USAID Grant Agreement No. 4920002.01

Millennium Challenge Account Threshold Program

STRATEGIC OBJECTIVE GRANT AGREEMENT

BETWEEN THE

UNITED STATES OF AMERICA

AND

THE GOVERNMENT OF THE REPUBLIC OF THE PHILIPPINES

TO

STRENGTHEN AND ENFORCE

ANTI-CORRUPTION MEASURES

Dated: July 26, 2006

Millennium Challenge Account Threshold Program

Strategic Objective Grant Agreement

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Millennium Challenge Account Threshold Program

STRATEGIC OBJECTIVE GRANT AGREEMENT

Dated: July 26, 2006

Between

The United States of America, acting through the United States Agency for International Development ("USAID")

and

The Government of the Republic of the Philippines, acting through the Department of Finance (hereinafter referred to as the "Grantee")

Article 1: Purpose

The purpose of this Strategic Objective Grant Agreement ("Agreement") is to set out the understanding of the parties named above (the "Parties") about the Strategic Objective described below.

Article 2: Strategic Objective and Results

Section 2.1. Strategic Objective. The strategic objective ("Strategic Objective" or "Objective") is to improve revenue administration and anti-corruption efforts in the Philippines.

This Section 2.1 may not be changed except by formal written amendment to this Agreement by the Authorized Representatives, as defined in Section 6.3.

Section 2.2. Results. In order to achieve the Objective, the Parties agree to work together to achieve the following results (each a "Result" and collectively, the "Results"):

(a) Reduce opportunities for corruption throughout the government; and

(b) Improve the ability of the authorities to expose violators and increase compliance with the laws by both taxpayers and officials of the revenue collection agencies.

This Section 2.2 may not be changed except by formal written amendment to this Agreement by the Authorized Representatives.

Section 2.3. Annex 1, Amplified Description. Annex 1, attached hereto, forms part of this Agreement and amplifies the above Objective and Results. Within the limits of the above definitions of the Objective in Section 2.1 and the Results in Section 2.2, Annex 1 may be changed only by written agreement of the Authorized Representatives, without formal amendment of this Agreement.

Article 3: Contributions of the Parties

Section 3.1. USAID Contribution. *The Grant.* To help achieve the Objective set forth in this Agreement, USAID, hereby grants, subject to the terms and conditions set forth herein, and pursuant to the Foreign Assistance Act of 1961, as amended, and Section 616 of the Millennium Challenge Act of 2003, to the Grantee an amount not to exceed twenty million six hundred eighty-five thousand United States ("U.S.") dollars ($20,685,000) (the "Grant").

Section 3.2. Grantee Contribution. The Grantee shall provide or cause to be provided all funds, in addition to those provided by USAID and any other donor identified in Annex 1, and all other resources required to complete, on or before the Completion Date, all activities necessary to achieve the Results. Grantee support shall include, but shall not be limited to, all organizational costs associated with achieving the Results.

Article 4: Completion Date

(a) The Completion Date, September 30, 2008, or such other date as the Parties may agree to in writing, is the date by which the Parties estimate that all the activities necessary to achieve the Objective and Results will be completed.

(b) Except as USAID may otherwise agree to in writing, USAID will not issue or approve documentation which would authorize disbursement of the Grant for services performed or goods furnished after the Completion Date.

(c) Requests for disbursement, accompanied by necessary supporting documentation prescribed in Implementation Letters, are to be received by USAID no later than nine (9) months following the Completion Date, or such other period as USAID agrees to in writing. After such period, USAID, at any time or times, may give notice in writing to the Grantee and reduce the amount of the Grant by all or any part thereof for which requests for disbursement, accompanied by necessary supporting documentation prescribed in Implementation Letters, were not received before the expiration of such period.

Article 5: Conditions Precedent to Disbursement

Section 5.1. First Disbursement. Prior to the first disbursement under the Grant or to the issuance by USAID of documentation pursuant to which such disbursement will be made, the Grantee will, except as the Parties may otherwise agree in writing, furnish to USAID in form and substance satisfactory to USAID:

(a) A legal opinion from the Department of Justice that this Agreement has been duly authorized 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, signed by the Authorized Representative of the Grantee specified in Section 6.3, of the name and title of each person who will act as a representative of the Grantee under Section 6.3, together with a specimen signature of each person specified in such statement.

Section 5.2. Notification. USAID will promptly notify the Grantee when USAID has determined that a condition precedent has been met.

Section 5.3. Terminal Dates for Conditions Precedent. The terminal date for meeting the conditions specified in Section 5.1 is sixty (60) days from the date of this Agreement or such later date as USAID may agree to in writing. If the conditions precedent in Section 5.1 have not been met by the above terminal date, USAID may terminate this Agreement by written notice to the Grantee.

Article 6: Miscellaneous

Section 6.1. Financial Disbursement. The activities funded under this Agreement will be undertaken in conformity with United States Government rules, regulations, policies and procedures, and USAID will disburse all funds under this Agreement to Implementing Partners (as defined in Annex 1) consistent with such rules, regulations, policies and procedures.

