PDBBU457

LIMITED SCOPE GRANT AGREEMENT

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

AND

The Republic of Kenya (Cooperating Country)

1. Project Title: Private Enterprise Development (PED)

2. AID Project Number: [redacted]

The above named parties hereby mutually agree to carry out the Project described in this Agreement in accordance with (1) the terms of this Agreement, including any annexes attached hereto, and (2) any general agreement between the two governments regarding economic or technical cooperation.

3. Amount of USAID Grant:	4. Cooperating Country Contribution:	5. Project Assistance Completion Date
$263,402	$88,000	June 30, 1992

6. This agreement consists of this title page and

Annexes A, B, C and D

7. For the Cooperating Country:	8. For the Agency for International Development
By: C. S. MBINDYO	By: John R. Westley
Signature: [signature]	Signature: [signature]
Title: Authorized Representative Ministry of Finance The Treasury	Title: Director, USAID/Kenya
Date: 2/2/91	Date: 2/2/91

Private Enterprise Development Project (PED Project)
615-0238

A. Project Description:

The purpose of the Private Enterprise Development (PED) project is to increase growth among private, for profit, enterprises. In support of that overall goal, the PED project is divided into five components. The Strategy Support component of the project assists, among other things, privatization and divestiture activities. The purpose of this LSGA is to assist the GOK in divesting and privatizing selected investments in the portfolios of two DFI's.

More specifically, this LSGA will fund: (1) an Assets Manager who will review and classify the investment portfolios of the Industrial and Commercial Development Corporation (ICDC) and the Industrial Development Bank (IDB) according to saleability, and (2) a Liabilities Manager who will be tasked with designing and implementing a strategy and mechanisms for reducing the foreign exchange exposure and debt service burden of the DFI's and their clients. By the end of the 12 month consultancies, it is expected that a minimum of 2 public offerings and 2 private placements will have been accomplished, and a system will be in place which can effectively mitigate foreign exchange exposure to the GOK.

B. Project Implementation:

1. Financial Contributions:

1.1 USAID Financing: The amount of the U.S.A.I.D. Grant to be provided is specified in Block 3 of the Title page.

1.2 Grantee Financing: The Government of Kenya will contribute office space, secretarial support services, local transport and telecommunications for official business, and counterpart staff time on an in-kind basis, in an amount equal to that shown in Block 4 on the Title page.

2. Contracting: Unless otherwise agreed by both parties, USAID will finance the services performed under the Grant. Selection and procurement of the two consultants financed by the grant will be conducted by the Executing Agency (ie. Ministry of Finance) and in accordance with standard Host Country Contracting regulations outlined in AID Handbook 11.

3. Reports: The Government of Kenya, Ministry of Finance will provide at least one copy of any reports or papers funded under this project.

4. Air Transport: Unless U.S.A.I.D. otherwise agrees in writing, transportation by air financed under the Grant, of property or persons, will be on carriers holding United States certification, to the extent services by such carriers are available.

5. Guidelines: Funds provided under this Grant must be used in accordance with U.S.A.I.D. guidelines. U.S.A.I.D. will provide the Ministry of Finance with a set of general provisions which will be included in consultants' contracts and which provide details of conditions and benefits accruing to personal service contractors.

C. Fiscal Data:

Appropriation:	72-111/21014
Budget Plan Code:	GSS19121615KG13
Amount:	$ 263,402
Project:	615-0238
Resctlno:	K210003

Funds Available
CONT/KENYA
Initials [illegible]
Date 1/10/91

ANNEX B

	ASSETS MANAGER OR LIABILITIES MANAGER		
	FAMILY OF 4 12 MOS	SINGLE 12 MOS	AVERAGE
COST ELEMENT			
SALARY ($76,982 is AID CAP)	$76,982	$76,982	
OVERTIME (not applicable)	$0	$0	
TEMPORARY LIVING ALLOWANCE ($57/DAY/ADULT x 60 DAYS x 2 ADULTS = 6840) (1/2 X 57/DAY/CHILD x 60 DAYS x 2 CHILDREN = 3420)	$10,260	$3,420	
HOUSING/UTILITIES (EX. TEL)/GUARDS (10 MO x $1000/MO)	$10,000	$10,000	
TRAVEL TO & FROM KENYA ($4000 x 4 INDIVIDUALS)	$16.000	$4.000	
SHIPMENT STORAGE & PACKING (HHE, ONE POV, UNACCOMPANIED AIR BAGAGE (UAB))	$18,000	$10,000	
EDUCATION ALLOWANCE (TUITION ISX x 2)	$15,000	$0	
OTHER DIRECT COSTS			
HEALTH INSURANCE ($314/MO)	$3,768	$1,884	
DEFFENSIVE BASED ACT (DBA) INS ($2.57/$100 UP TO $76,982)	$1,978	$1,978	
MEDICAL EVACUATION ($90/INDIVIDUAL)	$360	$90	
MISCELLANEOUS (PHYSICALS, INNOCUATIONS, VISAS, COMMUNICATIONS)	$2,000	$700	
TOTAL FOR ONE CONSULTANT	$154,348	$109,054	$131,701
TOTAL FOR BOTH CONSULTANTS			
2 X AVERAGE ($131,701) =			$263,402

