
CREDIT NUMBER 326 PNG

Project Agreement

(Ports Project)

BETWEEN

INTERNATIONAL DEVELOPMENT ASSOCIATION

AND

PAPUA NEW GUINEA HARBOURS BOARD

DATED JULY 21, 1972

CREDIT NUMBER 326 PNG

Project Agreement

(Ports Project)

BETWEEN

INTERNATIONAL DEVELOPMENT ASSOCIATION

AND

PAPUA NEW GUINEA HARBOURS BOARD

DATED JULY 21, 1972

PROJECT AGREEMENT

AGREEMENT, dated July 21, 1972, between INTERNATIONAL DEVELOPMENT ASSOCIATION (hereinafter called the Association) and PAPUA NEW GUINEA HARBOURS BOARD (hereinafter called PNGHB).

WHEREAS by the Development Credit Agreement of even date herewith between The Administration of Papua New Guinea (hereinafter called the Borrower) and the Association, the Association has agreed to make available to the Borrower an amount in various currencies equivalent to nine million two hundred thousand dollars (\$9,200,000), on the terms and conditions set forth in the Development Credit Agreement, but only on condition that PNGHB agree to undertake such obligations toward the Association as hereinafter set forth;

WHEREAS the Commonwealth of Australia agrees to guarantee the obligations of the Borrower in respect of such credit as provided in a letter of undertaking of even date herewith from the Commonwealth of Australia to the Association;

WHEREAS by a subsidiary loan agreement to be entered into by the Borrower and PNGHB, the proceeds of the credit provided for under the Development Credit Agreement will be relent to PNGHB on the terms and conditions therein set forth; and

WHEREAS PNGHB, in consideration of the Association's entering into the Development Credit Agreement with the Borrower, has agreed to undertake the obligations hereinafter set forth;

NOW THEREFORE the parties hereto hereby agree as follows:

ARTICLE I

Definitions

Section 1.01. Wherever used in this Agreement, unless the context shall otherwise require, the several terms defined in the Development Credit Agreement and in the General Conditions (as so defined) have the respective meanings therein set forth.

ARTICLE II

Execution of the Project

Section 2.01. PNGHB shall carry out the Project described in Schedule 2 to the Development Credit Agreement with due diligence and efficiency and in conformity with sound administrative, financial, engineering, and port management practices, and shall provide, or cause to be provided, promptly as needed, the funds, facilities, services and other resources required for the purpose.

Section 2.02. (a) In order to assist PNGHB in the preparation of detailed engineering and tender documents, evaluation of bids, and the supervision of construction under Part A of the Project, and in the collection of soil and hydrographic and other data associated therewith, PNGHB shall employ engineering consultants acceptable to the Association upon terms and conditions satisfactory to the Association.

(b) In order to assist PNGHB to carry out Part D of the Project, PNGHB shall employ consultants acceptable to the Association upon terms and conditions satisfactory to the Association.

Section 2.03. In carrying out Part A of the Project, PNGHB shall employ contractors acceptable to the Association upon terms and conditions satisfactory to the Association, and in accordance with the procedures set forth in Schedule 1 to this Agreement.

Section 2.04. Except as the Association shall otherwise agree, the goods and services required for Parts A and C of the Project and to be financed out of the proceeds of the Credit, shall be procured on the basis of international competition under procedures consistent with the Guidelines for Procurement under World Bank Loans and IDA Credits, published by the Bank in August 1969, as revised in May 1971, and in accordance with, and subject to, the provisions set forth in Schedule 1 to this Agreement.

Section 2.05. (a) PNGHB undertakes to insure, or make adequate provision for the insurance of, the imported goods to be financed out of the proceeds of the Credit against hazards incident to the acquisition, transportation and delivery thereof to the place of use or installation, and for such insurance any indemnity shall be payable in a currency freely usable by PNGHB to replace or repair such goods.

(b) Except as the Association may otherwise agree, PNGHB shall cause all goods and services financed out of the proceeds of the Credit to be used exclusively for the Project.

Section 2.06. (a) PNGHB shall furnish to the Association promptly upon their preparation, the plans, specifications, and construction and procurement schedules for the Project, and any material modifications thereof or additions thereto, in such detail as the Association shall reasonably request.

