

PDB/113-58

OFFICIAL PROJECT  
DOCUMENT

A.I.D. Grant Number: 83-5

PROJECT

GRANT AGREEMENT

Between the

Somali Democratic Republic

and the

UNITED STATES OF AMERICA

For

Kismayo Port Rehabilitation Project  
(A.I.D. Project No.649-0114)

Date: August 31, 1983

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Project Grant Agreement

Date:

Between

Somali Democratic Republic ("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

The Project, which is further described in Annex 1, will consist of assistance to the Grantee to complete final design plans and initiate implementation actions leading to the rehabilitation of the Port of Kismayo. Annex 1, attached, amplifies the above definition of the Project. Within the limits of the above definition of the Project, elements of the amplified description stated in Annex 1 may be changed by written agreement of the authorized representatives of the Parties named in Section 8.2 without formal amendment of this Agreement.

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 two million five hundred thousand United States ("U.S.") Dollars (\$2,500,000) ("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.

Article 3: Financing (Continued)

SECTION 3.2. Project Assistance Completion Date.

(a) The "Project Assistance Completion Date" (PACD), which is March 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 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) A statement of the name of the person holding or acting in the office of the Grantee specified in Section 8.2, and of any additional representatives, together with a specimen signature of each person specified in such statement;

(b) An opinion of counsel satisfactory 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.

SECTION 4.2. Notification. When A.I.D. has determined that the condition 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 20 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. Documentation.** The Grantee agrees to provide all existing documentation, studies and plans pertinent to the Port of Kismayo which may be useful in the finalization of the Port rehabilitation plan and preparation of plan implementation documents.

**SECTION 5.3. Human Resources.** The Grantee agrees to furnish the human resources necessary for effective management and coordination of the finalization of a plan and preparation of plan implementation documents for the rehabilitation of the port.

**SECTION 5.4. Continuing Consultation.** The Grantee agrees to cooperate fully with AID to assure that the purpose of the Grant will be accomplished. To this end, the Grantee and AID shall from time to time, at the request of either party, exchange views through their representatives with regard to the progress of the project, the performance of the Grantee of its obligations under the Agreement, the performance of consultants, contractors and suppliers engaged on the project, and other matters relating to the project.

**SECTION 5.5. Tariff Rate Structure.** The Grantee agrees to provide a plan for executing the recommendations of a tariff rate structure study to be produced by the Project consultant and Somali Port Authority which will suggest a rate readjustment program maximizing Port revenue in light of import and export incentives.

**SECTION 5.6. Port Maintenance.** The Grantee agrees to draft a time-phased administrative and financial plan for Port maintenance for review and discussion by A.I.D. and the Grantee, which specifies:  
1) Timing, number and types of personnel to be trained to maintain the Port; 2) Anticipated need and cost for replacing the equipment; and,  
3) Administrative arrangements for maintenance, including organization chart, staffing pattern and budget requirements.

**SECTION 5.7. Grantee Implementation.** The Grantee agrees to formulate a plan for discussion by A.I.D. and the Grantee which specifies how various Grantee Ministries and line agencies involved with the project will comply with their commitments to participate in facilitating Project implementation.

#### **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 their source and origin in countries included in Code 941 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.

**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 the Somali Democratic Republic ("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 (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.

Article 7: Disbursement (Continued)

(3) by the Grantee (A) requesting the Ministry of Finance of the Somali Democratic Republic to transfer funds to the Ministry of Public Works and Housing from CIPL\* resources, a copy of the request going to the CIPL Unit and AID., and (B) thereafter maintaining a separate local bank account into which advances are deposited and from which disbursements are made, and (C) concurrently establishing transactions in this account and maintaining documentation for future audit in accordance with pertinent Agreement Annex II Standard Provisions.

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 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 and introduced into Somali Democratic Republic 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 Somali Democratic Republic at the highest rate of exchange which, at the time the conversion is made, is not unlawful in Somali Democratic Republic.

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

Mail Address: Minister of Public Works and Housing  
Mogadishu, Somalia

Alternate address for cable: 700 CED MOGADISHU

To A.I.D.:

Mail Address: Director  
USAID/Somalia  
Mogadishu, Somalia

Alternate address for cables: AMEMBASSY MOGADISHU

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\* "CIPL" is an acronym derived from the A.I.D. Financed Commodity Import Program (CIP) and PL-480 Title I sales. The CIPL Unit of the Ministry of Finance is responsible for monitoring the CIP and PL-480 generated local currencies.