ANNEX C

PROJECT AGREEMENT

STANDARD PROVISIONS ANNEX

A. Reference to 'this Agreement' means the original Project Agreement as modified by any revisions which have entered into effect. Reference to 'cooperating country' means the country or territory of the Grantee.

B. (1) USAID will make available the amount specified in Block 3 of this Agreement, as necessary for the Project, as may be further described in Annexes A and B.

(2) The Grantee will make available the amount specified in Block 4 of this Agreement, as necessary for the Project, as may further be described in Annex A. The Grantee will also make, or arrange to have made, additional contributions of property, services, facilities and funds required for carrying out the project as specified in Annex A.

C. USAID and the Grantee may obtain the assistance of other public and private agencies in carrying out their respective obligations under this Agreement. The two parties may agree to accept contributions of property, services, facilities and funds for purposes of this Agreement from other public and private agencies, and may agree upon the participation of any such third party in carrying out activities under this Agreement.

D. Except as otherwise specified herein or subsequently agreed by the parties, all contributions of the parties pursuant to this Agreement shall be made on or before the Project Assistance Completion Date, or amended date. A contribution of goods or services shall be considered to have been made when the services have been performed and the goods furnished as contemplated in this Agreement. Disbursement of funds may take place after final contributions have been made, but USAID shall not be required to disburse funds hereunder after the expiration of nine months following the estimated Project Assistance Completion Date specified.

E. The procurement of commodities and services to be financed in whole or in part by USAID may (where so required by USAID procedures) be undertaken only pursuant to Project Implementation Orders (PIOs) issues by USAID.

F. Unless otherwise specified in the Project Implementation Letter (PIL), the procurement of commodities imported specifically for the Project and financed with the USAID contribution referred to in Block 3 of this Agreement shall be subject to the provisions of USAID Regulation 1.

G. Unless otherwise agreed by the parties or otherwise specified in the applicable PIL, title to all property procured through financing by USAID pursuant to Block 3 of this Agreement shall be in the Grantee, or such public or private agency as it may authorize.

H. (1) Any property furnished to either party through financing by the other party pursuant to this Agreement shall, unless otherwise agreed by the party which financed the procurement, be used effectively for the purposes of the Project in accordance with this Agreement, and upon completion of the Project, will be used so as to further the objectives sought in carrying out the Project. Either party shall offer to return to the other, or to reimburse the other for, any property which it obtains through financing by the other party pursuant to this Agreement which is not used in accordance with the preceeding sentence.

(2) Any funds provided to either party pursuant to this Agreement which are not used in accordance with this Agreement, shall be refunded to the party providing the funds.

(3) Any interest or other earnings on funds provided by USAID to the Grantee under this Agreement will be returned to USAID by the Grantee.

I. (1) If USAID and any public or private organization furnishing commodities through USAID financing for operations hereunder in the cooperating country, is, under the laws, regulations or administrative procedures of the cooperating country, liable for customs, duties and import taxes on commodities imported into the cooperating country for purposes of carrying out this Agreement, the Grantee will pay such duties and taxes unless exemption is otherwise provided by any applicable international agreement.

(2) If any personnel (other than citizens and residents of the cooperating country), whether United States Government employees, or employees of public or private organizations under contract with, or individuals under contract with USAID, the Grantee or any agency authorized by the Grantee, who are present in the cooperating country to provide services which USAID has agreed to furnish or finance under this Agreement,

are under the laws, regulations or administrative procedures of the cooperative country, liable for income and social security taxes with respect to income which they are obligated to pay income or social security taxes to the Government of the United States of America, for property taxes on personal property intended for their own use, or for the payment of any tariff or duty upon personal or household goods brought into the cooperating country for the personal use of themselves and members of their families (not including such personal or household goods as may be sold by any such personnel in the cooperating county) or if any firm, not normally resident in the cooperating country, is liable for income, receipts, or other taxes on work financed by USAID hereunder, the grantee will pay such taxes, tariff, or duty unless exemption is otherwise provided by any applicable international agreement.

