



Government of Samoa

TENDER DOCUMENTS

Issued on

Friday 18 May 2018

**For
PROCUREMENT OF**

SUPPLY OF ONE (1) NEW PILOT BOAT

GOODS & RELATED SERVICES Tender No:

MARKET PARTICIPANTS

Foreign: YES

Local: YES

Funded by: SAMOA PORTS AUTHORITY

Purchaser: SAMOA PORTS AUTHORITY

Contact Entity: SAMOA PORTS AUTHORITY

PREFACE

Purpose

The purpose of these Standard Tender Documents is to establish and maintain in Samoa a public procurement and contracting framework which:

- closely reflects internationally recognized good practice;
- encourages high quality services, economy and efficiency;
- provides eligible firms the opportunity to compete for services tendered by the Government of the Independent State of Samoa (“Government”);
- presents a standardized common procedure for the Government; and
- is transparent to Government departments and public bodies, participating contractors and the public at large.

Reference to “Government” includes all Government departments and public bodies. For the purpose of this Document, “department” and “public body” has the same meaning in the Public Finance Management Act 2001.

Application

This Document is called the Government Standard Tender Document issued and administered by the Ministry of Finance for use in the Request for Tender (“RfT”) process for procurement of Goods & Related Services and related contracts estimated to exceed SAT\$100,000. All contracts valued at more than SAT\$50,000 must be approved by the Government Tenders Board (“Tenders Board”) established by section 88 of the Public Finance Management Act 2001.

This document may also be used for General Services of value less than SAT\$50,000+ to SAT\$100,000.

Origins

This Tender Document (in particular, the terms of structure, format and operative provisions) is largely based on Sections I to VI of the World Bank Standard Bidding Documents for Procurement of Goods dated May 2007 (and as revised May 2010) .

Localization amendments

With the objective of seeking approval for the use on projects funded and supervised by the World Bank (“WB”) and the Asian Development Bank (“ADB”), the content of this Tender Document has largely remained the same except for:

- references to the language to be used and the applicable law;
- Instructions to Tenderers (“ITT”) under Section I at Clause 1.3 with regard to the application of documents and funding modes;
- ITT at Clause 1.4 with regard to interpretation;
- the general substitution throughout the Tender Document the removal of the word “bid” and its derivatives with the term “tender” & its derivatives;
- the removal of all references to the term “Bank” and replaced with “the Government”;
- the inclusion of eligible foreign nationalities in the tender process unless excluded by virtue of “limited tendering procedures” or “single tendering procedures” pursuant to Appendix I of the Tenders Board Guidelines for Procurement and Contracting: Goods, Works & General Services (“GWGS”) at Clause 4.2b of the ITT;

- reference local eligibility requirements of the Tenders Board Guidelines for Procurement and Contracting: GWGS at Clause 4.3 of the ITT;
- the insertion of **Section II (b) - Tender Preparation Checklist** (“TPCL”) to establish better compliance from prospective Tenderers in submitting their Tenders; and
- the exercise of “good faith” measures for resolving complaints and dispute resolution which may arise during the tendering process before any formal means of dispute resolution is instituted.

Authorization/ Security

All document versions whether it be in “draft” or “final” stage shall be issued with PDF write protected for **Section I - Instructions to Tenderers** and **Section VII - General Conditions of Contract**. These documents will be issued under the signatures of the Chairman and the Secretary of the Tenders Board with appropriate notations as to the amendments in the event of changes (if any).

Application Modalities, Evaluation and Award

The preferred application modality is open competitive tender. Contract award shall be based on the determination of the **lowest evaluated substantially responsive tender in which –**

- (a) **“substantially responsive”** means mostly compliant with commercial and technical (material) requirements, without significant (non-material) deviations, reservations and omissions of the Tenderer’s proposal compared with specified requirements in the Tender Document; and
- (b) **“lowest evaluated”** means the lowest tender prices submitted for the proposed contract for Goods & Related services for the purposes of evaluation in order to determine the lowest evaluated tender for the contract award.

Depending on the nature of Goods and Related Services required, the evaluation shall usually use PASS/FAIL criteria only or, a combination of PASS/FAIL with graded points scoring criteria at the discretion of the procuring entity.

Contract award requires post qualification to confirm the Tenderer selected is qualified to undertake the Contract in terms of **Section III - Qualification Criteria**.

Parties to the Contract

The **Parties to the Contract** are the **Purchaser** (procuring/ contracting entity which may be either a Ministry or Public Body representing and managing the Contract on behalf of the Government) and the **Supplier**, who is responsible for the delivery of the required Goods and Related Services in conformance with the specified quality, quantity and completion time requirements as specified in the Tender Document.

