
LOAN NUMBER 2399-PNG(SF)

LOAN AGREEMENT
(Special Operations)
(Lae Port Development Project)

between

THE INDEPENDENT STATE OF PAPUA NEW GUINEA

and

ASIAN DEVELOPMENT BANK

DATED 12 JUNE 2008

LAS:PNG 40037

**LOAN AGREEMENT
(Special Operations)**

LOAN AGREEMENT dated 12 June 2008 between the Independent State of Papua New Guinea (hereinafter called "the Borrower") and ASIAN DEVELOPMENT BANK (hereinafter called "ADB").

WHEREAS

(A) the Borrower has applied to ADB for a loan for the purposes of the Project described in Schedule 1 to this Loan Agreement (hereinafter called the "Project");

(B) by an agreement of even date herewith between the Borrower and ADB (hereinafter called the "Ordinary Operations Loan Agreement"), ADB has agreed to lend to the Borrower, from its Ordinary Capital resources, a loan in an amount of sixty million Dollars (\$60,000,000) (hereinafter called the "Ordinary Operations Loan") for the purposes of the Project;

(C) the Borrower has applied to the OPEC Fund for International Development (hereinafter called the OFID) for a loan (hereinafter called the "OFID Loan") in an amount equivalent to six million dollars (\$6,000,000) to assist in financing a portion of Part 1 of the Project, in accordance with the terms and conditions set forth in the agreement to be entered into between the Borrower and the OFID, which will be administered by ADB;

(D) the Borrower has applied to the Cooperation Fund for Fighting HIV/AIDS in Asia and the Pacific (hereinafter called the "Cooperation Fund"), for a grant (hereinafter called the "Cooperation Fund Grant") in an amount equivalent to seven hundred fifty thousand dollars (\$750,000) to assist in financing Part 4 of the Project, which will be administered by ADB;

(E) the Project will be carried out by Independent Public Business Corporation (hereinafter called the "IPBC") and for this purpose the Borrower will make available to IPBC the proceeds of the Loan provided for herein upon terms and conditions satisfactory to ADB; and

(F) ADB has agreed to make a loan to the Borrower from ADB's Special Funds resources (hereinafter called the "Loan") upon the terms and conditions set forth herein and in the Project Agreement of even date herewith between ADB and IPBC.

NOW THEREFORE the parties agree as follows:

ARTICLE I

Loan Regulations; Definitions

Section 1.01. All the provisions of the Special Operations Loan Regulations of ADB, dated 1 January 2006 (the "Loan Regulations"), are hereby made applicable to this Loan Agreement with the same force and effect as if they were fully set forth herein.

Section 1.02. The definitions set forth in the Loan Regulations are applicable to this Loan Agreement, unless the context requires otherwise. In addition, the following terms have the following meanings:

(a) "Companies Act" means the Companies Act, 1997 of the Borrower as may be amended from time to time;

(b) "Consulting Guidelines" means ADB's Guidelines on the Use of Consultants by Asian Development Bank and its Borrowers (2007, as amended from time to time);

(c) "Department of Environment and Conservation" means the Department of Environment and Conservation of the Borrower or any legal successor thereto;

(d) "Department of Justice and Attorney General" means the Department of Justice and Attorney General of the Borrower or any legal successor thereto;

(e) "Department of Lands and Physical Planning" means the Department of Lands and Physical Planning of the Borrower or any legal successor thereto;

(f) "Department of National Planning and Monitoring" means the Department of National Planning and Monitoring of the Borrower or any legal successor thereto;

(g) "Department of Transport" means the Department of Transport of the Borrower or any legal successor thereto;

(h) "Department of Treasury" means the Department of Treasury of the Borrower or any legal successor thereto;

(i) "EIA" means environmental impact assessment under the Project prepared by PPCL, and to be approved by the Department of Environment and Conservation;

(j) "EMP" means environmental management plan attached to the EIA;

(k) "Goods" means equipment and materials to be financed out of the proceeds of the Loan; and including related services such as transportation, insurance, installation, commissioning, training, and initial maintenance, but excluding consulting services;

(l) "HIV/AIDS" means Human Immunodeficiency Virus/Acquired Immunodeficiency Syndrome;

(m) "ICCC" means the Independent Consumer and Competition Commission of the Borrower established under the Independent Consumer and Competition Act or any legal successor thereto;

(n) "Independent Consumer and Competition Act" means the Independent Consumer and Competition Act, 2002, of the Borrower, as may be amended from time to time;

(o) "Independent Public Business Corporation Act" means the Independent Public Business Corporation Act, 2002, of the Borrower, as may be amended from time to time;

(p) "IPBC" means the Independent Public Business Corporation of the Borrower established under the Independent Public Business Corporation Act or any legal successor thereto;

(q) "IPDD" means the Infrastructure Planning and Development Division within IPBC or any legal successor thereto;

(r) "Part" means each of the various parts of the Project as described in Schedule 1 to this Loan Agreement;

