
GRANT NUMBER 9182-MON (EF)

GRANT AGREEMENT
(Japan Fund For Poverty Reduction)

(Improving School Dormitory Environment for Primary Students in Western Region Project)

between

MONGOLIA

and

ASIAN DEVELOPMENT BANK

DATED 26 Jan 2016

MON 49168

**GRANT AGREEMENT
(Japan Fund For Poverty Reduction)**

GRANT AGREEMENT dated 26 January 2016 between MONGOLIA ("Recipient") and ASIAN DEVELOPMENT BANK ("ADB").

WHEREAS

(A) the Recipient has applied to the Japan Fund For Poverty Reduction ("JFPR") for a grant, to be administered by ADB, for the purposes of the Project described in Schedule 1 to this Grant Agreement;

(B) on 4 September 2015, the Government of Japan has approved that JFPR would provide, and ADB has agreed to administer, the grant provided for herein upon the terms and conditions set out in the JFPR 2015 Guidelines; and

(C) ADB has agreed to make the proceeds of the grant from JFPR available to the Recipient upon the terms and conditions set forth herein;

NOW THEREFORE the parties agree as follows:

ARTICLE I

Grant Regulations; Definitions

Section 1.01. All provisions of the Externally Financed Grant Regulations of ADB, dated 8 April 2009 ("Grant Regulations"), are hereby made applicable to this Grant Agreement with the same force and effect as if they were fully set forth herein.

Section 1.02. Wherever used in this Grant Agreement, the several terms defined in the Grant Regulations have the respective meanings therein set forth unless modified herein or the context otherwise requires. Additional terms used in this Grant Agreement have the following meanings:

(a) "Aimag" means the Recipient's administrative unit below its central government level;

(b) "Consulting Guidelines" means the Guidelines on the Use of Consultants by Asian Development Bank and its Borrowers (2013, as amended from time to time);

(c) "Consulting Services" means the services to be financed out of the proceeds of the Grant for carrying out of the activities under Schedule 1 to this Grant Agreement;

(d) "Generic EMP" means a generic environmental management plan for the Project, including any update thereto, incorporated in the PAM;

(e) "Goods" means equipment and materials to be financed out of the proceeds of the Grant, including related services such as transportation, insurance, installation, commissioning, training, and initial maintenance, but excluding Consulting Services;

(f) "Indigenous Peoples Safeguards" means the principles and requirements set forth in Chapter V, Appendix 3, and Appendix 4 (as applicable) of the SPS;

(g) "Loan Disbursement Handbook" means ADB's Loan Disbursement Handbook (2015, as amended from time to time);

(h) "PAM" means the project administration manual for the Project dated 2 October 2015 and agreed between the Recipient and ADB, as updated from time to time in accordance with the respective administrative procedures of the Recipient and ADB;

(i) "PIU" means a project implementing unit to be established with in the Project Executing Agency;

(j) "Procurement Guidelines" means ADB's Procurement Guidelines (2015, as amended from time to time);

(k) "Procurement Plan" means the procurement plan for the Project dated 2 October 2015 and agreed between the Recipient and ADB, as updated from time to time in accordance with the Procurement Guidelines, the Consulting Guidelines, and other arrangements agreed with ADB;

(l) "Project Executing Agency" for the purposes of, and within the meaning of, the Grant Regulations means the Recipient's Ministry of Education, Culture and Science or any successor thereto acceptable to ADB, which is responsible for the carrying out of the Project;

(m) "Project facilities" means facilities to be constructed, procured, rehabilitated and/or maintained under the Project;

(n) "Project Implementing Agencies" means the Recipient's Ministry of Education, Culture and Science, Gobi-Altai, Uvs, and Zavkhan aimag education departments;

(o) "Safeguard Policy Statement" or "SPS" means ADB's Safeguard Policy Statement (2009);

(p) "SEGAP" means a social, ethnic, and gender action plan for the Project, including any update thereto, prepared and submitted by the Recipient and cleared by ADB

(q) "Soum" means the Recipient's administrative unit immediately below Aimag; and

(r) "Works" means construction or civil works to be financed out of the proceeds of the Grant, including services such as drilling or mapping, and project related services that are provided as part of a single responsibility or turnkey contract, but excluding Consulting Services.