The Contract

Contract General Conditions – Structure

The notional composition of the General Conditions of Contract (“GCC”) in terms of clauses headings is as follows:

Governance Framework:

1. Definitions;
2. Contract Documents;
3. Fraud & Corruption;
4. Interpretation;
5. Language;
6. Joint Ventures, Consortia & Associations;
7. Eligibility;
8. Notices;
9. Governing Law;
10. Settlement of Disputes;
-
30. Limitation of Liability;
31. Changes in Laws and Regulations;
36. Assignment

Execution/ Delivery:

11. Inspections and Audit by the Government;
12. Scope of Supply;
13. Delivery and Documents;
14. Suppliers Responsibilities;
19. Copyright;
20. Confidential Information;
21. Subcontracting;
22. Specifications and Standards;
23. Packing and Documents;
24. Insurance;
25. Transportation;
26. Inspections and Tests;
29. Patent Indemnity;
33. Change Orders and Contract Amendments;
34. Extensions of Time;
37. Export Restriction

Financial:

15. Contract Price;
16. Terms of Payment;
17. Taxes and Duties;
18. Performance Security;

Completion and Closure:

18. Performance Security;
27. Liquidated Damages;

- 28. Warranty;
- 32. Force Majeure;
- 35. Termination;

Contract

The Contract itself is between the Purchaser and the Supplier for the provision and completion of the required Goods and Related Services. It comprises the following documents (however they may be called) in order of priority:

- (a) Contract Agreement;
- (b) Letter of Acceptance;
- (c) Goods and Related Services Provider's Tender;
- (d) Special Conditions of Contract ("SCC");
- (e) General Conditions of Contract ("GCC");
- (f) the Specifications;
- (g) the Supply Schedule;
- (h) the completed Contract appendices (if used); and
- (i) any other document listed in the SCC.

Legal Approvals

For preliminary invitation and tendering processes, provided that the Tender Document for Goods and Related Services ("GRS") template is used and the general tendering conditions are consistent with the Government Procurement Guidelines relating to GRS, the endorsement of the Attorney General's Office is not necessary. However, the responsible executing agency may seek an opinion or review of the Office of the Attorney General if the contract scope of services is seen to be out of the ordinary or involves a high level of risk to the government (or any proposed/intended amendment(s) to the General Conditions of Contract).

Provided that this Tender Document is used for the proposed contract for GRS, the review and endorsement by the Attorney General's Office should be concerned only with confirming that the following have been adhered to:

- (a) in all material (significant) aspects, the Tender Documents have been followed;
- (b) that the conditions as specified in the Tender Data Sheet ("TDS") are fair and equitable to all Tenderers and that the Government's interests are sufficiently protected;
- (c) the evaluation, eligibility and qualification criteria as specified in the Tender Documents are appropriate in accordance with the contract context and the relevant market/industry; and
- (d) that the SCC sufficiently and adequately expand on the provisions referred to in the GCC and do not expose Government to any reasonably foreseeable risks.

As a matter of policy, ALL contracts involving procurement of GRS must be submitted to the Attorney General's Office for review and endorsement before execution of the same.

USER/ APPLICATION GUIDE

1 APPLICATION SCOPE

The procurement of Goods and Related Services (GRS) embraces a multitude of supply requirements across numerous development sectors and operational contexts which includes but is not exclusive of the following:

- (a) information technology and communications;
- (b) health;
- (c) education;
- (d) agriculture;
- (e) infrastructure - transportation, water supply and sanitation, power generation and distribution and so forth;
- (f) mobile plant and vehicles;
- (g) manufacturing; and
- (h) machinery maintenance.

The nature of Goods may vary from very simple described objects, supplies and commodities to highly technical complex and very costly aerospace vehicles and process/ manufacturing equipment.

Related Services usually are a relatively minor portion of GRS supply requirements but are none the less important in enabling the final effective use of the Goods, in the form of installation/commissioning, testing, training, production of operation and training materials and maintenance.

2 SCOPING PURCHASER'S REQUIREMENTS

Before issuing a Request for Tenders ("RfT"), the Purchaser and the Procuring Entity must pay careful attention to:

- a) clearly defining end user requirements in terms of physical, functional and performance characteristics, quantity, delivery place and delivery time;
- b) researching availability and pricing of required goods and related services in the local, regional and international markets, to target opportunities for optimizing supplier competition, value for money and future manufacturer/ supplier in country support;
- c) preparing technical specifications which are neutral and without bias to one (1) manufacture or supplier, while at the same time able to satisfactorily fulfill end user requirements;
- d) preparing accurate cost estimates which realistically reflect competitive market pricing, with sufficient current budget appropriation and to the extent possible, inclusion of the same in the Purchaser's annual procurement plan;
- e) ensuring that proposed procurement requirements, actions and processes do not contravene any applicable national laws and regulations; and
- f) ensuring that technical specifications and cost estimates are certified by a competent public professional or recognized private consultant in the appropriate

sector and discipline before the same are tendered out as part of the Tender Documents.

3 TENDER SUBMISSION REQUIREMENTS

Stated in simple terms, the Supplier's Tender must include the following:

- a) the Tender Submission Form (Section IV- 3. Tender Submission Form);
- b) Tender Security or Tender Securing Declaration (ITT 21, **Section IV** – 9. Tender Security (Tender Bond) and 10. Tender Securing Declaration Forms);
- c) Price Schedules applicable to context (ITT 14, **Section IV** – 4. Price Schedule: Goods Manufactured outside the Purchaser's Country to be Imported, 5. Price Schedule: Goods Manufactured Outside the Purchaser's Country already Imported, 6. Price Schedule: Goods Manufactured in the Purchaser's Country and 7. Price and Completion Schedule – Related Services Forms, currencies according to ITT 15 of the TDS and Section V - Eligible Countries) of the Tender Documents;
- d) signature by a duly authorised person pursuant to ITT 22 of the Tender Documents;
- e) documentary evidence of eligibility pursuant to ITT 4, 16 and 17 of the Tender Documents;
- f) clear evidence of responsiveness to technical specifications and standards without material or a substantial deviation, omission or reservation from the technical specification and standards specified in Section VI – Schedule of Requirements pursuant to ITT 18 of this Tender Document;
- g) documentary evidence establishing the pre-qualifications and post qualifications of the Tenderer pursuant to ITT 19 and ITT 38; and
- h) any other documents as requested for in the TDS.