(b) PNGHB: (i) shall maintain records adequate to record the progress of the Project (including the cost thereof) and to identify the goods and services financed out of the proceeds of the Credit relented to it by the Borrower, and to disclose the use thereof in the Project; (ii) shall, without limitation upon the provisions of Section 5.03 of this Agreement, enable the Association's representatives to inspect the Project, the goods financed out of such proceeds and any relevant records and documents; and (iii) shall furnish to the Association all such information as the Association shall reasonably request concerning the Project, the expenditure of the proceeds of the Credit so relented to it and the goods and services financed out of such proceeds.

Section 2.07. PNGHB shall take all such action as shall be necessary to acquire by a date not later than June 30, 1972 or such later date as shall be agreed to by the Association, all such land and rights in respect of land and water as shall be required for the construction and operation of the ports and related facilities presently under its jurisdiction or included in the Project and shall furnish to the Association, promptly after such acquisition, evidence satisfactory to the Association that such land and rights in respect of land and water are vested in it.

Section 2.08. Except as the Association and the Borrower shall otherwise agree, PNGHB shall not take or concur in any action which would have the effect of amending, abrogating, assigning or waiving the Subsidiary Loan Agreement or any provision thereof.

ARTICLE III

Management and Operations of PNGHB

Section 3.01. PNGHB shall:

(a) at all times maintain its right to carry on operations;

(b) operate and maintain, or cause to be operated and maintained, all its facilities, equipment and property and from time to time make, or cause to be made, all necessary renewals and repairs thereof, all in accordance with sound administrative, financial, engineering and port management practices; and

(c) at all times manage its affairs, plan its future operations and maintain its financial position in accordance with sound administrative, financial, engineering and port management practices and under the supervision of experienced and competent management.

Section 3.02. (a) PNGHB shall employ insurance consultants acceptable to the Association to advise it regarding the insurable risks borne by PNGHB, and to make appropriate recommendations, and shall require the consultants to submit a report to it in writing by a date not later than December 31, 1972, or such later date as may be agreed to by the Association.

(b) Until it has received the report of the insurance consultants, PNGHB shall, except as otherwise agreed by the Association, continue its current insurance arrangements (including the provision of reserves against risks for which it is self-insured); as soon as practicable after receipt of the report, PNGHB shall make provisions satisfactory to the Association for insurance against such risks and in such amounts as shall be consistent with sound port management practices.

Section 3.03. PNGHB shall continue to collect and evaluate appropriate data to assess the results of training programs presently in operation and the efficiency of port operations.

ARTICLE IV

Financial Covenants

Section 4.01. PNGHB shall maintain records adequate to reflect in accordance with consistently maintained sound accounting practices its operations and financial condition.

Section 4.02. PNGHB shall: (i) have its accounts and financial statements (balance sheets, statements of income and expenses and related statements, including cash-flow statements) for each fiscal year audited, in accordance with sound auditing principles 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 months after the end of each such year, (A) certified copies of its financial statements for such year as so audited and (B) the report of such

audit by said auditors, of such scope and in such detail as the Association shall have reasonably requested; and (iii) furnish to the Association such other information concerning the accounts and financial statements of PNGHB and the audit thereof as the Association shall from time to time reasonably request.

Section 4.03. (a) Except as the Association and the Borrower shall otherwise agree, PNGHB shall from time to time take all necessary measures, including but not limited to adjustments in its tariffs, as shall be required to enable PNGHB to earn an annual rate of return of not less than eight per cent (8%); and

(b) For the purposes of this Section:

- (i) the annual rate of return shall be calculated in respect of each fiscal year by relating the operating surplus for that year to the average of the value of the net fixed assets in operation at the beginning and at the end of that year;
- (ii) the term "operating surplus" shall mean the difference between (A) operating revenue and (B) operating and administrative expenses, including adequate maintenance and depreciation, but excluding interest and other charges on debt and income taxes (if any); and
- (iii) the term "value of net fixed assets in operation" shall mean the gross value of fixed assets in operation less the accumulated depreciation, both as valued from time to time in accordance with sound and consistently maintained methods of valuation acceptable to the Association.

