

भाग ५

श्री ५ को सरकार

कानून तथा न्याय मन्त्रालयको सूचना

श्री ५ को सरकार, नेपाल र अमेरिकी सरकारबीच "Feasibility Study (Phase I) on the Upper Arun Hydroelectric Project" का लागि आर्थिक सहयोग उपलब्ध गराउने सम्बन्धमा सम्पन्न भएका सम्झौता सर्वसाधारणको जानकारीको लागि प्रकाशित गरिएको छ ।

FINANCING AGREEMENT
BETWEEN
HIS MAJESTY'S GOVERNMENT OF NEPAL
AND
GOVERNMENT OF THE UNITED STATES OF AMERICA

His Majesty's Government of Nepal acting through the Ministry of Finance (hereinafter referred to as HMG/N) and the United States of America, acting through the US Trade and Development Program of the International Development Cooperation Agency (hereinafter referred to as TDP),

Being desirous of strengthening the friendly relations and cooperation existing between the Kingdom of Nepal and the United States of America;

Have agreed the following:

Article I
Grant Assistance

TDP agrees to provide HMG/N under the terms of this agreement not to exceed US Dollars 650,000 (six hundred fifty thousand Dollars) in grant assistance to finance the cost of services required for a proposed feasibility study (Phase I) on the Upper Arun Hydroelectric Project. The study will examine the economic, technical, financing, and marketing aspects of the proposed project.

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आधिकारिकता मुद्रण विभागबाट प्रमाणित गरिएपछि मात्र लागु हुनेछ।

Article II

US Dollar Funding/Local Currency Funding

The funding provided under this agreement will be used to finance US Dollar and local currency costs for professional and technical services including the field investigation to be performed by a US firm in conducting the aforementioned study.

Article III

Most Favourable Conversion Rate

If funds provided by TDP are introduced into the Kingdom of Nepal by TDP or any public or private agency for purposes of carrying out obligations of TDP hereunder, HMG/N will make such arrangements as may be necessary to convert such funds into Nepalese Rupees at the official rate of exchange prevailing at the time of conversion.

Article IV

HMG/N Financing

HMG/N will provide or cause to be provide, all funds for counterpart staffs and related expenditures thereof.

Article V

Completion Date

The completion date for the study, which is 12 months after the signing of the contract with the study consultant or such other date as HMG/N and TDP may agree to in writing, is the date by which the parties estimate that all services financed under the grant will have been performed as contemplated in this agreement.

Article VI

Prohibition Against Funding before Agreement**Entered and After Completion Date**

No services may be financed under this agreement which are procured under orders or contracts firmly placed or entered into before the date of this agreement, except as the parties may otherwise agree in writing. Except as TDP may otherwise agree in writing, TDP will not issue or approve documentation which would authorize disbursement of grant funds for services performed subsequent to the completion date as contemplated in this agreement.

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Article VII

Time Limitation of Disbursement

Disbursement of TDP funds for services performed will be made within six months after the completion date or such other period as TDP agrees to in writing.

Article VIII

Disbursement/Reimbursement Procedures

HMG/N may obtain disbursement/reimbursement of funds under this agreement for the costs of services required in accordance with the terms of this agreement by submitting to the United States Embassy, Kathmandu requests for disbursement/reimbursement for such services. Such requests shall consist of the following:

(a) An accounting of actual expenditures, indicating amounts expended or due, to whom paid and when, or to whom payable, and a justification for the payment indicating services performed for which payment/reimbursement is required as a proportion of total services to be provided under this agreement. The accounting shall include a signed statement that the amounts involved do not include taxes or fees imposed under laws of Nepal.

(b) A statement from HMG/N certifying that the services for which disbursement/reimbursement are requested have been performed and are satisfactory and are in compliance with the terms of this agreement.

(c) A copy of the signed contract under which payment is requested.

Article IX

Taxes and Duties

(a) This agreement and the grant will be free from any taxation or fees imposed under laws in effect in the Kingdom of Nepal. To the extent that any contractor, including any consulting firm, any personnel of such contractor financed under the grant, and any property or transaction relating to such contracts financed under the grant are not exempt from identifiable taxes, tariffs, duties or other levies imposed under laws in effect in the Kingdom of Nepal, HMG/N

will, as and to the extent provided in and pursuant to implementation letters, pay or reimburse the same with funds other than those provided under the grant.

(b) Contracts funded under this grant are exempt from the assessment, withholding, collection or payment of the Nepal Contract Tax under para (a) above. HMG/N will not assess, withhold, collect or require payment of contract tax on contracts funded under this grant. Further, HMG/N will include a clause in procurement documents and contracts executed or administered by HMG/N ministries and agencies for all contracts funded hereunder that the contract is exempt from the withholding, assessment, collection and payment of Contract Tax and that contractors bids and vouchers shall not include amounts for the contract tax.

Article X

Contracting Procedures

Contract for professional and technical services is to be carried out by HMG/N according to procedures to be mutually agreed by TDP and HMG/N. Pursuant to these arrangements, HMG/N will have the authority to carry out all aspects of the procurement.

Article XI

Use of US Air carriers

Transportation of property or persons financed under the grant will be on US air carriers, in accordance with the Fly American Act, 49 U.S.C. 1517, as amended by Section 21 of P.L. 96-192, 94 STAT 43, to the extent service by such carriers is available as provided for under US Government regulation.