Section 6.2. Communications. Any notice, request, document, or other communication submitted by either Party to the other under this Agreement shall be (a) in writing or by telegram or telefax, and (b) deemed duly given or sent when delivered to such Party at the following address:

To USAID:

Mail Address:
Mission Director
United States Agency for International Development
8/F PNB Financial Center

Pres. Diosdado Macapagal Boulevard
Pasay City, Philippines 1308

Tel.: +63-2-552-9800; Fax.: +63-2-552-9808

To the Grantee:

Mail Address:
Secretary Margarito B. Teves
Department of Finance
Roxas Blvd. corner Vito Cruz Street
Manila, Philippines 1004

Telefax: +63-2-521-9495

All such communications shall be in English unless the Parties otherwise agree in writing. Other addresses may be substituted for the above upon the giving of prior notice to the other Party.

Section 6.3. Representatives. For all purposes relevant to this Agreement, the Grantee will be represented by the individual holding or acting in the Office of Secretary of Finance, and USAID will be represented by the individual holding or acting in the Office of Mission Director, USAID/Philippines (each an "Authorized Representative" and together, the "Authorized Representatives"). Each of the Authorized Representatives, by written notice, may designate additional representatives ("Additional Representatives") for all purposes except signing this Agreement, signing formal amendments to the Agreement or exercising the power under Section 2.3 to change Annex 1. The names of the Authorized Representative and the Additional Representatives of the Grantee, with specimen signatures, will be provided to USAID, and USAID may accept as duly authorized any instrument signed by such representatives in implementation of this Agreement, until receipt of written notice of revocation of their authority.

Section 6.4. Standard Provisions Annex. A "Standard Provisions" Annex (Annex 2) is attached to and forms part of this Agreement.

Section 6.5. Amendments. Unless otherwise specified herein, the Parties may amend this Agreement only by a formal written amendment signed by the Authorized Representatives.

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

UNITED STATES OF AMERICA

By: _____

Francis A. Donovan
Acting Mission Director
USAID/Philippines

GOVERNMENT OF THE REPUBLIC OF THE PHILIPPINES

By: _____

Margarito B. Teves
Secretary of Finance

Witnesses

UNITED STATES OF AMERICA

By: _____

Kristie A. Kenney
United States Ambassador
to the/Philippines

UNITED STATES OF AMERICA

By: _____

Charles O. Sethness
Vice President
Millennium Challenge Corporation

ANNEX 1
AMPLIFIED DESCRIPTION

I. INTRODUCTION

This Annex 1 describes the activities to be undertaken and the Results to be achieved with the funds obligated under this Agreement. Nothing in this Annex 1 shall be construed as amending any of the definitions or terms of the Agreement.

II. BACKGROUND

In November 2004, the Millennium Challenge Corporation ("MCC") selected the Philippines as eligible to receive MCC Threshold program assistance. In response to MCC's invitation, the Government of the Republic of the Philippines (the "Government") submitted its Threshold Country Plan to MCC in April 2006.

In June 2006, the Board of Directors of MCC approved Threshold program assistance for the Philippines as set forth in this Agreement (the "Program"). The Program focuses on improving revenue administration and anti-corruption efforts and is consistent with the "Medium-Term Philippine Development Plan, 2004-2010," which was developed under the guidance of President Gloria Macapagal-Arroyo and released in October 2004. Under the Program, the Government will further accelerate the pace of sustainable and continuous efforts to stamp out corruption, plug revenue leaks, increase tax collection, and ultimately channel more resources to poverty reduction programs such as in healthcare, education and social services.

The Program will reduce corruption by strengthening the Office of the Ombudsman and strengthening enforcement within three areas of the Department of Finance – the Revenue Integrity Protection Service (RIPS), the Bureau of Internal Revenue (BIR), and the Bureau of Customs.

III. STRATEGIC OBJECTIVE; RESULTS TO BE ACHIEVED

The Strategic Objective of this Agreement is to improve revenue administration and anti-corruption efforts in the Philippines. In order to achieve the Objective, the following Results must be achieved for the respective Program components:

A. Strengthen the Office of the Ombudsman

B. Strengthen the Department of Finance

IV. ACTIVITIES

The Program will involve two components and their associated activities:

Component 1. <u>Strengthen the Office of the Ombudsman:</u> The Ombudsman has the authority to investigate and prosecute high-level government officials before the appropriate court. Funding has increased significantly for the office, resulting in dramatic increases in staff and requirements for additional training and equipment in order to be effective.

<u>Objective</u>: Reduce opportunities for corruption throughout the government by training Ombudsman employees and establishing information management and investigation and surveillance capability. The component also aims to reduce the deficit by reducing the cost of government operations and by obtaining higher revenues as revenue collection officials develop a stronger incentive to be honest.

<u>Activities</u>:

A. Expand the Ombudsman training program for new hires and provide advanced courses for previously trained employees.
B. Improve information management by internally connecting the six existing Ombudsman offices via a Local Area Network and a Wide Area Network.
C. Strengthen investigation and surveillance capability of the Ombudsman by providing training and acquiring equipment such as cameras, optic and electronic devices.
D. Train teachers to provide an anti-corruption module in public school curriculums.
E. Establish a mediation system to unclog the investigation-prosecution process.

