

No. 19917

**UNITED STATES OF AMERICA
and
SUDAN**

Grant Agreement for commodity imports. Signed at Khartoum on 31 December 1979

Authentic text: English.

Registered by the United States of America on 10 June 1981.

**ÉTATS-UNIS D'AMÉRIQUE
et
SOUDAN**

**Accord de don pour l'importation de produits primaires.
Signé à Khartoum le 31 décembre 1979**

Texte authentique : anglais.

Enregistré par les États-Unis d'Amérique le 10 juin 1981.

GRANT AGREEMENT¹ BETWEEN THE UNITED STATES OF AMERICA AND THE DEMOCRATIC REPUBLIC OF SUDAN FOR COMMODITY IMPORTS

Dated: December 31, 1979

A.I.D. Grant No. 650-0038

TABLE OF CONTENTS

<i>Article and Section</i>	<i>Title</i>	<i>Article and Section</i>	<i>Title</i>
Article I.	The Grant	Section 4.02.	Other Forms of Disbursement
Section 1.01.	The Grant	Section 4.03.	Date of Disbursement
Article II.	Conditions Precedent to Disbursement	Section 4.04.	Terminal Date for Disbursement
Section 2.01.	Conditions Precedent to Initial Disbursement	Section 4.05.	Documentation Requirements
Section 2.02.	Terminal Date for Meeting Conditions Precedent to Disbursement	Section 4.06.	Records
Section 2.03.	Notification of Meeting Conditions Precedent to Disbursement	Article V.	General Covenants and Warranties
Article III.	Procurement, Utilization, and Eligibility of Commodities	Section 5.01.	Reports
Section 3.01.	A.I.D. Regulation 1	Section 5.02.	Disclosure of Material Facts and Circumstances
Section 3.02.	Source of Procurement	Section 5.03.	Taxation
Section 3.03.	Date of Procurement	Section 5.04.	Commissions, Fees and Other Payments
Section 3.04.	Eligible Items	Section 5.05.	Periodic Discussions
Section 3.05.	Procurement for Public Sector	Section 5.06.	Use of Local Currency
Section 3.06.	Financing Physical Facilities	Article VI.	Termination and Suspension
Section 3.07.	Utilization of Commodities	Section 6.01.	Termination
Section 3.08.	Motor Vehicles	Section 6.02.	Suspension of Disbursements, Transfer of Goods to A.I.D.
Section 3.09.	Procedures	Section 6.03.	Cancellation by A.I.D.
Section 3.10.	Private Sector	Section 6.04.	Refunds
Article IV.	Disbursements	Section 6.05.	Nonwaiver of Remedies
Section 4.01.	Disbursement for United States Dollar Costs—Letters of Commitment to United States Banks	Article VII.	Miscellaneous
		Section 7.01.	Communications
		Section 7.02.	Representatives
		Section 7.03.	Implementation Letters
		Section 7.04.	Information and Marking

GRANT AGREEMENT dated the 31st day of December 1979 between the UNITED STATES OF AMERICA, acting through the AGENCY FOR INTERNATIONAL DEVELOPMENT (“A.I.D.”), and the DEMOCRATIC REPUBLIC OF SUDAN (“the Grantee”).

¹ Came into force on 31 December 1979 by signature.

Article I. THE GRANT

Section 1.01. THE GRANT. A.I.D. agrees to grant to the Grantee pursuant to the Foreign Assistance Act of 1961, as amended, an amount not to exceed Forty Million United States dollars (\$40,000,000) (the "Grant") for the foreign exchange costs of commodities and commodity-related services, as such services are defined by A.I.D. Regulation 1, needed to assist the Grantee in meeting a serious foreign exchange shortage, achieving development objectives, improving the standard of living and maintaining political stability. Commodities and commodity-related services authorized to be financed hereunder are hereinafter referred to as "Eligible Items," as hereinafter more fully described in Section 3.04.