ARTICLE II

The Grant

Section 2.01. ADB agrees to make available to the Recipient a grant from JFPR in the amount of three million Dollars (\$3,000,000).

ARTICLE III

Use of Proceeds of the Grant

Section 3.01. The Recipient shall cause the proceeds of the Grant to be applied to the financing of expenditures on the Project in accordance with the provisions of this Grant Agreement.

Section 3.02. The proceeds of the Grant shall be allocated and withdrawn in accordance with the provisions of Schedule 2 to this Grant Agreement, as such Schedule may be amended from time to time by agreement between the Recipient and ADB.

Section 3.03. Except as ADB may otherwise agree, the Recipient shall procure, or cause to be procured, the items of expenditure to be financed out of the proceeds of the Grant in accordance with the provisions of Schedule 3 to this Grant Agreement.

Section 3.04. Withdrawals from the Grant Account in respect of Goods, Works and Consulting Services shall be made only on account of expenditures relating to:

- (a) Goods which are produced in and supplied from and Works and Consulting Services which are supplied from such member countries of ADB as shall have been specified by ADB from time to time as eligible sources for procurement, and
- (b) Goods, Works and Consulting Services which meet such other eligibility requirements as shall have been specified by ADB from time to time.

Section 3.05. The Grant Closing Date for the purposes of Section 8.02 of the Grant Regulations shall be 30 April 2019 or such other date as may from time to time be agreed between the Recipient and ADB.

ARTICLE IV

Particular Covenants

Section 4.01. In the carrying out of the Project and operation of the Project facilities, the Recipient shall perform, or cause to be performed, all obligations set forth in Schedule 4 to this Grant Agreement.

Section 4.02. (a) The Recipient shall (i) maintain separate accounts and records for the Project; (ii) prepare annual financial statements for the Project in accordance with accounting principles acceptable to ADB; (iii) have such financial statements audited annually by independent auditors whose qualifications, experience and terms of reference are acceptable to ADB, in accordance with international standards for auditing or the national equivalent acceptable to ADB; (iv) as part of each such audit, have the auditors prepare a report (which includes the auditors' opinion on the financial statements, use of the Grant proceeds and compliance with the financial covenants of this Grant Agreement as well as on the use of the procedures for imprest fund and statement of expenditures) and a management letter (which sets out the deficiencies in the internal control of the Project that were identified in the course of the audit, if any); and (v) furnish to ADB, no later than 6 months after the end of each related fiscal year, copies of such audited financial statements, audit report and management letter, all in the English language, and such other information concerning these documents and the audit thereof as ADB shall from time to time reasonably request.

(b) ADB shall disclose the annual audited financial statements for the Project and the opinion of the auditors on the financial statements within 30 days of the date of their receipt by posting them on ADB's website.

(c) The Recipient shall enable ADB, upon ADB's request, to discuss the financial statements for the Project and the Recipient's financial affairs where they relate to the Project with the auditors appointed pursuant to subsection (a)(iii) hereinabove, and shall authorize and require any representative of such auditors to participate in any such discussions requested by ADB. This is provided that such discussions shall be conducted only in the presence of an authorized officer of the Recipient, unless the Recipient shall otherwise agree.

Section 4.03. The Recipient shall enable ADB's representatives to inspect the Project, the Goods and Works, and any relevant records and documents.

Section 4.04. The Recipient acknowledges and agrees that this Grant Agreement is entered into by ADB, not in its individual capacity, but as grant administrator for JFPR. Accordingly, the Recipient agrees that (i) it may only withdraw Grant proceeds to the extent that ADB has received proceeds for the Grant from JFPR, and (ii) that ADB does not assume any obligations or responsibilities of JFPR in respect of the Project or the Grant other than those set out in this Grant Agreement.

ARTICLE V

Effectiveness

Section 5.01. The following is specified as an additional condition to the effectiveness of this Grant Agreement for the purposes of Section 9.01(e) of the Grant Regulations: A Project manager shall have been engaged for the PIU.

Section 5.02. A date 90 days after the date of this Grant Agreement is specified for the effectiveness of this Grant Agreement for the purposes of Section 9.04 of the Grant Regulations.