4 DELIVERY TERMS – Clarification: Section I - Instructions to Tenderers at ITT 14.5 - INCOTERMS

For explanation of meaning of INCOTERMS and applicable responsibilities of the Supplier and Purchaser, please refer to noting the following are particularly applicable to Sāmoa:

- **EXW:** Ex Works (named place of delivery). The Supplier shall make the goods available at its own premises on a mutually agreed date. The Purchaser is responsible for all other actions, costs and risks. **Places minimum obligations on the Supplier and maximum obligations on the Purchaser.**
- **CIF:** Cost, Insurance & Freight (named port of destination). The Supplier pays for the cost of goods and freight, procures and pays for insurance. **CIF mode is the basis of customs charges and duty assessment in Samoa. (The Purchaser is responsible for all unloading charges, loading on truck, carriage to destination place, import clearance and customs charges unless stated otherwise by the Purchaser.)**
- **CIP:** Carriage & Insurance Paid To (named place of destination). "The containerized transport/ multimodal equivalent of CIF. The Supplier pays for carriage and insurance to the named destination point, but the risk passes when the goods are handed over to

the first carrier” (Import customs clearance and import taxes are paid by the Purchaser).

- **DDP:** Delivered Duty Paid. The Supplier is responsible for delivering the goods to the named place in the country of the purchaser and pays all costs in bringing the goods to the destination including import duties and taxes. **Places maximum obligations on Supplier and minimum obligations on the Purchaser.**

5 INSURANCES: Section I - Instructions to Tenderers at ITT 14.5

For insurance coverage on incoming overseas shipments, the executing agency should refer to the following prior to any discussion with the Supplier of goods or its Shipping Agent.

Insurance

Goods shall be fully insured in the eligible country in a fully convertible currency, against loss or damage incidental to manufacture, acquisition, transportation, storage or delivery according to Incoterms or as otherwise specified in SCC 24.1 of the Tender Documents.

SCC 24.1 provides the Purchaser with protection against partial or total loss or damage during shipment, transportation and storage.

Standard Tender Document

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PART 1 – Tendering Procedures

Section I. Instructions to Tenderers

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Section I. Instructions to Tenderers

General

- 1. Scope of Tender**
- 1.1 The **Purchaser**, issues this Tender Document for the supply of Goods and Related Services incidental thereto as specified in Section VI-Schedule of Requirements.
- 1.2 The name and identification number of this Competitive Tendering procurement are **specified in the TDS**. The name, identification, and number of lots of are also **provided in the TDS**.
- 1.3 The application of this Tender Document is permitted for the following funding modes:
- Public bodies own budget
- 1.4 Throughout this Tendering Document:
- (a) **“day”** means calendar day;
 - (b) **“Government”** means the Government of the Independent State of Samoa, including a Government department and public body (as defined in the Public Finance Management Act 2001);
 - (c) the term **“in writing”** means communicated in written form (e.g. by mail, e-mail, fax, telex) with proof of receipt;
 - (d) **“Purchaser”** is the *Samoa Ports Authority* acting for and on behalf of the Government or delegate or proxy for the Government and the Executor of the Contract;
 - (e) **“Contact Entity”** is the Purchaser’s assigned agency or person for conducting the tendering and contract administration processes; and
 - (f) if the context so requires, **“singular”** means **“plural”** and vice versa;

- 2. Source of Funds**
- 2.1 The **Government** has assigned or received financing (“funds”) from its own resources and/or donor contributions towards the cost of the project **named in the TDS**. The **Government** intends to apply a portion of the funds to eligible payments under the contract for which this Tender Document is issued.
- 2.2 Payment by the Government from its own funds shall be in accordance with the Government’s Treasury Instructions and Payment Policy.
- 2.3 For co-funded and fully donor funded projects, payments by the **Government** will be made only at the request of the **Purchaser** and upon approval by the Government in accordance with the terms and conditions of the financing agreement between the Government and the Donor Agency (“Donor Agreement”). This will be subject in all respects to the terms and conditions of that Donor Agreement.

Such Donor Agreement may prohibit a withdrawal from the donor imprest account for the purpose of any payment to persons or entities, or for any import of goods, if such payment or import, to the knowledge of the Government, is prohibited by decision of the United Nations Security Council taken under Chapter VII of the Charter of the United Nations.

No party other than the Government shall derive any rights from the Donor Agreement or have any claim to the funds.