Article II. CONDITIONS PRECEDENT TO DISBURSEMENT

Section 2.01. CONDITIONS PRECEDENT TO INITIAL DISBURSEMENT. Prior to any disbursement or to the issuance of any Letter of Commitment or other authorization of disbursement under the Grant, the Grantee 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 or opinions of the Attorney General of the Democratic Republic of Sudan that this Agreement has been duly authorized and/or ratified by and executed on behalf of the Grantee and that it constitutes a valid and legally binding obligation of the Grantee in accordance with all of its terms; and
- (b) A statement of the names of the persons holding or acting in the office of the Grantee specified in Section 7.02 and a specimen signature of each person specified in such statement.

Section 2.02. TERMINAL DATE FOR MEETING CONDITIONS PRECEDENT TO DISBURSEMENT. If all the conditions specified in Section 2.01 shall not have been met within sixty (60) days after 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 Grantee.

Section 2.03. NOTIFICATION OF MEETING CONDITIONS PRECEDENT TO DISBURSEMENT. A.I.D. shall notify the Grantee upon determination by A.I.D. that the conditions precedent to disbursement specified in Section 2.01 have been met.

Article III. PROCUREMENT, UTILIZATION AND ELIGIBILITY OF COMMODITIES

Section 3.01. A.I.D. REGULATION 1. Except as A.I.D. may otherwise specify in writing, this Grant and the procurement and utilization of Eligible Items financed under it are subject to the terms and conditions of A.I.D. Regulation 1 as from time to time amended and in effect, which is incorporated and made a part hereof. If any provision of A.I.D. Regulation 1 is inconsistent with a provision of this Agreement, the provision of this Agreement shall govern.

Section 3.02. SOURCE OF PROCUREMENT. Except as A.I.D. may specify in Implementation Letters or Commodity Procurement Instructions, or as it may otherwise agree in writing, all Eligible Items shall have their source and origin in countries included in Code 941 of the A.I.D. Geographic Code Book in effect at the time of procurement.

Section 3.03. DATE OF PROCUREMENT. Except as A.I.D. may otherwise agree in writing, no goods or services may be financed under the Grant for which any order or contract was firmly placed or entered into prior to the date of this Agreement.

Section 3.04. ELIGIBLE ITEMS. (a) The commodities eligible for financing under this Grant shall be those specified in the A.I.D. Commodity Eligibility Listing as set forth in the Implementation Letters and Commodity Procurement Instructions issued to Grantee. Commodity-related services as defined in A.I.D. Regulation 1 are eligible for financing under this grant. Other items shall become eligible for financing only with the written agreement of A.I.D. A.I.D. may decline to finance any specific commodity or commodity-related service when in its judgment such financing would be inconsistent with the purpose of the Grant or of the Foreign Assistance Act of 1961, as amended.

(b) A.I.D. reserves the right in exceptional situations to delete commodity categories or items within commodity categories described by Schedule B codes on the Commodity Eligibility Listing. Such right will be exercised at a point in time no later than commodity prevalidation by A.I.D. (Form 11 approval) or, if no commodity prevalidation is required, no later than the date on which an irrevocable Letter of Credit is confirmed by a U.S. bank in favor of the supplier.

(c) If no prevalidation is required and payment is not by Letter of Credit, A.I.D. will exercise this right no later than the date on which it expends funds made available to the Grantee, under this Agreement for the financing of the commodity. In any event, however, the Grantee will be notified through the A.I.D. Mission in its country of any decision by A.I.D. to exercise its right pursuant to a determination that financing the commodity would adversely affect A.I.D. or foreign policy objectives of the United States or could jeopardize the safety or health of people in the importing country.

Section 3.05. PROCUREMENT FOR PUBLIC SECTOR. With respect to procurement hereunder by or for the Grantee, its departments and instrumentalities:

- (a) The provision of Section 201.22 of A.I.D. Regulation 1 regarding competitive bid procedures shall apply unless A.I.D. otherwise agrees in writing; and
- (b) Grantee will undertake to assure that public sector end-users under this Grant establish adequate logistic management facilities and that adequate funds are available to pay banking charges, customs duties and other commodity-related charges in connection with commodities imported by public sector end-users.

