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IDA GRANT NUMBER H167 KOS

# Development Grant Agreement

(Business Environment Technical Assistance Project)

between

UNITED NATIONS INTERIM ADMINISTRATION MISSION IN KOSOVO

and

INTERNATIONAL DEVELOPMENT ASSOCIATION

Dated July 27, 2005

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**IDA GRANT NUMBER H167 KOS**

**INTERNATIONAL DEVELOPMENT ASSOCIATION GRANT AGREEMENT**

AGREEMENT, dated July 27, 2005, between UNITED NATIONS INTERIM ADMINISTRATION MISSION IN KOSOVO (the Recipient) and INTERNATIONAL DEVELOPMENT ASSOCIATION (the Association).

WHEREAS, the Recipient, having satisfied itself as to the feasibility and priority of the project described in Schedule 2 to this Agreement, has requested the Association to assist in financing the Project; and

WHEREAS the Association has agreed, on the basis, inter alia, of the foregoing, to extend the Grant (as hereinafter defined) to the Recipient, for the benefit of Kosovo, upon the terms and conditions set forth in this Agreement;

NOW THEREFORE, the parties hereto hereby agree as follows:

**ARTICLE I**

**General Conditions; Definitions**

Section 1.01. (a) The following provisions of the “General Conditions Applicable to Development Credit Agreements” of the Association, dated January 1, 1985 (as amended through May 1, 2004), with the modifications set forth in paragraph (b) of this Section (the General Conditions), constitute an integral part of this Agreement:

- (i) Article I;
- (ii) Article II;
- (iii) Sections 3.01 and 3.04 (c);
- (iv) Sections 4.01, 4.02, 4.03, 4.05 and 4.06;
- (v) Article V;
- (vi) Sections 6.01, 6.02, 6.03, 6.04 and 6.06;
- (vii) Article VIII;
- (viii) Article IX;
- (ix) Article X;

- (x) Article XI; and
  - (xi) Article XII.
- (b) The General Conditions shall be modified as follows:
- (i) the term “Borrower”, wherever used in the General Conditions, means the Recipient;
  - (ii) the term “Credit”, wherever used in the General Conditions, means the Grant;
  - (iii) the term “credit” is modified to read “grant”; except that where used in Sections 6.02 (a) (ii) and 6.02 (c) (i), as modified below, the term “credit” shall continue to read “credit”.
  - (iv) the term “Credit Account”, wherever used in the General Conditions, means the Grant Account;
  - (v) the term “Development Credit Agreement”, wherever used in the General Conditions, means this Development Grant Agreement;
  - (vi) paragraph 11 of Section 2.01 is modified to read as follows:

“11. “External debt” means any debt which is or may become payable other than in the currency of Kosovo.”;
  - (vii) Section 4.01 is modified to read as follows:

“Except as the Recipient and the Association shall otherwise agree, withdrawals from the Grant Account shall be made in the respective currencies in which the expenditures to be financed out of the proceeds of the Grant have been paid or are payable; provided, however, that withdrawals in respect of expenditures in the currency of Kosovo shall be made in such currency or currencies as the Association shall from time to time reasonably select.”
  - (viii) Section 4.02 (a) and the heading of Section 4.02 are modified to read as follows:

“Section 4.02. *Currencies in which Commitment Charge is Payable*

(a) The Recipient shall pay the commitment charge on the Grant in the currency specified in the Development Grant Agreement or in such other eligible currency or currencies as may from time to time be designated or selected pursuant to paragraph (c) or (e) of this Section.”

(b) Wherever used in Section 4.02 (c) and (e) of the General Conditions the words “principal and service charges” are modified to read “commitment charge”.

(c) Section 4.03 and its heading are modified to read as follows:

“Section 4.03. *Amount of the Grant*

The amount of the Grant withdrawn from time to time shall be the equivalent in terms of SDR (determined as of the date or respective dates of withdrawal from the Grant Account) of the value of the currency or currencies so withdrawn.”

(ix) Section 4.06 (b) shall be modified to read as follows:

“(b) The principal of the Grant shall be paid without restrictions of any kind imposed by the Recipient or in Kosovo.”

(x) Section 5.08 is modified to read as follows:

“It is the policy of the Association that no proceeds of the Grant shall be withdrawn on account of payments for any taxes levied by the Recipient or in Kosovo on goods or services, or on the importation, manufacture, procurement or supply thereof. To that end, if the amount of any taxes levied on or in respect of any item to be financed out of the proceeds of the Grant decreases or increases, the Association may, by notice to the Recipient, increase or decrease the percentage for withdrawal set forth or referred to in respect of such item in the Development Grant Agreement as required to be consistent with such policy of the Association.”