- Fraud and Corruption**
- 3.1 The Purchaser shall require that the Supplier, its contractors and their agents (whether declared or not), personnel, subcontractors, sub-consultants, and service providers under Government-financed contracts, observe the highest standard of ethics during the procurement and execution of such contracts pursuant to GCC 3 of this Tender Document.¹, Accordingly, the Government:
- (a) shall clarify the terms set out in GCC 3 where it becomes necessary;

¹ *In this context, any action taken by a tenderer, supplier, contractor, or any of its personnel, agents, subcontractors, sub-consultants, service providers, suppliers and/or their employees to influence the procurement process or contract execution for undue advantage is improper.*

- (b) shall reject a proposal for award of Contract if it determines that the Tenderer recommended for award has, directly or through an agent, engaged in corrupt, fraudulent, collusive, coercive or obstructive practices in competing for the contract in question;
- (c) will cancel the portion of the funding allocated to a contract if it determines at any time that representatives of the Purchaser engaged in corrupt, fraudulent, collusive, or coercive practices during the procurement or the execution of that contract, without the Purchaser having taken timely and appropriate action satisfactory to the Government to remedy the practice in question; and
- (d) will sanction a firm or an individual, at any time, in accordance with prevailing Government sanctions procedures, including by publicly declaring such firm or individual ineligible, either indefinitely or for a specified period of time:
 - (i) to be awarded a Government-financed contract; and
 - (ii) to be a nominated^b subcontractor, consultant, manufacturer or supplier, or service provider of an otherwise eligible firm being awarded a Government-financed contract.

3.2 Where necessary and only in exceptional circumstances, the Tenderers shall permit the Government to inspect any accounts and records and other documents relating to the Tender submission and contract performance, and to have them audited by auditors appointed by the Government.

3.3 Furthermore, Tenderers shall be aware of the provision stated in GCC 35.1 of this Tender Document with regard to termination.

**Eligible
Tenderers**

4.1 Subject to ITT 4.6, a Tenderer may be a *natural person*, private entity, or government-owned entity or a joint venture, under an existing agreement, or with the intent to constitute a legally-enforceable joint venture. Unless otherwise **stated in the TDS**, all partners shall be jointly and severally liable for the execution of the Contract in accordance with the terms and conditions of Contract.

^b A nominated sub-contractor, consultant, manufacturer or supplier, or service provider (different names are used depending on the particular tendering document) is one which either has been: (i) included by the tenderer in its pre-qualification application or tender because it brings specific and critical experience and know-how that are accounted for in the evaluation of the Tenderer's pre-qualification application or the tender; or (ii) recommended by the Purchaser

- 4.2 A Tenderer, and all parties constituting the Tenderer, shall have the nationality of an eligible country, in accordance with **Section V -Eligible Countries**. Accordingly:
- (a) a Tenderer shall be deemed to have the nationality of a country if the Tenderer is a citizen or is constituted, or incorporated, and operates in conformity with the provisions of the laws of that country. This criterion shall also apply to the determination of the nationality of proposed subcontractors or suppliers for any part of the Contract including related services; and
 - (b) any Tenderer of an eligible nationality foreign to the Independent State of Samoa shall not be excluded from participation and qualification in tender processes, unless the tender process is designated as “limited tendering procedure” (for those selected tenders invited by the Purchaser to submit offers) or “single tendering procedure” (for invited individual tenderers only) rather than the preferred “open competitive tender process” as per Appendix I of the Tenders Board Guidelines for Procurement and Contracting: GWGS.
- 4.3 All Tenderers shall satisfy the eligibility requirements defined in the Tenders Board Guidelines for Government Procurement and Contracting: GWGS as may be amended from time to time, notwithstanding that a foreign entity may present specifically equivalent documentary credentials from its country of domicile and business operations.
- 4.4 A Tenderer shall not have a conflict of interest. All Tenderers found to have conflict of interest shall be disqualified. Tenderers may be considered to have a conflict of interest with one (1) or more parties in the tendering process if they:
- (a) are or have been associated in the past, with a firm or any of its affiliates which have been engaged by the Purchaser to provide consulting services for the preparation of the design, specifications, and other documents to be used for the procurement of the goods to be purchased under this Tender Document; and
 - (b) submit more than one (1) tender in the tendering process, except for alternative offers permitted under ITT Clause 13.
- 4.5 A firm that has been sanctioned by the Government in accordance with ITT 3.1 (d) shall be ineligible to be awarded a contract, or benefit from a Government-financed contract, financially or otherwise, during such period of time as the Government shall determine. The list of debarred firms is available at the specified addresses in the **TDS**.

- 4.6 Foreign Government-owned enterprises and public bodies in Samoa shall be eligible only if they can establish that they:
- (i) are legally and financially autonomous,
 - (ii) operate under commercial law, and
 - (iii) are not a dependent agency of the Purchaser.

- 4.7 Tenderers shall provide such evidence of their continued eligibility satisfactory to the Purchaser as the Purchaser shall reasonably request.

**Eligible Goods
and Related
Services**

- 5.1 All the Goods and Related Services to be supplied under the Contract and financed by the Government may have their origin in any country in accordance with **Section V- Eligible Countries**.

- 5.2 For purposes of this Clause, the term:

“goods” includes commodities, raw material, machinery, equipment, and industrial plants; and

“related services” includes services such as insurance, minor construction, installation, commissioning, training, initial maintenance, preparation of operating and maintenance manuals.