Component 2. <u>Strengthen the Department of Finance</u>: To address corruption, the Department of Finance is simultaneously conducting anti-corruption drives in three separate areas: the Department of Finance itself through its Revenue Integrity Protection Service (RIPS) unit, the Bureau of Internal Revenue through its Run After Tax Evaders (RATE) unit, and the Bureau of Customs through its Run After The Smugglers! (RATS) unit. All three units were recently organized and given increased resources to increase the Government's enforcement ability. Additional resources are needed to increase their effectiveness.

<u>Objective</u>: Improve the ability of the RIPS, RATE, and RATS units to expose violators and increase compliance with the laws by both taxpayers and officials of the revenue collection agencies.

1. *Improve the investigative skills of the RIPS staff to strengthen and increase the number of cases filed against corrupt officials within the revenue generating agencies under the Department of Finance by investigating and conducting lifestyle checks.*

Activities:

A. Train and mobilize RIPS staff including basic training and advanced training courses.

B. Strengthen the investigation and surveillance capacity by providing surveillance equipment such as cameras, optic and electronic devices, which will reduce backlogs in case development and prosecution.

C. Improve information security to safeguard evidence and documents by designing and installing a security system.

2. *Institutionalize the RATE program within the Bureau of Internal Revenue to deter tax evasion.*

Activities:

A. Strengthen and sustain the RATE program by improving the investigative and prosecutorial skills of BIR personnel through local and overseas training programs on illegal activities, evidence needed to prove a tax case, and how to investigate and document a case.

B. Fundamentally reform the processes associated with taxpayer registration and filing, and expanding computerization to allow for a substantial increase in effectiveness of RATE investigations.

C. Automate the Human Resource Information System to enable BIR management to allocate human resources more effectively, improve work efficiency of BIR staff, and evaluate and monitor performance.

3. *Strengthen the capability of the Bureau of Customs (BOC) through the RATS program to investigate, prosecute, and deter violators of the Tariff and Customs Code and trade-related laws.*

Activities:

A. Train BOC staff under the RATS program on profiling, case evaluation and litigation.

B. Improve information management and document security.

C. Develop a RATS database for customs personnel with disaggregated information to better develop cases.

D. Institutionalize and strengthen the Customs Accreditation Secretariat to conform with international standards by training staff in areas such as financial evaluation and document validation, as well as centralizing and integrating accreditation systems that will eventually connect with other systems globally.

E. Harmonize customs law, rules and regulations to ensure that the Tariff and Customs Code of the Philippines is attuned to developments in worldwide customs administration.

F. Establish an Integrity Action Plan to promote ethical and professional behavior within the Bureau of Customs.

G. Establish an Internal Control Unit to ensure that all Bureau of Customs units perform their respective mandates in accordance with key performance objectives.

V. ROLES AND RESPONSIBILITIES

A. GOVERNMENT

In connection with the implementation of the activities under this Agreement, the Government shall use its very best efforts to ensure that the Results and the Objective are achieved, as contemplated in this Agreement.

In furtherance of, but without limiting the foregoing, the Government shall: (a) pay for the annual salaries and organizational costs of the Government staff assigned to oversee the Program; (b) provide office space for staff of selected Implementing Partners (as defined below); (c) provide Program monitoring; and (d) ensure budget support and replication of lessons learned to sustain Program activities after the Completion Date and expand to other areas.

B. USAID

USAID will work closely with the Government (specifically the Department of Finance) to assist the Government to successfully implement the Program and achieve the Results and the Objective contemplated by this Agreement.

USAID will enter into one or more agreements with one or more third-party implementing partners (each, an "Implementing Partner") to implement the Program. Such agreements may include grants, cooperative agreements, and contracts. The Implementing Partners may be local, United States, international or multi-national, governmental or nongovernmental, organizations or persons. USAID will select the Implementing Partners in accordance with USAID regulations and policies and in consultation with representatives of the Government and MCC.

USAID will monitor performance under such agreements and will oversee the performance of the Implementing Partners and progress toward achievement of the Results.

C. IMPLEMENTING PARTNERS

USAID will select the Implementing Partners in consultation with the Grantee and will ensure that the Implementing Partners carry out the implementation of the Program in conformance with this Agreement and report directly to USAID. Each agreement between USAID and an Implementing Partner that is an organization will be consistent

with this Agreement and will include a monitoring and evaluation plan, including indicators, targets and outputs.

D. MCC

USAID and the Government acknowledge and understand that MCC has charged USAID with responsibility for administering and overseeing the implementation of this Agreement under MCC principles of country ownership, accountability and emphasis on results. USAID and the Government acknowledge and agree that MCC shall have no rights or obligations under this Agreement.

VI. FINANCIAL PLAN

The financial plan (the "Financial Plan") for the Program is set forth below. Changes may be made to the Financial Plan in writing by the Authorized Representatives without formal amendment to the Agreement, if such changes do not cause USAID's contribution to exceed the amount specified in Section 3.1 of the Agreement.