Section 3.06. FINANCING PHYSICAL FACILITIES. Except as A.I.D. may otherwise agree in writing, not more than \$1,000,000 from the proceeds of this Grant shall be used for the purchase of commodities or commodity-related services for use in the construction, expansion, equipping, or alteration of any one physical facility, or related physical facilities without prior A.I.D. approval, additional to the approvals required by A.I.D. Regulation 1. "Related physical facilities" shall mean those facilities which, taking into account such factors as functional interdependence, geographic proximity and ownership, constitute a single enterprise in the judgment of A.I.D.

Section 3.07. UTILIZATION OF COMMODITIES. (a) Grantee shall insure that commodities financed under this Agreement shall be effectively used for the

purpose for which the assistance is made available. Such effective use shall include:

- (i) The maintenance of accurate arrival and clearance records by customs authorities and the prompt processing of commodity imports through customs at ports of entry and removal from customs and/or customs-bonded warehouses of such commodities, the total time for which (from date commodities arrive at port of entry to date importer removes them from customs) shall not exceed ninety (90) calendar days unless the importer is hindered by force majeure or A.I.D. otherwise agrees in writing;
- (ii) The consumption or use not later than one (1) year from the date the commodities arrive at the port of entry unless a longer period can be justified to the satisfaction of A.I.D. by reasons of force majeure or special market or other circumstances; and
- (iii) The proper surveillance and supervision by Grantee to reduce breakage and pilferage in ports resulting from careless or deliberately improper cargo handling practices, as specified in detail in Implementation Letters.

(b) Grantee shall use its best efforts to prevent the use of commodities financed under this Agreement to promote or assist any project 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 projected use except with the prior written consent of A.I.D.

Section 3.08. MOTOR VEHICLES. Except as A.I.D. may otherwise agree in writing, none of the proceeds of this Grant may be used to finance the purchase, sale, long-term lease, exchange or guaranty of a sale of motor vehicles unless such motor vehicles are manufactured in the United States.

Section 3.09. PROCEDURES. A.I.D. will issue binding Implementation Letters and Commodity Procurement Instructions which will prescribe the procedures applicable in connection with the implementation of this Agreement.

Section 3.10. PRIVATE SECTOR. In recognition of the importance of the development of the private sector in promoting its overall economic growth the Grantee agrees to take all necessary steps to make available to the private sector as much of the proceeds of the Grant as possible.

Article IV. DISBURSEMENTS

Section 4.01. DISBURSEMENT FOR UNITED STATES DOLLAR COSTS—LETTERS OF COMMITMENT TO UNITED STATES BANKS. Upon satisfaction of conditions precedent, the Grantee 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 bank or banks for payments made by them to the Grantee or any designee of the Grantee through the use of Letters of Credit or otherwise, for costs of Eligible Items procured 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 of the United States bank or banks incurred in connection with Letters of Commitment and Letters of Credit shall be for the account of the Grantee and may be financed under the Grant.

Section 4.02. OTHER FORMS OF DISBURSEMENT. Disbursements of the Grant may also be made through such other means and by such other procedures as the Grantee and A.I.D. may agree to in writing.

Section 4.03. DATE OF DISBURSEMENT. Disbursements by A.I.D. shall be deemed to occur, in the case of disbursements pursuant to Section 4.01, on the date on which A.I.D. makes a disbursement to the Grantee, to its designee, or to a banking institution pursuant to a Letter of Commitment.

Section 4.04. TERMINAL DATE FOR DISBURSEMENT. Except as A.I.D. may otherwise agree in writing, no Letter of Commitment or other commitment documents which may be called for by another form of disbursement under Section 4.02 shall be issued in response to a request received by A.I.D. after twelve (12) months, and no disbursement of grant funds shall be made against documentation received by A.I.D. or any bank described in Section 4.01 after twenty-four (24) months from the date the Grantee satisfies the Conditions Precedent in Section 2.01.