(s) "PFMA" means the Public Finances (Management) Act, 1995, of the Borrower, as may be amended from time to time;

(t) "PPCL" means the PNG Ports Corporation Limited established under the Companies Act;

(u) "Procurement Guidelines" means ADB's Procurement Guidelines (2007, as amended from time to time);

(v) "Procurement Plan" means the procurement plan for the Project dated 23 November 2007 and agreed between the Borrower and ADB, as updated from time to time in accordance with Procurement Guidelines, Consulting Guidelines, and other arrangements agreed with ADB;

(w) "Project area" means certain identified areas agreed upon between the Borrower and ADB, which lie within the city of Lae in the territory of the Borrower;

(x) "Project Executing Agency" means for the purposes of, and within the meaning of, the Loan Regulations means, IPBC, which shall be responsible for the carrying out of the Project;

(y) "Subsidiary Loan Agreement" means the agreement to be entered into between the Borrower and IPBC pursuant to Section 3.01 of this Loan Agreement, as the same may be amended from time to time; and

(z) "Works" means construction or civil works to be financed out of the proceeds of the Loan, including services such as drilling or mapping, and project related services that are provided as part of a single responsibility or turnkey contract, but excluding consulting services.

ARTICLE II

The Loan

Section 2.01. ADB agrees to lend to the Borrower from ADB's Special Funds resources an amount in various currencies equivalent to twenty five million two hundred forty two thousand Special Drawing Rights (SDR 25,242,000).

Section 2.02. (a) The Borrower shall pay to ADB an interest charge at the rate of one percent (1%) per annum during the grace period, and one and one-half percent (1.5%) per annum thereafter, on the amount of the Loan withdrawn from the Loan Account and outstanding from time to time.

(b) The term "grace period" as used in paragraph (a) of this Section means the period prior to payment of the first principal amount of the Loan on the payment date in accordance with the amortization schedule set forth in Schedule 2 to this Loan Agreement.

Section 2.03. The interest charge and any other charge on the Loan shall be payable semiannually on 15 March and 15 September in each year.

Section 2.04. The Borrower shall repay the principal amount of the Loan withdrawn from the Loan Account in accordance with the amortization schedule set forth in Schedule 2 to this Loan Agreement.

Section 2.05. The currency of repayment of the principal of the Loan and the currency of payment of the interest charge for the purposes of Sections 4.03(a) and 4.04 of the Loan Regulations shall be Dollar.

ARTICLE III

Use of Proceeds of the Loan

Section 3.01. (a) The Borrower shall relend the proceeds of the Loan together with other funds required for the Project to IPBC under a Subsidiary Loan Agreement upon terms and conditions satisfactory to ADB.

(b) The Borrower shall cause IPBC to apply the proceeds of the Loan to the financing of expenditures on the Project in accordance with the provisions of this Loan Agreement and the Project Agreement.

Section 3.02. The Goods, Works and consulting services and other items of expenditure to be financed out of the proceeds of the Loan and the allocation of amounts of the Loan among different categories of such Goods, Works and consulting services and other items of expenditure shall be in accordance with the provisions of Schedule 3 to this Loan Agreement, as such Schedule may be amended from time to time by agreement between the Borrower and ADB.

Section 3.03. Withdrawals from the Loan Account in respect of Goods, Works and consulting services shall be made only on account of expenditures relating to

(a) Goods which are produced in and supplied from and services which are supplied from such member countries of ADB as shall have been specified by ADB from time to time as eligible sources for procurement, and

(b) Goods, Works and consulting services which meet such other eligibility requirements as shall have been specified by ADB from time to time.

Section 3.04. Except as ADB may otherwise agree, all Goods, Works and consulting services to be financed out of the proceeds of the Loan shall be procured in accordance with the provisions of Schedule 4 to this Loan Agreement.

Section 3.05. The Loan Closing Date for the purposes of Section 8.02 of the Loan Regulations shall be 30 June 2012 or such other date as may from time to time be agreed between the Borrower and ADB.

ARTICLE IV

Particular Covenants

Section 4.01. In the carrying out of the Project and operation of the Project facilities, the Borrower shall perform, or cause to be performed, all obligations set forth in Schedule 5 to this Loan Agreement and the Schedule to the Project Agreement.

Section 4.02. The Borrower shall enable ADB's representatives to inspect the Project, the Goods and Works financed out of the proceeds of the Loan, all other plants, sites, properties and equipment of the Borrower, and any relevant records and documents.

Section 4.03. The Borrower shall take all action which shall be necessary on its part to enable IPBC to perform its obligations under the Project Agreement, and shall not take or permit any action which would interfere with the performance of such obligations.

Section 4.04. (a) The Borrower shall exercise its rights under the Subsidiary Loan Agreement in such a manner as to protect the interests of the Borrower and ADB and to accomplish the purposes of the Loan.

(b) No rights or obligations under the Subsidiary Loan Agreement shall be assigned, amended, or waived without the prior concurrence of ADB.