- 5.3 The term **“origin”** means the country where the goods have been mined, grown, cultivated, produced, manufactured or processed or through manufacture, processing, or assembly, another commercially recognized article results that differ substantially in its basic characteristics from its components.

Contents of Tendering Documents

**Sections
of Tendering
Documents**

- 6.1 The Tender Documents consist of Parts 1, 2 and 3 which include all the Sections indicated below and should be read in conjunction with any Addendum issued in accordance with ITT 8.

PART 1 Tendering Procedures

- Section I. Instructions to Tenderers (“ITT”)
- Section II. Tender Data Sheet (“TDS”)
- Section III. Evaluation and Qualification Criteria
- Section IV. Tendering Forms
- Section V. Eligible Countries

PART 2 Supply Requirements

- Section VI. Schedule of Requirements

PART 3 Contract

- Section VII. General Conditions of Contract (“GCC”)
- Section VIII. Special Conditions of Contract (“SCC”)
- Section IX. Contract Forms

6.2 The Request for Tenders as issued by the Purchaser and set out in Section IX forms part of the Tender Documents.

6.3 The Purchaser is not responsible for the completeness of the Tender Documents and their addenda if they were not obtained directly from the Purchaser.

6.4 The Tenderer is expected to examine all instructions, forms, terms, and specifications in the Tender Documents. Failure to furnish all information or documentation required by the Tender Documents may result in the rejection of the tender.

Clarification of Tendering Documents

7.1 A prospective Tenderer requiring any clarification of the Tender Documents shall contact the Purchaser in writing at the Purchaser’s address **specified in the TDS**. The Purchaser shall respond in writing to any request for clarification, provided that such request is received no later than the number of days specified in the **TDS** prior to the deadline for submission of Tenders. The Purchaser shall forward copies of its response to all those who have acquired the Tender Documents directly from it, including a description of the inquiry but without identifying its source. Should the Purchaser deem it necessary to amend the Tender Documents as a result of a clarification, it shall do so following the procedure under ITT 8 and ITT 24.2 of the Tender Documents.

Amendment of Tendering Documents

8.1 At any time prior to the deadline for submission of Tenders, the Purchaser may amend the Tender Documents by issuing an addendum.

8.2 Any addendum issued shall form part of the Tender Documents and shall be communicated in writing to all who have obtained the Tender Documents directly from the Purchaser.

8.3 To give prospective Tenderers reasonable time in which to take an addendum into account in preparing their Tenders the Purchaser may, at its discretion, extend the deadline for the submission of Tenders, pursuant to ITT 24.2 of this Tender Document.

Preparation of Tenders

- | | | | |
|---|-----------|------|--|
| Cost Tendering | of | 9.1 | The Tenderer shall bear all costs associated with the preparation and submission of its tender, and the Purchaser shall not be liable for those costs, regardless of the conduct or outcome of the tender process. |
| Language Tender | of | 10.1 | The Tender as well as all correspondence and documents relating to the same, shall be written in the language specified in the TDS . Supporting documents and any other printed materials that are part of the Tender may be in another language provided they are accompanied by an accurate translation of the relevant passages of the Tender in the language specified in the TDS , in which case and for the purposes of interpreting the Tender, the translated version shall take precedent. |
| Documents Comprising the Tender | | 11.1 | The Tender shall comprise the following: <ul style="list-style-type: none"> (a) the Tender Submission Form and the applicable Price Schedules in accordance with ITT 12, 14, and 15; (b) Tender Security or Tender-Securing Declaration in accordance with ITT 21 if required; (c) written confirmation authorising the signatory of the Tender to commit the Tenderer in accordance with ITT 22; (d) documentary evidence in accordance with ITT 16 establishing the Tenderer's eligibility to tender; (e) documentary evidence in accordance with ITT 17, that the Goods and Related Services to be supplied by the Tenderer are of eligible origin; (f) documentary evidence in accordance with ITT 18 and 30, that the Goods and Related Services conform to the Tender Documents; (g) documentary evidence in accordance with ITT 19 establishing the Tenderer's qualifications to perform the contract if its tender is accepted; and (h) any other document required in the TDS. |
| Tender Submission Form and Price Schedules | | 12.1 | The Tenderer shall submit the Tender Submission Form using the form in Section IV - Tendering Forms . This form must be completed without any alterations to its format, and no substitutes shall be accepted. All blank spaces shall be filled in with the information requested. |
| | | 12.2 | The Tenderer shall submit the Price Schedules for Goods and Related Services, according to their origin as appropriate, using the forms provided for in Section IV - Tendering Forms . |
| Alternative Tenders | | 13.1 | Unless otherwise specified in the TDS , alternative tenders shall not be considered. |

