

No. 12821

**UNITED STATES OF AMERICA
and
BANGLADESH**

**Grant Agreement for relief and rehabilitation. Signed at
Dacca on 30 May 1972**

**Amendment No. 1 to the above-mentioned Agreement.
Signed at Dacca on 26 June 1972**

Authentic texts: English.

Registered by the United States of America on 21 November 1973.

**ÉTATS-UNIS D'AMÉRIQUE
et
BANGLADESH**

**Accord relatif à un don destiné à des opérations de secours
et de relèvement. Signé à Dacca le 30 mai 1972**

**Premier amendement à l'Accord susmentionné. Signé à
Dacca le 26 juin 1972**

Textes authentiques : anglais.

Enregistrés par les États-Unis d'Amérique le 21 novembre 1973.

GRANT AGREEMENT¹ BETWEEN THE GOVERNMENT OF THE PEOPLE'S REPUBLIC OF BANGLADESH AND THE UNITED STATES OF AMERICA FOR RELIEF AND REHABILITATION

Agreement, dated May 30, 1972 between the Government of the People's Republic of Bangladesh ("Government") and the United States of America, acting through the Agency for International Development ("A.I.D.").

Whereas, Bangladesh recently suffered disasters of major intensity which have taken a large toll in human lives and have caused widespread damage and human suffering; and

Whereas, Bangladesh has undertaken a program of relief and rehabilitation; and

Whereas, the United States in a spirit of friendship and cooperation with the people and Government of Bangladesh desires to assist the Government in the arduous task of rehabilitation; and

Whereas, the Congress of the United States of America has appropriated certain United States Dollar funds to be used for relief and rehabilitation assistance in Bangladesh.

Now, therefore, the parties hereto agree as follows:

Article I. THE GRANT

Section 1.1. PURPOSE OF THE GRANT. A.I.D. agrees to grant to the Government, subject to the conditions hereinafter set forth, an amount not to exceed Ninety Million Dollars (\$90,000,000) ("Grant") to assist the Government in carrying out the Project referred to in section 1.2. ("Project") for relief and rehabilitation assistance in Bangladesh. The Grant shall be used exclusively to finance costs of imported goods and services required for the Project and to make available to the Government funds for its use in financing local currency costs associated with the Project.

Section 1.2. THE PROJECT. The "Project" shall mean:

(a) The provision of goods and services and the financing of local currency costs for one or more relief and rehabilitation activities ("Sub-Projects") in the following areas:

- (i) Coastal embankments;
 - (ii) Power sector;
 - (iii) Roads and bridges;
 - (iv) Education sector; and
 - (v) Such other activities as may be agreed upon by A.I.D. and the Government.
- (b) The provision of general commodity imports for relief and rehabilitation.

¹ Came into force on 30 May 1972 by signature.

Article II. CONDITIONS PRECEDENT TO DISBURSEMENT

Section 2.1. CONDITIONS PRECEDENT TO DISBURSEMENT. Prior to the first disbursement or to the issuance of the first Letter of Commitment under the Grant, the Government shall, except as A.I.D. may otherwise agree in writing, furnish to A.I.D. in form and substance satisfactory to A.I.D.:

- (a) An opinion of the Minister of Law of Bangladesh or of other counsel acceptable to A.I.D. that this Agreement has been duly authorized or ratified by and executed on behalf of the Government in accordance with all of its terms;
- (b) Evidence of the authority of the person or persons who will act as the representative or representatives of the Government specified in section 8.4 and a specimen signature of each such person certified as to its authenticity by either the person who renders the legal opinion or the person who executes the Agreement;
- (c) Such other documents as A.I.D. may reasonably request.

Section 2.2. CONDITIONS PRECEDENT TO DISBURSEMENT FOR GENERAL COMMODITY IMPORTS. Prior to the first disbursement or to the issuance of the first Letter of Commitment for each specific commodity import, the Government shall, except as A.I.D. may otherwise agree in writing, furnish to A.I.D. in form and substance satisfactory to A.I.D. a written proposal for purchase of each such commodity setting forth the specifications of the commodity, the proposed consignee or consignees, the proposed delivery dates, the estimated cost, and whether the intended source is the United States only or countries included in Code 941 of the A.I.D. Geographic Code Book.