Section 4.04. Subject to the requirements of Section 4.03 PNGHB shall:

(a) except as the Association and the Borrower shall otherwise agree, or as may be otherwise required under paragraphs (b) and (c) of this Section, maintain the level of tariffs set by PNGHB's By-Law approved on April 12, 1972 and designated as Statutory Instrument No. 16 of 1972;

(b) introduce as soon as possible a cost accounting system to determine the relevant costs of the various services and facilities which it provides; and

(c) Promptly thereafter, but in any event by a date not later than July 1, 1976 or such later date as shall be agreed to by the Association, take all necessary measures to introduce and maintain tariffs of dues and rates, on the following basis:

- (i) dues and rates will be set as far as practicable for each port individually;
- (ii) dues and rates will be levied for all ships and goods using the ports' facilities and services; and
- (iii) except as the Borrower and the Association shall otherwise agree, dues and rates for services and facilities will be based on, and not less than, the economic costs of those services and facilities, and will take into account the desirability of ensuring that a sufficient proportion of total economic benefits (particularly those enjoyed by ships) resulting from the port investments accrue to the economy of Papua New Guinea.

Section 4.05. (a) Except as the Association shall otherwise agree, PNGHB shall not incur any debt unless its net revenue for the fiscal year next preceding the date of such incurrence or for a later twelve-month period ending prior to the date of such incurrence, whichever is greater, shall be not less than 1.5 times the maximum debt service requirements for any succeeding year on all the debt of PNGHB, including the debt to be incurred.

(b) For the purposes of this Section: (i) the term "debt" means all debt, including debt assumed or guaranteed by PNGHB, except debt incurred in the ordinary course of business and maturing by its terms on demand or less than one year after its incurrence; (ii) debt shall be deemed to be incurred on the date on which a contract or loan agreement or guarantee agreement is executed; (iii) the term "net revenue" means gross operating revenue of PNGHB, adjusted to take account of tariffs in effect at the time of the incurrence of debt even though they were not in effect during the entire fiscal year or twelve-month period to which such revenue relates, less all operating expenses, including adequate maintenance, taxes, if any, and administrative expenses, but before provision for depreciation, and interest and other charges on debt; (iv) the term "debt service requirements" means the aggregate amount of amortization (including sinking fund provisions), interest and other charges on debt; and (v) whenever it shall be necessary to value in the currency used in the territory of the Borrower debt payable in another currency, such valuation shall be made on the basis of the rate of exchange at which such other currency is obtainable by PNGHB, at the time such valuation is made, for the purposes of servicing such debt, or if such other currency is not obtainable, at a rate of exchange reasonably determined by the Association.

Section 4.06. Except as the Association shall otherwise agree, PNGHB shall make annual sinking fund appropriations in respect of its existing indebtedness

to the Borrower, and invest such appropriations in such manner as to produce at maturity the full amounts due.

ARTICLE V

Consultation, Information and Inspection

Section 5.01. The Association and PNGHB shall cooperate fully to assure that the purposes of the Credit will be accomplished. To that end, the Association and PNGHB shall from time to time, at the request of either party, exchange views through their representatives with regard to the performance of their respective obligations under this Agreement, the appointment of the chief executive or chief financial officer of PNGHB, the administration, operations and financial condition of PNGHB and other matters relating to the purpose of the Credit.

Section 5.02. The Association and PNGHB shall promptly inform each other of any condition which interferes with, or threatens to interfere with, the accomplishment of the purposes of the Credit, the performance by either of them of its obligations under this Agreement or the performance by PNGHB of its obligations under the Subsidiary Loan Agreement.

Section 5.03. PNGHB shall enable the Association's representatives to inspect all plants, sites, works, installations and equipment of PNGHB and any relevant records and documents.

ARTICLE VI

Effective Date; Termination; Cancellation and Suspension

Section 6.01. This Agreement shall come into force and effect on the date upon which the Development Credit Agreement becomes effective.

Section 6.02. (a) This Agreement and all obligations of the Association and of PNGHB thereunder shall terminate on the earlier of the following two dates:

- (i) the date on which the Development Credit Agreement shall terminate in accordance with its terms; or
- (ii) a date twenty-five years after the date of this Agreement.

(b) If the Development Credit Agreement terminates in accordance with its terms before the date specified in paragraph (a) (ii) of this Section, the Association shall promptly notify PNGHB of this event and, upon the giving of such notice, this Agreement and all obligations of the parties thereunder shall forthwith terminate.

Section 6.03. All the provisions of this Agreement shall continue in full force and effect notwithstanding any cancellation or suspension under the Development Credit Agreement.

