



## REQUEST FOR PROPOSALS (RFP)

**TO: SUITABLY QUALIFIED ENGINEERING CONSULTANTS**

**RFP No: CP04 – 18/19**

**DATE: 19 September 2018**

**SUBJECT: SINO-VAN FISHERIES LTD – VANUATU  
REVIEW OF SCOPE OF WORKS AND PROJECT  
CERTIFICATION.**

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Sino-Van Fisheries Ltd, Vanuatu, is a tuna processing joint venture (JV), between the Republic of Vanuatu and CNFC Overseas Fishery Co., Ltd of China.

Proposals are sought from a suitably qualified and experienced Consultant to provide a detailed assessment of the Scope of Works, and periodic certification of works, for the following refurbishment and construction activities to be undertaken by Sino-Van Fisheries Ltd:

- A. Upgrade of the existing Sino-Van fish processing plant located at Black Sands, Port Vila.
- B. Construction of additional facilities at the Black Sands processing plant
- C. Construction of wharf facilities and pontoons at Paray Bay, Port Vila.

To enable you to submit a Request for Proposal for this work, please find enclosed:

Annex I: Instructions to Bidders

Annex II: Terms of Reference, containing a description of FFA's requirements for which these services are being sought

Annex III: FFA Standard Conditions of Contract

This request is not to be construed in any way as an offer to contract any specific party.

Matthew Hooper

Acting Director General

**INSTRUCTIONS TO BIDDERS**

**RFP No: CP04-18/19**

**SINO-VAN FISHERIES LTD – VANUATU  
REVIEW OF SCOPE OF WORKS AND PROJECT CERTIFICATION.**

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**1. Submission of Proposals**

1.1. All proposals submitted together with all correspondence and related documents shall be in English.

1.2. All prices in the proposals must be presented in United States Dollar (USD).

1.3. Any proposal received after the 8<sup>th</sup> of October 2018 will be rejected. FFA may, at its discretion, extend the deadline for the submission of proposals by notifying all prospective bidders in writing. The extension of the deadline may accompany a modification of the solicitation documents prepared by FFA on its own initiative or in response to a clarification requested by a prospective bidder.

1.4. In tendering a proposal, interested parties should demonstrate a clear understanding of the Terms of Reference (TOR) as set out, with appropriate explanatory comments, proposed methodology, work plan and timeline for completion of the entire scope of work. The FFA Standard Conditions for Contract are not negotiable.

1.5. The proposal should also include:

- i. A cover letter outlining proposed methodology and the time lines for undertaking the assignment as per the Terms of Reference (Annex II);
- ii. The CV of the consultant(s) proposed to complete the work, including background and relevant experience of the consultant(s) as well as a summary of any similar or related work;
- iii. A separately enclosed financial proposal providing a detailed cost summary for the implementation of the work which must include the daily fee rate(s) for the consultant(s).

**2. Period of validity of proposals**

2.1. Proposals shall remain valid for sixty (60) days after the date of Proposal submission prescribed by FFA, pursuant to the deadline clause. A Proposal valid for a shorter period may be rejected by FFA on the grounds that it is non-responsive.

2.2. In exceptional circumstances, FFA may solicit the bidder's consent to an extension of the period of validity. The request and the responses thereto shall be made in writing. A bidder granting the request will not be required nor permitted to modify their Proposal.

### 3. Outputs required

A suitably qualified and experienced consultant is expected to deliver the following outputs:

<b>Output</b>	
i	Work plan and proposed schedule
ii	Detailed report on the Scope of Works, including; <ul style="list-style-type: none"> <li>(a) a review of designs and documentation,</li> <li>(b) review of the audit of the existing Sino-Van plant, and any geotechnical testing requirements;</li> <li>(c) completion of tender documentation, and issuance thereof, to contract the proposed works</li> <li>(d) tender review, analysis and recommendation</li> <li>(e) award tender and issue contract to nominated contractor(s)</li> </ul>
iii	Identification and selection of a Project Manager to manage Sino-Van interests.
iv	Monthly certification, including: <ul style="list-style-type: none"> <li>(a) inspection and review of works in progress</li> <li>(b) attendance at Project Control Group meetings</li> <li>(c) review of costs/progress claims</li> </ul>
v	Final Report confirming practical completion of works.

