

## **Acuerdos Bilaterales**

Clasificación: 59-2005

Fecha de Ingreso: 20 de junio de 2005

Nombre de Acuerdo: Agreement between the Provisional Electoral Council of the Republic of Haiti and the General Secretariat of the Organization of American States on the Retention, Training and Payment of Consultants for the Registration Process in Haiti

Materia: Observación electoral / democracia

Partes: SG/OEA & The Provisional Electoral Council of the Republic of Haiti

Referencia: HAITI

Fecha de Firma: 23 de mayo de 2005

Fecha de Inicio: 23 de mayo de 2005

Fecha de Terminación:

Lugar de Firma:

Unidad Encargada:

Persona Encargada:

Original:

Claves:

Cierre del proceso:

**AGREEMENT  
BETWEEN  
THE PROVISIONAL ELECTORAL COUNCIL OF THE REPUBLIC OF HAITI  
AND  
THE GENERAL SECRETARIAT OF THE ORGANIZATION OF AMERICAN  
STATES  
ON THE RETENTION, TRAINING AND PAYMENT OF CONSULTANTS FOR  
THE REGISTRATION PROCESS IN HAITI**

**INTRODUCTION:**

The General Assembly of the Organization of American States (hereinafter referred to as the "OAS"), through resolutions AG/RES. 1831 (XXXI-O/01), AG/RES. 1841 (XXXII-O/02), AG/RES. 1959 (XXXIII-O/03), and AG/RES. 2058 (XXXIV-O/04), has established the OAS's action framework for the strengthening of Democracy in Haiti;

In March 2002, the Government of Haiti and the General Secretariat of the Organization of American States (hereinafter referred to as the "GS/OAS") signed an Agreement for the establishment of the OAS Special Mission for the Strengthening of Democracy in Haiti ("the Mission"), and in May 2004, during a session of the OAS Permanent Council, Acting Prime Minister LaTortue requested OAS assistance for the preparation of elections. In August 2004, the GS/OAS signed a Cooperation Agreement with the United Nations Development Program (hereinafter referred to as the "UNDP") which stipulated that the UNDP would provide a financial contribution (hereinafter referred to as the "Contribution") to the GS/OAS for the implementation of a electoral registration project in Haiti.

The OAS Electoral Technical Assistance Program in Haiti (hereinafter referred to as "ETAPH") was subsequently established in the framework of the Mission, to support the Provisional Electoral Council of Haiti (hereinafter referred to as the "CEP" in the registration process.

During a meeting between the Provisional Electoral Council of Haiti (hereinafter referred to as "CEP") and the OAS Special Mission on November 5, 2004, the CEP adopted the voter registration plan proposed by the GS/OAS. Also in November 2004, a Memorandum of Understanding (hereinafter referred to as "MOU") was signed between the United Nations Stabilization Mission in Haiti (hereinafter referred to as "MINUSTAH") and the GS/OAS related to cooperation in support for elections in Haiti.



In response to provisions of the 2005 Electoral Decree regarding the National Identification Card and the establishment of a permanent electoral registry, the CEP has asked GS/OAS to provide training for and to pay the remuneration of Consultants retained and hired by the CEP in the voter registration process, and the UNDP has authorized the use of the Contribution for that purpose. For the 2005 elections, the CEP must issue identification cards and register up to 4.4 million eligible voters.

**THE PARTIES:** The Electoral Provisional Council of the Republic of Haiti and the General Secretariat of the Organization of American States, agree as follows:

## **CHAPTER I PURPOSE**

**Article 1.** The purpose of this Agreement is to establish the terms and conditions for cooperation between the CEP and GS/OAS for the retention, training and payment of the consultants (hereinafter referred to as "Consultants") to provide services to register voters for the 2005 Haitian elections.

## **CHAPTER II THE CEP'S OBLIGATIONS**

**Article 2.** The CEP shall:

- a. Retain the services of up to one thousand six hundred and sixty-nine (1699) Consultants (operators, registrants and card deliverers) and up to one hundred and sixty-five (165) Departmental and Communal supervisors of the registration centers, in the conditions stipulated in Annex I, hereto attached, and in accordance with the requirements of Haitian law;
- b. Be solely and exclusively responsible for any and all claims brought by any Consultant and any such Consultant's heirs or assigns arising out of or related to this Agreement.
- c. Ensure that the Consultants are making correct use of, and are properly caring for, the registration equipment which will be entrusted to and operated by them for the registration process in Haiti.



