

C. DRAFT CONTRACT DOCUMENT

**PAPUA NEW GUINEA
DEPARTMENT OF NATIONAL
PLANNING AND MONITORING**

EUROPEAN UNION

CONTRACT No. 200.../.../EU/SC

Nature of Contract : Service Contract

Amount of Contract : PGK

Date of Notification :

Project Details

Funding : European Development Fund

Financing Agreement : .../PNG

Project No¹ : ...ACP.PNG....

Title¹ :

Contract Details

Title :

Contractor :

Period of performance :

¹ The project number and title must be quoted in all correspondence and on all payment documents

SERVICE CONTRACT

**Financed under the 8th European Development Fund
Project No: 8.ACP.PNG 017**

BETWEEN The Independent State of Papua New Guinea, represented by the National Authorising Officer of the European Development Fund (NAO), or one of his Deputies, hereinafter referred to as the "Contracting Authority" on the one part

AND, referred to as "the Consultant" on the other part

THE FOLLOWING HAS BEEN AGREED

The Contracting Authority hereby entrusts to the Consultant, who accepts on the terms set out below, the task of providing technical assistance for the Rural Coastal Fisheries Programme.

The description of the services to be carried out by the Consultant pursuant this Contract as well as all the conditions and clauses of the contract are given in the contractual documents annexed hereto.

The Contract Price shall be PGK[Amount in figures]
.....([Amount in letters]).

equivalent to..... [Foreign Currency] [Amount in figures]
.....([Amount in letters]).

on the basis of the following exchange rate: 1 [Foreign Currency] = [Exchange Rate] PGK, in accordance with Annex A of the Special Conditions (Price Breakdown) and with Art. 14 of the Instructions to Tenderers.

SPECIAL CONDITIONS OF THE SERVICE CONTRACT

Preamble

These Special Conditions supplement and/or amend the General Conditions for Service Contracts financed by the EDF (Annex IV to Decision No. 3/90 of the ACP-EEC Council of Ministers of 29 March 1990). Unless otherwise provided in these Special Conditions, the General Conditions referred to above remain fully applicable.

The numbering of these Special Conditions is not consecutive and with the exception of the preamble follows the numbering of the General Conditions.

All financial aspects of this contract require the approval of the National Authorising Officer or of his Deputy and of the Head of Delegation of the Commission in Papua New Guinea.

Article 1. Definitions

- Contracting Authority : The Contracting Authority is the Government of the Independent State of Papua New Guinea, represented by the National Authorising Officer (NAO) of the European Development Fund (EDF) or one of his Deputies.
- Convention : The Revised Fourth Lomé Convention, 2nd Financial Protocol
- Head of Delegation : The representative of the European Commission in Papua New Guinea
- Local Currency : The Kina, the currency of Papua New Guinea
- Supervisor : The Supervisor is the National Fisheries Authority

Article 2. Law and Language of the Contract

2.3. The language of the contract and all related communications shall be English.

Article 3. Order of Precedence of Contract Documents

The Order of Precedence of Contract Documents shall be as follows:

- The special conditions of the service contract and its annexes
- The notification of award of the contract
- The offer and its annexes
- The tender dossier and its annexes
- The General Conditions for Service Contracts financed by the EDF

Article 4. Notices and Written Communications

The addresses designated are as follows:

Contracting Authority:

The National Authorising Officer of the European Development Fund
Department of National Planning and Monitoring
PO Box 631

Waigani/NCD

Telephone: (675) 328 8524/328 8522

Facsimile: (675) 325 5759

E-mail: eupmu.pm@global.net.pg

Supervisor:

National Fisheries Authority

P.O Box 2016,

11th Floor, Deloitte Tower

Port Moresby

Telephone: 321.26.43

Facsimile: 320.20.61

Consultant:

[Address, Telephone, fax, e-mail]

Head of Delegation:

Delegation of the European Commission in Papua New Guinea

The Lodge, 3rd Floor

PO Box 76

Port Moresby/NCD

Telephone: (675) 321 35 44

Facsimile: (675) 321 78 50

E-mail: admin@eudelpng.org

All communication related to this contract shall be copied for information to the Head of Delegation in Port Moresby.

Article 14. Indemnification

14.2. The Consultant's liability under Art. 14.2(b) shall be limited to the contract price. However, this ceiling shall not apply to actions, claims, losses or damages caused by the Consultant's wilful misconduct.

Article 15. Medical and Insurance Arrangements

15.4. The sum of the insurance policy required under Art. 15.4(a) and (d) shall be as foreseen by the applicable Laws and Regulations of the country of the Consultant's registered place of business. The sum of the insurance policy required under paragraph (c) shall be as foreseen by the Laws and Regulations of Papua New Guinea. The sum of the insurance policy required under paragraph (b) shall be, as a minimum, the Contract Price.