ARTICLE V

Suspension; Cancellation; Acceleration of Maturity

Section 5.01. The following are specified as additional events for suspension of the right of the Borrower to make withdrawals from the Loan Account for the purposes of Section 8.01(m) of the Loan Regulations:

(a) the Borrower shall have, in the opinion of ADB, failed to perform any of its obligations under the Ordinary Operations Loan Agreement;

(b) the OFID Loan shall have become liable for suspension or cancellation or shall have become repayable prior to its agreed maturity date; and

(c) the Cooperation Fund Grant shall have become liable for suspension or cancellation.

Section 5.02. The following is specified as an additional event for acceleration of maturity for the purposes of Section 8.07(d) of the Loan Regulations: the events specified in Section 5.01 of this Loan Agreement shall have occurred.

ARTICLE VI

Effectiveness

Section 6.01. The following is specified as an additional condition to the effectiveness of this Loan Agreement for the purposes of Section 10.01(f) of the Loan Regulations:

(a) the Ordinary Operations Loan Agreement shall have been duly executed and delivered on behalf of the Borrower, and all conditions precedent to its effectiveness (other than a condition requiring the effectiveness of this Loan Agreement) shall have been fulfilled;

(b) the OFID Loan Agreement shall have been duly executed and delivered and all conditions precedent to its effectiveness (other than a condition requiring effectiveness of this Loan Agreement) shall have been fulfilled or arrangements satisfactory to ADB shall have been made for the fulfillment thereof within a period of time satisfactory to ADB; and

(c) the Project Management Unit (PMU) shall have been established to the satisfaction of ADB.

Section 6.02. The following is specified as an additional matter, for the purposes of Section 10.02(d) of the Loan Regulations, to be included in the opinion or opinions to be furnished to ADB: the Ordinary Operations Loan Agreement has been duly executed and delivered on behalf of and is legally binding upon the Borrower in accordance with its terms.

Section 6.03. A date ninety (90) days after the date of this Loan Agreement is specified for the effectiveness of the Loan Agreement for the purposes of Section 9.04 of the Loan Regulations.

ARTICLE VII

Delegation of Authority

Section 7.01. The Borrower hereby designates IPBC its agent for the purposes of taking any action or entering into any agreement required or permitted under Sections 3.02 and 3.05 of this Loan Agreement and under Sections 5.01, 5.02, 5.03 and 5.04 of the Loan Regulations.

Section 7.02. Any action taken or any agreement entered into by IPBC pursuant to the authority conferred under Section 7.01 of this Loan Agreement shall be fully binding on the Borrower and shall have the same force and effect as if taken by the Borrower.

Section 7.03. The authority conferred on IPBC under Section 7.01 of this Loan Agreement may be revoked or modified by agreement between the Borrower and ADB.

ARTICLE VIII

Miscellaneous

Section 8.01. The Minister for Treasury and Finance of the Borrower is designated as representative of the Borrower for the purposes of Section 11.02 of the Loan Regulations.

Section 8.02. The following addresses are specified for the purposes of Section 11.01 of the Loan Regulations:

For the Borrower

Department of Treasury
Vulupindi Haus
P.O. Box 542
Waigani
Port Moresby
Papua New Guinea

Facsimile Numbers:

(675) 312-8804
(675) 312-8808.

For ADB

Asian Development Bank
P.O. Box 789
0980 Manila, Philippines

Cable Address:

ASIANBANK
MANILA

Telex Numbers:

29066 ADB PH (RCA)
42205 ADB PM (ITT)
63587 ADB PN (ETPI)

Facsimile Numbers:

(632) 636-2444
(632) 636-2446.

IN WITNESS WHEREOF the parties hereto, acting through their representatives thereunto duly authorized, have caused this Loan Agreement to be signed in their respective names and to be delivered at the principal office of ADB, as of the day and year first above written.

THE INDEPENDENT STATE OF PAPUA
NEW GUINEA

By 

HON. PATRICK PRUITCH, MP
Minister of Treasury and Finance

ASIAN DEVELOPMENT BANK

By 

C. LAWRENCE GREENWOOD, JR.
Vice President (Operations 2)

SCHEDULE 1**Description of the Project**

1. The Project is expected to catalyze industrial and commercial development through the promotion of trade by the Borrower by relieving a binding constraint of key port infrastructure.
2. The scope of the Project shall comprise the following parts:
 - (1) the construction of new port facilities, which shall include the construction of a tidal basin located to the northwest of the existing port facilities at Lae, a multi-purpose berth, a terminal building, including storage area, roads, drainage, and water systems, and facilities for electricity and sewerage services;
 - (2) the resettlement of around 482 households in the Project area and the relocation of the landing site and associated fish market;
 - (3) the provision of support for Project implementation, financial management, construction supervision, resettlement, and socioeconomic impact monitoring; and
 - (4) the provision of gender responsive HIV/AIDS awareness and prevention program.
3. The Project also includes provision of consulting services. The Project is expected to be completed by 31 December 2011.