### 4. Evaluation Criteria

A two-stage procedure will be used in evaluating the proposals, with evaluation of the technical proposal being completed prior to any price proposal reviewed and compared. The financial proposal will only be reviewed for submissions that have passed the minimum technical score of 70% of the total obtainable score in the technical proposals.

The technical proposal is evaluated on the basis of its responsiveness to the competency requirements as detailed in the evaluation criteria matrix.

<b>Competency Requirements</b>	<b>Score Weight (%)</b>
1. Demonstrated experience in construction, project management, engineering and certification.	40

2. Experience in completing large scale projects in offshore jurisdictions, in particular the Pacific Islands	20
3. Ability to provide clear recommendations and options based on constraints and challenges identified from a thorough review of construction plans and documentation	20
4. Ability to liaise and effectively communicate with all relevant stakeholders	20
<b>Total Score</b>	<b>100%</b>
<b>Qualification Score</b>	<b>70%</b>

In the Second Stage, the financial proposal of all bidders, who have attained a minimum of 70% score in the technical evaluation, will be compared. The contract will be awarded to the bidder(s) offering the best value for money taking into account the cumulative scores of technical and financial evaluations. The overall evaluation weighting shall be 80% Technical and 20% Financial.

## 5. Financial Proposals

The financial proposal should be submitted as a separate document and not included as part of the technical proposal. Financial proposals should provide a budget for the project including professional fees, travel and accommodation and any others costs associated with the completion of this work. The construction programme will be determined once the scope of works is confirmed, however for the purpose of this Proposal, a sixteen-month construction period should be estimated. Any variation to this timeframe will be included as an agreed variation to the contract terms.

## 6. Request for further information

Queries or questions are to be emailed to the Investment Facilitation Manager, Fisheries Development Division, FFA, email: [tony.sullivan@ffa.int](mailto:tony.sullivan@ffa.int)

## 7. Award of Contract

FFA reserves the right to accept or reject any Proposal, and to annul the solicitation process and reject all Proposals at any time prior to award of contract, without thereby incurring any liability to the affected Bidder(s) or any obligation to inform the affected bidder(s) of the grounds for such action.

## **8. FFA's right to vary requirements at time of award**

FFA reserves the right at the time of award of contract to vary the quantity of services and goods specified in the Request for Proposal (RFP) without any change in price or other terms and conditions.

## **9. Closing date for proposals**

Proposals should be emailed to [procurement@ffa.int](mailto:procurement@ffa.int) with the subject line heading "Sino-Van Review of Scope of Works and Project Certification"

All proposals must be received by FFA before 5.00pm (Local time), 8<sup>th</sup> October 2018

## **10. Timing of the Study**

FFA will ensure prompt selection of the consultant, who should be ready to mobilise and commence work upon signing of the contract.

## **11. Notification**

The name of successful bidder shall be advertised on the FFA website; [www.ffa.int/employment/tenders/tender\\_results](http://www.ffa.int/employment/tenders/tender_results)

## Annex II

### TERMS OF REFERENCE

RFP No: CP04-18/19

### SINO-VAN REVIEW OF SCOPE OF WORKS AND PROJECT CERTIFICATION

#### INTRODUCTION

The Forum Fisheries Agency (FFA) has been requested to assist the Government of the Republic of Vanuatu to review construction of additional plant and infrastructure for Sino-Van Fisheries Ltd, a fish processing joint venture partnership between the Government of Vanuatu and CNFC Overseas Fishery Co., Ltd of China. The engagement requires an initial engineering review of documentation and scope of works, appointment of a Project Manager, completion of tender requirements, award of contract, and monthly certification of works.

#### BACKGROUND

The Government of the Republic of Vanuatu through the Ministry of Agriculture, Livestock, Forestry, Fisheries and Biosecurity is keen on maximising economic returns from its offshore tuna resources. Amongst a number of priority areas, it is looking at encouraging its JV Company, Sino-Van Fisheries Ltd, to land and process fish caught in its Exclusive Economic Zone (EEZ) by its JV partner's tuna longline vessels to which the Government has issued licenses.