(xi) Section 6.02 is modified as follows:

(a) The phrase “any other development credit agreement” in Section 6.02 (a) (ii) is modified to read: “any other development grant agreement or any development credit agreement or development financing agreement”.

(b) The phrase “any development credit agreement” in Section 6.02 (c) (i) is modified to read: “any development grant agreement, development credit agreement or development financing agreement”.

(c) Paragraph (e) of Section 6.02 is deleted.

(xii) Section 8.01 of the General Conditions is modified to read as follows:

“(a) The commitment charges on the Grant shall be paid without deduction for, and free from, any taxes levied by the Recipient or in Kosovo.

(b) The Development Grant Agreement, and any other agreement to which these General Conditions apply, shall be free from any taxes levied by the Recipient or in Kosovo on or in connection with the execution, delivery or registration thereof.”

(xiii) Paragraph (b) of Section 9.01 of the General Conditions is modified to read as follows:

“(b) The Recipient shall afford all reasonable opportunity for representatives of the Association to visit any part of Kosovo for purposes related to the Grant.”

(xiv) Section 9.02 of the General Conditions is modified to read as follows:

“The Recipient shall furnish to the Association all such information as the Association shall reasonably request with respect to financial and economic conditions in Kosovo including its balance of payments and its external debt as well as that of its political or administrative subdivisions and any entity owned or controlled by, or operating for the account or benefit of Kosovo or any such subdivision, and any institution performing the functions of a central bank or exchange stabilization fund, or similar functions, for Kosovo.”

(xv) Section 12.05 of the General Conditions is modified to read as follows:

“Section 12.05. *Termination of Development Grant Agreement*

The obligations of the Recipient under the Development Grant Agreement shall terminate on the date 20 years after the date of the Development Grant Agreement.”

Section 1.02. Wherever used in this Agreement, unless the context otherwise requires, the several terms defined in the General Conditions and in the Recitals to this Agreement have the respective meanings therein set forth and the following additional terms have the following meanings:

(a) “AMK” means the Association of Municipalities of Kosovo, or any successor or successors thereto.

(b) “Euro” means the lawful currency of the member states of the European Union that adopt the single currency in accordance with the Treaty establishing the European Community, as amended by the Treaty on European Union.

(c) “Financial Monitoring Report” means each report prepared in accordance with Section 4.02 of this Agreement.

(d) “Investment Promotion Office” means the office established within the MTI (as hereafter defined) to promote domestic and foreign investment in Kosovo, or any successor or successors thereto.

(e) “KCA” means the Kosovo Cadastral Agency, established on June 7, 2000 pursuant to Administrative Direction No. 2000/14 given by the Special Representative of the Secretary-General of the United Nations pursuant to the authority given to him under Section 5 of UNMIK Regulation No. 2000/12 of March 14, 2000 on the Establishment of the Administrative Department of Public Services, or any successor or successors thereto.

(f) “MEF” means the Ministry of Economy and Finance within the PISG (as hereafter defined), or any successor or successors thereto.

(g) “MPS” means the Ministry of Public Services within the PISG, or any successor or successors thereto.

(h) “MTI” means the Ministry of Trade and Industry within the PISG, or any successor or successors thereto.

(i) “OPM” means the Office of the Prime Minister, or any successor or successors thereto.

(j) “PISG” means the Provisional Institutions of Self-Government established pursuant to the Recipient’s Regulation No. 2001/9 of May 15, 2001 on a Constitutional Framework for Provisional Self-Government in Kosovo, as amended,

promulgated by the Special Representative of the Secretary-General of the United Nations pursuant to the authority given to him under United Nations Security Council Resolution 1244 (1999) of June 10, 1999 (UNSCR 1244 (1999)).

(k) “PPA” means the Public Procurement Agency within the PISG, or any successor or successors thereto.

(l) “Procurement Plan” means the procurement plan, dated March 27, 2005, prepared by the PPA and endorsed by the Recipient covering the initial 18 month period of Project implementation, as the same shall be updated from time to time in accordance with the provisions of Section 3.02 to this Agreement, to cover succeeding 12 month periods (or longer) of Project implementation.

(m) “Project Operational Manual” means the manual referred to in Section 6 of Schedule 4 to this Agreement, including a financial management manual, satisfactory to the Association, for the carrying out of the Project, to be adopted by the Project Secretariat and endorsed by the Recipient, as the same may be amended from time to time with the agreement of the Association.