Article XII

TDP Access to Contract Documents

Contracts and contractors financed under this agreement for the provision of professional and technical services and for other services, and any amendments to such contracts, including any changes in the scope of work, must be agreed to by TDP in writing before execution/amendment of the contracts. Such contracts shall include the following mandatory clauses:

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(a) It is understood by the parties that TDP has reserved certain rights such as, but not limited to, the right to approve the terms of the contracts, the contractors, scope of work and any or all documents related to the contract financed by this grant. The parties hereto further understand and agree that TDP, in reserving any or all of the foregoing approval rights, has acted solely as a financing entity to assure the proper use of United States Government funds and that any decision by TDP to exercise or refrain from exercising these approval rights shall be made as a financier in the course of financing this effort and shall not be construed as making TDP a party to the contracts. The parties hereto understand and agree that TDP may from time to time exercise the foregoing approval rights or discuss matters related to these rights and the project with the parties jointly or separately, without thereby incurring any responsibility of liability to the parties or to any one of them. Any approval or failure to approve by TDP shall not bar HMG/N or TDP from asserting any right, or relieve the contractors of any liability which the contractors might otherwise have to HMG/N.

(b) All services provided by the contractors or any subcontractors shall have their nationality, sources and origin in the United States or Nepal except as the parties may otherwise agree in writing. In no case shall services having their nationality, source and origin in Nepal exceed 20 percent of the grant financing provided by TDP.

(c) The contractors financed under this grant shall maintain books, records, documents and other evidence and shall apply consistent accounting procedures and practices sufficient to reflect properly all transaction under or in connection with the contract. The foregoing constitutes "records" for the purpose of this clause.

(1) Such records shall be maintained during the contract term and for a period of three years after final payment by TDP.

(2) All records maintained by the contractors shall be subject to inspection and audit by HMG/N and or TDP (or their authorized agents) at all reasonable times. The contractor shall afford HMG/N and/or TDP, proper facilities for such inspection and audit.

(d) Transportation of persons by air, financed under the grant must be on US air carriers, in accordance with the Fly American

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Act, 49 U.S.C. 1517 as amended by Section 21 of P.L. 96-192, 94 STAT 43, to the extent service by such carriers is available as provided for under US Government regulations.

(e) The study consultant shall provide to the US Government 10 copies of the final report financed under this grant.

(f) Adequate workmen's compensation insurance coverage must be provided for US citizen personnel under service contracts financed by TDP.

Article XIII Reasonable Prices

No more than reasonable prices will be paid for any services financed under the grant.

Article XIV Cooperation between Parties

The parties will cooperate to assure that the purpose of this agreement will be accomplished. To this end, the parties, at the request of either, will exchange views on the progress of the study, the performance of obligations under this agreement, the performance of any consultants or contractors engaged in the study and other matters relating to the study.

Article XV Implementation Letters

To assist HMG/N in the implementation of the study, TDP may, from time to time, issue implementation letters that will provide additional information about matters covered in this agreement. The parties may also use jointly agreed upon implementation letters to confirm and record their mutual understanding of the implementation of this agreement.

Article XVI Representatives of Parties

For all purposes relevant to this agreement, HMG/N will be represented by the Secretary of the Ministry of Finance and the United States Government will be represented by the United States Ambassador to Nepal, each of whom may, by written notice, designate additional representatives for all purposes under this agreement.

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Article XVII

Books and Records

HMG/N agrees to maintain, in accordance with generally accepted accounting principles and practices, consistently applied, books and records relating to the study and to this agreement, adequate to show, without limitation, the receipt and use of services acquired under the grant. Such books and records will be maintained for three years after the date of last disbursement by TDP. Such books and records will be adequate to show the basis for award of contract and the overall progress of the study toward completion, and afford authorized representatives of TDP the opportunity at reasonable times to review books, records and other documents relating to the study and grant.

Article XVIII

Addresses of Record for Parties

(a) Any notice, request, document or other communication submitted by either party to the other under this agreement will be in writing or by telegram or cable, and will be deemed duly given or sent when delivered to such party at the following addresses:

For His Majesty's Government of Nepal

Secretary
Ministry of Finance
Bagh Durbar
Kathmandu, Nepal
Cable - ARTHA
Telex - 2249 NP

For the Government of the United States of America

The US Trade and Development Program (TDP)
C/O The Embassy of the United States of America
Pani Pokhari
Kathmandu, Nepal

(b) All such communications will be in English, unless the parties agree otherwise in writing. Other addresses may be substituted provided reasonable notice is given.

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Article XIX

Effective date and Termination

This agreement become effective when signed by both parties. Either party may terminate this agreement by giving the other party 30 days advance written notice. Termination of this agreement will terminate any obligations of the parties to provide financial or other resources to the study pursuant to this agreement, except for payments which they are committed to make pursuant to non-cancellable commitments entered into with third parties prior to the termination of this agreement.

Article XX

Non-waiver of Rights and Remedies

No delay in exercising any right or remedy accruing to a party in connection with its financing under this agreement will be construed as a waiver of such right or remedy.

In witness whereof, His Majesty's Government of Nepal and the Government of the United States of America, each acting through its duly authorized representative, have caused this agreement to be signed in their names and delivered on this 8th day of September, 1986 A.D. at Kathmandu.

For His Majesty's
Government of Nepal
Sd.

Lok Bahadur Shrestha
Finance Secretary

For the United States of
America
Sd.

Leon J. Weil
Ambassador Extraordinary
and Plenipotentiary of the
United States of America
to the Kingdom of Nepal

आज्ञाले,

उदय नेपाली श्रेष्ठ

उपसचिव

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श्री ५ को सरकारको छापाखाना, सिंहदरवार, काठमाडौंमा मुद्रित ।

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