- d. Draft written contracts for the Consultants, verify their identity and provide GS/OAS, through the OAS Mission Office in Haiti, with signed copies of each such contract within five working days after each such contract is signed;
- e. Each Consultant's contract shall:
1. Set forth the duties and responsibilities of the Consultant.
  2. Require each Consultant to open and to maintain a savings account at the SOGEBANK, or, in very specific cases mentioned in Annex II, at the BANQUE NATIONALE DE CREDIT, in which the agreed gross monthly remuneration will be deposited by the GS/OAS.
  3. Establish that the Gross Compensation paid to the Consultants constitutes full consideration for the Work. It also covers all fees, expenses, and costs incurred by the Consultant in providing the Work.
  4. Establish that the Consultant is responsible for paying, from the gross compensation paid, all contributions and deductions required by Haitian Law.
  5. Specify that payment each month is conditional upon satisfactory completion of the work required.
  6. State that the Consultant is responsible for proper use and care of the registration equipment entrusted to him/her.
  7. Establish that the registration equipment entrusted to the Consultant remains the property of the UNDP and is under the responsibility of the GS/OAS.
  8. Establish the contract beginning and ending date and the monthly compensation (gross compensation) to be paid.
  9. State that the Consultant is an independent contractor and not an employee.
  10. Include a section confirming that during the period covered by the contract, the Consultant will not





engage in any political activity, proselytism or campaign.

11. Provide for anticipatory termination by either party without right to indemnity in the following cases: i) death of the Consultant; ii) written notification by the CEP (when, for example, the quality of the Consultant's work is not satisfactory, when the CEP does not have the adequate budget to pay, etc.); and iii) notification by the consultant for personal reasons.
  12. Establish that either of the parties can terminate the contract by advising the other at least 15 days in advance.
  13. Establish that the provisions of Haitian law in these matters will prevail.
- f. Supervise the work of the Consultants, take responsibility for the accountability of the Consultants under their Contracts, and provide GS/OAS with the certifications required under Article IV below;
  - g. Immediately notify the GS/OAS regarding any significant problems that arise in relation to the effective operation and/or work of the Consultants in the voter registration process;
  - h. Provide any additional information and/or report requested by the GS/OAS.

### **CHAPTER III GS/OAS' OBLIGATIONS**

**Article 3.1** GS/OAS shall, through the ETAPH's Departmental and Communal Coordinators:

- a. Ensure the correct identity of the future Consultants, when initiating their training;
- b. Coordinate, together with the CEP, the Consultants' work in the field;
- c. Participate with the CEP in the certification process of the work accomplished by the Consultants, so that the CEP can prepare the monthly payment list;



**Article 3.2** GS/OAS shall also:

- a. Make the corresponding monthly payments from the Contribution to the Consultants, in accordance with Article IV below;
- b. Assist the CEP in determining the number of Consultants required per registration site;
- c. Prepare the manuals, training materials and training sessions, and conduct the training for the Consultants recruited by the CEP for the registration process;
- d. Assist the CEP in defining and/or revising the workflow procedures of the Consultants working in the registration process;
- e. Notify the CEP immediately regarding any significant problems that arise in relation to the effective operation of any of the Consultants in the voter registration process;
- f. Recuperate from the registration sites at the end of the registration process, for return to the UNDP, the equipment provided through the Contribution and entrusted to the Consultants at the registration sites, unless otherwise agreed between the parties and the UNDP;
- g. Support the CEP in the recruitment process for Consultants required for the registration centers or offices.

**CHAPTER IV  
PAYMENTS TO CONSULTANTS**

**Article 4.** Payments for services to Consultants shall be made by the last day of every month during which a Consultant is under contract with the CEP in the framework of the present Agreement;

**Article 5.** As a condition for payment, the CEP must provide GS/OAS, 10 (ten) days prior to the end of the month, with a certified payment list in which the CEP certifies that the Consultants listed are entitled to their monthly payment in accordance with the duties performed. The payment list must include the name of the bank and that of the branch, as well as the account number of each of the consultants listed. The CEP must ensure that the banking information provided by the Consultants is true and accurate. A



certified statement by the CEP must be attached to the payment list attesting that the persons listed have satisfactorily performed their duties in the field. ETAPH representatives will provide assistance to the CEP in determining the level of diligence of the Consultants in the field. If any change in the Payment List occurs after its submission (resignations, etc.), the GS/OAS will accept any such modifications up to 72 hours prior to the payment date, after which time, any financial implications resulting from said change will be the responsibility of the CEP.

**Article 6.** On receipt of the afore-mentioned certified Payment List from the CEP, the GS/OAS will deposit the agreed sum for the corresponding pay period into the savings account of each Consultant at the SOGEBANK, or, in the specific cases mentioned in Annex II, at the BANQUE NATIONAL DE CREDIT in Haiti.

**Article 7.** The GS/OAS is not associated with and cannot be associated with any of the bank accounts established by any of the Consultants pursuant to the requirements of this Agreement. The CEP agrees that GS/OAS is not liable for and will not be held liable for any fees levied by any Bank in which any Consultant's bank account is established or for any account activity in any such bank transacted by the Consultant or the Consultant's agent.

## **CHAPTER V LIABILITY AND INDEMNIFICATION**

**Article 8.** The CEP is the sole responsible entity in the case of any litigation or claims made by the Consultants or any other person or entity related in any way to this Agreement. The CEP shall indemnify, hold and save harmless and defend at the CEP's own expense, the OAS and the GS/OAS and their officers, employees, and agents from and against all suits, claims, demands, damages, losses, and liability of any nature and kind, including but not limited to their costs, expenses, and reasonable attorneys' fees arising out of the acts or omission of the CEP or the CEP's employees or agents or by persons contracted by the CEP for the management or implementation of this Agreement

**Article 9.** The GS/OAS cannot be held responsible for any payments made to Consultants that are found to be fraudulent.