(n) “Project Secretariat” means the secretariat established within the MTI for purposes of the Project, referred to in Section 2 of Schedule 4 to this Agreement, as confirmed to the Recipient and the Association by that certain letter dated April 11, 2005 addressed by the Minister of Trade and Industry, and subsequently endorsed by the Recipient in that certain letter dated April 13, 2005 addressed by the Deputy Special Representative of the Secretary-General, UNMIK Pillar IV to the Association, comprised of up to three experts, and such other qualified personnel as may be necessary for Project purposes, employed under terms of reference satisfactory to the Association.

(o) “Project Steering Committee” means the committee established for purposes of the Project, referred to in Section 1 of Schedule 4 to this Agreement, proposed by the MTI in that certain letter dated April 11, 2005 addressed by the Minister of Trade and Industry to the Recipient and the Association, and as confirmed to the Association by that certain letter dated April 13, 2005 addressed by the Deputy Special Representative of the Secretary-General, UNMIK Pillar IV, with representatives from the Recipient, the MTI, the MPS, the Ministry of Local Government, the AMK, and the OPM.

## **ARTICLE II**

### **The Grant**

Section 2.01. The Association agrees to make available to the Recipient, on the terms and conditions set forth or referred to in this Agreement, a grant in an amount in various currencies equivalent to four million seven hundred thousand Special Drawing Rights SDR 4,700,000 (the Grant).

Section 2.02. The amount of the Grant may be withdrawn from the Grant Account in accordance with the provisions of Schedule 1 to this Agreement for expenditures made (or, if the Association shall so agree, to be made) in respect of the reasonable cost of goods, works and services required for carrying out the Project and to be financed out of the proceeds of the Grant.

Section 2.03. The Closing Date shall be February 28, 2010, or such later date as the Association shall establish. The Association shall promptly notify the Recipient of such later date.

Section 2.04. (a) The Recipient shall pay to the Association a commitment charge on the principal amount of the Grant not withdrawn from time to time at a rate to be set by the Association as of June 30 of each year, but not to exceed the rate of one-half of one percent (1/2 of 1%) per annum.

(b) The commitment charge shall accrue: (i) from the date sixty (60) days after the date of this Agreement (the accrual date) to the respective dates on which amounts shall be withdrawn by the Recipient from the Grant Account or cancelled; and (ii) at the rate set as of the June 30 immediately preceding the accrual date and at such other rates as may be set from time to time thereafter pursuant to paragraph (a) above. The rate set as of June 30 in each year shall be applied from the next date in that year specified in Section 2.04 of this Agreement.

(c) The commitment charge shall be paid: (i) at such places as the Association shall reasonably request; (ii) without restrictions of any kind imposed by the Recipient or in Kosovo; and (iii) in Euros or in such other eligible currency or currencies as may from time to time be designated or selected pursuant to the provisions of Section 4.02 of the General Conditions.

Section 2.05. Commitment charges shall be payable semi-annually on January 15 and June 15 in each year.

Section 2.06. With respect to any action required or permitted to be taken under the provisions of Section 2.02 of this Agreement and Article V of the General Conditions, the Recipient shall ensure that applications for withdrawal of the Grant from the Grant Account shall be prepared by the MEF in the form specified and satisfactory to the Association and shall be signed by one duly authorized representative of the MTI and one duly authorized representative of the MEF.

### **ARTICLE III**

#### **Execution of the Project**



Section 3.01. (a) The Recipient declares its commitment to the objectives of the Project as set forth in Schedule 2 to this Agreement and, to this end, shall carry out the Project with due diligence and efficiency and in conformity with appropriate environmental, financial, technical and administrative practices, and shall provide, promptly as needed, the funds, facilities, services and other resources required for the Project.

(b) Without limitation upon the provisions of paragraph (a) of this Section and except as the Recipient and the Association shall otherwise agree, the Recipient shall carry out the Project in accordance with the implementation program set forth in Schedule 4 to this Agreement.

Section 3.02. (a) Except as the Association shall otherwise agree, procurement of the goods, works and services required for the Project and to be financed out of the proceeds of the Grant shall be governed by the provisions of Schedule 3 to this Agreement, as said provisions may be further elaborated in the Procurement Plan.

(b) The Recipient shall cause the Project Secretariat to update the Procurement Plan in accordance with guidelines acceptable to the Association, and furnish such update to the Association not later than 12 months after the date of the preceding Procurement Plan, for the Association's approval.