Section 2.3. CONDITIONS PRECEDENT TO DISBURSEMENT FOR SUB-PROJECTS. Prior to the first disbursement or to the issuance of the first Letter of Commitment for any Sub-Project, the Government shall, except as A.I.D. may otherwise agree in writing, furnish to A.I.D. in form and substance satisfactory to A.I.D. a written Sub-Project proposal which shall contain:

- (i) a description of the activities to be financed;
- (ii) identification of the proposed administrative and implementing agencies;
- (iii) an estimate of the funds and the time required to carry out the Sub-Project.

Section 2.4. TERMINAL DATES FOR MEETING CONDITIONS PRECEDENT TO DISBURSEMENT. (a) If all of the conditions specified in section 2.1 shall not have been met within ninety (90) 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 giving written notice to the Government. Upon giving of such notice, this Agreement and all obligations of the parties thereunder shall terminate.

(b) Except as A.I.D. may otherwise agree in writing, commodity imports for which the conditions specified in section 2.2 have not been satisfied within ninety (90) days from the date of this Agreement shall be ineligible for financing under this Grant.

(c) Except as A.I.D. may otherwise agree in writing, each Sub-Project for which the conditions specified in section 2.3 have not been satisfied within ninety (90) days from the date of this Agreement shall be ineligible for financing under this Grant.

Article III. COVENANTS

Section 3.1. COVENANTS. The Government, in consideration of this Grant, hereby covenants and agrees that:

(a) The Government shall carry out the Sub-Projects financed hereunder with due diligence and efficiency and in conformity with sound engineering, financial and administrative practices.

(b) The Government shall cause the Sub-Projects financed hereunder to be carried out in conformity with all of the contracts, schedules and other arrangements, and with all modifications therein, approved by A.I.D. pursuant to this Agreement.

(c) The Government and A.I.D. shall cooperate fully to assure that the purpose of the Grant will be accomplished. To this end, the Government and A.I.D. shall from time to time, at the request of either party, exchange views through their representatives with regard to the progress of the Project and other matters relating to the Project.

(d) (i) The Government warrants and covenants that in connection with obtaining the Grant, or taking any action under or with respect to this Agreement, it has not paid, and will not pay or agree to pay, nor to the best of its knowledge has there been paid nor will there be paid or agreed to be paid by any other person or entity, Commissions, fees or other payments of any kind, except as regular compensation for bona fide professional, technical or comparable services. The Government shall promptly report to A.I.D. any payment or Agreement to pay for such bona fide professional, technical or comparable services to which it is a party, or of which it has a knowledge (indicating whether such payment has been made or is to be made on a contingent basis), and if the amount of any such payment is deemed unreasonable by A.I.D., the same shall be adjusted in a manner satisfactory to A.I.D.

(ii) The Government covenants and warrants that no payments have been or will be received by the Government, or any official of the Government, in connection with the procurement of goods and services financed hereunder, except fees, taxes or similar payments legally established in Bangladesh.

Article IV. RECORDS, REPORTS AND INSPECTION

Section 4.1. MAINTENANCE AND AUDIT OF RECORDS. The Government shall maintain, or cause to be maintained, in accordance with sound accounting principles and practices consistently applied, books and records relating both to the Project and to this Agreement. Such books and records shall, without limitation, be adequate to show:

(a) the receipt and use made of goods and services acquired for the Project with funds disbursed pursuant to this Agreement;

- (b) the receipt and use made of goods and services acquired for the Project with local currency;
- (c) the nature and extent of solicitations of prospective suppliers of goods and services acquired;
- (d) the basis of the award of contracts and orders to successful bidders; and
- (e) the progress of the Project.

Such books and records shall be regularly audited, in accordance with standard Government auditing procedures, and shall be maintained for three (3) years after the date of the final disbursement hereunder.