Sino-Van Fisheries Limited (Sino-Van) was established in July 2008 to process and export fish from a purpose built facility at Black Sands on the western outskirts of Port Vila. On a land area of five hectares, the construction area covers 2,772 m<sup>2</sup>, of which 2,080 m<sup>2</sup> consists of the processing workshop and refrigeration facilities. Supporting infrastructure includes an ice-making station, ice-storage, an 800kva transformer and distribution centre, back-up generator, sewage treatment station and factory office building.

The processing plant has never been commissioned or operative, and is now in a dilapidated state requiring remedial works, and also having failed its most recent Seafood Verification Audit in August 2016.

In addition to the remedial works, the Company intends expanding facilities at the Black Sands site to incorporate the following:

- Reconstruction and fit out of offices
- Construct a staff rest area and packing material warehouse
- Construct a maintenance workshop (675 m<sup>2</sup>)
- Construct a warehouse (180 m<sup>2</sup>)
- Construct living quarters

Design plans for these facilities are currently under draft under the direction of Sino-Van Fisheries Ltd.

To facilitate the offloading of catch from long-line vessels, the proposed construction will also include a 90m long floating fishing wharf at Paray Bay in Port Vila consisting of a segmented steel structure linked to a shore based sea wall. Technical design and plans have been commissioned by CNFC Overseas Fishery Co., Ltd.

## OBJECTIVE

To provide a detailed assessment of the Scope of Works for the refurbishment and construction activities to be undertaken by Sino-Van Fisheries Ltd at Black Sands and Paray Bay, and the periodic certification of these works throughout construction.

## ACTIVITIES

Assist Sino-Van Fisheries in the recruitment of a Project Manager whose role will include the following:

- Manage the completion of the scope of works
- Advise Sino-Van Fisheries as necessary on any design issues
- Advise on the selection of materials and construction techniques including methodology
- Assist with the completion of construction budget costs
- Provide input to the project to ensure the emerging design can be achieved within budget
- In collaboration with Sino-Van management, engage/instruct engineering audit of existing buildings and facilities
- Ensure all approvals are in place prior to commencement of works
- Oversee the daily construction of the works
  - o Regular site inspections
  - o Review and comment on the Contractors program with specific focus on the critical path
  - o Monitor the relationship with all authorities
  - o Daily administration of the construction contract
  - o Monitor the flow of design documentation
  - o Attend all Project Control Meetings

The Consultant will provide input to the Project Manager's job description and provide recommendations to Sino-Van Fisheries in the selection process.

Review of Audit Findings establishing the extent of rectification works to be completed. Sino-Van Fisheries Ltd will commission an audit of the total existing processing plant including the following: Structural; Mechanical and Refrigeration; Electrical; Water; and Sewerage Treatment to ensure the buildings and plant will, following rehabilitation, be compliant, structurally sound, have the capacity to service both the existing processing plant plus the proposed extensions to the processing plant and will run efficiently to ensure maximum productivity and no breakdowns. The Consultant will review and confirm these audit outcomes.

## Review the Expansion Plans of the new works completed by Sino-Van Fisheries Limited

### A) New Works to be completed at Black Sands

Review the expansion plans including:

- a) Overall site plan detailing all buildings (existing and new), extent of perimeter fencing and security, concrete hard stand and landscaping.
- b) Detailed drawings of each building
  - Structural: footings, slabs, steel framing, roofing etc.
  - Services (hydraulics/electrical/sewerage and mechanical if applicable)
  - Building Plans
  - Fixtures and finishes to be installed as part of the project
  - Details of any plant and equipment that are to be supplied and installed as part of the works

### B) Paray Bay Wharf and Pontoons

Review the expansion plans including:

- a) Overall site plan detailing existing buildings, extent of demolition, extent of hardstand requirements.
- b) Structural
  - Geotechnical investigation of existing ground conditions
  - Investigations into the depth of the channel and size of fishing boats
  - Extent and details of retaining wall and shoring requirements
  - Hardstand area for trucks and container storage
  - Pontoons
- c) Existing buildings – details and extent of refurbishment works to be completed
- d) Services – requirements including refurbished buildings, pontoons and site security

## Contract and Construction Requirements

- a) Prepare tender documentation and release tender to builders
- b) Recommend selected Builder to Sino-Van Fisheries Ltd for approval
- c) Present final lump sum contracts of selected Builder to Sino-Van Fisheries Ltd for approval
- d) Review and comment on Builders construction programme.
- e) Attend monthly Project Meetings
- f) Review, assess and certify monthly progress claims
- g) Ensure all defects are rectified prior to issuing Certificate of Practical Completion.