Program Component	**USAID Contribution (in U.S. Dollars)**
Strengthening the Office of the Ombudsman	$6,475,000
Strengthening the Department of Finance	
Revenue Integrity Protection Service (RIPS) Unit	$1,425,000
Run After The Tax Evaders (RATE)	$9,400,000
Run After The Smugglers (RATS)	$3,135,000
Monitoring and Evaluation	$ 250,000
TOTAL	**$20,685,000**

VII. MONITORING AND EVALUATION

Program monitoring and evaluation will be based on quantitative as well as qualitative factors, and shall be carried out by the Department of Finance with technical assistance provided under this Agreement by the Implementing Partners and USAID.

Achievement of the Results and the Strategic Objective shall be measured based upon the following performance indicators and targets:

1. Increase the conviction rate in corruption cases filed before the anti-graft court (*Sandiganbayan*) on a cumulative basis from 30 percent to 40 percent.
2. Increase the number of cases successfully mediated in the Ombudsman's Public Assistance Office from 0 to 300 per year.
3. Increase the number of RIPS cases filed from 13 to 50.

4. Increase the number of officials charged by RIPS who were suspended by the Ombudsman from 6 to 35.
5. Increase the percentage of income tax returns filed by professionals and the self-employed by 10 percent.
6. Increase the percentage of corporate tax returns filed by 10 percent.
7. Increase the number of RATE cases filed with the Department of Justice from 44 to 116.
8. Increase the number of cases filed by RATS with the Department of Justice from 9 to 24 per year.
9. Increase in RATS cases filed by the Department of Justice with the Court of Tax Appeals from 2 to 15 per year.

The Government will also use additional indicators on corruption in tax administration and customs drawn from MCC's "Control of Corruption" indicator to measure program effectiveness.

Additionally, the Government shall monitor all outputs to ensure that performance is consistent with this Agreement.

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Standard Provisions

Article A: Definitions and Implementation Letters.

Section A.1. Definitions. As used in this Annex, the "Agreement" refers to the Strategic Objective Grant Agreement, including Annex 1 thereto, to which this Annex is attached and of which this Annex forms a part. Capitalized terms used and not otherwise defined in this Annex have the same meaning or reference as in the Agreement.

Section A.2. Implementation Letters. To assist the Grantee in the implementation of the Agreement, USAID, from time to time, will furnish additional information about matters stated in this Agreement. The Parties may also issue jointly agreed-upon Implementation Letters to confirm and record their mutual understanding on aspects of the implementation of this Agreement. Implementation Letters can also be issued to record revisions or exceptions which are permitted by the Agreement.

Article B: General Covenants.

Section B.1. Consultation. The Parties will cooperate to assure that the Objective and Results of this Agreement will be accomplished. To this end, the Parties, at the request of either, will exchange views on progress towards the Objective and Results, the performance of obligations under this Agreement, the performance of any consultants, contractors, or suppliers engaged under the Agreement, and other matters relating to the Agreement.

Section B.2. Execution of Agreement. The Grantee will:

(a) Carry out the Agreement or cause it to be carried out with due diligence and efficiency, in conformity with sound technical, financial, and management practices, and in conformity with those documents, plans, specifications, contracts, schedules, or other arrangements, and with any modifications therein, approved by USAID pursuant to this Agreement; and

(b) Provide qualified and experienced management for, and train such staff as may be appropriate for the maintenance and operation of activities financed under the Agreement, and, as applicable for continuing activities, cause those activities to be operated and maintained in such manner as to assure the continuing and successful achievement of the Objective and Results of the Agreement.

Section B.3. Utilization of Goods and Services.

(a) Any goods and services financed under this Agreement, unless otherwise agreed in writing by USAID, will be devoted to the Agreement until the completion or termination of the Agreement, and thereafter (as well as during any period of suspension

of the Agreement) will be used to further the Objective of the Agreement and as USAID may direct in Implementation Letters.

(b) Goods or services financed under this Agreement, except as USAID may otherwise agree in writing, will not be used to promote or assist a foreign aid project or activity associated with or financed by a country not included in USAID Geographic Code 935 as in effect at the time of such use.

Section B.4. Taxation.

(a) General Exemption. The Agreement and the assistance thereunder are free from any taxes imposed under laws in effect in the territory of the Grantee.

(b) Except as provided otherwise in this provision, the General Exemption in subsection (a) applies to, but is not limited to (1) any activity, contract, grant or other implementing agreement financed by USAID under this Agreement; (2) any transaction or supplies, equipment, materials, property or other goods (hereinafter collectively "goods") under (1) above; (3) any contractor, grantee, or other organization carrying out activities financed by USAID under this Agreement; (4) any employee of such organizations; and (5) any individual contractor or grantee carrying out activities financed by USAID under this Agreement.

(c) Except as provided otherwise in this provision, the General Exemption in subsection (a) applies to, but is not limited to, the following taxes:

(1) Exemption 1. Customs duties, tariffs, import taxes, or other levies on the importation, use and re-exportation of goods or the personal belongings and effects (including personally-owned automobiles) for the personal use of non-national individuals or their family members. Exemption 1 includes, but is not limited to, all charges based on the value of such imported goods, but does not include service charges directly related to services performed to transfer goods or cargo.