SCHEDULE 2**Amortization Schedule****(Lae Port Development Project)**

<u>Period</u>	<u>Date</u>	<u>Payment of Principal</u> (expressed in Special Drawing Rights)*
1	15-Mar-2016	525,875.00
2	15-Sep-2016	525,875.00
3	15-Mar-2017	525,875.00
4	15-Sep-2017	525,875.00
5	15-Mar-2018	525,875.00
6	15-Sep-2018	525,875.00
7	15-Mar-2019	525,875.00
8	15-Sep-2019	525,875.00
9	15-Mar-2020	525,875.00
10	15-Sep-2020	525,875.00
11	15-Mar-2021	525,875.00
12	15-Sep-2021	525,875.00
13	15-Mar-2022	525,875.00
14	15-Sep-2022	525,875.00
15	15-Mar-2023	525,875.00
16	15-Sep-2023	525,875.00
17	15-Mar-2024	525,875.00
18	15-Sep-2024	525,875.00
19	15-Mar-2025	525,875.00
20	15-Sep-2025	525,875.00
21	15-Mar-2026	525,875.00
22	15-Sep-2026	525,875.00
23	15-Mar-2027	525,875.00
24	15-Sep-2027	525,875.00
25	15-Mar-2028	525,875.00
26	15-Sep-2028	525,875.00
27	15-Mar-2029	525,875.00
28	15-Sep-2029	525,875.00
29	15-Mar-2030	525,875.00
30	15-Sep-2030	525,875.00
31	15-Mar-2031	525,875.00
32	15-Sep-2031	525,875.00
33	15-Mar-2032	525,875.00
34	15-Sep-2032	525,875.00
35	15-Mar-2033	525,875.00
36	15-Sep-2033	525,875.00
37	15-Mar-2034	525,875.00
38	15-Sep-2034	525,875.00
39	15-Mar-2035	525,875.00

<u>Period</u>	<u>Date</u>	<u>Payment of Principal</u> (expressed in Special Drawing Rights)*
40	15-Sep-2035	525,875.00
41	15-Mar-2036	525,875.00
42	15-Sep-2036	525,875.00
43	15-Mar-2037	525,875.00
44	15-Sep-2037	525,875.00
45	15-Mar-2038	525,875.00
46	15-Sep-2038	525,875.00
47	15-Mar-2039	525,875.00
48	15-Sep-2039	525,875.00
	TOTAL	<u>25,242,000.00</u>

* The figures in this column represent SDR equivalents determined as of the respective dates of withdrawal. The arrangements for payment of each maturity are subject to the provisions of Sections 3.04 and 4.03 of the Loan Regulations.

SCHEDULE 3

Allocation and Withdrawal of Loan Proceeds

General

1. The table attached to this Schedule sets forth the Categories of Goods, Works, services and other items to be financed out of the proceeds of the Loan and the allocation of amounts of the Loan to each such Category (hereinafter called the Table). (Reference to "Category" or "Categories" in this Schedule is to a Category or Categories of the Table and reference to "Subcategory" or "Subcategories" in this Schedule is to a Subcategory or Subcategories of a Category.)

Percentages of ADB Financing

2. Except as ADB may otherwise agree, the items of the Categories and Subcategories listed in the Table shall be financed out of the proceeds of the Loan on the basis of the percentages set forth in the Table.

Reallocation

3. Notwithstanding the allocation of Loan proceeds and the withdrawal percentages set forth in the Table,

(a) if the amount of the Loan allocated to any Category appears to be insufficient to finance all agreed expenditures in that Category, ADB may, by notice to the Borrower, (i) reallocate to such Category, to the extent required to meet the estimated shortfall, amounts of the Loan which have been allocated to another Category but, in the opinion of ADB, are not needed to meet other expenditures, and (ii) if such reallocation cannot fully meet the estimated shortfall, reduce the withdrawal percentage applicable to such expenditures in order that further withdrawals under such Category may continue until all expenditures thereunder shall have been made; and

(b) if the amount of the Loan then allocated to any Category appears to exceed all agreed expenditures in that Category, ADB may, by notice to the Borrower, reallocate such excess amount to any other Category.

Disbursement Procedures

4. Except as ADB may otherwise agree, the Loan proceeds for financing Goods, Works, and consulting services and other items shall be disbursed in accordance with ADB's "Loan Disbursement Handbook" dated January 2007 (ADB's Loan Disbursement Handbook), as amended from time to time.

Imprest Account

5. Except as ADB may otherwise agree, the Borrower shall establish after the Effective Date, an imprest account at a commercial bank acceptable to ADB. The imprest account shall be established, managed, replenished and liquidated in accordance with ADB's Loan Disbursement Handbook and detailed arrangements agreed upon between the Borrower and ADB. The currency of the imprest account shall be in the local currency. The initial amount to be deposited into the imprest account shall not exceed the lower of (i) the first six months of estimated expenditure to be financed from the imprest account, or (ii) the equivalent of ten (10) percent of the Loan amount.