Section 4.2. REPORTS. (a) The Government shall furnish to A.I.D. such information and reports relating to the Grant and to the Project as A.I.D. may reasonably request.

(b) The Government shall promptly notify A.I.D. of any conditions which interfere with carrying out the relief and rehabilitation activities contemplated hereunder.

Section 4.3. INSPECTIONS. The authorized representatives of A.I.D. shall have the right at all reasonable times to inspect the Sub-Projects financed hereunder, the utilization of all goods and services financed under the Grant and the books, records and other documents relating to the Project and the Grant. The Government shall cooperate with A.I.D. to facilitate such inspections.

Article V. PROCUREMENT

Section 5.1. PROCUREMENT FROM THE UNITED STATES AND CODE 941 COUNTRIES. Except as A.I.D. may otherwise agree in writing, disbursements made pursuant to Section 6.1 shall be used exclusively to finance the procurement for the Project of goods and services, ocean shipping and marine insurance having both their source and origin in the United States of America and countries included in code 941 of the A.I.D. Geographic Code Book as in effect at the time of such procurement.

Section 5.2. ELIGIBILITY DATE. Except as A.I.D. may otherwise agree in writing, no goods and services may be financed under the Grant which are procured pursuant to orders or contracts firmly placed or entered into prior to the date of this Agreement.

Section 5.3. GOODS AND SERVICES NOT FINANCED UNDER GRANT. Except as A.I.D. may otherwise agree in writing, goods and services procured for the Project but not financed under the Grant shall have their source and origin in countries included in code 935 of the A.I.D. Geographic Code Book as in effect at the time orders are placed for such goods and services.

Section 5.4. CONTRACTS. The following contracts financed under the Grant shall be approved by A.I.D. in writing prior to their execution:

- (a) contracts for engineering and other professional services;
- (b) contracts for construction services;
- (c) contracts for such other services as A.I.D. may specify; and
- (d) contracts for such equipment and materials as A.I.D. may specify.

Material modifications in any of such contracts shall also be approved by A.I.D. in writing prior to their becoming effective.

Section 5.5. SHIPPING AND INSURANCE. (a) Goods financed under the Grant shall be transported to Bangladesh on flag carriers of any country included in code 935 of the A.I.D. Geographic Code Book as in effect at the time of shipment.

(b) At least fifty percent (50%) of the gross tonnage of all goods financed under the Grant (computed separately for dry bulk carriers, dry cargo liners and tankers) which shall be transported to Bangladesh on ocean vessels shall be transported on privately-owned United States-flag commercial vessels, and, in addition, at least fifty percent (50%) of the gross freight revenue generated by all shipments financed under the Grant which shall be transported on any cargo liners shall be paid to or for the benefit of privately owned United States-flag commercial vessels, unless A.I.D. shall determine that such vessels are not available at fair and reasonable rates for United States-flag commercial vehicles. No such goods may be transported on any ocean vessel (or aircraft) (i) which A.I.D. in a notice to the Government has designated as ineligible to carry A.I.D. financed goods or (ii) which has been chartered for the carriage of A.I.D. financed goods unless such charter has been approved by A.I.D.

(c) The Government shall insure, or cause to be insured, all goods financed under the Grant against risks incident to their transit to the point of their use in the Project. Such insurance shall be issued upon terms and conditions consistent with sound commercial practice, shall insure the full value of the goods, and shall be payable in the currency in which such goods were financed. Any indemnification received by the Government under such insurance shall be used to replace or repair any material damage or any loss of the goods insured or shall be used to reimburse the Government for the replacement or repair of such goods. Any such replacements shall be of United States or code 941 source and origin and otherwise subject to the provisions of this Agreement.

(d) If in connection with the placement of marine insurance on shipments financed under United States legislation authorizing assistance to other nations, the Government, by statute, decree, rule or regulation, favors any marine insurance company of any country over any marine insurance company authorized to do business in any state of the United States of America, goods financed under the Grant shall during the continuance of such discrimination be insured against marine risk in the United States of America with a company or companies authorized to do a marine insurance business in any state of the United States of America.