(2) Exemption 2. Taxes on the income, profits or property of all (i) non-national organizations of any type, (ii) non-national employees of national and non-national organizations, or (iii) non-national individual contractors and grantees. Exemption 2 includes income and social security taxes of all types and all taxes on the property, personal or real, owned by such non-national organizations or persons. The term "national" refers to organizations established under the laws of the Grantee and citizens of the Grantee, other than permanent resident aliens in the United States.

(3) Exemption 3. Taxes levied on the last transaction for the purchase of goods or services financed by USAID under this Agreement, including sales taxes, value-added taxes (VAT), or taxes on purchases or rentals of real or personal property. The term "last transaction" refers to the last transaction by which the goods or services were purchased for use in the activities financed by USAID under this Agreement.

(d) If a tax has been levied and paid contrary to the provisions of an exemption, USAID may, in its discretion, (1) require the Grantee to refund to USAID or to others as USAID may direct the amount of such tax with funds other than those provided under the Agreement, or (2) offset the amount of such tax from amounts to be disbursed under this or any other agreement between the Parties.

(e) In the event of a disagreement about the application of an exemption, the Parties agree to promptly meet and resolve such matters, guided by the principle that the assistance furnished by USAID is free from direct taxation, so that all of the assistance furnished by USAID will contribute directly to the economic development of the country of the Grantee.

Section B.5. Reports and Information, Agreement Books and Records, Audits, and Inspections.

(a) Reports and Information. The Grantee shall furnish USAID accounting records and such other information and reports relating to the Agreement as USAID may reasonably request.

(b) Grantee Agreement Books and Records. The Grantee shall maintain accounting books, records, documents and other evidence relating to the Agreement, adequate to show, without limitation, all costs incurred by the Grantee under the Agreement, the receipt and use of goods and services acquired under the Agreement by the Grantee, agreed-upon cost sharing requirements, the nature and extent of solicitations of prospective suppliers of goods and services acquired by the Grantee, the basis of award of Grantee contracts and orders, and the overall progress of the Agreement toward completion ("Agreement books and records"). The Grantee shall maintain Agreement books and records in accordance with generally accepted accounting principles prevailing in the United States, or at the Grantee's option, with approval by USAID, other accounting principles, such as those (1) prescribed by the International Accounting Standards Committee (an affiliate of the International Federation of Accountants) or (2) prevailing in the country of the Grantee. Agreement books and records shall be maintained for at least three years after the date of last disbursement by USAID or for such longer period, if any, required to resolve any litigation, claims or audit findings.

(c) Grantee Audit. If $300,000 or more of USAID funds are expended directly by the Grantee in its fiscal year under the Agreement, the Grantee shall have financial audits made of the expenditures in accordance with the following terms, except as the Parties may otherwise agree in writing:

(1) With USAID approval, the Grantee shall use its Supreme Audit Institution or select an independent auditor in accordance with the "Guidelines for Financial Audits Contracted by Foreign Recipients" issued by the USAID Inspector General ("Guidelines"), and the audits shall be performed in accordance with the "Guidelines"; and

(2) The audit shall determine whether the receipt and expenditure of the funds provided under the Agreement are presented in accordance with generally accepted accounting principles agreed to in section (b) above and whether the Grantee has complied with the terms of the Agreement. Each audit shall be completed no later than nine months after the close of the Grantee's year under audit.

(d) Sub-recipient Audits. The Grantee, except as the Parties may otherwise agree in writing, shall submit to USAID, in form and substance satisfactory to USAID, a plan for the audit of the expenditures of "covered" sub-recipients, as defined below, that receive funds under this Agreement pursuant to a direct contract or agreement with the Grantee.

(1) A "covered" sub-recipient is one who expends $300,000 or more in its fiscal year in "USAID awards" (i.e., as recipients of USAID cost reimbursable contracts, grants or cooperative agreements and as sub-recipients under USAID strategic objective and other grant agreements with foreign governments).

(2) The plan shall describe the methodology to be used by the Grantee to satisfy its audit responsibilities for covered sub-recipients. The Grantee may satisfy such audit responsibilities by relying on independent audits of the sub-recipients; expanding the scope of the independent financial audit of the Grantee to encompass testing of sub-recipients' accounts; or a combination of these procedures.

(3) The plan shall identify the funds made available to covered sub-recipients that will be covered by audits conducted in accordance with other audit provisions that would satisfy the Grantee's audit responsibilities. (A nonprofit organization organized in the United States is required to arrange for its own audits. A for-profit contractor organized in the United States that has a direct contract with USAID is audited by the cognizant U.S. Government Agency. A private voluntary organization organized outside the United States with a direct grant from USAID is required to arrange for its own audits. A host-country contractor should be audited by the Grantee's auditing agency.)

(4) The Grantee shall ensure that covered sub-recipients under direct contracts or agreements with the Grantee take appropriate and timely corrective actions; consider whether sub-recipients' audits necessitate adjustment of its own records; and require each such sub-recipient to permit independent auditors to have access to records and financial statements as necessary.