Section 3.03. For the purposes of Section 9.06 of the General Conditions and without limitation thereto, the Recipient shall:

(a) cause the Project Secretariat to prepare, on the basis of guidelines acceptable to the Association, and furnish to the Association not later than six (6) months after the Closing Date or such later date as may be agreed for this purpose between the Recipient and the Association, a plan designed to ensure the continued achievement of the Project's objectives; and

(b) afford the Association a reasonable opportunity to exchange views with the Recipient and the Project Secretariat on said plan.

Section 3.04. Except as the Association shall otherwise agree, the Recipient shall not, and the Recipient shall ensure that the Project Secretariat shall not, amend, suspend, abrogate, terminate or waive any provision of the Project Operational Manual without the prior written consent of the Association.

## **ARTICLE IV**

### **Financial Covenants**

Section 4.01. (a) The Recipient shall ensure that the MEF maintains a financial management system, including records and accounts, and prepares financial statements in

accordance with consistently applied accounting standards acceptable to the Association, adequate to reflect the Recipient's operations and financial condition and to register separately the operations, resources and expenditures related to the Project.

(b) The Recipient shall:

- (i) ensure that the MEF has the Recipient's financial statements (balance sheets, statements of income and expenses and related statements) for each fiscal year (or other period agreed to by the Association) audited, commencing with the accounts for the year ending December 31, 2006, in accordance with consistently applied auditing standards acceptable to the Association, consistently applied, by independent auditors acceptable to the Association;
- (ii) furnish to the Association as soon as available, but in any case not later than six (6) months after the end of each such year (or other period agreed to by the Association): (A) certified copies of the financial statements referred to in paragraph (a) of this Section for such year (or other period agreed to by the Association), as so audited, and (B) an opinion on such statements by said auditors, in scope and detail satisfactory to the Association; and
- (iii) furnish, and shall ensure that the MEF and the Project Secretariat each furnishes, to the Association such other information concerning such records and accounts, and the audit of such financial statements, and concerning said auditors, as the Association may from time to time reasonably request.

(c) For all expenditures with respect to which withdrawals from the Grant Account were made on the basis of statements of expenditure, the Recipient shall ensure that MEF:

- (i) retains, until at least one (1) year after the Association has received the audit report for, or covering, the fiscal year in which the last withdrawal from the Grant Account was made, all records (contracts, orders, invoices, bills, receipts and other documents) evidencing such expenditures;
- (ii) enables the Association's representatives to examine such records; and

- (iii) ensures that such statements of expenditure are included in the audit for each fiscal year (or other period agreed to by the Association), referred to in paragraph (b) of this Section.

Section 4.02. (a) Without limitation upon the Recipient's progress reporting obligations set out in Section 8 of Schedule 4 of this Agreement, the Recipient shall cause the MEF to prepare a financial monitoring report, in form and substance satisfactory to the Association, and the Recipient shall furnish such report to the Association, which report:

- (i) sets forth sources and uses of funds for the Project, both cumulatively and for the period covered by said report, showing separately funds provided under the Grant, and explains variances between the actual and planned uses of such funds;
- (ii) describes physical progress in Project implementation, both cumulatively and for the period covered by said report, and explains variances between the actual and planned Project implementation; and
- (iii) sets forth the status of procurement under the Project, as at the end of the period covered by said report.

(b) The first Financial Monitoring Report shall be furnished to the Association not later than forty-five (45) days after the end of the first calendar quarter after the Effective Date, and shall cover the period from the incurrence of the first expenditure under the Project through the end of such first calendar quarter; thereafter, each Financial Monitoring Report shall be furnished to the Association not later than forty-five (45) days after each subsequent calendar quarter, and shall cover such calendar quarter.

**ARTICLE V**

**Termination**

Section 5.01. The date ninety (90) days after the date of this Agreement is hereby specified for the purposes of Section 12.04 of the General Conditions.

**ARTICLE VI**

**Representative of the Recipient; Addresses**

Section 6.01. Except as provided in Section 2.06 of this Agreement, the Deputy Special Representative of the Secretary-General of the United Nations Interim Administration Mission in Kosovo, Pillar IV, is designated as representative of the Recipient for the purposes of Section 11.03 of the General Conditions.