Tender Prices and Discounts

- 14.1 The prices and discounts quoted by the Tenderer in the Tender Submission Form and in the Price Schedules shall conform to the requirements specified in this ITT 14.
- 14.2 All lots and items must be listed and priced separately in the Price Schedules.
- 14.3 The price to be quoted in the Tender Submission Form shall be the total price of the Tender, including the applicable taxes as specified in the **TDS** but excluding any discounts offered.
- 14.4 The Tenderer shall quote any unconditional discounts and indicate the method for their application in the Tender Submission Form.
- 14.5 The terms EXW, CIP, and other similar terms shall be governed by the rules prescribed in the current edition of Incoterms, published by The International Chamber of Commerce as specified in the **TDS**.
- 14.6 Prices shall be quoted as specified in each Price Schedule included in **Section IV- Tendering Forms**. The dis-aggregation of price components is required solely for the purpose of facilitating the comparison of Tenders by the Purchaser. This shall not in any way limit the Purchaser's right to contract on any of the terms offered. In quoting its prices, the Tenderer shall be free to use transportation through carriers registered in any eligible country, in accordance with **Section V - Eligible Countries**. Similarly, the Tenderer may obtain insurance services from any eligible country in accordance with **Section V - Eligible Countries**. Prices shall be entered in the following manner:
- (a) **For Goods manufactured in the Purchaser's Country:**
- (i) the price of the Goods quoted EXW (ex works, ex factory, ex warehouse, ex showroom, or off-the-shelf, as applicable), including all customs duties and sales and other taxes already paid or payable on the components and raw material used in the manufacture or assembly of the Goods;
- (ii) any Purchaser's Country sales tax and other taxes which will be payable on the Goods if the contract is awarded to the Tenderer; and
- (iii) the price for inland transportation, insurance, and other local services required to convey the Goods to their final destination (Project Site) as specified in the **TDS**.

(b) **For Goods manufactured outside the Purchaser's Country, to be imported:**

- (i) the price of the Goods, quoted CIP named place of destination, or CIF port of destination as specified in the **TDS**;
- (ii) the price for inland transportation, insurance, and other local services required to convey the Goods from the named place of destination to their final destination (Project Site) specified in the **TDS**;
- (iii) in addition to the CIP prices specified in (b)(i) above, the price of the Goods to be imported may be quoted FCA (named place of destination) or CPT (named place of destination), if so specified in the **TDS**; and
- (iv) **Tenderers shall note that the basis of Customs charges assessment is CIF.**

(c) **For Goods manufactured outside the Purchaser's Country, already imported:**

[For previously imported Goods, the quoted price shall be distinguishable from the original import value of those Goods declared to customs and shall include any rebate or mark-up of the local agent or representative and all local costs except import duties and taxes, which have been and/or have to be paid by the Purchaser. For clarity the Tenderers are asked to quote the price including import duties, and additionally to provide the import duties and the price net of import duties which is the difference from those values.]

- (i) the price of the Goods, including the original import value of the Goods; plus any mark-up (or rebate); plus any other related local cost, and custom duties and other import taxes already paid or to be paid on the Goods already imported.
- (ii) the custom duties and other import taxes already paid (need to be supported with documentary evidence) or to be paid on the Goods already imported;
- (iii) the price of the Goods, obtained as the difference between (i) and (ii) above;

- (iv) any Purchaser's Country sales and other taxes which will be payable on the Goods if the contract is awarded to the Tenderer; and
- (v) the price for inland transportation, insurance, and other local services required to convey the Goods from the named place of destination to their final destination (Project Site) specified in the **TDS**.
- (d) **for Related Services**, other than inland transportation and other services required to convey the Goods to their final destination, whenever such Related Services are specified in the Schedule of Requirements:
 - (i) the price of each item comprising the Related Services (inclusive of any applicable taxes).

14.7 Prices quoted by the Tenderer shall be fixed during the Tenderer's performance of the Contract and not subject to variation on any account, unless otherwise specified in the **TDS**. A Tender submitted with an adjustable price quotation shall be treated as non-responsive and shall be rejected, pursuant to ITT 30. However, if in accordance with the **TDS**, prices quoted by the Tenderer shall be subject to adjustment during the performance of the Contract, a tender submitted with a fixed price quotation shall not be rejected, but the price adjustment shall be treated as zero.

14.8 If so indicated in ITT 1.1, Tenderers may be invited for individual contracts (lots) or for any combination of contracts (packages). Unless otherwise indicated in the **TDS**, prices quoted shall correspond to all of the items specified for each lot and to all of the quantities specified for each item in that particular lot. Tenderers wishing to offer any price reduction (discount) for the award of more than one (1) Contract shall specify the applicable price reduction in accordance with ITT 14.4 provided the tenders for all lots are submitted and opened at the same time.

Currencies of Tender 15.1 The Tenderer shall quote in the currency of the Purchaser's Country the portion of the tender price that corresponds to expenditures incurred in the currency of the Purchaser's country, unless otherwise specified in the **TDS**.

15.2 The Tenderer may express the tender price in the currency of any country in accordance with **Section V -Eligible Countries**; but for purposes of comparison of tender price, the tender price may then be valued in terms of the Samoan Tala or other single currency stated in the tender documents and the rates of exchange to use is the

prevailing selling rates at that time. If no official exchange rates are available, this shall be determined by the procuring entity with the approval of the Tenders Board.

Documents
Establishing the Eligibility of the Tenderer

16.1 To establish their eligibility in accordance with ITT 4, Tenderers shall complete the Tender Submission Form included in Section IV - Tendering Forms.