## **LOGISTICS**

The Consultant will be provided with office and communication facilities by Sino-Van Fisheries Ltd and/or the Vanuatu Department of Fisheries, as may be mutually agreed.

## **TIMING**

The construction timeframe for this project is estimated to be **sixteen (16) months**. This is an estimate only to enable submission of proposals. The terms of any variation to this estimate will be agreed in the Contract.

## TRAVEL

International travel will be required. FFA will authorise the issue of economy class return air tickets from the usual place of residence to Port Vila through its travel service provider. Reimbursement of airfares can be claimed with support of receipts, if the cost of airfares is borne by the consultant.

## ASSISTANCE TO BE PROVIDED BY VANUATU FISHERIES DEPARTMENT AND SINO-VAN FISHERIES LIMITED

- Provision of design plans, scope of works, and any other documents, on a confidential basis if necessary, to the consultant upon request;
- Inputs from Sino-Van Fisheries Management and Board of Directors as may be required from time to time throughout the project.
- Facilitate access to other relevant national government agencies, if necessary; and,
- Provision of site access and logistical arrangements as required

## REPORTING REQUIREMENTS AND DELIVERABLES

The Consultant is responsible for providing the following deliverables:

### (i) Work plan, reporting and deliverables

Following the execution of this Contract, the Consultant shall prepare a work plan for the period of this consultancy. The consultant will liaise collectively with Mr Michael Jiang, Managing Director, Sino-Van Fisheries Limited, Mr. Benjamin Shing, Director General, Ministry of Agriculture, Livestock, Forestry, Fisheries and Biosecurity, and the FFA Investment Facilitation Manager.

The work plan should include:

- A response to the TOR
- Critical information to be provided by stakeholders
- A diary showing the allocation of days to be spent against each task.

The Consultant shall report directly to the FFA Investment Facilitation Manager (IFM) or other designated FFA staff member, and will take into account the advice and recommendations made by the Ministry of Agriculture, Livestock, Forestry, Fisheries and Biosecurity, and the Board and Management of Sino-Van Fisheries Ltd, in relation to the Consultancy and other matters related thereto.

Following the execution of this Contract and arrival in Port Vila, the Consultant will engage with Mr. Richard Kalses, Compliance Manager, Ministry of Agriculture, Livestock, Forestry, Fisheries and Biosecurity or his designate, and liaise as required with the FFA Investment Facilitation Manager.

## OUTPUTS/MILESTONES

The Consultant shall prepare the following:

Output	Proposed time-line
i) Work plan and proposed schedule	Following execution of the contract and arrival into Vanuatu
ii) Identification and recruitment of a Project Manager	15 November 2018
iii) Review of Engineering Audit Findings	20 business days after completion of the audit
iv) Review of Scope of Works, budgets, buildability and timeframe for completion	20 business days following receipt of Scope of Works and Budgets.
v) Monthly certification of works in progress	Reporting monthly throughout construction. Certification to be provided no later than 15 business days after receipt of monthly progress report and progress claim.

## AWARD OF CONTRACT

FFA reserves the right to accept or reject any Proposal, and to annul the solicitation process and reject all Proposals at any time prior to award of contract, without thereby incurring any liability to the affected Bidder(s) or any obligation to inform the affected bidder(s) of the grounds for such action.

## FFA'S RIGHT TO VARY REQUIREMENTS AT TIME OF AWARD

FFA reserves the right at the time of award of contract to vary the quantity of services and goods specified in the Request for Proposal (RFP) without any change in price or other terms and conditions.

## CLOSING DATE FOR PROPOSALS

Proposals should be emailed to [procurement@ffa.int](mailto:procurement@ffa.int) with the subject line heading **"SINO-VAN REVIEW OF SCOPE OF WORKS AND CERTIFICATION"**. All proposals must be received by FFA before 5.00pm. 8<sup>th</sup> October 2018

Please note that the FFA Standard Conditions of Contract are not negotiable.