Retroactive Financing

6. Withdrawals from the Loan Account may be made for reimbursement of reasonable expenditures incurred under the Project before the Effective Date, but not earlier than 12 months before the date of this Loan Agreement in connection with Project management and resettlement costs, subject to a maximum amount equivalent to 20 percent of the Loan amount.

Condition of Withdrawals from Loan Account

7. Notwithstanding any other provision of this Loan Agreement, no withdrawals shall be made from the Loan Account until:

(a) a legal opinion has been issued on behalf of the Borrower showing the legal and valid ownership of the Borrower on the land to be acquired and utilized under the Project; and

(b) the Subsidiary Loan Agreement has been duly executed and delivered on behalf of and is legally binding upon the Borrower and IPBC in accordance with its terms.

TABLE

ALLOCATION AND WITHDRAWAL OF LOAN PROCEEDS				
(Lae Port Development Project)				
CATEGORY				ADB FINANCING
Number	Item	Amount Allocated SDR		Percentage and Basis for Withdrawal from the Loan Account
		Category	Subcategory	
1	Works	24,560,000		
1A	Port Facilities		23,595,000	35 percent of total expenditure
1B	Resettlement Housing Construction		965,000	100 percent of total expenditure*
2	Compensation and Relocation	196,000		100 percent of total expenditure*
3	Consulting Services (Construction Supervision)	316,000		100 percent of total expenditure*
4	Training	19,000		100 percent of total expenditure*
5	Unallocated	151,000		
	Total	25,242,000		

* Exclusive of local taxes and duties

SCHEDULE 4

Provisions on Procurement and Consulting Services

A. General

1. All Goods and Works, and consulting services, to be financed out of the proceeds of the Loan shall be subject to and governed by the Procurement Guidelines, and the Consulting Guidelines, respectively.
2. All terms used and not otherwise defined in this Loan Agreement have the meanings provided in the Procurement Guidelines and/or the Consulting Guidelines, as applicable.

B. Procurement for Goods and Works

3. Except as ADB may otherwise agree, Goods and Works shall only be procured on the basis of the methods of procurement set forth below:

International Competitive Bidding
National Competitive Bidding

The methods of procurement are subject to, among other things, the detailed arrangements and threshold values set forth in the Procurement Plan. The Borrower may only modify the methods of procurement or threshold values with the prior agreement of ADB, and modifications must be set out in updates to the Procurement Plan.

4. Domestic Preference. The Borrower may grant a margin of preference in the evaluation of bids under international competitive bidding in accordance with paragraphs 2.55(a) and 2.56 of the Procurement Guidelines for domestically manufactured Goods and paragraphs 2.55(b) and 2.56 of the Procurement Guidelines for domestic Works.
5. National Competitive Bidding. The Borrower's standard procurement procedures, are subject to the following modifications: National competitive bidding shall conform to the provisions set in the PFMA, and the specific procedures prescribed in the financial instructions issued from time to time, with the clarifications and modifications described in the following paragraphs required for compliance with the provisions of the Procurement Guidelines:
 - i. Participation in Bidding
 - (a) Borrower-owned enterprises within the territory of the Borrower shall be eligible to bid only if they can establish that they are legally and financially autonomous, operate under commercial law, and are not a dependent agency of the Borrower or IPBC.
 - (b) Foreign bidders shall be eligible to participate in bidding under the same conditions as national bidders.

Schedule 4

- (c) Bidding shall not be restricted to pre-registered firms and such registration shall not be stated in the bidding documents as a condition for the submission of bids. Where registration is required prior to award of contract, bidders: (i) shall be allowed a reasonable time to complete the registration process; and (ii) 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.

- ii. Classification of Contractors; Qualification; Post-qualification

- (a) Post-qualification shall be used unless prequalification is explicitly provided for in the Loan Agreement or the Procurement Plan.
- (b) Bidding shall not be restricted to any particular class of contractors, and non-classified contractors shall also be eligible to bid. Qualification criteria (in case prequalification was not carried out) shall be stated in the bidding documents, and before contract award, the bidder having submitted the lowest evaluated responsive bid shall be subject to post-qualification.

- iii. Conflict of Interest

Bidders may be considered to be in conflict of interest with one or more parties in this bidding process if, including but not limited to:

- (a) they have controlling shareholders in common; or
- (b) they receive or have received any direct or indirect subsidy from any of them; or
- (c) they have the same legal representative for purposes of this bid; or
- (d) they have a relationship with each other, directly or through common third parties, that puts them in a position to have access to information about or influence on the bid or another bidder, or influence the decisions of the Borrower or IPBC regarding this bidding process; or
- (e) a bidder participates in more than one bid in this bidding process. Participation by a bidder in more than one bid will result in the disqualification of all bids in which the party is involved. However, this does not limit the inclusion of the same subcontractor in more than one bid; or
- (f) a bidder or any of its affiliates participated as a consultant in the preparation of the design or technical specifications of the Goods or Works that are the subject of the bid; or
- (g) a bidder or any of its affiliates has been hired (or is proposed to be hired) by the Borrower or IPBC as engineer for the contract.

