

THE REPUBLIC OF KIRIBATI

AGREEMENT FOR CONSULTING SERVICES

OF

FISHERIES DEVELOPMENT PROJECT

BETWEEN

MINISTRY OF NATURAL RESOURCE DEVELOPMENT

AND

D&A ENGINEERING CO., LTD.

This AGREEMENT (hereinafter together with the appendices attached hereto called the "AGREEMENT") is made on the day of between the Ministry of Natural Resource Development, Republic of Kiribati on the one part (hereinafter called the "~~CLIENT~~"^{* Ministry of Natural Resources}) and D&A Engineering Co., Ltd. a company incorporated under the laws of Japan having its registered office at 4-4 Chome, Kandasurugadai, Chiyoda-ku, Tokyo, Japan on the other part (hereinafter called the "CONSULTANT").

WITNESSETH:

WHEREAS, the Government of the Republic of Kiribati is desirous of constructing the Cold Store under its Fisheries Development Project (hereinafter called the "PROJECT"), and the Government of Japan will extend to the REPUBLIC the grant on the basis of EXCHANGE of NOTES made on the 3rd day of May, 1983, for the purpose of implementation of the PROJECT.

WHEREAS, the CLIENT has requested the CONSULTANT to provide sufficient consulting services (hereinafter called the "SERVICES") necessary for the effective implementation of the PROJECT. ■

WHEREAS, the CONSULTANT is willing to provide the SERVICES on the terms and conditions set forth in this AGREEMENT.

NOW THEREFORE the parties hereto agree as follows:

ARTICLE I. DEFINITION

In construing this AGREEMENT the following terms have the meanings hereby defined below unless the context requires otherwise:

- (a) "CLIENT" means the Ministry of Natural Resource Development, Republic of Kiribati, one party this AGREEMENT and shall include its authorized persons.
- (b) "CONSULTANT" means D&A Engineering Co., Ltd, another party to this AGREEMENT and shall include any persons who act in this PROJECT on behalf of the said corporation during the period of this AGREEMENT.
- (c) "CONTRACTOR" means the Japanese firm or company whose tender is awarded by the CLIENT.
- (d) "CONTRACT DOCUMENT" means the documents consisting of the Contracts, the Conditions of the Contracts (General, Supplementary and other Conditions), including but not limited to, the Drawings, the Specifications, all Addenda issued prior to execution of the Contracts and all Modifications prepared by CONSULTANT, The Invitation to Tender, Instruction to Tenderers, Form of Tender, Tender Schedule, and Completion Schedule.

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(e) "PROJECT"

means the Project for constructing the Cold Store for preserving fishes, which is financed under the grant from the Government of Japan in accordance with the stipulations set forth in the EXCHANGE of NOTES. ●

(f) "EXCHANGE of NOTES"

means the notes exchanged between the Government of the Republic of Kiribati and the Government of Japan on the 3rd day of May, 1983 in connection with the grant from the Government of Japan.

ARTICLE II. CONSISTENCY WITH EXCHANGE OF NOTES

Any and all stipulations of this AGREEMENT shall be consistent with the content of the EXCHANGE of NOTES. Should any of stipulations of this AGREEMENT be in conflict with the said EXCHANGE of NOTES, such stipulations shall be deemed null and void.

ARTICLE III. SERVICES

The CONSULTANT shall perform the SERVICES under this AGREEMENT in accordance with the Terms of Reference set forth in "Appendix A" heretoeafter.

ARTICLE IV. CONTRACT PRICE AND TERMS OF PAYMENT

4 - 1 Price:

The ~~CLIENT~~ shall pay a net sum of Eighteen Million Japanese Yen (¥18,000,000.-) to the CONSULTANT as the Price for the SERVICES stipulated in ARTICLE III which is inclusive of the costs and expenses borne by the CONSULTANT as hereinafter set forth.

4 - 2 Currency:

Any and all payments by the ~~CLIENT~~ to the CONSULTANT under this AGREEMENT shall be made in Japanese YEN.

4 - 3 Method of Payments:

Payments for SERVICES shall be made by the CLIENT to CONSULTANT in installments as follows:

In accordance with the terms of the EXCHANGE of NOTES, between the Government of Kiribati and the Government of Japan, the CLIENT or its designated authority shall make the arrangement with an authorized foreign exchange bank of Japan designated by the CLIENT or its designated authority.

The CLIENT or its designated authority shall issue to the bank the authorization to pay within fifteen (15) days after verification of this AGREEMENT by the Government of Japan.

(1) 1st Installment

The sum of Seven Million Two Hundred Thousand Japanese Yen
(¥7,200,000.-) equivalent to Forty
Percent (40%) of the Contract Price shall be paid upon
verification of this AGREEMENT by the Government of
Japan.

The amount of this installment shall be paid against
a copy of notice of verification of this AGREEMENT by
the Government of Japan.

(2) 2nd Installment

The sum of Five Million Four Hundred Thousand Japanese Yen
(¥5,400,000.-) equivalent to Thirty
Percent (30%) of the Contract Price shall be paid upon
the verification of the Construction Contract by the
Government of Japan. The amount of this installment
shall be paid against a copy of notice of verification
of the Construction Contract by the Government of Japan.

(3) 3rd Installment

The sum of Three Million Six Hundred Thousand Japanese Yen
(¥3,600,000.-) equivalent to Twenty Percent
(20%) of the Contract Price shall be paid upon comple-
tion of roof work of the Cold Store. The amount of this
installment shall be paid against a copy of the Certifi-
cate the completion roof work of the Cold Store issued
by the CLIENT.