ARTICLE VI

Miscellaneous

Section 6.01. The Minister of Finance of the Recipient is designated as representative of the Recipient for the purposes of Section 11.02 of the Grant Regulations.

Section 6.02. The following addresses are specified for the purposes of Section 11.01 of the Grant Regulations:

For Mongolia

Ministry of Finance
Government Building – 2
Negdsen Undestnii gudamj – 5/1
Ulaanbaatar – 210646
Mongolia

Facsimile Number:

(976-11) 262-272.

For ADB

Asian Development Bank
6 ADB Avenue
Mandaluyong City
1550 Metro Manila
Philippines

Facsimile Numbers:


(632) 636-2444
(632) 636-2407.

IN WITNESS WHEREOF the parties hereto, acting through their representatives thereunto duly authorized, have caused this Grant Agreement to be signed in their respective names as of the day and year first above written and to be delivered at the principal office of ADB.

MONGOLIA

By  _____
BOLOR BAYARBAATAR
Minister
Ministry of Finance

ASIAN DEVELOPMENT BANK

By  _____
ROBERT SCHOELLHAMMER
Country Director
Mongolia Resident Mission

SCHEDULE 1

Description of the Project

1. The objective of the Project is to establish and implement models to improve physical dormitory environment and services established and implemented in 3 Aimags of the western region.

2. The Project shall comprise the following outputs:

Output 1: Physical school dormitory environment improved. Supporting minor civil works for Soum school dormitories in Gobi-Altai, Uvs, and Zavkhan Aimags of the western region, including:

- (a) rehabilitation of buildings to adequately cope with winter temperatures, wind and precipitation;
- (b) repair and/or installation of universal design water, sanitation, and hygiene facilities meeting the minimum requirements;
- (c) provision of beds and other furniture to accommodate larger numbers of students; and
- (d) renovation of common rooms properly furnished for study, reading, and extracurricular activities.

Output 2: Capacity to deliver school dormitory services improved. Supporting capacity development of school dormitory staff and primary class teachers, school management and accountants, and Aimag education department staff to improve school dormitory services for primary students staying in dormitories and their parents in Gobi-Altai, Uvs, and Zavkhan Aimags.

Output 3: Policy and regulatory frameworks for improving school dormitory environment developed. Supporting the development of comprehensive standards, national strategy and financing policy for improving school dormitory environment.

3. The Project is expected to be completed by 31 October 2018.

SCHEDULE 2**Allocation and Withdrawal of Grant Proceeds**General

1. The table attached to this Schedule sets forth the Categories of items of expenditure to be financed out of the proceeds of the Grant and the allocation of the Grant proceeds to each such Category ("Table"). (Reference to "Category" in this Schedule is to a Category of the Table.)

Basis for Withdrawal from the Grant Account

2. Except as ADB may otherwise agree, the proceeds of the Grant shall be disbursed on the basis of the withdrawal percentage for each item of expenditure set forth in the Table.

Reallocation

3. Notwithstanding the allocation of Grant proceeds and the withdrawal percentages set forth in the Table,

(a) if the amount of the Grant allocated to any Category appears to be insufficient to finance all agreed expenditures in that Category, ADB may, by notice to the Recipient, (i) reallocate to such Category, to the extent required to meet the estimated shortfall, amounts of the Grant which have been allocated to another Category but, in the opinion of ADB, are not needed to meet other expenditures, and (ii) if such reallocation cannot fully meet the estimated shortfall, reduce the withdrawal percentage applicable to such expenditures in order that further withdrawals under such Category may continue until all expenditures thereunder shall have been made; and

(b) if the amount of the Grant allocated to any Category appears to exceed all agreed expenditures in that Category, ADB may, by notice to the Recipient, reallocate such excess amount to any other Category.

Disbursement Procedures

4. Except as ADB may otherwise agree, the Grant proceeds shall be disbursed in accordance with the Loan Disbursement Handbook.