iv. Preferences

No preference shall be given for domestic bidders and for domestically manufactured goods.

v. Advertising, time for bid preparation

- (a) Invitations to bid shall be advertised in at least one newspaper of national circulation or freely accessible and well-known website, allowing a minimum of 4 weeks for the preparation and submission of bids, such 4-week period to begin with the availability of the bid documents or the advertisement, whichever is later.
- (b) Bidding of contracts estimated at \$500,000 or more for Goods, or \$1,000,000 or more for Works, shall be advertised concurrently with the general procurement notices on ADB's website.

vi. Standard Bidding Documents

Until national standard bidding documents approved by ADB are available, bidding documents acceptable to ADB should be used.

vii. Bid Security

If required by the bidding documents, bid security shall be in the form of a bank guarantee from a reputable bank. A bidder's bid security shall apply only to a specific bid.

viii. Bid Opening and Bid Evaluation

- (a) Bidders may deliver bids, at their option, either in person or by courier service or by mail.
- (b) Bidders shall not be allowed to amend their tenders after the closing date and time for submission of bids.
- (c) Bids shall be opened in public, immediately after the deadline for submission of bids. No bid shall be rejected during bid opening. The name of the bidder, the total amount of each bid, and any discounts shall be read aloud and recorded in the minutes of the public bid opening.
- (d) Evaluation of bids shall be made in strict adherence to the Qualifications and Evaluation Criteria stipulated in the bidding documents..
- (e) No bidder shall be rejected merely on the basis of a comparison with the IPBC's estimate and budget ceiling without ADB's prior concurrence.

Schedule 4

- (f) The contract shall be awarded to the technically responsive bidder that offers the lowest evaluated price, and meets the qualifying criteria. In determining the lowest evaluated price, the following are to be considered: (i) bid price, as offered, (ii) arithmetical corrections on the bid price, if any, and (iii) monetary value of the evaluation criteria that are stated in the bidding document.

ix. Rejection of Bids

Bids shall not be rejected and new bids solicited without ADB's prior concurrence.

x. Extension of the Validity of Bids

In exceptional circumstances and with prior ADB approval, the procuring entity may, before the expiration of bid validity, request all bidders in writing to extend the validity of their bids. In such a case, bidders shall not be requested nor permitted to amend the price or any other condition of their bid. Bidders shall have the right to refuse to grant such an extension without forfeiting their bid security, but bidders granting such an extension shall be required to provide a corresponding extension of their bid security.

xi. Disclosure on Contract Awards

At the same time that notification on award of contract is given, the Borrower and IPBC shall publish the following information on contract award on a free and open access website or other means of publication acceptable to ADB: (i) name of each bidder who submitted a bid; (ii) bid prices as read out at bid opening; (iii) name and evaluated price of each bid that was evaluated; (iv) names of bidders whose bids were rejected and the reasons for the rejection; and (v) name of the winning bidder, price it offered as well as the duration and summary scope of the contract awarded. IPBC shall respond in writing to unsuccessful bidders who seek explanations on the grounds on which their bids are not selected.

xii. No Negotiations

There shall be no negotiations, even with the lowest evaluated bidder, without ADB's prior concurrence. A bidder shall not be required, as a condition of award, to undertake obligations not specified in the bidding documents, or otherwise, to modify the bid as originally submitted.

xiii. Inspection and Auditing

Each contract financed from the proceeds of a Loan shall provide that the contractor/supplier shall permit ADB, at its request, to inspect their accounts and records relating to the performance of the contract and to have said accounts and records audited by auditors appointed by ADB.

xiv. Member Country Restriction

Bidders must be nationals of member countries of ADB, and offered Goods and Works must be produced in and supplied from member countries of ADB.

C. Selection of Consulting Services

6. Quality- and Cost-Based Selection. Except as ADB may otherwise agree, and except as set forth in the paragraph below, the Borrower shall apply quality- and cost-based selection for selecting and engaging consulting services.

7. The Borrower shall apply the following method for selecting and engaging the specified consulting services, in accordance with, among other things, the procedures set forth in the Procurement Plan:

Single Source Selection for (i) the supervision of housing construction, (ii) landing site design and construction, and (iii) HIV/AIDS prevention.
Individual consultants for (i) port engineering, (ii) contract management, (iii) financial management, (iv) socioeconomic monitoring, and (v) resettlement activities.

D. Industrial or Intellectual Property Rights

8. (a) The Borrower shall ensure that all Goods and Works procured (including without limitation all computer hardware, software and systems, whether separately procured or incorporated within other goods and services procured) do not violate or infringe any industrial property or intellectual property right or claim of any third party.

(b) The Borrower shall ensure that all contracts for the procurement of Goods and Works contain appropriate representations, warranties and, if appropriate, indemnities from the contractor or supplier with respect to the matters referred to in subparagraph (a) of this paragraph.