(4) Last Installment

The sum of One Million Eight Hundred Thousand Japanese Yen
(¥1,800,000.-) equivalent to Ten Percent
(10%) of the Contract Price shall be paid upon the
delivery of the Cold Store. The amount of this install-
ment shall be paid against a copy of the Certificate of
acceptance of the Cold Store issued by the CLIENT.

ARTICLE V. UNDERTAKING OF THE CLIENT

5 - 1

The CLIENT warrants that the Government of Kiribati shall exempt the CONSULTANT from any taxes, duties, fees, levies and other impositions imposed under the laws and regulations in effect in Kiribati on the CONSULTANT in respect of:

- (1) any payments made to the CONSULTANT in connection with the carrying out of the SERVICES;
- (2) any property and equipment brought into the Republic of Kiribati by the CONSULTANT which are to be used for the execution of the PROJECT, and which if not withdrawn from the Republic of Kiribati upon completion of the PROJECT shall be transferred to the Government of Kiribati.

5 - 2 Other Privileges and Exemptions:

The CLIENT shall:

- (1) provide the CONSULTANT and each of its personnel with work permits and such other documents as shall be necessary to enable them to perform the SERVICES;
- (2) arrange for the personnel to be provided promptly with all necessary entry and exit visas, required for their stay in the Republic of Kiribati;
- (3) issue to officials, agents and representatives of the Government of Kiribati all such instructions as may be necessary or appropriate for the prompt and effective implementation of the SERVICES.

ARTICLE VI. UNDERTAKING OF THE CONSULTANT

6 - 1 Responsibilities of the CONSULTANT:

- (1) The CONSULTANT shall carry out the SERVICES with due diligence and efficiency and in conformity with sound engineering and administrative practices.
- (2) The CONSULTANT shall act at all times so as to protect the interests of the CLIENT and will take all reasonable steps to keep engineering expenses to a minimum consistent with sound engineering practices.

6 - 2 Information:

The CONSULTANT shall furnish to the CLIENT such informations relating to the SERVICES stipulated in ARTICLE III as the CLIENT may from time to time reasonably request.

6 - 3 Assignments:

Without the prior written approval of the CLIENT, the CONSULTANT shall not assign or transfer the AGREEMENT.

6 - 4 Confidentiality:

Without the prior consent of the CLIENT, the CONSULTANT shall not at any time communicate to any person or entity any confidential information disclosed to them for the purpose of the SERVICES or discovered by them in the course of the SERVICES, nor shall the CONSULTANT make public any information as to the recommendations formulated in the course of or as a result of the SERVICES.

6 - 5

The CONSULTANT shall submit the "Monthly Report" to the CLIENT a month, period of the construction stage.

ARTICLE VII. EFFECTIVENESS & PERIOD

7 - 1 Effectiveness:

This AGREEMENT shall become effective upon the date of the verification by the Government of Japan.

7 - 2 Period:

The SERVICES of the CONSULTANT described in ARTICLE III shall be completed by 15th day of March, 1984.

ARTICLE VIII. MISCELLANEOUS

8 - 1 Governing Law:

The parties hereto agree the validity and interpretation of this AGREEMENT and of each article and part thereof shall be governed by the Law of Japan.

8 - 2 Language and Unit:

(1) Language

Any and all notices and communications in connection with this AGREEMENT shall be written in English Language.

(2) Unit

Metric System shall be adopted for design and construction of the Cold Store including machinery, equipment and fittings.

8 - 3 Force Majeure:

Neither party shall be liable to the other party for any failure or delay in the performance of any of its obligations under this AGREEMENT for the period and to the extent such failure or delay is caused by riot, civil commotions, wars, hostilities, laws, orders, regulations, embargoes, actions by the government or any government agency, acts of God, earthquakes, floods, storms, fires, accidents, strike, lockout, sabotages, explosions, epidemics, quarantine restrictions, or other similar or different contingencies beyond the reasonable control of the respective parties.

8 - 4 Arbitration:

All disputes, controversies, or differences that may arise between the parties out of or in connection with this AGREEMENT which can not be resolved between the parties, shall be finally settled by arbitration in accordance with the rules of the International Chamber of Commerce and the Laws of Japan. Any award given by the arbitrators shall be final and binding upon both parties.

8 - 5 Representatives of Parties:

With respect to all matters arising from the execution of this AGREEMENT, the CLIENT shall be represented by the Minister of Natural Resource Development or its designated authorities and the CONSULTANT shall be represented by the President of D&A Engineering Co., Ltd.

8 - 6 Entire Agreement:

- (1) This AGREEMENT constitutes the entire agreement between the parties and supersedes any previous written or oral agreement, negotiations, commitments and representations in respect thereto.
- (2) No modification, change and amendment of this AGREEMENT shall be binding upon parties except as shall be mutually agreed upon in writing by both parties under verification of the Government of Japan.

ARTICLE LX. NOTICES

All notices, demands, and other communications in connection with the AGREEMENT shall be made in writing by registered air mail, telegraph or telex, and shall be addressed as follows:

To the CLIENT

The Ministry of Natural Resource Development
P.O. Box 64
BAIRIKI, TARAWA, Republic of Kiribati
Cable Address: RESOURCES BAIRIKI `

To the CONSULTANT

4-4 chome, Kandasurugadai, Chiyoda-ku,
Tokyo, 101, Japan
Cable Address: DANDAENGCO TOKYO
Telephone No.: (03) 257-1601

Notices, demands, and communications given as provided shall be deemed to be duly given on the day of deposit of such notices in the post office of the sender.