15.5. The Consultant shall also insure against loss or damage to the personal effects of his employees located in Papua New Guinea.

Article 17. The Scope of the Services

- 17.3. This contract covers the provision of Technical assistance in the framework of the Rural Coastal Fisheries Programme. The nature and scope of the services are described in **Annex A** of the Tender dossier (Terms of Reference).

The Consultant shall, on his own initiative or at the Contracting Authority's request, provide the Contracting Authority with all information and explanation concerning performance of the contract or relating directly to it.

This information shall be given either in the reports referred to in Articles 29, 30 and 31 of the General Conditions and articles XXIX and XXXI of these special conditions, or in an appropriate manner in the case of any important fact or decision that, in the opinion of the Consultant, should be brought immediately to the attention of the Contracting Authority and/or the Project Supervisor.

Article 19. Staff and Equipment

- 19.1. The qualifications and other requirements to be met by the Consultants are set out in **Annex A** of the Tender Dossier (Terms of Reference).
- 19.2. The Consultant shall perform this contract with the personnel referred to in this tender (see **Annexes C** and **D** of the Tender Dossier). Acceptance of the tender by the Contracting Authority shall constitute acceptance of the personnel proposed.
An independent, external evaluation may be carried out mid way through the project. The findings of the mid-term evaluation will be studied with a view to making any changes in the design or the management of the project, to ensure that project achievement indicators continue to be met.
- 19.4. The personnel supplied by the Consultant shall start work on the date to be notified by the Contracting Authority.

Article 20. Trainees

- 20.1. Transfer of appropriate skills to counterpart staff shall be provided as indicated in **Annex A** of the Tender Dossier (Terms of Reference) [if appropriate]

Article 21. Commencement Orders

- 21.1. The Contract shall enter into force on the date of its notification. Performance of the Contract shall start on the date indicated in the commencement order issued by the Contracting Authority.

Article 22. Period of Performance

- 22.1. The period of performance of the contract is hereby set at 60 months commencing on the date referred to in Article XXI.1. of these Special Conditions.

Article 24. Delays in Performance

- 24.1. The damages per day of delay provided for in Art. 24.1 shall be set at 2/1000 of the Value of the Contract up to 15% of the total Contract Price.

Article 28. Leave Entitlement

- 28.1. Annual leave is provided to the Consultant in the terms and conditions stipulated in Article 28 of the General Conditions and Article XXVIII.2. of these Special Conditions.
- 28.2. The leave entitlement of the Consultant's expatriate personnel shall be calculated based on 1.5 month per person/month of performance of the contract.

Article 29. Information

The nature and frequency of regular information are stipulated in Annex A of the Tender Dossier (Terms of Reference).

Article 31. Submission of Reports

- 31.1. Reports referred to in Art. 31.1. will be submitted in accordance to Annex A of the Tender Dossier (Terms of Reference).

Article 32. Approval of Reports and Documents

- 32.2. The Contracting Authority shall take a decision of the reports and documents referred to in Art. 32 .2. within 60 days of submission.

Article 33. General Provisions

- 33.1. All payments under the contract shall be as follows:
- a) For the Fees and Direct Costs (referred as I.A & I.B in Annex A of these Special Conditions):
...% in [Foreign Currency], ...% in PGK
 - b) Payments for reimbursable expenses (referred as I.C in Annex A of these Special Conditions)
 - incurred in Kina shall be reimbursed in Kina;
 - incurred in currencies other than Kina shall be reimbursed in [Foreign Currency]

Any conversion from other currencies shall be calculated based on the rates published in the Official Journal of the European Communities (O.J.), which were in force on the first working day of the month in which the expenses were incurred.

In the case of currencies not quoted in the OJ, conversion shall be calculated based on the rates published in InforEuro, which were in force on the first working day of the month in which the expenses were incurred.

Payments shall be made to the following account(s):

For payments in [Foreign Currency]:
[Address and Account No]

For payments in PGK:

The bank must be established in Papua New Guinea; the Consultant will provide precise references later.

The Contracting Authority shall facilitate the timely granting to the Consultant's personnel of:

- the privilege of bringing into the country reasonable amounts of foreign currency for the purposes of the services or the personal use of such personnel, and of withdrawing any such amounts as may be earned therein by such personnel in the execution of the services.
- a firm authorisation from the Central Bank or other appropriate authority that the foreign exchange component of the remuneration under this Contract shall be allowed to be transferred to the Consultant's home country.