9. The Borrower shall ensure that all ADB-financed contracts with consultants contain appropriate representations, warranties and, if appropriate, indemnities from the consultants to ensure that the consulting services provided do not violate or infringe any industrial property or intellectual property right or claim of any third party.

E. ADB's Review of Procurement Decisions

10. All contracts procured under international competitive bidding procedures and contracts for consulting services shall be subject to prior review by ADB, unless otherwise agreed between the Borrower and ADB and set forth in the Procurement Plan.

SCHEDULE 5

Execution of Project and Operation of Project Facilities; Financial Matters

Project Implementation

1. As the Project Executing Agency, IPBC shall be responsible for overall Project implementation, and Morobe Provincial Administration of the Borrower shall be responsible for the day to day implementation of Part 4 of the Project. The Borrower shall cause IPBC to establish the PMU to comprise (a) engineering and contract management division, (b) resettlement and environment division, and (c) finance and administration division. The Borrower shall ensure that IPBC appoint a Project director who has integrity, leadership skills, and familiarity with the administrative system of the Borrower and the local culture. The Project director shall report to the director of IPDD. The Borrower through the IPBC shall cause the PMU to be responsible for the: (a) implementation of the resettlement efforts in coordination with the Morobe Provincial Administration, (b) bidding process, (c) management of contracts, (d) monitoring the progress of the Project, (e) preparation of withdrawal applications, (f) preparation of Project progress reports and project completion report, (g) management of Project accounts and financial records for auditing, and (h) monitoring of the socioeconomic impact of the Project. The Borrower shall cause IPBC to ensure that the Project director shall be given adequate financial authority to approve contract variations and Works contract under the Project to an amount to be agreed upon between ADB and the Borrower. The Borrower shall cause IPBC to also ensure that the PMU remain fully staffed and adequately funded throughout Project implementation period.

2. Within three months of the Effective Date, the Borrower shall establish the Project Steering Committee (PSC) to oversee Project implementation and provide policy guidance. The Borrower shall ensure that the PSC shall be chaired by the managing director of IPBC, with the director of IPDD as the secretary-member. The remaining members shall comprise chair of the board of PPCL, the chief executive officer of PPCL, and senior representatives from: (a) Department of Treasury, (b) Department of National Planning and Monitoring, (c) Department of Justice and Attorney General, (d) Department of Lands and Physical Planning, (e) Department of Transport, (f) Department of Environment and Conservation, (g) ICCC, and (h) Morobe Provincial Administration. The Borrower shall ensure that PSC meets at least on a quarterly basis and provides ADB with the minutes of such meetings.

Counterpart Financing

3. The Borrower shall ensure that throughout the implementation of the Project, adequate budgetary allocations of the required counterpart funds are made, approved, and released in a timely manner in order to ensure proper implementation of the Project.

Tariff

4. Six months prior to the operation of the port facilities, the Borrower, through IPBC, shall undertake the requisite actions to achieve tariff levels that shall allow for full cost recovery of the facilities.

Construction Quality

5. The Borrower shall cause IPBC to ensure that the Project facilities are built in accordance with the design technical specifications and that construction supervision, quality control, and contract management are implemented in accordance with the internationally accepted standards.

Environment

6. The Borrower shall ensure that the Project is carried out in accordance with, and all Project facilities are designed, constructed, operated, maintained and monitored, in compliance with all applicable environmental laws and regulations of the Borrower, and ADB's *Environment Policy* (2002). In case of any discrepancies between the environmental laws, regulations and/or procedures of the Borrower, and ADB's *Environment Policy*, ADB's *Environment Policy* shall prevail. The Borrower and IPBC shall implement and comply with the EMP. The Borrower and IPBC shall submit semiannual reports to ADB on the implementation of and compliance with the EMP.

7. The Borrower shall cause IPBC to ensure that the dumping of dredged sediments offshore shall only be permitted if appropriate mitigation measures are in place and conducted in compliance with ADB's *Environment Policy* and applicable laws and regulations of the Borrower.

Resettlement

8. The Borrower shall ensure that the land to be utilized or acquired under the Project for the port facilities is the land owned by the Borrower and that the land is not subject to any ownership dispute.

9. The Borrower and IPBC shall ensure that the resettlement activities under the Project are implemented in accordance with ADB's *Involuntary Resettlement Policy* (1995), and the resettlement plan agreed upon between ADB and the Borrower. The Borrower and IPBC shall further ensure that (a) the people who are required to be relocated or have their assets dispossessed or both under the Project shall have been given adequate compensation and other related resettlement assistance in accordance with ADB's *Involuntary Resettlement Policy* and the resettlement plan prior to their relocation or the dispossession of their assets, (b) the Malahang resettlement site shall have been fully developed and ready for occupation prior to relocation of the people affected by the Project, and (c) the new boat landing facility and fish market in SP Beach shall have been fully developed and operational, prior to the acquisition of the existing boat landing site and associated fish market in Landaun Market for the purpose of the Project.