ARTICLE VII

Miscellaneous Provisions

Section 7.01. Any notice or request required or permitted to be given or made under this Agreement and any agreement between the parties contemplated by this Agreement shall be in writing. Such notice or request shall be deemed to have been duly given or made when it shall be delivered by hand or by mail, telegram, cable, telex or radiogram to the party to which it is required or permitted to be given or made at such party's address hereinafter specified or at such other address as such party shall have designated by notice to the party giving such notice or making such request. The addresses so specified are:

For the Association:

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

Cable address:

Indevas
Washington, D.C.

For PNGHB:

The Secretary
Papua New Guinea Harbours Board
P.O. Box 671
Port Moresby
Papua New Guinea

Cable address:

Harbours
Port Moresby

Section 7.02. Any action required or permitted to be taken, and any documents required or permitted to be executed, under this Agreement on behalf of PNGHB may be taken or executed by the Chairman of PNGHB or such other person or persons as the Chairman shall designate in writing.

Section 7.03. PNGHB shall furnish to the Association sufficient evidence of the authority and the authenticated specimen signature of the person or persons who will, on behalf of PNGHB, take any action or execute any documents required or permitted to be taken or executed by PNGHB pursuant to any of the provisions of this Agreement.

Section 7.04. This Agreement may be executed in several counterparts, each of which shall be an original, and all collectively but one instrument.

IN WITNESS WHEREOF, the parties hereto, acting through their representatives thereunto duly authorized, have caused this Agreement to be signed in their respective names and delivered in the District of Columbia, United States of America, as of the day and year first above written.

INTERNATIONAL DEVELOPMENT ASSOCIATION

By /s/ J. Burke Knapp

Vice President

PAPUA NEW GUINEA HARBOURS BOARD

By /s/ E. M. W. Visbord

Authorized Representative

SCHEDULE 1**Procurement**

1. Unless the Association shall otherwise agree, the procedures outlined below shall be followed for all civil works contracts, and all contracts for the supply of equipment and/or materials required for the Project estimated to cost the equivalent of \$100,000 or more:

(a) Prequalification, as described in paragraph 1.3 of the Guidelines, shall be required for all civil works bidders. PNGHB shall, before qualification is invited, inform the Association in detail of the procedure to be followed and shall introduce such modifications in said procedure as the Association shall reasonably request. The list of prequalified bidders, together with a statement of their qualifications and of the reasons for the exclusion of any applicant for prequalification, shall be furnished by PNGHB to the Association for its comments before the applicants are notified and PNGHB shall make such additions or deletions from the said list as the Association shall reasonably request.

(b) Before bids are invited, PNGHB shall furnish to the Association, for its comments, the text of the invitations to bid and the specifications and other bidding documents, and shall make such modifications in the said documents as the Association shall reasonably request. Any further modification to the bidding documents shall require the Association's concurrence before it is issued to the prospective bidders.

(c) After bids have been received and evaluated, PNGHB shall, before a final decision on the award is made, inform the Association of the name of the bidder to whom it intends to award the contract and shall furnish to the Association, in sufficient time for its review, a detailed report, by the consultants referred to in Section 2.02 of this Agreement, on the evaluation and comparison of the bids received, together with the recommendations for award of the said consultants, and the reasons for the intended award. The Association shall, if it determines that the intended award would be inconsistent with the procedures set forth or referred to in Section 2.04 of this Agreement, promptly inform PNGHB and state the reasons for such determination.

(d) The terms and conditions of the contract shall not, without the Association's concurrence, materially differ from those on which bids were asked.

(e) Two conformed copies of the contract shall be furnished to the Association promptly after its execution and prior to the submission to the

Association of the first application for withdrawal of funds from the Credit Account in respect of any such contract.

2. With respect to any other contract for equipment and/or materials not covered under 1 above, PNGHB shall furnish to the Association, promptly after its execution and prior to the submission to the Association of the first application for withdrawal of funds from the Credit Account in respect of any such contract, two conformed copies of such contract, together with the analysis of bids, recommendations for award and such other information as the Association shall reasonably request. The Association shall, if it determines that the award of the contract is not consistent with the procedures set forth or referred to in Section 2.04 of this Agreement, promptly inform PNGHB and state the reasons for such determination, and, in such event, no expenditure under such contract shall be financed out of the proceeds of the Credit.