Section 6.02. The following addresses are specified for the purposes of Section 11.01 of the General Conditions:

For the Recipient:

United Nations Interim Administration Mission in Kosovo  
One Mother Theresa Street  
Pristina  
Kosovo

Facsimile:

(212) 963-8442-5642  
(381-38) 504 604-5642

For the Association:

International Development Association  
1818 H Street, N.W.  
Washington, D.C. 20433  
United States of America

Cable address:

Telex:

Facsimile:

INDEVAS  
Washington, D.C.

248423 (MCI)  
64145 (MCI)

(202) 477-6391

IN WITNESS WHEREOF, the parties hereto, acting through their duly authorized representatives, have caused this Agreement to be signed in their respective names in Pristina, Kosovo, as of the day and year first above written.

UNITED NATIONS INTERIM ADMINISTRATION  
MISSION IN KOSOVO

By /s/ Dr. Joachim Rücker

Authorized Representative

INTERNATIONAL DEVELOPMENT ASSOCIATION

By /s/ Kanthan Shankar

Authorized Representative

## SCHEDULE 1

### Withdrawal of the Proceeds of the Grant

1. The table below sets forth the Categories of items to be financed out of the proceeds of the Grant, the allocation of the amounts of the Grant to each Category and the percentage of expenditures for items so to be financed in each Category:

<u>Category</u>	<u>Amount of the Grant Allocated (Expressed in SDR Equivalent)</u>	<u>% of Expenditures to be Financed</u>
Goods, works, consultants' services, training, incremental operating costs, and technical services	4,700,000	100% and 95% of local expenditures for services and incremental operating costs procured locally
<b>TOTAL</b>	<b><u>4,700,000</u></b>	

2. For the purposes of this Schedule:

(a) the term "Training" means training activities (other than consultants' services) to be carried out under the Project, as approved by the Association on the basis of annual training and study tour plans acceptable to the Association, including reasonable and necessary travel expenses incurred by participants in training and study tours, as well as lodging, subsistence and per diem allowances, registration fees, costs of training materials, and other expenditures directly related to the training and study tour activity as shall be agreed with the Association;

(b) the term "Incremental operating costs" means reasonable and necessary incremental expenditures, as approved by the Association on the basis of budgets acceptable to the Association, incurred by the Project Secretariat, the MTI and the KCA on account of Project technical support, implementation, facilitation, coordination, monitoring and evaluation, including consultant fees (not otherwise financed under Consultants' services), office supplies, office equipment maintenance and repair, vehicle operation (including fuel) and repair, communication, translation and interpretation, production of documents, publication of advertisements and procurement notices, travel costs, including air fare, local transport, hotel and per diem charges, and other miscellaneous costs as may be agreed with the Association, but excluding salaries or honoraria of officials and employees of the Recipient and the PISG, including, without limitation, salaries or honoraria of officials and employees of the MTI and KCA; and

(c) the term “Technical services” means services for carrying out cadastre mapping and surveying, building cadastre, data entry, and publicity campaigns, and other services to be contracted under Part 2 of the Project on the basis of performance of measurable physical outputs.

3. Notwithstanding the provisions of paragraph 1 above, no withdrawals shall be made in respect of payments made for expenditures prior to the date of this Agreement.

4. The Association may require withdrawals from the Grant Account to be made on the basis of statements of expenditure for expenditures under contracts for: (a) goods, works and technical services costing less than \$100,000 equivalent per contract; (b) for services of individual consultants costing less than \$25,000 equivalent per contract; and (c) for services of consulting firms costing less than \$50,000 equivalent per contract; all under such terms and conditions as the Association shall specify by notice to the Recipient.

5. If the Association shall have determined at any time that any amount of the Grant was used in a manner inconsistent with the provisions of this Agreement, the Recipient shall, promptly upon notice from the Association, refund to the Association for deposit into the Grant Account, an amount equivalent to the amount so used.

## **SCHEDULE 2**

### **Description of the Project**

The objective of the Project is to improve the business environment in Kosovo by reducing uncertainty of key regulatory processes, improving delivery of related services, strengthening property rights, and increasing transparency and accountability of implementing institutions.

The Project consists of the following, subject to such modifications thereof as the Recipient and the Association may agree upon from time to time to achieve such objectives.

1. Business Services Integration

Assistance in the reduction of regulatory uncertainty, reduction of existing administrative barriers to starting and operating a business, improvement in the transparency and accountability of regulatory functions administered by municipalities, and facilitation of investment, by upgrading the Kosovo Business Registry system, establishing and rehabilitating municipally-based Business Service Centers, and support for the Investment Promotion Office, through the provision of consulting services, training and goods.

