
GRANT NUMBER 0575-TON(SF)

GRANT AGREEMENT
(Special Operations)
(Cyclone Gita Recovery Project)

between

KINGDOM OF TONGA

and

ASIAN DEVELOPMENT BANK

DATED 2 JULY 2018

TON 52129

GRANT AGREEMENT (Special Operations)

GRANT AGREEMENT dated 2 July 2018 between the Kingdom of Tonga ("Recipient") and ASIAN DEVELOPMENT BANK ("ADB").

WHEREAS

(A) the Recipient has applied to ADB for a grant for the purposes of the Project described in Schedule 1 to this Grant Agreement;

(B) the Project will be carried out by the Recipient's Ministry of Finance and National Planning through the Tonga Power Limited (TPL), and for this purpose the Recipient will make available to TPL the proceeds of the grant provided for herein upon terms and conditions satisfactory to ADB; and

(C) ADB has agreed to make a grant to the Recipient from ADB's Special Funds resources upon the terms and conditions set forth herein and in the Project Agreement of even date herewith between ADB and TPL;

NOW THEREFORE the parties agree as follows:

ARTICLE I

Grant Regulations; Definitions

Section 1.01. All the provisions of ADB's Special Operations Grant Regulations, dated 1 January 2017 ("Grant Regulations"), are hereby made applicable to this Grant Agreement with the same force and effect as if they were fully set forth herein, subject, however, to the following modifications:

(a) Section 2.01(m) is deleted and the following is substituted therefor:

"Project Agreement" means the project agreement of even date herewith between ADB and TPL, as such agreement may be amended from time to time; and such project agreement includes all schedules to the Project Agreement;

(b) The term "Project Executing Agency" appearing in Sections 6.01(a), 8.01(c), 8.01(e), 8.01(i), 9.01(b) and 9.02(b) of the Grant Regulations shall be substituted by the term "TPL".

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) "Consulting Services" means consulting services as described in the Procurement Regulations and set out in the Procurement Plan, and to be financed out of the proceeds of the Grant;
- (b) "EARF" means the environmental assessment and review framework for the Project, including any update thereto, prepared and submitted by the Recipient and cleared by ADB;
- (c) "EMP" means each environmental management plan for the Project, including any update thereto, incorporated in the IEE;
- (d) "Environmental Safeguards" means the principles and requirements set forth in Chapter V, Appendix 1, and Appendix 4 (as applicable) of the SPS;
- (e) "Goods" means equipment and materials as set out in the Procurement Plan and to be financed out of the proceeds of the Grant, including any related Nonconsulting Services such as transportation, insurance, installation, commissioning, training, and initial maintenance;
- (f) "IEE" means each initial environmental examination for the Project, including any update thereto, prepared and submitted by the Recipient pursuant to the requirements set forth in the EARF and cleared by ADB;
- (g) "Loan Disbursement Handbook" means ADB's Loan Disbursement Handbook (2017, as amended from time to time);
- (h) "Nonconsulting Services" means nonconsulting services as described in the Procurement Regulations and set out in the Procurement Plan, and to be financed out of the proceeds of the Grant;
- (i) "PAM" means the project administration manual for the Project dated 18 May 2018 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;
- (j) "Procurement Plan" means the procurement plan for the Project dated 18 May 2018 and agreed between the Recipient and ADB, as updated from time to time in accordance with the Procurement Policy, the Procurement Regulations, and other arrangements agreed with ADB;
- (k) "Procurement Policy" means ADB's Procurement Policy - Goods, Works, Nonconsulting and Consulting Services (2017, as amended from time to time);
- (l) "Procurement Regulations" means ADB's Procurement Regulations for ADB Borrowers - Goods, Works, Nonconsulting and Consulting Services (2017, as amended from time to time);
- (m) "Project Executing Agency" means for the purposes of, and within the meaning of, the Grant Regulations means the Recipient's Ministry of

Finance and National Planning, which is responsible for the carrying out of the Project;

- (n) "Safeguards Monitoring Report" means each report prepared and submitted by the Recipient to ADB that describes progress with implementation of, and compliance with, the EMP, including any corrective and preventative actions;
- (o) "Services" means Consulting Services and Nonconsulting Services;
- (p) "SPS" means ADB's Safeguard Policy Statement (2009);
- (q) "Subsidiary Grant Agreement" means the agreement between the Recipient and TPL referred to in Section 3.01(a) of this Grant Agreement; and
- (r) "Works" means construction or civil works as set out in the Procurement Plan and to be financed out of the proceeds of the Grant, including any related Nonconsulting Services and project related services that are provided as part of a single responsibility or turnkey contract.

ARTICLE II

The Grant

Section 2.01. ADB agrees to make available to the Recipient from ADB's Special Funds resources an amount of six million eight hundred thousand Dollars (\$6,800,000).