Section 5.6. UTILIZATION OF GOODS AND SERVICES. (a) Goods and services financed under this Grant shall be used exclusively for the Project, except as A.I.D. may otherwise agree in writing. Upon completion of the Sub-Projects, or at such other time as goods financed under the Grant can no longer usefully be employed for the Sub-Projects, the Government may use or dispose of such goods in such manner as A.I.D. may agree to in writing prior to such use or disposition.

(b) Except as A.I.D. may otherwise agree in writing, no goods or services financed under the Grant shall be used to promote or assist any foreign aid proj-

ect or activity associated with or financed by any country not included in code 935 of the A.I.D. Geographic Code Book as in effect at the time of such use.

Section 5.7. REASONABLE PRICE. No more than reasonable prices shall be paid for any goods or services financed, in whole or in part, under the Grant as more fully described in Implementation Letters. Such items shall be procured on a fair and, except for professional services, on a competitive basis in accordance with procedures therefor prescribed in Implementation Letters.

Section 5.8. EMPLOYMENT OF THIRD COUNTRY NATIONALS UNDER CONSTRUCTION CONTRACTS. The employment of personnel to perform services under construction contracts financed under the Grant shall be subject to requirements with respect to third-country nationals prescribed in Implementation Letters.

Section 5.9. NOTIFICATION TO POTENTIAL SUPPLIERS. In order that all United States firms shall have the opportunity to participate in furnishing goods and services to be financed under the Grant, the Government shall furnish to A.I.D. appropriate information with regard thereto, and at such times, as A.I.D. may request in Implementation Letters.

Section 5.10. INFORMATION AND MARKING. The Government will cooperate with A.I.D. in its efforts to disseminate information concerning the Project and shall comply with such reasonable instructions with respect to the marking of goods financed under the Grant or the identification of any Project site as A.I.D. may issue from time to time.

Article VI. DISBURSEMENTS

Section 6.1. DISBURSEMENTS FOR UNITED STATES DOLLAR COSTS—LETTERS OF COMMITMENTS TO UNITED STATES BANKS. Upon satisfaction of conditions precedent, the Government may, from time to time, request A.I.D. to issue Letters of Commitment for specified amounts to one or more United States banks, satisfactory to A.I.D., committing A.I.D. to reimburse such banks for payments made by them to contractors or suppliers, through the use of Letters of Credit or otherwise, for Dollar Costs of goods and services procured for the Project in accordance with the terms and conditions of this Agreement. Payment by a bank to a contractor or supplier will be made by the bank upon presentation of such supporting documentation as A.I.D. may prescribe in Letters of Commitment and Implementation Letters. Banking charges incurred in connection with Letters of Commitment and Letters of Credit may be financed under the Grant.

Section 6.2. DISBURSEMENTS FOR LOCAL CURRENCY COSTS. Upon satisfaction of conditions precedent, the Government may, from time to time, request disbursements by A.I.D. to finance local currency costs of goods and services to be procured in Bangladesh for the Project in accordance with procedures to be prescribed in Implementation Letters. The United States dollar amounts disbursed pursuant to this section shall be the United States dollar equivalent of the disbursements by the Government of local currency for the Project determined at the rate, not unlawful in Bangladesh, providing the largest

number of units of local currency per United States dollar at the time the disbursement of local currency is made.

Section 6.3. OTHER FORMS OF DISBURSEMENT. Disbursements of the Grant may also be made through such other means as the Government and A.I.D. may agree to in writing.

Section 6.4. TERMINAL DATES FOR DISBURSEMENTS. Except as A.I.D. may otherwise agree in writing, no Letter of Commitment, or other commitment documents which may be called for under this Agreement, shall be issued in response to requests received by A.I.D. after June 30, 1973, and no disbursement shall be made against documentation received by A.I.D. or any bank described herein after December 31, 1973.