2. Immovable Property Rights Enhancement

Assistance in the enhancement of immovable property rights as a contribution to land market development and to support business environment improvement, by guiding the further development of the legal framework, supporting the implementation and operation of a new immovable property rights registration system, supporting the reconstruction of cadastral information and records, strengthening the institutional capacity of the Kosovo Cadastral Agency and up to 30 municipal cadastral offices and their respective delivery of services to civil society, and establishing a new building cadastre, through the provision of consulting services, training, works, technical services and goods.

3. Project Coordination and Monitoring

Assistance in the management, implementation and coordination of the Project, including financial management, procurement, and monitoring and evaluation, through the provision of consulting services, including the audit of accounts and financial statements referred to in Section 4.01 (b) of this Agreement, and training.

\* \* \*

The Project is expected to be completed by August 31, 2009.



### **SCHEDULE 3**

#### **Procurement**

##### Section I. General

A. All goods, works and services (other than consultants' services) shall be procured in accordance with the provisions of Section I of the "Guidelines: Procurement under IBRD Loans and IDA Credits" dated May 2004 (the Procurement Guidelines), and with the provisions of this Schedule.

B. All consultants' services shall be procured in accordance with Sections I and IV of the "Guidelines: Selection and Employment of Consultants by World Bank Borrowers" dated May 2004 (the Consultant Guidelines), and with the provisions of this Schedule.

C. The capitalized terms used below in this Schedule to describe particular procurement methods or methods of review by the Association of particular contracts, have the meanings ascribed to them in the Procurement Guidelines, or the Consultant Guidelines, as the case may be.

##### Section II. Particular Methods of Procurement of Goods, Works and Services (other than Consultants' Services)

A. International Competitive Bidding. Except as otherwise provided in Part B of this Section, contracts shall be awarded on the basis of International Competitive Bidding.

##### B. Other Procurement Procedures

##### 1. National Competitive Bidding

Works and technical services contracts estimated to cost less than \$100,000 equivalent per contract may be procured under contracts awarded on the basis of National Competitive Bidding and the following additional provisions:

##### (a) Registration

- (i) Bidding shall not be restricted to pre-registered firms;
- (ii) Where registration is required, bidders (1) shall be allowed a reasonable time to complete the registration process, and (2) shall not be denied registration for reasons unrelated to their capability and resources to

successfully perform the contract, which shall be verified through post-qualification; and

- (iii) Foreign bidders not from the territory of Kosovo shall not be precluded from bidding. If a registration process is required, a foreign bidder declared the lowest evaluated bidder shall be given a reasonable opportunity to register.

(b) Advertising

Invitations to bid shall be advertised in at least one widely circulated Albanian-language daily newspaper and in at least one widely circulated Serbian-language daily newspaper available over the territory of Kosovo allowing a minimum of 30 days for the preparation and submission of bids.

(c) Pre-qualification

When pre-qualification shall be required for large or complex works, invitations to pre-qualify for bidding shall be advertised in at least one widely circulated daily newspaper available over the territory of Kosovo a minimum of 30 days prior to the deadline for the submission of pre-qualification applications. Minimum experience, and technical and financial requirements, shall be explicitly stated in the pre-qualification documents, which shall be determined on a “pass/fail” method, not through the use of a merit point system. When pre-qualification is not used, the qualifications of the bidder recommended for contract award shall be assessed by post-qualification, applying minimum experience, technical and financial requirements, which shall be explicitly stated in the bidding documents.

(d) Participation by Publicly-owned enterprises

Publicly-owned enterprises shall be eligible to participate in bidding only if they can establish that they are legally and financially autonomous, operate under commercial law and are not a dependent agency of the contracting authority. Furthermore, they will be subject to the same bid and performance security requirements as other bidders.

(e) Bidding Documents

Procuring entities shall use the appropriate standard bidding documents for the procurement of goods, works or services, acceptable to the Association.

(f) Bid Opening and Bid Evaluation

- (i) Bids shall be submitted in a single envelope containing the bidder's qualification information, technical and price bids, which shall be opened simultaneously at the public bid opening;
- (ii) Bids shall be opened in public, immediately after the deadline for submission of bids. The name of the bidder, the total amount of each bid and any discounts offered shall be read aloud and recorded in the minutes of the public bid opening;
- (ii) Evaluation of bids shall be made in strict adherence to the monetarily quantifiable criteria declared in the bidding documents. No merit point system will be used;
- (iv) Extensions of bid validity will be allowed once only for not more than 30 days. No further extensions shall be requested without the prior approval of the Association; and
- (v) Contracts shall be awarded to the qualified bidder having submitted the lowest-evaluated, substantially responsive bid and no negotiation shall take place.