ARTICLE III

Use of Proceeds of the Grant

Section 3.01. The Recipient shall make the proceeds of the Grant available to TPL as a grant under a Subsidiary Grant Agreement upon terms and conditions satisfactory to ADB and shall cause the proceeds of the Grant to be applied exclusively to the financing of expenditures on the Project in accordance with the provisions of this Grant Agreement and the Project 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 Services shall be made only on account of expenditures relating to:

- (a) Goods which are produced in and supplied from and Works and 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 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 31 December 2020 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 3 to this Grant Agreement and the Project Agreement.

Section 4.02. The Recipient shall enable ADB's representatives to inspect the Project, the Goods, Works and Services, and any relevant records and documents.

Section 4.03. The Recipient shall take all actions which shall be necessary on its part to enable TPL to perform its obligations under the Project Agreement, and shall not take or permit any action which would interfere with the performance of such obligations.

Section 4.04. (a) The Recipient shall exercise its rights under the Subsidiary Grant Agreement in such a manner as to protect the interests of the Recipient and ADB and to accomplish the purposes of the Grant.

(b) No rights or obligations under the Subsidiary Grant Agreement shall be assigned, amended, or waived without the prior concurrence of ADB.

ARTICLE V

Effectiveness

Section 5.01. A date 90 days after the date of this Grant Agreement is specified for the effectiveness of the Grant Agreement for the purposes of Section 9.04 of the Grant Regulations.

ARTICLE VI

Termination

Section 6.01. The Grant Agreement and all obligations of the parties thereunder shall terminate on a date 40 years after the date of this Agreement.

ARTICLE VII

Delegation of Authority

Section 7.01. The Recipient hereby designates the Project Executing Agency as its agent for the purposes of taking any action or entering into any agreement required or permitted under Sections 3.02, 3.03 and 3.05 of this Grant Agreement and under Sections 5.01, 5.02, 5.03 and 5.04 of the Grant Regulations.

Section 7.02. Any action taken or any agreement entered into by the Project Executing Agency pursuant to the authority conferred under Section 7.01 of this Grant Agreement shall be fully binding on the Recipient and shall have the same force and effect as if taken by the Recipient.

Section 7.03. The authority conferred on the Project Executing Agency under Section 7.01 of this Grant Agreement may be revoked or modified by agreement between the Recipient and ADB.

ARTICLE VIII

Miscellaneous

Section 8.01. The Minister of Finance and National Planning of the Recipient is designated as representative of the Recipient for the purposes of Section 11.02 of the Grant Regulations.

Section 8.02. The following addresses are specified for the purposes of Section 11.01 of the Grant Regulations:

For the Recipient

Ministry of Finance and National Planning
Vuna Road
Nuku'alofa
Kingdom of Tonga

Facsimile Number:

(676) 24040

For ADB

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

Facsimile Numbers:

(632) 636-2444

(632) 636-2446.

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.

KINGDOM OF TONGA

By



SYURKANI ISHAK KASIM
Authorized Representative

ASIAN DEVELOPMENT BANK

By



JAMES PATRICK LYNCH
Deputy Director General
Pacific Department

SCHEDULE 1**Description of the Project**

1. The objective of the Project is to restore and upgrade the electricity supply in Nuku'alofa priority areas.
2. The Project shall comprise of (i) the rehabilitation of the existing 11 kilovolt overhead network and the existing low voltage overhead network using disaster resilience measures including modern aerial-bundled conductors, and (ii) installation of new 11/0.4 kilovolt distribution transformers and new underground service cables to customer premises with new smart meters.
3. The Project is expected to be completed by 30 June 2020.

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 amounts of the Grant to each such Category ("Table"). (Reference to "Category" in this Schedule is to a Category or Subcategory of the Table.)

Basis for Withdrawal from the Grant Account

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

Disbursement Procedures

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

Condition for Withdrawals from Grant Account

4. Notwithstanding any other provision of this Grant Agreement, no withdrawals shall be made from the Grant Account until the Subsidiary Grant Agreement, in a form and substance satisfactory to ADB, shall have been duly executed and delivered on behalf of the Recipient and TPL.

TABLE

| ALLOCATION AND WITHDRAWAL OF GRANT PROCEEDS | | | |
|---|--|---|--|
| Number | Item | Total Amount Allocated for ADB Financing (\$) | Basis for Withdrawal from the Grant Account |
| | | Category | |
| 1 | Works, equipment and materials, and recurrent costs ** | 6,800,000 | 100% of total expenditure claimed* |
| | TOTAL | 6,800,000 | |

* Exclusive of taxes and duties imposed within the territory of the Recipient.