**Article 10.** This Agreement is a contract between the CEP and the GS/OAS. This Agreement in no way constitutes a partnership or joint venture of any kind between the CEP and GS/OAS.





## **CHAPTER VI DISPUTE RESOLUTION AND PRIVILEGES AND IMMUNITIES**

**Article 11.** It is the intent of the Parties that any dispute arising between them regarding or connected in any way to this Agreement shall be settled by amicable agreement. If they are unable to reach such agreement, upon either party giving written notice to the other, settlement of said disputes shall be sought through procedures mutually agreed upon by the Parties; provided, however, if the Parties are unable to reach mutual agreement regarding these procedures, that either Party may refer the matter to arbitration in accordance with the Rules of the United Nations Commission on International Trade Law ("UNCITRAL"). If a matter is referred to arbitration, the arbitral decision shall be final and binding on the Parties.

**Article 12.** Nothing in this MOU constitutes an express or implied waiver of the privileges and immunities that either Party, or their employees, agents, or contractors enjoy under the laws of Haiti, the laws of the United States of America or international law.

## **CHAPTER VII NOTIFICATION AND COORDINATION**

**Article 13.** For purposes of coordinating the activities under this Agreement and receiving and sending notifications required hereunder, GS/OAS's representative is:

Elizabeth Spehar  
General Coordinator  
Electoral Technical Assistance Program in Haiti  
Address: Babiote #40, Pacot, Port-au-Prince, Haïti  
Tel: (509) 244-1001 / 244-1010 / 245-2534  
Email: [Espehar@oas.org](mailto:Espehar@oas.org)

**Article 14.** For purposes of coordinating the activities under this Agreement and receiving and sending notifications required hereunder, the CEP's representative is:

Pierre-Richard Duchemin  
Président de la Commission du Registre Electoral  
Conseil Electoral Provisoire  
Address: 300, Autoroute de Delmas, Port-au-Prince, Haïti  
Tel: (509) 417-2864/249-1165  
Email: [pierrerichardduchemin@yahoo.com](mailto:pierrerichardduchemin@yahoo.com)



**Article 15.** Either Party may change its representative under this Agreement by advanced written notification to the other.

**Article 16.** All written notifications under this Agreement must be sent or received, as the case may be, to and from the representatives and at the addresses specified above or as specified in the corresponding notification sent under Article 5, above.

## **CHAPTER VIII AUDITS**

**Article 17.** GS/OAS reserves the right to conduct audits, inspections and evaluations regarding the recruitment of personnel carried out by the CEP with the use of the Contribution and also with regard to the payments by GS/OAS to the Consultants which are made by the GS/OAS based upon the Consultant payment lists provided by the CEP. GS/OAS shall have the right, at its own expense, to audit or review all contribution-related files and records, as it may require. The CEP shall grant access to its contribution-related files and records or, if requested, promptly provide GS/OAS with certified photocopies thereof.

**Article 18.** The CEP agrees to cooperate fully with the GS/OAS and with the GS/OAS' Inspector General ("IG") and/or with any auditors designated by either of them.

## **CHAPTER IX GENERAL PROVISIONS**

**Article 19.** Annexes I and II to this Agreement are hereby incorporated by reference into this Agreement.

**Article 20.** This Agreement, including Annexes I and II, hereto, may be amended by written agreement signed by the duly authorized representatives of the Parties, and annexed hereto.

**Article 21.** This Agreement shall enter into force upon the date it is signed by the duly authorized representatives of the Parties and shall remain in force until terminated by mutual written agreement or as stated below.

**Article 22.** Either Party may terminate this Agreement by 30 days' advanced written notice to the other Party.

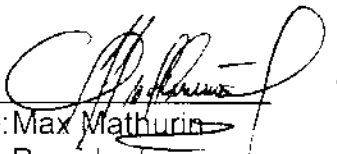
A handwritten signature in dark ink, appearing to be a stylized 'P' followed by a flourish.

**Article 23.** The obligations of the Parties under Articles V, VI, and VIII shall survive the termination of this Agreement.

**Article 24.** This Agreement is being signed by the duly authorized representatives of the Parties in duplicate originals in both French and English.

SIGNED by the duly authorized representatives of the Parties, in duplicate originals in French and in English at the place and on the date indicated below:

**FOR THE PROVISIONAL ELECTORAL  
COUNCIL OF THE  
REPUBLIC OF HAITI:**

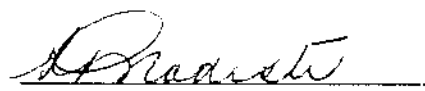
  
Name: Max Mathurin  
Title: President

23/05/05

Date:

Place: Port-au-Prince, Haiti

**FOR THE GENERAL SECRETARIAT  
OF THE ORGANIZATION OF  
AMERICAN STATES:**

  
Name: Denneth Modeste  
Title: Special Representative of  
Secretary General

Date: 23/5/05

Place: Port-au-Prince, Haiti