33.2. In reference to Art. 308, 309 et 310 of the Lome IV Convention, PART THREE, Title III, Chapter 5, Section 6 (Tax and customs arrangements), and the Aid Status (Privileges & Immunities) Act/Chapter No 345 of the Laws of Papua New Guinea, all expenses incurred in the framework of this contract are exempted of the Value Added Tax (VAT) . The Consultant must take all necessary arrangements in order to be registered to the Internal Revenue Commission (IRC) and to proceed with the recovery of the VAT. Therefore, all claims presented for reimbursement shall be free of VAT and other taxes, which are not eligible for reimbursement.

Article 34. Advances

- 34.1. Advances may be made to the Consultant at his request. Any advance shall be covered by a guarantee for the same amount expressed in the same currency.
- 34.2. The total amount of the advances shall not exceed 20% of the fees and direct costs, and will be paid to the consultant in accordance to Article XXXIII.1.(a) above.
- 34.8. The reimbursement of the advance is effected by deduction from interim payments and, if necessary, from the balance due to the Consultant. Repayment shall start with the first interim payment due under the contract and shall be completed by the time the sum of the interim payment reaches 80%, and shall be made in the same currencies as those of the advances. The amount to be deducted from each interim payment shall be calculated using the following formula:

$$R = D \times V_a / (V_t \times 0.8), \quad \text{where}$$

- R = the amount to be repaid
 D = the amount of the interim payment
 V_a = the amount of the advance
 V_t = the amount of the fees and direct costs

Article 35. Payment Procedure

- 35.1. Payments will be made quarterly in arrears. These payments are in the nature of interim payments and do not relieve the Consultant of his contractual obligation in respect of the period concerned. Fees are not payable during leave periods.

- 35.4. Payment of the 10% balance will be due annually upon approval of the last quarterly report for each year of implementation by the [Contracting Authority or Project Steering Committee]. For the final year, the payment will be due on approval of the project completion report by the [Contracting Authority or Project Steering Committee].
- 35.7. Request for payments of fixed costs and reimbursable over the same period shall be submitted simultaneously. For each interim payment, the Consultant shall send the following documents:
- 4 original invoices to the Supervisor;
 - The itemised statements of the amounts payable for each period concerning the services rendered by the Consultant, and
 - The original and three copies of the supporting documents

For costs based on reimbursement, payments shall be made on production of original invoices together with all relevant original supporting documentation, including air ticket stubs and boarding passes. Original documentation is essential. Copies shall not be considered.

Article 36. Travel and Transport

- 36.1. The entitlement to the reimbursement of international transport costs of the staff and their dependents is limited to the cost of the most direct practical route between their usual place of residence and Port Moresby (POM). The following trips are envisaged:
- On taking up the post in POM: one way journey from the usual place of residence to POM
 - After each year of performance of the contract (except last year) for the purpose of leave: one return journey from POM to the usual place of residence
 - Upon completion of the contract: one-way journey from POM to the usual place of residence.
- 36.2. (a) The reimbursement will be equivalent to the cost of an economy class ticket as notified by an official travel agent in the country where the journey originates. (IATA fares should be used)
- (b) The expert will also be reimbursed at cost of authorised domestic air travel for service purposes.
- (c) The weight limits for the journey to take up the assignment and for the return journey at the end of the contract are:
- accompanied baggage: 20 kg per person
 - unaccompanied baggage: 200 kg for the expert and 100 kg per dependent for a transport by air, or the equivalent amount of money for a transport by sea.
- 36.3. The cost of transporting documents, equipment, materials and any other special apparatus that may be required by the experts shall be deemed included in the lump sums or unit prices indicated in the Price Breakdown (Annex A of these Special Conditions) and shall not be reimbursed separately.

Article 37. Revision of Prices

37.1. Providing it can be justified, a revision of the unit prices may take place at the beginning of the 2nd year after signature of the contract and of each consecutive period of 12 months or part thereof. The revision will apply to the sums (fees and direct costs) due for services rendered thereafter, and not subject to a prior revision made outside the scope of this article.

37.2. The formula to be applied for price revision is as follows:

For the local component: $P = P_0 \times (0,20 + 0,80 Z / Z_0)$

For the foreign component: $P = P_0 \times (0,20 + 0,80 E / E_0)$

Where:

P, P₀: revised rate and initial rate shown in the contract, respectively;

Z, Z₀: cost of living index in Papua New Guinea, for the month of the price revision and for the month preceding the date set for submission of the tenders, respectively;

E, E₀: cost of living index in the country of Consultant's registered place of business, for the month of the price revision and for the month preceding the date set for submission of the tenders, respectively.

Note: E and E₀ derive from Eurostat tables and Z and Z₀ from the official statistics offices of Papua New Guinea. If the foreign currency is the EURO, E and E₀ represent the Eurostat index for the EU.