(g) Price Adjustment

Civil works contracts of long duration (more than 18 months) shall contain an appropriate price adjustment clause.

(h) Rejection of Bids

- (i) All bids shall not be rejected and new bids solicited without the Association's prior concurrence.
- (ii) When the number of bids received is less than three, re-bidding shall not be carried out without the Association's prior concurrence.

(i) Securities

Bid security shall not exceed 3 percent of the estimated cost of the contract and performance security not more than 10 percent of this cost. No advance payment shall be made to contractors without a suitable advance payment security. These securities shall be included in the bidding documents in a text and format acceptable to the Association.

ECA Regional Sample Bidding Documents, modified as acceptable to the Association, shall be used.

2. Shopping. Contracts for goods which cannot be grouped into larger bidding packages and estimated to cost less than \$100,000 equivalent per contract may be procured under contracts awarded on the basis of Shopping, based on quotations obtained from at least three (3) qualified domestic suppliers in response to a model request for quotations satisfactory to the Association. In the case of direct invitation (not publicly advertised), the list of firms to be invited should be determined by a committee or commission.

Minor works and technical services estimated to cost less than \$50,000 equivalent per contract may also be procured under contracts awarded on the basis of Shopping and lump-sum, fixed-price contracts awarded on the basis of quotations obtained from at least three (3) qualified domestic contractors in response to a written invitation. The invitation shall include a detailed description of the works or technical services, including basic specifications, the required completion date, a basic form of agreement acceptable to the Association, and relevant drawings, where applicable. The award shall be made to the contractor who offers the lowest price quotation for the required work, and who has the experience and resources to complete the contract successfully. In the case of direct invitation (not publicly advertised), the list of firms to be invited should be determined by a committee or commission.

3. Direct Contracting: Goods which meet the requirement for direct contracting referred to in paragraphs 3.1, 3.6 and 3.7 of the Procurement Guidelines, may, with the Association's prior agreement, be procured in accordance with the provisions of said paragraphs.

Section III. Particular Methods of Procurement of Consultants' Services

A. Quality- and Cost-based Selection. Except as otherwise provided in Part B of this Section, consultants' services shall be procured under contracts awarded on the basis of Quality- and Cost-based Selection.

B. Other Procedures

1. Selection Based on Consultants' Qualifications

Services estimated to cost less than \$100,000 equivalent per contract may be procured under contracts awarded in accordance with the provisions of paragraphs 3.1, 3.7 and 3.8 of the Consultant Guidelines.

2. Least-cost Selection. Services of a standard or routine nature may be procured under contracts awarded on the basis of Least-cost Selection in accordance with the provisions of paragraphs 3.1 and 3.6 of the Consultant Guidelines.

3. Individual Consultants

Specialized advisory services for assignments that meet the requirements set forth in the first sentence of paragraph 5.1 of the Consultant Guidelines and selected by comparison of qualifications of three (3) candidates may be procured under contracts awarded to individual consultants in accordance with the provisions of paragraphs 5.2 through 5.3 of the Consultant Guidelines. In the case of direct invitation (not publicly advertised), the list of individuals to be invited to submit curriculum vitae should be determined by a committee or commission. Under the circumstances described in paragraph 5.4 of the Consultant Guidelines, such contracts may be awarded to individual consultants on a sole-source basis.

4. Incremental Operating Costs

Reasonable and necessary incremental expenditures, as approved by the Association on the basis of budgets acceptable to the Association, incurred by the Project Secretariat, MTI and KCA on account of Project technical support, implementation, facilitation, coordination, monitoring and evaluation, including consultant fees (not otherwise financed under Consultants' services in the table included in paragraph 1 of Schedule 1 to this Agreement), office supplies, office equipment maintenance and repair, vehicle operation (including fuel) and repair, communication, translation and interpretation, production of documents, publication of advertisements and procurement notices, travel costs, including air fare, local transport, hotel and per diem charges, and other miscellaneous costs, as may be agreed with the Association, but excluding salaries or honoraria of officials and employees of the Recipient and PISG, including, without limitation, salaries or honoraria of officials and employees of MTI and KCA, would be

procured using the relevant entity's administrative procedures which were reviewed and found acceptable to the Association.

