition, USAID may terminate this Agreement in whole or in part, upon giving the Grantee written notice, if (1) the Grantee fails to comply with any provision of this Agreement, (11) an event occurs that USAID determines makes it

improbable that the result or related objective of this Agreement or the assistance program will be attained or that the Grantee will be able to perform its obligations under this Agreement, or (iii) any disbursement or use of funds in the manner herein contemplated would be in violation of the legislation governing USAID, whether now or hereafter in effect

(b) Except for payment which the Parties are committed to make pursuant to noncancellable commitments entered into with third parties prior to such suspension or termination, suspension or termination of this entire Agreement or part thereof will suspend (for the period of the suspension) or terminate, as applicable, any obligation of the Parties to provide financial or other resources to this Agreement, or to the suspended or terminated portion of this Agreement, as applicable. Any portion of this Agreement which is not suspended or terminated shall remain in full force and effect

(c) In addition, upon such full or partial suspension or termination, USAID may, at USAID's expense, direct that title to goods financed under this Agreement, or under the applicable portion of this Agreement, be transferred to USAID if the goods are in a deliverable state

Section M 2 Refunds

(a) In the case of any disbursement which is not supported by valid documentation in accordance with this Agreement, or which was for goods or services not used in accordance with this Agreement, USAID, 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 USAID 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 or supported under this Agreement are not used effectively in accordance with this Agreement, USAID may require the Grantee to refund all or any part of the amount of the disbursements under this Agreement for or in connection with such goods or services in U S Dollars to USAID within sixty (60) days after receipt of a request therefor

(c) The right under subsections (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 refunds under subsections (a) or (b), or (2) any refund to USAID from a contractor, supplier, bank or other third party with respect to goods or services financed under this Agreement, 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 this Agreement, 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 funds disbursed by USAID to the Grantee under this Agreement prior to the authorized use of such funds for this Agreement will be returned to USAID in U S Dollars by the Grantee, unless USAID otherwise agrees in writing

Section M 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 M 4 Assignment The Grantee agrees, upon request, to execute an assignment to USAID 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 which USAID financed in whole or in part out of funds granted by USAID under this Agreement

Article N Job Loss, Export Processing Zones and Workers' Rights

Section N 1 No funds or other support provided hereunder may be used in an activity reasonably likely to involve the relocation or expansion outside of the United States of an enterprise located in the United States if non-U S production in such relocation or expansion replaces some or all of the production of, and reduces the number of employees at, said enterprise in the United States

Section N 2 No funds or other support provided hereunder may be used in an activity the purpose of which is the establishment or development in a foreign country of any export processing zone or designated area where the labor, environmental, tax, tariff, and safety laws of the country would not apply, without the prior written approval of USAID

Section N 3 No funds or other support provided hereunder may be used in an activity which contributes to the violation of

15

internationally recognized rights of workers in the recipient country, including those in any designated zone or area in that country

Article 0 Language of Agreement

If this Agreement is prepared in a language in addition to English, the English language version will control in the event of ambiguity or conflict between the two versions

Drafted OSPP SRagama
Clearance

OSPP NAli	<i>[Signature]</i>	Date	10/15/98
CONT PKlosky	<i>[Signature]</i>	Date	29 Oct 98
RLA KFickencher	<i>[Signature]</i>	Date	23 Oct 98
A/DIR LARoss	<i>[Signature]</i>	Date	

Fisical Date

APP 728/91037
 BPC GLS8-99-21615-KG13
 RESCTLNO V291001
 AMOUNT \$850,000.00
 OBDOCNO LSGA615-0269-90001
 P.E 01

doc u \usaid\usaid prg\docs\haddis\proags\lsga-spo

195

Funds Available
 CONT/KENYA
 Initials *[Signature]*
 Date - 10/29/98