
GRANT NUMBER 0424-NAU (EF)

GRANT AGREEMENT
(Externally Financed)

(Electricity Supply Security and Sustainability Project)

between

NAURU

and

ASIAN DEVELOPMENT BANK

DATED 9 FEBRUARY 2015

NAU 46455

GRANT AGREEMENT (European Union)

GRANT AGREEMENT dated 9 February 2015 between NAURU ("Recipient") and ASIAN DEVELOPMENT BANK ("ADB").

WHEREAS

(A) by a grant agreement of even date herewith between the Recipient and ADB ("Special Operations Grant Agreement"), ADB has agreed to provide a grant ("Special Operations Grant") to the Recipient from ADB's Special Funds resources in the amount of two million Dollars (\$2,000,000) for the purposes of the Project described in Schedule 1 to the Special Operations Grant Agreement;

(B) the Recipient has applied to the European Union ("EU") for a grant ("Grant", and together with the Special Operations Grant, "Grants"), to be administered by ADB, for the purposes of cofinancing expenditures under the Project;

(C) by an agreement dated 15 December 2014 between ADB and the EU ("Cofinancing Agreement"), the EU has agreed to provide, and ADB has agreed to administer, the Grant provided for herein upon the terms and conditions set out in the Cofinancing Agreement;

(D) the Project shall be carried out by Nauru Utilities Corporation ("NUC"), and the Recipient shall make available to NUC the proceeds of the Grants for the purposes of the Project in the manner provided for herein, upon terms and conditions satisfactory to ADB; and

(E) ADB has agreed to make the proceeds of the Grant available to the Recipient upon the terms and conditions set forth herein and the Project Agreement;

NOW THEREFORE the parties agree as follows:

ARTICLE I

Grant Regulations; Definitions

Section 1.01. All the 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. The definitions set forth in the Grant Regulations and the Special Operations Grant Agreement are applicable to this Grant Agreement unless the context requires otherwise.

ARTICLE II

The Grant

Section 2.01. (a) ADB agrees to make available to the Recipient a grant from the EU in the amount equivalent to approximately two million and seven hundred thousand Dollars (\$2,700,000), as such amount may be adjusted from time to time in accordance with subsection (b) hereinafter.

(b) The amount of the Grant shall be adjusted from time to time to account for currency fluctuations, such that the amount of the Grant, denominated in Dollars, shall be equivalent to two million euros at the time that ADB converted the resources made available to ADB by the EU for the purposes of the Grant.

ARTICLE III

Use of Proceeds of the Grant

Section 3.01. (a) The Recipient shall make the proceeds of the Grant available to NUC as a grant under a Subsidiary Grant Agreement upon terms and conditions satisfactory to ADB.

(b) The Recipient shall cause NUC to apply the proceeds of the Grant 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 1 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 2 to this Grant Agreement.

Section 3.04. The Grant Closing Date for the purposes of Section 8.02 of the Grant Regulations shall be 31 December 2016 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 the Special Operations Grant Agreement.

Section 4.02. 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.

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 the EU. Accordingly, the Recipient agrees that (i) it may only withdraw Grant proceeds to the extent that ADB has received proceeds for the Grant from the EU, and (ii) that ADB does not assume any obligations or responsibilities of the EU in respect of the Project or the Grant other than those set out in this Grant Agreement.

ARTICLE V

Suspension

Section 5.01. The following are specified as additional events for suspension of the right of the Recipient to make withdrawals from the Grant Account for the purposes of Section 8.01(k) of the Grant Regulations:

- (a) the Recipient or NUC shall have failed to perform any of its obligations under the Special Operations Grant Agreement; and
- (b) the Recipient or NUC shall have failed to perform any of its obligations under the Subsidiary Grant Agreement.

ARTICLE VI

Effectiveness

Section 6.01. 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: the Special Operations Grant Agreement shall have been duly executed and

delivered, and all conditions precedent to their effectiveness, other than a condition requiring the effectiveness of this Grant Agreement, shall have been fulfilled, or arrangements satisfactory to ADB shall have been made for the fulfillment thereof within a period of time satisfactory to ADB.

Section 6.02. The following is specified as an additional matter, for the purposes of Section 9.02(c) of the Grant Regulations, to be included in the opinion or opinions to be furnished to ADB: the Special Operations Grant Agreement has been duly executed and delivered, and all conditions precedent to its effectiveness, other than a condition requiring the effectiveness of this Grant Agreement, have been fulfilled, or arrangements satisfactory to ADB have been made for the fulfillment thereof within a period of time satisfactory to ADB.

Section 6.03. 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 VII

Delegation of Authority

Section 7.01. The Recipient hereby designates NUC as its agent for the purposes of taking any action or entering into any agreement required or permitted under Sections 3.02 and 3.03 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 NUC 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 NUC 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 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
Government Offices, Yaren District
Republic of Nauru

Telephone Number:

+674 557-3133

Facsimile Number:

not available.

For ADB

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

Facsimile Numbers:

+63 2 636-2444
+63 2 636-2388.

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.

NAURU

By  _____
ANTHONY JAMES BAKER
Authorized Representative

ASIAN DEVELOPMENT BANK

By  _____
ANDREA IFFLAND
Regional Director
Pacific Liaison and Coordination Office

SCHEDULE 1

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, in consultation with 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, in consultation with 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.

Condition for Withdrawal from the Grant Account

5. Notwithstanding any other provision of this Grant Agreement and except as ADB may otherwise agree, no withdrawals shall be made from the Grant Account, unless the Subsidiary Grant Agreement, in form and substance satisfactory to ADB, has been duly authorized and ratified by, and executed and delivered on behalf of, the Recipient and NUC, and has become legally binding upon the parties thereto in accordance with its terms.

TABLE

ALLOCATION AND WITHDRAWAL OF GRANT PROCEEDS (Electricity Supply Security and Sustainability Project)			
Number	Item	Total Amount Allocated for EU Financing (\$) Category	Basis for Withdrawal from the Grant Account
1	New Generator Contract**	1,726,277	57.4% of total expenditure claimed*
2	Roof Replacement Contract**	430,277	57.4% of total expenditure claimed*
3	Design and Supervision Consultants**	237,980	57.4% of total expenditure claimed*
4	Unallocated***	305,466	
	Total	2,700,000	

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

**Subject to the condition for withdrawal indicated in paragraph 5 of Schedule 1 to this Grant Agreement.

***This amount includes ADB's administration fee, audit cost, bank charges and provision for foreign exchange fluctuations (if any), to the extent that these items are not covered by the interest and investment income earned on this grant, or any additional grant contribution by the EU.

SCHEDULE 2

Procurement of Consulting Services

General

1. The procurement of Consulting Services shall be subject to and governed by the Procurement Guidelines, and the Consulting Guidelines.

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 international competitive bidding.

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.

Condition for Award of Contract

5. The Recipient shall not award any Works contract which involves environmental impacts until the Recipient has incorporated the relevant provisions from the EMP into the Works contract.

6. Notwithstanding any other provision of this Grant Agreement and except as ADB may otherwise agree, the Recipient shall not award the civil works contract under Component A of the Project, unless and until NUC has completed preparation of the site, to the satisfaction of ADB, for the construction and/or installation of the new diesel-generator.

Consulting Services

7. The Recipient shall apply the following method for selecting and engaging DSCs, in accordance with, among other things, the procedures set forth in the Procurement Plan: Fixed Budget Selection.

Industrial or Intellectual Property Rights

8. The Recipient shall ensure that all 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.

9. 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

10. Contracts procured under international competitive bidding 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.