Section 6.5. REFUNDS. If A.I.D. determines that any disbursement made pursuant to this Grant is not made or used in accordance with the terms and covenants of the Agreement, A.I.D. at its option may, notwithstanding the availability of any other remedy provided for under the Agreement, require the Government to refund to A.I.D. within thirty (30) days after receipt of a request therefor, such amount provided that such request by A.I.D. shall be made not later than three (3) years after the date of final disbursement hereunder. Notwithstanding the fact that A.I.D. may have invoked its right to terminate the Agreement, the rights of A.I.D. set forth in this Section shall remain in force after such termination.

Article VII. SUSPENSION AND TERMINATION

Section 7.1. SUSPENSION. In the event that at any time:

(a) An event occurs that A.I.D. determines to be an extraordinary situation that makes it improbable that the purpose of the Grant will be attained; or

(b) Any disbursement would be in violation of the legislation governing A.I.D., then A.I.D., in addition to any other remedy available to it, may, at its option:

- (i) suspend or cancel outstanding commitment documents to the extent that they have not been utilized through the issuance of irrevocable Letters of Credit, in which event A.I.D. shall give notice to the Government promptly thereafter;
- (ii) decline to make disbursements other than under outstanding commitment documents;
- (iii) decline to issue additional commitment documents; and
- (iv) at A.I.D.'s expense, direct that title to goods financed under the Grant shall be transferred to A.I.D. if the goods are from a source outside of Bangladesh, are in a deliverable state and have not been offloaded in ports of entry of Bangladesh.

Section 7.2. TERMINATION. Following any suspension pursuant to Section 7.1, if the cause or causes for such suspension shall not have been eliminated or corrected within sixty (60) days from the date of notice of such suspension to the Government, A.I.D. may, at its option, at any time or times thereafter terminate all or any part of this Grant that is not then disbursed or subject to irrevocable Letters of Credit.

Article VIII. MISCELLANEOUS

Section 8.1. WAIVER OF DEFAULT. No delay in exercising, or omission to exercise, any right accruing to A.I.D. under the Agreement shall be construed as a waiver of any of its rights, powers or remedies hereunder.

Section 8.2. TAXATION AND RELATED MATTERS. (a) This Agreement and the Grant shall be free from any taxation or fees imposed under the laws of Bangladesh. Any supplies, materials or equipment introduced into Bangladesh for purposes of the Sub-Projects shall, while such supplies, materials or equipment are used in connection with the Sub-Projects, be exempt from any taxes on ownership or use of property and any other taxes, investment or deposit requirements, and the import, export, purchase, use, or disposition of any such supplies, materials or equipment in connection with the Sub-Projects shall be exempt from any tariffs, customs duties, import and export duties, taxes on purchase or disposition of property, and other taxes or similar charges in Bangladesh.

(b) All public or private organizations under contract with or financed by A.I.D. in Bangladesh in connection with the administration or implementation of this Grant, or any activity related to or in support of the administration or implementation of this Grant, and all personnel and their families (other than citizens and permanent residents of Bangladesh), whether United States Government employees or employees of public or private organizations under contract with or financed by, or individuals under contract with or financed by, A.I.D. in Bangladesh in connection with the administration or implementation of this Grant, or any activity related to or in support of the administration or implementation of this Grant, shall be exempt from income, social security and similar taxes levied under the laws of Bangladesh or any of its geographic subdivisions with respect to income upon which they are obligated to pay income or social security taxes to any other government.

(c) All United States Government employees and their families (other than citizens and permanent residents of Bangladesh) in Bangladesh in connection with the administration or implementation of this Grant, or any activity related to or in support of the administration or implementation of this Grant, shall enjoy the same immunity from civil, criminal and administrative jurisdiction, the same exemption from taxes and the same duty free privileges as are accorded by the Government to the personnel of comparable rank and category of the Embassy of the United States of America in Bangladesh.

(d) All personnel and their families (other than citizens and permanent residents of Bangladesh) who are employees of public or private organizations under contract with or financed by, or individuals under contract with or financed by, A.I.D. in Bangladesh in connection with the administration or implementation of this Grant, or any activity related to or in support of the administration or implementation of this Grant, shall be exempt from the payment of customs and import and export duties on a reasonable amount of personal effects, equipment and supplies (including automobiles) imported into Bangladesh for their own use at the time of first installation. In addition they would be entitled to customs free import of a reasonable amount of consumable items as agreed to between the Government and such contracting public or private organizations or individuals.