Documents
Establishing the Eligibility of the Goods and Related Services

17.1 To establish the eligibility of the Goods and Related Services in accordance with ITT 5, Tenderers shall complete the Country of Origin declarations in the Price Schedule Forms of **Section IV- Tendering Forms**.

Documents
Establishing the Conformity of the Goods and Related Services

18.1 To establish the conformity of the Goods and Related Services to the Tendering Documents, the Tenderer shall furnish as part of its Tender the documentary evidence that the Goods conform to the technical specifications and standards specified in **Section VI- Schedule of Requirements**.

18.2 The documentary evidence may be in the form of literature, drawings or data, and shall consist of a detailed item by item description of the essential technical and performance characteristics of the Goods and Related Services, demonstrating substantial responsiveness of the Goods and Related Services to the technical specification, and if applicable, a statement of deviations and exceptions to the provisions of the Schedule of Requirements.

18.3 The Tenderer shall also furnish a list giving full particulars, including available sources and current prices of spare parts, special tools, etc., necessary for the proper and continuing functioning of the Goods during the period **specified in the TDS** following commencement of the use of the goods by the Purchaser.

18.4 Standards for workmanship, process, material, and equipment, as well as references to brand names or catalogue numbers specified by the Purchaser in the Schedule of Requirements, are intended to be descriptive only and not restrictive. The Tenderer may offer other standards of quality, brand names, and/or catalogue numbers, provided that it demonstrates, to the Purchaser's satisfaction, that the substitutions ensure substantial equivalence or are superior to those specified in the Schedule of Requirements.

Documents

19.1 The documentary evidence of the Tenderer's qualifications to perform the contract if its tender is accepted shall establish to the Purchaser's

Establishing the Qualifications of the Tenderer

satisfaction:

- (a) that if **required in the TDS**, a Tenderer that does not manufacture or produce the Goods it offers to supply shall submit the **Manufacturer's Authorisation** using the form included in **Section IV- Tendering Forms** to demonstrate that it has been duly authorised by the manufacturer or producer of the Goods to supply these Goods in the Purchaser's Country;
- (b) that if **required in the TDS**, in case of a Tenderer not doing business within the Purchaser's Country, the Tenderer is or will be (if awarded the contract) represented by an Agent in the Purchaser's Country equipped and able to carry out the Supplier's maintenance, repair and spare parts-stocking obligations prescribed in the Conditions of Contract and/or Technical Specifications; and
- (c) that the Tenderer meets each of the qualification criterion specified in **Section III - Evaluation and Qualification Criteria** of the Tender Documents.

Period of Validity of Tenders

- 20.1 Tenders shall remain valid for the period **specified in the TDS** after the tender submission deadline date prescribed by the Purchaser. A tender valid for a shorter period shall be rejected by the Purchaser as being non-responsive.
- 20.2 In exceptional circumstances, prior to the expiration of the tender validity period, the Purchaser may request Tenderers to extend the validity period of their Tenders. The request and the responses shall be made in writing. If a Tender Security is requested in accordance with ITT 21, it shall also be extended for a corresponding period. A Tenderer may refuse the request without forfeiting its Tender Security. A Tenderer granting the request shall not be required or permitted to modify its tender, except as provided for in ITT 20.3.
- 20.3 In the case of fixed price contracts, if the award is delayed by a period exceeding fifty-six (56) consecutive days (including weekends) counted after the initial tender validity period, the Tender price shall be adjusted as specified in the request for extension. Tender evaluation shall be based on the Tender Price without taking into consideration the above adjusted price.

Tender Security

- 21.1 The Tenderer shall furnish as part of its tender, a Tender Security or a Tender-Securing Declaration if required, as **specified in the TDS**.
- 21.2 The Tender Security shall be in the amount specified in the **TDS** and

denominated in the currency of the Purchaser's Country or a freely convertible currency, and shall:

- (a) at the Tenderer's option, be in the form of either a letter of credit, or a bank guarantee from a banking institution, or a bond issued by a surety;
- (b) be issued by a reputable institution selected by the tenderer and located in any eligible country. If the institution issuing the bond is located outside the Purchaser's Country, it shall have a correspondent financial institution located in the Purchaser's Country to make it enforceable;
- (c) be substantially in accordance with one of the forms of Tender Security in **Section IV- Tendering Forms**, or another form approved by the Purchaser prior to the close of tender submission;
- (d) be payable promptly upon written demand by the Purchaser in case the conditions listed in ITT 21.5 are invoked;
- (e) be submitted in its original form as copies will not be accepted; and
- (f) remain valid for a period of twenty eight (28) days beyond the validity period of the tenders as extended if applicable, in accordance with ITT 20.2.

21.3 If a Tender Security or a Tender-Securing Declaration is required in accordance with ITT 21.1, any tender not accompanied by a substantially responsive Tender Security or Tender Securing Declaration in accordance with ITT 21.1 shall be rejected by the Purchaser as being non-responsive.

21.4 The Tender Security of unsuccessful Tenderers shall be returned as promptly as possible upon the successful Tenderer's furnishing of the Performance Security pursuant to ITT 44.