Section 4.05. DOCUMENTATION REQUIREMENTS. A.I.D. Regulation 1 specifies in detail the documents required to substantiate disbursements under this Agreement by Letter of Commitment or other method of financing. The document number shown on the Letter of Commitment or other disbursing authorization document shall be the number reflected on all disbursement documents submitted to A.I.D. In addition to the above, Grantee shall maintain records adequate to establish that commodities financed hereunder have been utilized in accordance with Section 3.07 of this Agreement. Additional documents may also be required by A.I.D. with respect to specific commodities, as may be set forth in detail in Implementation Letters.

Section 4.06. RECORDS. Grantee shall maintain or cause to be maintained in accordance with sound accounting principles and practices consistently applied such books and records relating to this Agreement as may be prescribed in Implementation Letters. Such books and records shall be made available to A.I.D. for such periods and at such times as A.I.D. may require, and shall be maintained for three (3) years after the date of last disbursement by A.I.D. under this Agreement.

Article V. GENERAL COVENANTS AND WARRANTIES

Section 5.01. REPORTS. Grantee shall furnish to A.I.D. such information and reports relating to the goods and services financed by this Grant and the performance of Grant's obligations under this Agreement as A.I.D. may reasonably request.

Section 5.02. DISCLOSURE OF MATERIAL FACTS AND CIRCUMSTANCES. The Grantee represents and warrants that all facts and circumstances that it has disclosed or caused to be disclosed to A.I.D. in the course of obtaining the Grant are accurate and complete, and that it has disclosed to A.I.D., accurately and completely, all facts and circumstances that might materially affect the Grant and the discharge of its obligation under this Agreement. The Grantee shall promptly inform A.I.D. of any facts and circumstances that may hereafter arise that might materially affect, or that it is reasonable to believe might materially affect, this Grant or the discharge of the Grantee's obligations under this Agreement.

Section 5.03. TAXATION. This Agreement, and the Grant, shall be free from any taxation or fees imposed under the laws in effect within the country of the Grantee.

Section 5.04. COMMISSIONS, FEES AND OTHER PAYMENTS. (a) Grantee 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 to the Grantee's full-time officers and employees or as compensation for bona fide professional, technical or comparable services. The Grantee 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 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.

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

Section 5.05. PERIODIC DISCUSSIONS. Periodically, but no less than annually, the Grantee and A.I.D. will meet to discuss the status of the economy, associated economic issues and the relationship of the A.I.D. program to those concerns.

Section 5.06. USE OF LOCAL CURRENCY. Grantee will establish a Special Account in the Bank of Sudan and deposit therein currency of the Government of the Democratic Republic of Sudan in amounts equal to proceeds accruing to the Grantee or any authorized agency thereof as a result of the sale or importation of the Eligible Items. Funds in the Special Account may be used for such purposes as are mutually agreed upon by A.I.D. and the Grantee from time to time, provided that such portion of the funds in the Special Account as may be designated by A.I.D. shall be made available to A.I.D. to meet the requirements of the United States.

Article VI. TERMINATION AND SUSPENSION

Section 6.01. TERMINATION. This Agreement may be terminated by mutual agreement of the Parties at any time. Either Party may terminate this Agreement by giving the other Party thirty (30) days written notice.

Section 6.02. SUSPENSION OF DISBURSEMENTS, TRANSFER OF GOODS TO A.I.D. In the event that at any time:

- (a) Grantee shall fail to comply with any provision of this Agreement; or
- (b) Any representation or warranty made by or on behalf of Grantee with respect to obtaining this Grant or made or required to be made under this Agreement is incorrect in any material respect; or
- (c) An event occurs that A.I.D. determines to be an extraordinary situation that makes it improbable either that the purposes of the Grant will be attained or that the Grantee will be able to perform its obligations under this Agreement; or

- (d) Any disbursement by A.I.D. would be in violation of the legislation governing A.I.D.; or
- (e) A default shall have occurred under any other agreement between Grantee or any of its agencies and the Government of the United States or any of its agencies;

then A.I.D., in addition to remedies provided in A.I.D. Regulation 1, at its option, may (i) decline to issue further Letters of Commitment or other disbursing authorization, (ii) suspend or cancel outstanding Letters of Commitment or other disbursing authorizations to the extent that they have not been utilized through the issuance of irrevocable Letters of Credit, or (iii) to the extent that A.I.D. has not made direct reimbursement to Grantee thereunder, giving notice to Grantee promptly thereafter; decline to make disbursements other than under Letters of Commitment; and (iv) at A.I.D.'s expense, direct that title to goods financed hereunder shall be transferred to A.I.D., if the goods are in a deliverable state and have not been offloaded in ports of entry of the Democratic Republic of Sudan.