(e) Audit Reports. The Grantee shall furnish or cause to be furnished to USAID an audit report for each audit arranged for by the Grantee in accordance with this Section within 30 days after completion of the audit and no later than nine months after the end of the period under audit.

(f) Other Covered Sub-recipients. For "covered" sub-recipients who receive funds under the Agreement pursuant to direct contracts or agreements with USAID, USAID

will include appropriate audit requirements in such contracts or agreements and will, on behalf of the Grantee, conduct the follow-up activities with regard to the audit reports furnished pursuant to such requirements.

(g) Cost of Audits. Subject to USAID approval in writing, costs of audits performed in accordance with the terms of this Section may be charged to the Agreement.

(h) Audit by USAID. USAID retains the right to perform the audits required under this Agreement on behalf of the Grantee by utilizing funds under the Agreement or other resources available to USAID for this purpose, conduct a financial review, or otherwise ensure accountability of organizations expending USAID funds regardless of the audit requirement.

(i) Opportunity to Audit or Inspect. The Grantee shall afford authorized representatives of USAID the opportunity at all reasonable times to audit or inspect activities financed under the Agreement, the utilization of goods and services financed by USAID, and books, records and other documents relating to the Agreement.

(j) Sub-recipient Books and Records. The Grantee will incorporate paragraphs (a), (b), (d), (e), (g), (h) and (i) of this provision into all sub-agreements with non-U.S. organizations which meet the $300,000 threshold of paragraph (c) of this provision. Sub-agreements with non-U.S. organizations, which do not meet the $300,000 threshold, shall, at a minimum, incorporate paragraphs (h) and (i) of this provision. Sub-agreements with U.S. organizations shall state that the U.S. organization is subject to the audit requirements contained in OMB Circular A-133.

Section B.6. Completeness of Information. The Grantee confirms:

(a) that the facts and circumstances of which it has informed USAID, or caused USAID to be informed, in the course of reaching agreement with USAID on the Agreement, are accurate and complete, and include all facts and circumstances that might materially affect the Agreement and the discharge of responsibilities under this Agreement; and

(b) That it will inform USAID in timely fashion of any subsequent facts and circumstances that might materially affect, or that it is reasonable to believe might so affect, the Agreement or the discharge of responsibilities under this Agreement.

Section B.7. Other Payments. Grantee affirms that no payments have been or will be received by any official of the Grantee in connection with the procurement of goods or services financed under the Agreement, except fees, taxes, or similar payments legally established in the country of the Grantee.

Section B.8. Information and Marking. The Grantee will give appropriate publicity to the Agreement as a program to which the United States has contributed,

identify Agreement activity sites, and mark goods financed by USAID, as described in Implementation Letters.

Article C: Procurement Provisions.

Section C.1. Source and Origin.

(a) Disbursements under this Agreement will be used exclusively to finance the costs of goods and services required for the Agreement having, with respect to goods, their source and origin and, with respect to the suppliers of goods and services, their nationality, in countries included in Geographic Code 935 as in effect at the time orders are placed or contracts entered into for such goods or services, except as USAID may otherwise agree in writing and as follows:

(1) Ocean transportation costs shall be financed under the Agreement only on vessels under flag registry of countries included in Geographic Code 935. Also see Section C.6 on use of U.S. flag vessels.

(2) The country of the Grantee is an eligible source for marine insurance.

(b) The source and origin of ocean and air shipping will be deemed to be the ocean vessel's or aircraft's country of registry at the time of shipment.

(c) Provisions concerning restricted and ineligible goods and services may be provided in an Implementation Letter.

(d) Transportation by air of property or persons financed under this Agreement will be on carriers holding United States certification, to the extent service by such carriers is available under the Fly America Act. This requirement may be further described by USAID in Implementation Letters.

Section C.2. Eligibility Date. No goods or services may be financed under the Agreement which are procured pursuant to orders or contracts firmly placed or entered into prior to the date of this Agreement, except as the Parties may otherwise agree in writing.

Section C.3. Plans, Specifications and Contracts. In order for there to be mutual agreement on the following matters, and except as the Parties may otherwise agree in writing:

(a) The Grantee will furnish to USAID upon preparation:

(1) Any plans, specifications, procurement or construction schedules, contracts, or other documentation between the Grantee and third parties, relating to goods or services to be financed under the Agreement, including documentation relating to the prequalification and selection of contractors and to the solicitation of bids and proposals.

Material modifications in such documentation will likewise be furnished USAID on preparation; and

(2) Such documentation will also be furnished to USAID, upon preparation, relating to any goods or services, which, though not financed under the Agreement, are deemed by USAID to be of major importance to the Agreement. Aspects of the Agreement involving matters under this subsection (a) (2) will be identified in Implementation Letters.