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. The Grantee, in addition, will provide the USAID Mission with a copy of each communication sent to A.I.D.

SECTION 8.2. Representatives. For all purposes relevant to this Agreement, the Grantee will be represented by the individual holding or acting in the office of the Minister of Public Works and Housing and A.I.D. will be represented by the individual holding or acting in the office of Director USAID/Somalia, 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 8.3. 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.

SOMALI DEMOCRATIC REPUBLIC

By:           /5/            
Minister of National  
Title:           Planning          

UNITED STATES OF AMERICA

By:           /5/            
Title:           Director, USAID/Somalia

GRANT AGREEMENT NUMBER 83-5  
ANNEX I  
Amplified Description of the Project

The Project will assist Somalia produce final design plans and other documents, and initiate implementation actions necessary to begin Kismayo Port ("Port") rehabilitation activities by financing the costs of technical assistance and related goods and services necessary to complete the following tasks:

1. The preparation of final design plans and documents;
2. The preparation of construction contract documents;
3. The undertaking of various field investigations; and,
4. The prequalifying of construction contract bidders.

An expanded description of the above four tasks is given below:

1. Final Design

Approximately twenty five percent of design efforts were completed during the preliminary design phase under the previous Kismayo Port Rehabilitation Grant Agreement of September 23, 1982. A contract with a U.S. A & E firm for completion of the remaining 75% of the final design will be negotiated and executed.

2. Construction Contract Documents

The A & E firm contracted to complete the Final Design of Task 1 above will assist the Grantee and A.I.D. prepare Request for Proposals (RFP) for Port construction contractor services.

3. Additional Field Investigations

Available data on site conditions at the Port must be supplemented by additional field investigations. These will include a site topographic survey, boring and probings along the new bulkhead alignment, and investigations of aggregate and water sources.

4. Prequalification of Construction Contractors

The A&E firm of Task 1 above will assist the Grantee and A.I.D. in pre-qualifying potential construction contractors and determining a short list of those who are to be eligible to submit bids in response to the RFP developed under Task 2 above.

The above four tasks are intended to provide all the data and complete all actions necessary for Port rehabilitation construction activities to begin. It is further intended that sufficient funding will have been made available under this Grant to allow continuity of A&E firm and other related activities into the Port rehabilitation construction phase of the overall Project.

Implementation responsibilities will be shared among the Ministry of Public Works and Housing (MPW), the Somali Port Authority (SPA) and USAID/Somalia (USAID). The MPW is responsible for general management of the Project which includes among other matters assuring the smooth and uninterrupted prosecution of the work by taking or causing to be taken all actions necessary to permit unrestricted access to all Project areas by the Project contractor(s) and subcontractor(s). All contracts will be direct AID contracts. USAID, the SPA and the MPW will assign full time Project Managers to the Project and as necessary, field liaison personnel will be stationed in Kismayo.

The process of selecting the A&E firm to perform the final design work and other tasks noted above has begun. It is anticipated that a contract may be executed by October 1, 1983. Final design and preparation of construction contract documents is scheduled to take five months from the time of signing of the A&E firm contract. Concurrent activities include the additional field investigations to be initiated at the beginning of the final design phase and prequalification of bidders, including placement of notice in the Commerce Business Daily. Following AID and Grantee approval of contract documents scheduled to take one month, two months are allowed for construction bid preparation by prequalified contractors. A bidders conference will be arranged in Mogadishu, including a field visit to Kismayo, during the bid preparation period. Bid evaluation and construction contractor selection will take two months, to be followed by a two month negotiation period. On that basis, the construction contract should be awarded by September 1, 1984.

It is intended that Port rehabilitation construction funding will be obligated under a separate agreement before September, 1984 and that this next agreement will note the continuity between the activities described herein and those to be included in the next phase of the Kismayo Port Rehabilitation Project. It is further intended that sufficient funding will have been supplied through this Grant to allow such continuity and that unused funds from this Grant will be employed in facilitating such continuity.

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