## Annex III

### FFA STANDARD CONDITIONS OF CONTRACT

#### 1. Definitions

##### 1.1 In this Contract:

- (a) "Consultancy Services" means the Consultancy Services described in Schedule A;
- (b) "Memorandum of Agreement" means the agreement executed by and between FFA and the Consultants in which these Conditions have been incorporated by reference;
- (c) "FFA" means the South Pacific Forum Fisheries Agency, based in Honiara, Solomon Islands;
- (d) "Contract" means the Memorandum of Agreement together with these Conditions and all other schedules and documents, if any, annexed to the Memorandum of Agreement or incorporated therein and intended to form part of the contractual relationship between the parties;
- (e) "Confidential Information" means information that:
  - (i) is by its nature confidential;
  - (ii) is designated by FFA as confidential;
  - (iii) the Consultant knows or ought to know is confidential;but does not include information which:
  - is or becomes public knowledge other than by breach of this Contract;
  - is in the possession of the Consultant without restriction in relation to disclosure before the date of receipt from FFA;
  - has been independently developed or acquired by the Consultant.
- (f) "Usual Place of Residence" means the place of residence of the Consultants during the duration of the consultancy, as designated in the Memorandum of Agreement;
- (g) "Term of Engagement" means the entire period during which the Consultants will be expected to perform the Consultancy Services.

1.2 Words importing a gender include any other gender.

1.3 Words in the singular number include the plural and words in the plural number include the singular.

1.4 Clause headings in this Contract are for convenient reference only and have no effect in limiting or extending the language of the provisions to which they refer.

1.5 A reference to a Schedule is a reference to a Schedule to this Contract and includes such Schedule as amended or replaced from time to time by agreement in writing between the parties.

#### 2. Fees

2.1 FFA shall pay fees to the Consultants in respect of the Consultancy Services at the rate and in the currency specified in Schedule B to the Memorandum of Agreement on the basis of time spent by the Consultants in performing the Consultancy Services. For the purpose of determining the amount of such fees:

- (a) Where the fees are expressed in terms of a daily rate the time spent in performing the Consultancy Services shall be determined solely on the basis of the number of days actually worked by the Consultant in performing the Consultancy Services, including travel time.
- 2.2 Except as otherwise agreed between FFA and the Consultant, no fees will be paid in respect of work performed other than during the Term of Engagement.

### **3. Expenses**

3.1 In addition to the fees specified in clause 2, FFA shall pay to or reimburse the Consultants for the following allowances, costs and expenses:

- (a) A daily subsistence allowance (DSA) at standard FFA rates for every day during the term of engagement during which the Consultant shall be absent from the Usual Place of Residence for the purpose of performing the Consultancy Services; provided that DSA will be paid for the day of departure from the Usual Place of Residence but not for the day of return thereto. The DSA covers all accommodation charges, including government taxes (where applicable), meals, laundry and incidental expenses.
- (b) All transportation costs properly and reasonably incurred by the Consultant in travelling for the purposes of the Consultancy Services whether within the Country of Assignment or elsewhere, including the cost of transportation by an appropriate means of public transport between the Usual Place of Residence and the nearest convenient international airport and the cost of economy class air travel.
- (c) All other reasonable out-of-pocket expenses of the Consultants arising directly out of the performance of the Consultancy Services, including communications charges, airport and departure taxes, visa fees, taxi fares, and photocopying charges.

### **4. Payment of Fees, Costs and Expenses**

4.1 The consultancy fees payable under the Contract will be paid to the consultants in accordance with Schedule B and to the satisfaction of the FFA.

4.2 Where the Consultancy Services have not been performed to the satisfaction of FFA, FFA may withhold the balance of the fees in whole or in part and may:

- (a) require the Consultant to carry out whatever additional work is required to complete the Consultancy Services to the satisfaction of FFA; or
- (b) terminate the Contract forthwith without prejudice to any right of action or remedy which has accrued or which may accrue in favour of FFA.

4.3 The travel costs and DSA (other than those paid in advance by FFA under Schedule B) shall be paid by FFA upon written application made by the Consultant to FFA, supported by such receipts or other evidence as FFA may reasonably require to establish that the Consultant was absent for the purpose of the Consultancy Services from the Usual Place of Residence. Where

an advance of DSA has been made, FFA shall require the Consultant to complete a reconciliation of advance against actual entitlement.