(b) Documents related to the prequalification of contractors, and to the solicitation of bids or proposals for goods and services financed under the Agreement will be approved by USAID in writing prior to their issuance, and their terms will include United States standards and measurements;

(c) Contracts and contractors financed under the Agreement for engineering and other professional services, for construction services, and for such other services, equipment, or materials as may be specified in Implementation Letters, will be approved by USAID in writing prior to execution of the contract. Material modifications in such contracts will also be approved in writing by USAID prior to execution; and

(d) Consulting firms used by the Grantee for the Agreement but not financed under the Agreement, the scope of their services and such of their personnel assigned to activities financed under the Agreement as USAID may specify, and construction contractors used by the Grantee for the Agreement but not financed under the Agreement, shall be acceptable to USAID.

Section C.4. Reasonable Price. No more than reasonable prices will be paid for any goods or services financed, in whole or in part, under the Agreement. Such items will be procured on a fair and, to the maximum extent practicable, competitive basis.

Section C.5. Notification to Potential Suppliers. To permit all United States firms to have the opportunity to participate in furnishing goods and services to be financed under the Agreement, the Grantee will furnish to USAID such information with regard thereto, and at such times, as USAID may request in Implementation Letters.

Section C.6. Shipping/Transportation

(a) In addition to the requirements in Section C.1(a), costs of ocean or air transportation and related delivery services may not be financed under the Grant, if the costs are for transportation under an ocean vessel or air charter which has not received prior USAID approval.

(b) Unless USAID determines that privately owned United States-flag commercial ocean vessels are not available at fair and reasonable rates for such vessels, or otherwise agrees in writing:

(1) At least fifty percent (50%) of the gross tonnage of all goods (computed separately for dry bulk carriers, dry cargo liners and tankers) financed by USAID which may be transported on ocean vessels will be transported on privately owned United States-flag commercial vessels; and

(2) At least fifty percent (50%) of the gross freight revenue generated by all shipments financed by USAID and transported to the territory of the Grantee on dry cargo liners shall be paid to or for the benefit of privately owned United States-flag commercial vessels. Compliance with the requirements of (1) and (2) of this subsection must be achieved with respect to both any cargo transported from U.S. ports and any cargo transported from non-U.S. ports, computed separately.

Section C.7. Insurance.

(a) Marine insurance on goods financed by USAID which are to be transported to the territory of the Grantee may be financed under this Agreement provided (1) such insurance is placed at the most advantageous competitive rate; (2) such insurance is placed in a country which is authorized under Section C.1(a); and (3) claims thereunder are payable in U.S. dollars or any freely convertible currency unless USAID agrees otherwise in writing.

If the Grantee (or the government of the Grantee), by statute, decree, rule, regulation, or practice discriminates with respect to USAID-financed procurement against any marine insurance company authorized to do business in any State of the United States, then all goods shipped to the territory of the Grantee financed by USAID hereunder shall be insured against marine risks and such insurance shall be placed in the United States with a company or companies authorized to do marine insurance business in the United States.

(b) Except as USAID may otherwise agree in writing, the Grantee will insure, or cause to be insured, goods financed under the Agreement imported for the Agreement against risks incident to their transit to the point of their use under the Agreement; such insurance will be issued on terms and conditions consistent with sound commercial practice and will insure the full value of the goods. Any indemnification received by the Grantee under such insurance will be used to replace or repair any material damage or any loss of the goods insured or will be used to reimburse the Grantee for the replacement or repair of such goods. Any such replacement will be of source and origin of countries listed in USAID Geographic Code 935 as in effect at the time of replacement and, except as the Parties may agree in writing, will be otherwise subject to the provisions of the Agreement.

Section C.8. U.S. Government-Owned Excess Property. The Grantee agrees that wherever practicable, United States Government-owned excess personal property, in lieu of new items financed under the Grant, should be utilized. Funds under the Agreement may be used to finance the costs of obtaining such property.

Article D: Miscellaneous.

Section D.1. Disbursements. No disbursements to the Grantee are contemplated under this Agreement. Should disbursements to the Grantee be required, disbursements will be made through such means as the Parties agree to in writing or as set forth in Annex 1.

Section D.2. Rate of Exchange. If funds provided under the Agreement are introduced into the territory of the Grantee by USAID or any public or private agency for purposes of carrying out the obligations of USAID hereunder, the Grantee will make such arrangements as may be necessary so that such funds may be converted into local currency at the highest rate of exchange which, at the time the conversion is made, is not unlawful in the country of the Grantee to any person for any purpose.

Article E: Termination; Remedies

Section E.1. Suspension and Termination

(a) Either Party may terminate this Agreement in its entirety by giving the other Party 30 days' written notice. USAID also may terminate this Agreement in part by giving the Grantee 30 days' written notice, and suspend this Agreement in whole or in part upon giving the Grantee written notice. In addition, USAID may terminate this Agreement in whole or in part, upon giving the Grantee written notice, if (i) the Grantee fails to comply with any provision of this Agreement, (ii) an event occurs that USAID determines makes it improbable that the Objective or Results of the Agreement or the assistance program will be attained or that the Grantee will be able to perform its obligations under this Agreement, or (iii) any disbursement or use of funds in the manner herein contemplated would be in violation of the legislation governing USAID or the Grant whether now or hereafter in effect.