Section 8.3. COMMUNICATIONS. Any notice, request or communication given, made or sent by the Government or A.I.D. pursuant to the Agreement shall be in writing and shall be deemed to have been duly given, made or sent to the party to which it is addressed when it shall be delivered by hand or by mail, telegram, cable, or radiogram to such other party at the following address:

To the Government:

Mail Address: Secretary, Planning Commission
Bangladesh Secretariat
Dacca, Bangladesh

Cable Address: Plancom

To A.I.D.:

Mail Address: USAID Relief and Rehabilitation Office
American Embassy, Adamjee Court
Motijheel Commercial Area
Dacca-2, Bangladesh

Cable Address: Uscorr

Other addresses may be substituted for the above upon giving a notice as provided herein. All notices, requests, communications and documents submitted to A.I.D. hereunder shall be in English, except as A.I.D. may otherwise agree in writing.

Section 8.4. REPRESENTATIVES. For all purposes relative to this Agreement, the Government will be represented by the individual holding or acting in the office of Secretary, Planning Commission, and A.I.D. will be represented by the individual holding or acting in the office of Coordinator, USAID Relief and Rehabilitation Office. Such individuals shall have the authority to designate by written notice additional representatives. In the event of any replacement or other designation of a representative hereunder, the Government shall submit a statement of the representative's name and specimen signature in form and substance satisfactory to A.I.D. Until receipt by A.I.D. of written notice of revocation of the authority of any of the duly authorized representatives of the Government designated pursuant to this section, it may accept the signature of any such representative or representatives as conclusive evidence that any action effected by such instrument is duly authorized.

Section 8.5. IMPLEMENTATION LETTERS. A.I.D. may from time to time issue Implementation Letters that will prescribe the procedures applicable hereunder in connection with the implementation of this Agreement.

IN WITNESS WHEREOF, the Government and A.I.D., each acting through its respective duly authorized representative, have caused this Agreement to be signed in their name and delivered as of the date and year first above written.

Government of the People's Republic of Bangladesh:

By: [Signed]

Name: A.K.M. GHULAM RABBANI

Title: Secretary

Planning Commission

United States of America:

By: [Signed]

Name: DONALD G. MACDONALD

*Title: Assistant Administrator Bureau for Asia,
Agency for International Development*

AMENDMENT No. 1¹ TO THE GRANT AGREEMENT OF 30 MAY 1972 FOR RELIEF AND REHABILITATION²

Amendment No. 1, dated June 26, 1972, between the Government of the People's Republic of Bangladesh ("Government") and the United States of America, acting through the Agency for International Development ("A.I.D."), to the Grant Agreement, dated May 30, 1972,² between the Government and A.I.D. ("Grant Agreement").

Whereas, the Government has priority relief and rehabilitation needs for which additional funds are required; and

Whereas, A.I.D. wishes to provide additional funds to meet these needs;

Now, therefore, the parties hereto agree as follows:

1. Section 1.1 of the Grant Agreement is amended by deleting "Ninety Million Dollars (Dols. 90,000,000) and inserting in its place One Hundred Fifteen Million Dollars (Dols. 115,000,000)."
2. Section 6.4 of the Grant Agreement is amended by deleting "June 30, 1973," and inserting in its place "December 31, 1973," and by deleting "December 31, 1973", in the last line and inserting in its place "June 30, 1974."
3. To the extent not amended herein, the terms and conditions of the Grant Agreement shall remain in full force and effect.

IN WITNESS WHEREOF, the parties hereto have executed this Amendment on the date first above written.

Government
of the People's Republic
of Bangladesh:

By: [Signed]

A.K.M. HEDAYEDUL HUQ
Joint Secretary
Planning Commission

United States
of America:

By: [Signed]

HERBERT D. SPIVACK
Chargé d'Affaires ad interim

¹ Came into force on 26 June 1973 by signature.

² See p. 128 of this volume.