Section 6.03. CANCELLATION BY A.I.D. Following any suspensions of disbursements pursuant to Section 6.02, if the cause or causes for such suspension of disbursements shall not have been eliminated or corrected within sixty (60) days from the date of such suspension, A.I.D. may, at its option, at any time or times thereafter, cancel all or any part of the Grant that is not then either disbursed or subject to irrevocable Letters of Credit.

Section 6.04. REFUNDS. In addition to any refund otherwise required by A.I.D. pursuant to A.I.D. Regulation 1, in the case of any disbursement not supported by valid documentation in accordance with the terms of the Agreement as determined by A.I.D., or of any disbursement not made nor used in accordance with the terms of this Agreement or is in violation of the laws governing A.I.D., as determined by A.I.D., A.I.D. may require the Grantee to refund such amount in United States dollars to A.I.D. within thirty (30) days after receipt of a request therefor. Refunds paid by Grantee to A.I.D. resulting from violations of the terms of this Agreement shall be considered as a reduction in the amount of A.I.D.'s obligation under the Agreement, reducing the amount available for future disbursement, and shall not be available for reuse under the Agreement.

Section 6.05. NONWAIVER OF REMEDIES. No delay in exercising or omission to exercise any right, power or remedy accruing to A.I.D. under this Agreement shall be construed as a waiver of any of such rights, powers or remedies.

Article VII. MISCELLANEOUS

Section 7.01. COMMUNICATIONS. Any notice, request, document, or other communication given, made, or sent by the Grantee or A.I.D. pursuant to this Agreement shall be in writing or by telegram, cable, or radiogram 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 to such party by hand or by mail, telegram, cable, telex, or radiogram at the following addresses:

To Grantee:

Mail address:

Ministry of National Planning
P.O. Box 2092
Khartoum, Sudan

Cable Address:
EIMAR Khartoum
Telex No. 324

To A.I.D.:

Mail address:
United States Agency for International Development
American Embassy
P.O. Box 699
Khartoum, Sudan

Telex No. 619 AmEmb Km.

Other addresses may be substituted for the above upon the giving of notice. 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 7.02. REPRESENTATIVES. For all purposes relative to this Agreement, the Grantee will be represented by the individuals holding or acting in the offices of Minister of National Planning and the Undersecretary for National Planning, and A.I.D. will be represented by the individual holding or acting in the office of Director, USAID, Khartoum, Sudan. Such individuals shall have the authority to designate additional representatives by written notice. In the event of any replacement or other designation of a representative hereunder, Grantee shall submit a statement of the new 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 Grantee designated pursuant to this Section, it may accept the signature of any such representative or representatives on any instrument [as] duly authorized.

Section 7.03. IMPLEMENTATION LETTERS. A.I.D. shall from time to time issue Implementation Letters that will prescribe the procedures applicable hereunder in connection with the implementation of this Agreement. Except as permitted by particular provisions of this Agreement, Implementation Letters will not be used to amend or modify the text of this Agreement.

Section 7.04. INFORMATION AND MARKING. The Grantee will give appropriate publicity to the Grant as a program to which the United States has contributed, and require goods financed by A.I.D. to be marked as described in Implementation Letters.

IN WITNESS WHEREOF, Grantee and the United States of America, each acting through its respective duly authorized representative, have caused this Agreement to be signed in their names and delivered as of the day and year first above written.

Democratic Republic of Sudan:

United States of America:

By: [Signed]

By: [Signed]

Name: Maj. Gen. (Ret.) NASR AL DIN MUSTAFA

Name: DONALD C. BERGUS

Title: Minister

Title: Ambassador