TABLE

ALLOCATION AND WITHDRAWAL OF GRANT PROCEEDS (Improving School Dormitory Environment for Primary Students in Western Region Project)			
Number	Item	Total Amount Allocated for JFPR Financing (\$)	Basis for Withdrawal from the Grant Account
		Category	
1	Works	1,740,000	96.7% of total expenditure claimed
2	Equipment and furniture	90,000	100% of total expenditure claimed
3	Books, teaching-learning and other materials	60,000	100% of total expenditure claimed
4	Training and workshops	30,000	100% of total expenditure claimed
5	Consulting services	463,000	100% of total expenditure claimed
6	Project management	544,960	100% of total expenditure claimed
7	Recurrent costs	30,400	100% of total expenditure claimed
8	Unallocated	41,640	
	Total	3,000,000	

SCHEDULE 3

Procurement of Goods, Works and Consulting Services

General

1. The procurement of Goods, Works and Consulting Services shall be subject to and governed by the Procurement Guidelines, and the Consulting Guidelines, respectively.
2. All terms used in this Schedule and not otherwise defined in this Grant Agreement have the meanings provided in the Procurement Guidelines and/or the Consulting Guidelines, as applicable.

Goods and Works

3. Except as ADB may otherwise agree, Goods and Works shall only be procured on the basis of the methods of procurement set forth below:
 - (a) National Competitive Bidding; and
 - (b) Shopping.
4. The methods of procurement are subject to, among other things, the detailed arrangements and threshold values set forth in the Procurement Plan. The Recipient may only modify the methods of procurement or threshold values with the prior agreement of ADB, and modifications must be set out in updates to the Procurement Plan.

Domestic Preference

5. The Recipient may grant a margin of preference in the evaluation of bids under international competitive bidding in accordance with paragraphs 2.55(a) and 2.56 of the Procurement Guidelines for domestically manufactured Goods and paragraphs 2.55(b) and 2.56 of the Procurement Guidelines for domestic Works.

National Competitive Bidding

6. The Recipient and ADB shall ensure that, prior to the commencement of any procurement activity under national competitive bidding, the Recipient's national competitive bidding procedures are consistent with the Procurement Guidelines. Any modifications or clarifications to such procedures agreed between the Recipient and ADB shall be set out in the Procurement Plan. Any subsequent change to the agreed modifications and clarifications shall become effective only after approval of such change by the Recipient and ADB.

Condition for Award of Works Contract

7. The Recipient shall ensure that no Works contracts shall be awarded until the relevant provisions from the Generic EMP are incorporated into the Works contract.

Consulting Services

8. Except as ADB may otherwise agree, and except as set forth in the paragraph below, the Recipient shall apply quality- and cost-based selection for selecting and engaging Consulting Services.

9. The Recipient shall apply the following method for selecting and engaging the specified Consulting Services, in accordance with, among other things, the procedures set forth in the Procurement Plan: Consultants' Qualifications Selection for engineering firm for drawings of dormitory.

10. The Recipient shall recruit the individual consultants for architectural engineering, environment safeguards, dormitory equipment and furniture, dormitory staff policy and management, education finance and economics, social development, law, school nutrition, and project management.

Industrial or Intellectual Property Rights

11. (a) The Recipient shall ensure that all Goods and Works procured (including without limitation all computer hardware, software and systems, whether separately procured or incorporated within other goods and services procured) do not violate or infringe any industrial property or intellectual property right or claim of any third party.

(b) The Recipient shall ensure that all contracts for the procurement of Goods and Works contain appropriate representations, warranties and, if appropriate, indemnities from the contractor or supplier with respect to the matters referred to in subparagraph (a) of this paragraph.

12. The Recipient shall ensure that all ADB-financed contracts with consultants contain appropriate representations, warranties and, if appropriate, indemnities from the consultants to ensure that the consulting services provided do not violate or infringe any industrial property or intellectual property right or claim of any third party.

ADB's Review of Procurement Decisions

13. Contracts procured under National Competitive Bidding procedures, the first contract procured under Shopping procedures, and contracts for consulting services shall be subject to prior review by ADB, unless otherwise agreed between the Recipient and ADB and set forth in the Procurement Plan.

SCHEDULE 4

Execution of Project; Financial and Other Matters

Implementation Arrangements

1. The Recipient shall ensure that the Project is implemented in accordance with the detailed arrangements set forth in the PAM. Any subsequent change to the PAM shall become effective only after approval of such change by the Recipient and ADB. In the event of any discrepancy between the PAM and this Grant Agreement, the provisions of this Grant Agreement shall prevail.