Article 38. Delayed Payments

38.1. Where payment is in an European currency, the interest rate shall be one and a half percentage points higher than that applied by the European Central Bank to its main refinancing operations, with effect from the first day of the month in which the payment should have been made. This rate is published each month by the Commission in the Official Journal of the European Communities (OJ).

Where payment is in any other currency, the rate shall be the rediscount rate applied by the Central Bank of the State of that currency.

Interest on late payment shall be payable for the time elapsed between the end of the 90-day period within which the Commission should have made the payment and the date on which the late payment was made.

Article 40. Breach of Contract

40.1. A Consultant who changes the composition of the personnel for reasons other than those provided for in Art. 18.4 and 18.6 and Art. 43 shall be considered in breach of contract.

40.2. Where there are replacements as referred to in Paragraph 1 above, and without prejudice to the application of Art. 40.2 (b) and 18.2, 18.3, 18.5 and 18.6, the Contracting Authority

may claim compensation equivalent to 10% of the total contractual amount to be paid to the agent or agents concerned.

Article 42. Termination by the Consultant

42.3. The limit referred to in Art. 42.3 is hereby set at 20% of the value of the Contract.

Article 45. Settlement of Disputes

45.2. The arrangements referred to in Art. 45.2 are as follows:

a) The procedure to be followed for an amicable settlement of a dispute shall be opened by one party's notifying the other party of the dispute, in writing, and proposing recourse to an amicable settlement, in accordance with arrangements to be agreed and in accordance with this Article and Art. 45 of the General Conditions.

b) The deadline for carrying out the amicable settlement shall be no more than thirty days following the parties' notification, referred to in subparagraph 45.2 (a).

The maximum period permissible for coming to an amicable settlement shall be sixty (60) days from the date of notification. The parties may agree, in writing, to extend this period by up to a further sixty (60) days period.

c) The deadline referred to in Art. 45.2 (c) of the General Conditions, within which there should be a response to requests, shall be eight (8) days from receipt of the said requests. Where this deadline is not kept, the party that has made the request shall send a reminder. Where there is no response to the reminder within eight (8) days of its receipt, the attempt for an amicable settlement shall be deemed to have failed.

XLV.3. The parties may agree that the conciliation procedure referred to in Art.45.3 of the General Conditions shall be that provided for in Art. 5 of the Procedural rules on conciliation and arbitration referred to in Art. 45.2 (b).

Where the European Commission is asked to intervene in an amicable settlement, such request may be made only once all internal means of administrative recourse have been exhausted, in accordance with Arts. 4 and 5.1 of the Procedural Rules on Conciliation and Arbitration of Contracts financed by the EDF, adopted by Decision of the ACP-EEC Council of Ministers No. 3/90 of 29 March 1990 (OJ L 382 of 31.12.90).

Intervention by the Commission in an amicable settlement may take the form of an intervention by the Commission Delegation on the spot or by departments of the Commission Headquarters, as agreed between the parties concerned and the Commission.

45.5.(b)(ii) The procedural rules referred to in Art. 45.5 (b) (ii) shall be taken to mean those provided for in the Procedural rules on conciliation and **arbitration** referred to above.

ANNEXES: Annex A – Price Breakdown

SIGNATURES:

For the Consultant,
(Name, function, with mention
"Read and agreed")

For the Supervisor,
.....

Signature:

Signature:

Date:

Date:

Endorsed for financing by the EDF

For the Contracting Authority,
The National Authorising Officer (or one
of his Deputies)

For the European Commission,

Signature:

Signature:

Date:

Date:

Jeremiah Andrew
Assistant Secretary (Multilateral)

Anthony Crasner
Head of Delegation

ANNEX A to the Special Conditions of the Service Contract. Price Breakdown

Fixed Exchange Rate (as per [Month Year]): 1 [Foreign Currency] = [Exchange Rate] PGK

Rural Coastal Fisheries Project - Price Breakdown

Exchange Rate: 1 EUR = PGK

1. Price Breakdown

No.	Description	Price Unit	Qty	Unit Rate		Unit Rate in	
				Euro	Total in Euro	PGK	Total in PGK
I	UNIT RATES						
IA	<u>Fees (Expatriated Staff)</u>						
A.1	Project Coordinator	Man-month	31.50				
A.2	Field Officer	Man-month	52.50				
A.3	Master fisherman	Man-month	15.75				
A.4	Processing Specialist	Man-month	6.00				
IB	<u>Other Direct Costs</u>						
B.1	Accommodation	Months	120.00				
<i>Sub-total I</i>							
II	REIMBURSABLE EXPENSES						
D	Long Distance travel						
D.1	Expatriate Staff	Return ticket					
D.2	Dependents	Return ticket					
E.1	Accompanied baggage	Kg					
E.2	Unaccompanied baggage	Max.					
<i>Sub-total II</i>							
GRAND TOTAL							