(b) Except for payment which the Parties are committed to make pursuant to noncancelable commitments entered into with third parties prior to such suspension or termination, suspension or termination of this entire Agreement or part thereof will suspend (for the period of the suspension) or terminate, as applicable, any obligation of the Parties to provide financial or other resources to the Agreement, or to the suspended or terminated portion of the Agreement, as applicable. Any portion of this Agreement which is not suspended or terminated shall remain in full force and effect.

(c) In addition, upon such full or partial suspension or termination, USAID may, at USAID's expense, direct that title to goods financed under the Agreement, or under the applicable portion of the Agreement, be transferred to USAID if the goods are in a deliverable state.

Section E.2. Refunds.

(a) In the case of any disbursement which is not supported by valid documentation in accordance with this Agreement, or which is not made or used in accordance with this Agreement, or which was for goods or services not used in accordance with this Agreement, USAID, notwithstanding the availability or exercise of any other remedies under this Agreement, may require the Grantee to refund the amount of such disbursement in U.S. dollars to USAID within sixty (60) days after receipt of a request therefore.

(b) If the failure of the Grantee to comply with any of its obligations under this Agreement has the result that goods or services financed or supported under the Agreement are not used effectively in accordance with this Agreement, USAID may require the Grantee to refund all or any part of the amount of the disbursements under this Agreement for or in connection with such goods or services in U.S. dollars to USAID within sixty (60) days after receipt of a request therefore.

(c) The right under subsections (a) or (b) to require a refund of a disbursement will continue, notwithstanding any other provision of this Agreement, for three years from the date of the last disbursement under this Agreement.

(d) (1) Any refunds under subsections (a) or (b), or (2) any refund to USAID from a contractor, supplier, bank or other third party with respect to goods or services financed under the Agreement, which refund relates to an unreasonable price for or erroneous invoicing of goods or services, or to goods that did not conform to specifications, or to services that were inadequate, will (A) be made available first for the Agreement, to the extent justified, and (B) the remainder, if any, will be applied to reduce the amount of the Grant.

(e) Any interest or other earnings on funds disbursed by USAID to the Grantee under this Agreement prior to the authorized use of such funds for the Agreement will be returned to USAID in U.S. dollars by the Grantee, unless USAID otherwise agrees in writing.

Section E.3. Nonwaiver of 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.

Section E.4. Assignment. The Grantee agrees upon request, to execute an assignment to USAID of any cause of action which may accrue to the Grantee in connection with or arising out of the contractual performance or breach of performance by a party to a direct U.S. dollar contract which USAID financed in whole or in part out of funds granted by USAID under this Agreement.

Article F: Miscellaneous

Section F.1. Investment Promotion.

(a) Except as specifically set forth in the Agreement or otherwise authorized by USAID in writing, no funds or other support provided hereunder may be used for any activity that involves investment promotion in a foreign country.

(b) In the event the Grantee is requested or wishes to provide assistance in the above area or requires clarification from USAID as to whether the activity would be consistent with the limitation set forth above, the Grantee must notify USAID and provide a detailed description of the proposed activity. The Grantee must not proceed with the activity until advised by USAID that it may do so.

(c) The Grantee must ensure that its employees and subcontractors and sub-recipients providing investment promotion services hereunder are made aware of the restrictions set forth in this clause and must include this clause in all subcontracts and other sub-agreements entered into hereunder.

Section F.2. Voluntary Family Planning. The Parties agree that all USAID funds provided under this Agreement shall be used in accordance with applicable United States policy and statutory requirements relating to voluntary family planning projects, and that none of the USAID funds provided under this Agreement, or goods or services financed by such funds, may be used for

(a) the performance of abortion as a method of family planning or to motivate or coerce any person to practice abortions;

(b) the performance of involuntary sterilizations as a method of family planning or to coerce or provide any financial incentive to any person to undergo sterilizations; or

(c) any biomedical research which relates, in whole or in part, to methods of, or the performance of, abortions or involuntary sterilizations as a method family planning.

USAID will issue implementation letters that more fully describe the requirements of this section.

Section F.3. Prohibition on Assistance to Drug Traffickers. USAID reserves the right to terminate this Agreement or take other appropriate measures if the Grantee or a key individual of the Grantee is found to have been convicted of a narcotics offense or to have been engaged in drug trafficking as defined in 22 Code of Federal Regulations (CFR) Part 140.

Section F.4. Workers' Rights.

(a) Except as specifically set forth in the Agreement or otherwise authorized by USAID in writing, no funds or other support provided hereunder may be used for any activity that involves workers' rights in a foreign country.

(b) In the event the Grantee is requested or wishes to provide assistance in the above area or requires clarification from USAID as to whether the activity would be consistent with the limitation set forth above, the Grantee must notify USAID and provide a detailed description of the proposed activity. The Grantee must not proceed with the activity until advised by USAID that it may do so.

(c) The Grantee must ensure that all employees and subcontractors and sub-recipients providing employment-related services hereunder are made aware of the restrictions set forth in this clause and must include this clause in all subcontracts and other sub-agreements entered into hereunder.