Counterpart Support

2. The Recipient shall ensure that: (a) all local and foreign currency counterpart funds, including cash advances, necessary for the smooth and successful completion of the Project are provided in a timely manner; and (b) additional funds, as and when needed, shall be provided to meet any Project shortfall or cost overruns.

Safeguards

3. The Recipient shall ensure that the preparation, design, construction, implementation, operation and decommissioning of the Project and all Project facilities comply with (a) all applicable laws and regulations of the Recipient relating to environment, health and safety; (b) the Safeguard Policy Statement; and (c) all measures and requirements set forth in the Generic EMP, and any corrective or preventative actions (i) set forth in a Project Progress Report, or (ii) which are subsequently agreed between ADB and the Recipient.

4. The Recipient shall cause the Project Executing Agency to ensure that the preparation, design, construction, implementation, and operation of all activities under the Project comply with (a) all applicable laws, regulations and guidelines of the Government relating to ethnic minorities, (b) the Indigenous Peoples Safeguards' principles and requirements set forth in Chapter V, Appendix 3, and Appendix 4 (as applicable) of the Safeguard Policy Statement; and (c) all measures set forth in the SEGAP, and any corrective or preventative actions (i) set forth in Project progress reports, or (ii) which are subsequently agreed between ADB and the Recipient.

5. The Recipient shall ensure that the Project does not have any involuntary resettlement impacts, all within the meaning of SPS. In the event that the Project does have such impact, the Recipient shall take all steps required to ensure that the Project complies with the applicable laws and regulations of the Recipient and with SPS.

Gender and Social Development

6. The Recipient shall, through the Project Executing Agency and the Project Implementing Agencies, ensure that (a) the SEGAP is implemented in accordance with its terms; (b) the bidding documents and contracts include relevant provisions for contractors to comply with the measures set forth in the SEGAP; (c) adequate resources are allocated for implementation of the SEGAP; and (d) progress on implementation of the SEGAP, including

progress toward achieving key gender outcome and output targets, are regularly monitored and reported to ADB.

Operation and Maintenance

7. The Recipient shall ensure that sufficient budgets are provided to operate and maintain the Project facilities.

Works Contract

8. The Recipient, through the Project Executing Agency, shall ensure that all Works under the Project are designed and constructed in accordance with national standards and specifications and that the construction supervision, quality control, contract management, and completion inspection and acceptance follow all applicable national laws and regional and local regulations.

Regulatory Framework

9. The Recipient shall ensure that by 31 December 2018, the Recipient shall develop a plan to adopt comprehensive standards for school dormitories to be developed under the Project, in a form and substance satisfactory to ADB.

National Strategy and Financing Policy

10. The Recipient shall ensure that by 31 December 2018, the Recipient shall adopt the national strategy and financing policy, in a form and substance satisfactory to ADB, to improve school dormitory environment with focus on Soum schools to be developed under the Project.

Governance and Anticorruption

11. The Recipient shall (a) comply with ADB's Anticorruption Policy (1998, as amended to date) and acknowledge that ADB reserves the right to investigate directly, or through its agents, any alleged corrupt, fraudulent, collusive or coercive practice relating to the Project; and (b) cooperate with any such investigation and extend all necessary assistance for satisfactory completion of such investigation.

12. The Recipient shall ensure that the anticorruption provisions acceptable to ADB are included in all bidding documents and contracts, including provisions specifying the right of ADB to audit and examine the records and accounts of the executing and implementing agencies and all contractors, suppliers, consultants, and other service providers as they relate to the Project.

13. The Recipient shall ensure that (a) the Project Executing Agency shall comply with applicable laws and regulations of the Recipient on combating money laundering and financing of terrorism; and (b) Grant proceeds are not used, directly or indirectly, in money laundering or financing of terrorism.

Visibility

14. The Recipient shall comply with the Visibility and Coordination Guidelines of JFPR; and in particular, the Recipient shall include the JFPR and Japan ODA logos in all relevant Project publications and on any equipment or facility funded by JFPR. For the purposes of this provision, Visibility and Coordination Guidelines of JFPR refers to the "Guidance Notes on Visibility of Japan and Coordination with Embassy of Japan and JICA" agreed between ADB and the Government of Japan in March 2012, as amended from time to time.