J. If funds provided by USAID 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 shall be convertible into currency of the cooperating country at the highest rate which, at the time the conversion is made, is not unlawful in the cooperating country.

K. USAID shall expend funds and carry on operations pursuant to this Agreement only in accordance with the applicable laws and regulations of the United States Government.

L. The two parties shall have the right at any time to observe operations carried out under this Agreement. Either party during the term of the Project and for three years after the completion of the Project shall further have the right (1) to examine any property procured through financing by that party under this Agreement, wherever such property is located, and (2) to inspect and audit any records and accounts with respect to funds provided by, or any properties and contract services procured through financing by, that party under this Agreement, wherever such records may be located and maintained. Each party, in arranging for any disposition of any property procured through financing by the other party under this Agreement, shall assure that the rights of examination, inspection and audit described in the preceding sentence are reserved to the party which did the financing.

M. USAID and the Grantee shall each furnish the other with such information as may be needed to determine the nature and scope of operations under this Agreement and to evaluate the effectiveness of such operations. USAID shall reserve the right to review and comment on the final draft report of each study undertaken before the final report is prepared.

N. The present Agreement shall enter into force when signed. Either party may terminate this Agreement by giving the other party thirty (30) days written notice of intention to terminate it. Termination of this Agreement shall terminate any obligations of the two parties to make contributions pursuant to Blocks 3 and 4 of this Agreement, except for payments which they are committed to make pursuant to noncancelable commitments entered into with third parties prior to the termination of the Agreement. It is expressly understood that the obligations under paragraph H relating to the use of property or funds shall remain in force after such termination. In addition, upon such termination USAID may, at USAID's expense, direct that title to goods financed under the Grant be transferred to USAID if the goods are from a source outside the Grantee's country, are in a deliverable state and have not been off loaded in ports of entry of the Grantee's country.

O. To assist in the implementation of the Project, USAID from time to time may issue PILs that will furnish additional information about matters stated in this Agreement. The parties may also use jointly agreed-upon PILs to confirm and record their mutual understanding on aspects of the implementation of this Agreement.

P. 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 with A.I.D. financed in whole or in part out of funds granted by A.I.D. under this Agreement.

SCOPE OF WORK FOR ASSETS MANAGER

1. Review the Industrial Commercial Development Corporation (ICDC) and the Industrial Development Bank (IDB) investment portfolios to classify their portfolios into the following categories:

   a. Performing
   b. Non-performing with potential for restructuring
   c. Non-performing, candidates for liquidation
   d. Social projects requiring continuous external financial support.

2. Review performing assets of ICDC and IDB and categorize the marketable assets according to potential for:

   a. Public offering
   b. Private placement
   c. Asset sell-off
   d. Retention for policy reasons.

3. Work with shareholders of potential public offerings to seek agreement for divestiture in order to permit the largest possible offering of shares.

4. Assist ICDC and IDB in arriving at a fair market valuation of assets, using external professional help where necessary.

5. Assist in negotiations between ICDC/IDB, shareholders, and underwriters regarding pricing and fees.

6. Assist in preparation of prospectus and other steps for public sale of assets.

7. Assist in establishing timetables for sales (target a minimum of 2 public offerings and 2 private placements over a 12 month period.

8. Assist in the establishment of a mechanism to manage government-directed non-commercial operations, and develop compensation rules and mechanisms for Treasury support of such activities within a pre-determined budget allocation.

9. Work with the Ministry of Finance, the Capital Markets Authority, the Attorney General's Chambers, USAID, The World Bank and other concerned agencies in preparation of a National privatization plan for GOK consideration.

SCOPE OF WORK FOR LIABILITIES MANAGER

1. Develop a strategy for managing existing and future foreign currency exposure of the ICDC, IDB and their client institutions.

2. Implement an approved strategy utilizing mechanisms which eliminate, reduce, or otherwise mitigate foreign currency exposure to manageable levels.

3. Institutionalize the mechanisms within the financial operations of the DFI's.

4. Work with creditors, donors, and other concerned parties in conducting debt swaps, debt-equity conversions, or whatever mechanisms are adopted.

5. Review the overall asset-liability structure of the DFI's and selected client firms and develop recommendations which would reduce domestic liabilities and improve cash flow and profitability.