** Subject to the condition for withdrawal described in paragraph 4 of Schedule 2.

SCHEDULE 3

Execution of Project; Financial Matters

Implementation Arrangements

1. The Recipient, MFNP and TPL 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.

Procurement

2. The Recipient, through MFNP and TPL, shall ensure that:

- (a) the procurement of Goods, Works and Services is carried out in accordance with the Procurement Policy and the Procurement Regulations;
- (b) Goods, Works and Services shall be procured based on the detailed arrangements set forth in the Procurement Plan, including the procurement and selection methods, the type of bidding documents, and ADB's review requirements. The Recipient may modify the detailed arrangements set forth in the Procurement Plan only with the prior agreement of ADB, and such modifications must be set out in updates to the Procurement Plan; and
- (c) (i) all Goods and Works procured and Services obtained (including 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; and (ii) all contracts for the procurement of Goods, Works and Services contain appropriate representations, warranties and, if appropriate, indemnities from the contractor, supplier, consultant or service provider with respect to the matters referred to in this subparagraph.

3. The Recipient and TPL shall not award any Works contracts which involve environmental impacts until:

- (a) the relevant environment authority of the Recipient has granted the final approval of the relevant IEE; and
- (b) the Recipient or TPL, as applicable, has incorporated the relevant provisions from the EMP into the Works contract.

Counterpart Support

4. The Recipient shall make available through budgetary allocations or other

means, all counterpart funds required for the timely and effective implementation of the Project including any funds required to (a) mitigate unforeseen environmental and social impacts; and (b) meet any additional costs arising from design changes, price escalations in construction or installation costs or other unforeseen circumstances. In addition to the foregoing, the Recipient shall ensure that TPL has sufficient funds to satisfy its liabilities arising from any Works, Goods and/or Services contract.

Environment

5. The Recipient, through MFNP and TPL, 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 Environmental Safeguards; (c) the EARF; and (d) all measures and requirements set forth in the IEE, the EMP, and any corrective or preventative actions set forth in a Safeguards Monitoring Report.

Involuntary Resettlement and Indigenous Peoples

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

Human and Financial Resources to Implement Safeguards Requirements

7. The Recipient, MFNP and TPL shall make available necessary budgetary and human resources to fully implement each EMP.

Safeguards – Related Provisions in Bidding Documents and Works Contracts

8. The Recipient, through MFNP and TPL, shall ensure that all bidding documents and contracts for Works contain provisions that require contractors to:

- (a) comply with the measures relevant to the contractor set forth in the IEE and the EMP, and any corrective or preventative actions set forth in a Safeguards Monitoring Report;
- (b) make available a budget for all such environmental measures; and
- (c) provide the Recipient or TPL with a written notice of any unanticipated environmental, resettlement or indigenous peoples risks or impacts that arise during construction, implementation or operation of the Project.

Safeguards Monitoring and Reporting

9. The Recipient, through MFNP and TPL, shall do the following:

- (a) submit semiannual Safeguards Monitoring Reports to ADB and disclose relevant information from such reports to affected persons promptly

upon submission;

- (b) if any unanticipated environmental risks and impacts arise during construction, implementation or operation of the Project that were not considered in the IEE or the EMP, promptly inform ADB of the occurrence of such risks or impacts, with detailed description of the event and proposed corrective action plan; and
- (c) report any actual or potential breach of compliance with the measures and requirements set forth in the EMP promptly after becoming aware of the breach.

Prohibited List of Investments

10. The Recipient, through MFNP and TPL, shall ensure that no proceeds of the Grant are used to finance any activity included in the list of prohibited investment activities provided in Appendix 5 of the SPS.

Labor Standards, Health and Safety

11. The Recipient, through MFNP and TPL, shall ensure that the core labor standards and the applicable laws and regulations of the Recipient are complied with during Project implementation. The Recipient shall include specific provisions in the bidding documents and contracts financed by ADB under the Project requiring that the contractors, among other things: (a) comply with the applicable labor law and regulations of the Recipient and incorporate applicable workplace occupational safety norms; (b) do not use child labor; (c) do not discriminate workers in respect of employment and occupation; (d) do not use forced labor; (e) allow freedom of association and effectively recognize the right to collective bargaining; and (f) disseminate, or engage appropriate service providers to disseminate, information on the risks of sexually transmitted diseases, including HIV/AIDS, to the employees of contractors engaged under the Project and to members of the local communities surrounding the Project area, particularly women.

12. The Recipient, through MFNP and TPL, shall strictly monitor compliance with the requirements set forth in paragraph 11 above and provide ADB with regular reports.

Gender and Development

13. The Recipient, through MFNP and TPL, shall ensure that the principles of gender equality aimed at increasing Project benefits and impact on women in the Project area are followed during implementation of the Project. These include (a) equal pay to men and women for work of equal value; (b) enabling working conditions for women workers; and (c) taking necessary actions to encourage women living in the Project area to participate in the design and implementation of Project activities.

Governance and Anticorruption

14. The Recipient, MFNP and TPL 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.

15. The Recipient, MFNP and TPL 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.

Project Website

16. The Recipient, through MFNP and TPL, shall maintain a Project website which shall be regularly updated. The Project website shall include information on (a) bidding procedures, bidders, and contract awards; (b) use of the funds disbursed under the Project; and (c) physical progress of the Project.

Operations and Maintenance

17. The Recipient, through TPL, shall ensure that adequate funding for operations and maintenance of Project facilities to be provided during and after Project completion.