Labor, Health and Gender Development

10. The Borrower shall cause IPBC to ensure that Works contractors engaged under the Project shall (a) comply with all applicable labor laws and related international treaty obligations, and do not employ child labor under the Project, (b) provide information to all construction workers during the construction period on the prevention of sexually transmitted infections, including HIV/AIDS, in health and safety programs, (c) provide prompt and equal pay to men and women for work of equivalent value in accordance with the Borrower's laws and international treaty obligations, (d) provide safe working conditions for both male and female workers, and (e) provide separate and culturally appropriate facilities for men and women workers. The Borrower shall cause IPBC to ensure that specific provisions to this effect shall be included in the bidding documents and contracts for Works. The Borrower shall cause IPBC to monitor compliance and to include the status of the implementation of these activities in the Project progress reports.

Security Measures

11. The Borrower shall undertake the required measures to provide adequate security for the smooth and uninterrupted implementation of the Project. The Borrower shall also ensure that (a) all Works contracts contain requirements to prepare an action plan for adequate security for the smooth and uninterrupted implementation of the Project, (b) the cost to implement such plan to be included in the budget for such Works, and (c) such plan shall be fully implemented.

Anti-Corruption

12. The Borrower shall comply and cause IPBC to comply with ADB's Anticorruption Policy (1998, as amended to date) and the Borrower's laws and regulations on anti-corruption. The Borrower agrees (a) that ADB reserves the right to investigate, directly or through its agents, any alleged corrupt, fraudulent, collusive or coercive practices relating to the Project, and (b) to cooperate fully with any such investigation and to extend all necessary assistance, including providing access to all relevant books and records, as may be necessary for the satisfactory completion of any such investigation. In particular, the Borrower shall (a) conduct periodic inspections on the contractors' activities related to fund withdrawals and settlements, and (b) ensure that all contracts financed by ADB in connection with the Project include provisions specifying the right of ADB to audit and examine the records and accounts of the Project Executing Agency, all contractors, suppliers, consultants and other service providers as they relate to the Project.

13. The Borrower shall cause IPBC to ensure that (a) the entire PMU staff actively participate in the training on ADB's Anticorruption Policy, and the Borrower's laws and regulations on anti-corruption, and (b) within three months of the Effective Date, the Project website shall have been developed and maintained to disclose, among other things, the audited Project financial accounts, the Project progress report, and the procurement results.

Monitoring

14. The Borrower shall cause IPBC to ensure that the Project stakeholders are involved in monitoring the implementation of the Project. This shall include ensuring that the PMU meet with the representatives of stakeholders on a regular basis to report on the delivery of Project inputs, and the effectiveness of Project interventions.

Project Performance Management System

15. The Borrower shall cause IPBC to establish a Project performance and monitoring system to monitor and evaluate Project impacts to ensure that the Project is managed effectively and the benefits are maximized.

16. Within twelve months of the Effective Date, ADB and the Borrower through IPBC shall agree upon a system for monitoring and evaluating Project performance in relation to its goals and purposes, with an emphasis on trade, economic activities, job creation, and livelihood improvement. A consultant shall be recruited under the Project to establish the system and assess the socioeconomic impact of the Project. The Borrower shall cause IPBC to submit to ADB (a) within three months at the end of each calendar year, the annual monitoring report, and (b) within three months after Project completion, the final monitoring report. The monitoring indicators shall include (a) industrial and commercial activities, (b) job creation, (c) exports and imports, (d) traffic volume, (e) port charges, (f) income generation, and (g) social services. Employment impact indicators shall include information about unskilled laborers, poor laborers, and women laborers.

Public-Private Partnership

17. Within twelve months of the Effective Date, the Borrower shall develop a public-private partnership policy to guide business partnership arrangements between the public and the private sector.

18. Within twenty four months of the Effective Date, the Borrower shall cause IPBC to prepare, in accordance with its public-private partnership policy, a time-bound action plan to develop a strategic public-private partnership model to ensure effective and efficient service delivery in the operation of the new port facilities constructed under the Project.

Project Review

19. ADB, the Borrower and IPBC shall undertake semi-annual and mid-term reviews to consider (a) the compliance to the loan covenants stipulated in this Loan Agreement and the Schedule to the Project Agreement, (b) physical achievements against milestones along with any reasonable changes, and disbursement and financial progress, and (c) Project implementation issues requiring resolution or action. The mid-term review shall be undertaken within twenty four months of the Effective Date.

Auditing and Reporting

20. The Borrower shall cause IPBC to provide ADB with copies of the audited Project accounts and financial statements no later than six months after the end of the fiscal year to which they relate. In order to achieve this, the Borrower shall ensure that IPBC shall submit the necessary financial information and documents to the auditors no later than three months after the end of the fiscal year to which they relate.

21. The Borrower shall cause IPBC to also provide ADB with quarterly progress reports on Project implementation. Within three months of the physical completion of the Project, the Borrower shall provide ADB with a Project completion report. The Borrower shall cause IPBC to ensure that the annual audited accounts of the Project and IPBC as well as the quarterly Project progress reports shall be made accessible to the public.