- 4.4 Printing and distribution costs and reimbursable costs and expenses referred to in clause 3 shall be paid by FFA upon written application made by the Consultant to FFA, supported by such receipts or other evidence as FFA may reasonably require to establish that the expenditure was incurred in the amount and currency and in the manner claimed.
- 4.5 Unless otherwise agreed between the 'Consultants'; and FFA, the fees shall be paid in the currency specified in Schedule B. All travel costs, allowances, and out-of-pocket expenses shall be paid either in the currency in which the same were incurred or in US dollars or partly in one currency and partly in the other, as FFA shall reasonably determine in consultation with the 'Consultants'.
- 4.6 Whenever it shall be necessary to determine the equivalent of an amount in one currency in terms of another, the conversion shall be made at the rate which FFA shall determine was applicable at the time and place when the Consultants incurred the expenditure or converted currency into the currency of expenditure, whichever first occurred.

## **5. Medical and Insurance**

All medical insurance costs shall be borne by the Consultant and FFA shall be under no liability in respect of medical expenses of the Consultants.

## **6. Indemnity**

- 6.1 Subject to the provisions of this Contract, the Consultants shall at all times indemnify and hold harmless FFA, its officers, employees and agents (in this clause referred to as "those indemnified") from and against any loss (including legal costs and expenses on a solicitor/own client basis), or liability, reasonably incurred or suffered by any of those indemnified arising from any claim, suit, demand, action or proceeding by any person against any of those indemnified where such loss or liability was caused by any wilful, unlawful or negligent act or omission of the Consultants in connection with this Contract.
- 6.2 The Consultants' liability to indemnify FFA under clause 6.1 shall be reduced proportionately to the extent that any act or omission of FFA or its officers, employees or agents contributed to the loss or liability.
- 6.3 The indemnity referred to in clause 6.1 shall survive the expiration or termination of this Contract.

## **7. General Covenants**

- 7.1 The Consultants covenant and agree that:

- (a) During the Term of Engagement they shall devote the whole of their time and attention to the performance of the Consultancy Services and shall at all times act with due diligence and efficiency and in accordance with the Terms of Reference. They shall make or assist in making all such reports and recommendations as may be contemplated by the Terms of Reference and shall at all times cooperate with FFA, its employees and agents. After the termination of the engagement they shall continue to cooperate with FFA to such reasonable extent as may be necessary to clarify or explain any reports or recommendations made by them.
- (b) At all times they shall act with appropriate propriety and in particular, refrain from making any public statement concerning the Consultancy Services without the prior approval of FFA.
- (c) They shall have no authority to commit FFA in any way whatsoever and shall make this clear as circumstances warrant.
- (d) They shall report immediately to FFA any circumstances or events which might reasonably be expected to hinder or prejudice the performance of the Consultancy Services, including circumstances and events relating to his transportation and accommodation.
- (e) All reports, notes, drawings, specifications, statistics, plans and other documents and data compiled or made by the Consultants while performing the Consultancy Services shall be the property of FFA and upon termination of the engagement shall be disposed of as FFA may direct. The Consultants may retain copies of such documents and data but shall not use the same for purposes unrelated to the Consultancy Services without the prior approval of FFA.

## **8. Conflict of Interest**

- 8.1 The Consultants warrants that, to the best of their knowledge, at the date of signing this Contract, no conflict of interest exists or is likely to arise in the performance of his obligations under this Contract.
- 8.2 If during the Term of Engagement a conflict of interest arises, or appears likely to arise, the Consultants undertake to notify FFA immediately in writing and to take such steps as FFA may reasonably require to resolve or otherwise deal with the conflict. If the Consultants fail to notify FFA or are unable or unwilling to resolve or deal with the conflict as required, FFA may terminate this Contract in accordance with the provisions of clause 10.
- 8.3 The Consultants shall not engage in any activity or obtain any interest during the Term of Engagement that is likely to conflict with or restrict the Consultants in providing the Consultancy Services to FFA fairly and independently.