Section IV. Review by the Association of Procurement Decisions

Except as the Association shall otherwise determine by notice to the Recipient, the following contracts shall be subject to Prior Review by the Association: (a) each contract for goods, works and technical services estimated to cost \$100,000 equivalent per contract or more procured on the basis of International Competitive Bidding; (b) the first two contracts for works and technical services procured under National Competitive Bidding; (c) the first two contracts for goods, works and technical services procured under Shopping; (d) each contract for consultants' services estimated to cost \$50,000 equivalent per contract or more; and (e) each contract for services of individual consultants estimated to cost \$25,000 equivalent per contract or more. In addition, annual training and study tours plans of the relevant implementing agencies shall be subject to Prior Review by the Association. All other contracts shall be subject to Post Review by the Association.

## **SCHEDULE 4**

### **Implementation Program**

1. The Recipient shall ensure that the Project Steering Committee:
  - (a) is maintained for the entire duration of the Project;
  - (b) provides strategic guidance for overall Project implementation;
  - (c) approves on a timely basis annual plans, budgets, and updates of the Procurement Plan prepared by the Project Secretariat and satisfactory to the Association;
  - (d) coordinates and builds consensus effectively among key Project stakeholders on key policy issues related to Project implementation;
  - (e) identifies broad policy and strategic issues related to the business environment and the implementation of policy reforms; and
  - (f) monitors the overall progress made by the PISG in improving the business environment, including by means of the review of the investment climate surveys referred to in Section 7 below of this Schedule 4.
2. The Recipient shall ensure that MTI obtains a written no-objection from the Association prior to any hiring or dismissal of any staff of the Project Secretariat.
3. The Recipient shall ensure that the Project Secretariat:
  - (a) is maintained for the entire duration of the Project with suitably qualified staff in sufficient numbers required for the Project;
  - (b) provides effective technical support to the Project Steering Committee on a timely basis;
  - (c) facilitates and effectively coordinates all day-to-day activities required for Project implementation;
  - (d) prepares for the Project annual plans, budgets, and updates for the Procurement Plan, for approval by the Project Steering Committee and the Association, no later than November 30 of each year, starting November 30, 2006;
  - (e) supports Project procurement, as well as compliance with the Association's procurement guidelines and procedures, including through the development of terms of reference, the establishment of and participation in selection committees, and the evaluation of Project completion reports; and

(f) monitors and evaluates Project performance in accordance with the indicators referred to in Section 8 (a) below of this Schedule 4 and prepares progress implementation reports, including the commissioning of the investment climate surveys referred to in Section 7 below of this Schedule 4.

4. The Recipient shall ensure that all the ministries, agencies, departments, and other organs of the Recipient and of the PISG involved in the implementation of the Project, including, without limiting the generality of the foregoing, the PPA, the MEF, the MTI, the Investment Promotion Office and KCA are provided with adequate resources, staff and facilities for the performance of their respective responsibilities and obligations, and that they properly discharge such responsibilities and obligations in a timely and effective manner.

5. The Recipient shall ensure that Part 2 of the Project is carried out by the KCA, in coordination for procurement purposes with the PPA.

6. The Recipient shall ensure that the Project Secretariat completes and delivers the Project Operational Manual to the Association no later than by July 29, 2005.

7. The Recipient shall ensure that the Project Secretariat commissions at least two investment climate surveys, the final results of which shall be available for purposes of the report mentioned in Section 8(b) below of this Schedule 4 and for purposes of the plan specified under Section 3.03(a) of this Agreement, and which shall also be shared with and considered by the Project Steering Committee.

8. The Recipient shall:

(a) maintain policies and procedures adequate to enable it, through the Project Secretariat, to monitor and evaluate on an ongoing basis, in accordance with indicators satisfactory to the Association, the carrying out of the Project and the achievement of the objectives thereof;

(b) cause the Project Secretariat to prepare, under terms of reference satisfactory to the Association, and furnish to the Association, on or about September 30, 2007 a report integrating the results of the monitoring and evaluation activities performed pursuant to paragraph (a) of this Section, on the progress achieved in the carrying out of the Project during the period preceding the date of said report and setting out the measures recommended to ensure the efficient carrying out of the Project and the achievement of the objectives thereof during the period following such date; and

(c) review with the Association, by October 31, 2007 or such later date as the Association shall request, the report referred to in paragraph (b) of this Section, and, thereafter, take all measures required to ensure the efficient completion of the Project and



the achievement of the objectives thereof, based on the conclusions and recommendations of the said report and the Association's views on the matter.