## **9. Disclosure of Information**

- 9.1 The Consultants shall not, without the prior written approval of FFA, disclose to any person other than FFA, any Confidential Information. In giving written approval, FFA may impose such terms and conditions as it thinks fit.
- 9.2 FFA may at any time require the Consultants to give a written undertaking, in a form required by FFA, relating to the non-disclosure of Confidential Information. The Consultants shall promptly arrange for all such undertakings to be given.
- 9.3 The obligation on the Consultants under this clause shall not be taken to have been breached where the information referred to is legally required to be disclosed.

## **10. Termination**

- 10.1 FFA may, at any time by written notice, terminate this Contract in whole or in part. If this Contract is so terminated, FFA shall be liable only for:
- (a) payment under the payment provisions of this Contract for Consultancy Services rendered before the effective date of termination; and
  - (b) subject to clauses 10.3 and 10.4, any reasonable costs incurred by the Consultants and directly attributable to the termination or partial termination of this Contract.
- 1.2 Upon receipt of a notice of termination the Consultants shall:
- (a) stop work as specified in the notice;
  - (b) take all available steps to minimize loss resulting from that termination;
  - (c) continue work on any part of the Consultancy Services not affected by the notice.
- 10.3 In the event of partial termination FFA's liability to pay fees under Schedule B shall, in the absence of agreement to the contrary, abate proportionately to the reduction in the Consultancy Services.
- 10.4 FFA shall not be liable to pay compensation in an amount which would, in addition to any amounts paid or due, or becoming due, to the Consultants under this Contract, together exceed the total fees set out in Schedule B.

## **11. Default**

- 11.1 If either party is in default under this Contract on account of the failure to perform or observe any obligation or undertaking to be performed or observed on its part under this Contract, the party not in default may terminate this Contract in whole or in part without

prejudice to any right of action or remedy which has accrued or which may accrue in favour of either party.

## **12. Waiver**

- 12.1 A waiver by either party in respect of any breach of a condition or provision of this Contract shall not be deemed to be a waiver in respect of any continuing or subsequent breach of that provision, or breach of any other provision. The failure of either party to enforce at any time any of the provisions of this Contract shall in no way be interpreted as a waiver of such provision.

## **13. Notices**

- 13.1 Any notice, request or other communication to be given or served pursuant to this Contract shall be in writing and dealt with as follows:

- (a) if given by the Consultants to FFA, addressed and forwarded to the Director-General, Forum Fisheries Agency, P.O. Box 629, Honiara, Solomon Islands. Fax: (+677) 23995.
- (b) if given by FFA to the Consultants, signed by the Director-General or Deputy Director-General and forwarded to the Consultants at the Usual Place of Residence.

- 13.2 Any such notice, request or other communication shall be delivered by hand or sent by pre-paid registered post, facsimile or telex to the address of the party to which it is sent.

- 13.3 Any notice, request or other communication will be deemed to be received:

- (a) if delivered personally, on the date of delivery;
- (b) if sent by pre-paid registered post, on the day that the acknowledgment of delivery is completed by the recipient; and
- (c) if sent by facsimile, on the business day next following the day of despatch providing that the sender receives an "OK" code in respect of the transmission and is not notified by the recipient by close of business of the next business day following the day of despatch that the transmission was illegible.

## **14. Entire Agreement and Variation**

- 14.1 This Contract contains the entire agreement between the parties and supersedes all communications, negotiations, arrangements and agreements, whether oral or written, between the parties with respect to the subject matter of this Contract.

- 14.2 No agreement or understanding varying or extending this Contract, including in particular the scope of the Consultancy Services in Schedule A shall be legally binding upon either party unless in writing and signed by both parties.

## **15. Severability**

- 15.1 Each provision of this Contract and each part thereof shall, unless the context otherwise necessarily requires it, be read and construed as a separate and severable provision or part. If any provision or part thereof is void or otherwise unenforceable for any reason then that

provision or part (as the case may be) shall be severed and the remainder shall be read and construed as if the severable provision or part had never existed.

**16. Applicable Law**

- 16.1 This Contract shall be governed by and construed in accordance with the laws of Solomon Islands and the parties agree, subject to the Contract, that the courts of Solomon Islands shall have jurisdiction to entertain any action in respect of, or arising out of, this Contract.