21.5 The Tender Security may be forfeited:

- (a) if a Tenderer withdraws its tender during the period of tender validity in accordance with ITT 20.1, and as provided for in ITT 20.2 if applicable; or
- (b) if the successful Tenderer fails to:
 - (i) sign the Contract in accordance with ITT Clause 43;
 - (ii) furnish a Performance Security in accordance with ITT Clause 44; and
 - (iii) Accept the arithmetic correction made in accordance with ITT 31.3.

21.6 The Tender Security or Tender- Securing Declaration of a JV must be in the name of a legally constituted JV that submits the tender or otherwise in the names of all future partners as named in the letter of intent mentioned in **Section IV - Tendering Forms, at 7. Tenderer Information Form Item 7.**

21.7 If a Tender security is **not required in the TDS**, and if a Tenderer withdraws its tender during the period of tender validity specified by the Tenderer in accordance with ITT 20.1 and ITT 20.2 where applicable, that Tender will be disqualified.

**Format and
Signing of Tender**

22.1 The Tenderer shall prepare one (1) original of the documents comprising the tender as described in ITT and clearly mark it **"ORIGINAL."** In addition, the Tenderer shall submit the required amount of copies of that Tender, in accordance with the **TDS** and clearly mark them **"COPY"**. In the event of any discrepancy between the Original and the Copies, the Original prevails.

22.2 The Original and all Copies of the tender shall be typed or written in indelible ink and shall be signed by the Tenderer or a person duly authorised to sign on behalf of the Tenderer.

22.3 Any interlineation, erasures, or overwriting shall be valid only if they are signed or initialed by the authorised person signing the Tender.

Submission and Opening of Tenders

**Submission,
Sealing and
Marking of
Tenders**

23.1 Tenderers must always submit their Tenders by mail or by hand delivery. Tenderers submitting tenders by mail or by hand delivery, shall enclose the original and each copy of the Tender, including alternative tenders, if permitted in accordance with ITT 13, in three (3) separate envelopes, sealed and duly marked as **"ORIGINAL"**, **"COPY"** and **"ALTERNATIVE"**, respectively. All three (3) envelopes shall then be enclosed in one (1) single envelope. The rest of the procedure shall be in accordance with ITT 23.2 and 23.3.

23.2 The inner and outer envelopes shall:

- (a) Bear the name and address of the Tenderer;
- (b) be addressed to the Purchaser in accordance with ITT 24.1;
- (c) bear the specific identification of this tendering process indicated in ITT 1.1 and any additional identification marks as **specified in the TDS**; and

- (d) bear a warning to the effect that the envelope must not be opened before the time and date for tender opening in accordance with ITT 27.1 of this Tender Document.

23.3 If all envelopes are not sealed and marked as required, the Purchaser will assume no responsibility for the misplacement or premature opening of any tender. The Purchaser also assumes no responsibility for delay in courier or any other form of delivery.

Deadline for Submission of Tenders 24.1 Tenders must be received by the Purchaser at the address and no later than on the date and time **specified in the TDS**.

24.2 The Purchaser may at its discretion, extend the deadline for the submission of tenders by amending the Tender Documents in accordance with ITT 8, in which case all rights and obligations of the Purchaser and Tenderers previously subject to the deadline shall thereafter be subject to the deadline as extended.

Late Tenders 25.1 The Purchaser shall not consider any tender that arrives after the deadline for submission of tenders in accordance with ITT 24. Any tender received by the Purchaser after the deadline for submission of tenders shall be declared late, rejected and returned unopened to the Tenderer.

Withdrawal, Substitution, and Modification of Tenders 26.1 A Tenderer may withdraw, substitute, or modify its Tender after it has been submitted by sending a written notice in accordance with ITT 23, duly signed by the Tenderer or an authorised representative, and shall include a copy of the authorisation (the power of attorney) in accordance with ITT 22.2, (except that no copies of the withdrawal notice are required). The corresponding substitution or modification of the Tender must accompany the respective written notice. All notices must be:

- (a) submitted in accordance with ITT 22 and 23 (except that withdrawal notices do not require copies), and in addition, the respective envelopes shall be clearly marked "**WITHDRAWAL**", "**SUBSTITUTION**" or "**MODIFICATION**", respectively; and
- (b) received by the Purchaser prior to the deadline prescribed for submission of Tenders in accordance with ITT 24.

26.2 Tenders requested to be withdrawn in accordance with ITT 26.1 shall be returned unopened to the Tenderers.

26.3 No tender may be withdrawn, substituted, or modified in the interval between the deadline for submission of Tenders and the expiration of

the period of tender validity specified in accordance with ITT 20.1 as specified in the **TDS** or any extension thereof.

Tender Opening 27 The Purchaser shall conduct the tender opening at the address, date and time **specified in the TDS** in the presence of Tenderers (or designated representatives of the Tenderers), representatives of the procuring entity and Tenders Board:

First,

(a) envelopes marked "**WITHDRAWAL**" shall be opened and read out and the envelope **with the corresponding** tender shall not be opened, but returned to the Tenderer. If the withdrawal envelope does not contain a copy of the "power of attorney" confirming the signature as a person duly authorised to sign on behalf of the Tenderer, the corresponding Tender previously submitted will be opened. No tender withdrawal shall be permitted unless the corresponding withdrawal notice contains a valid authorisation to request the withdrawal and is read out at tender opening.

Next,

(b) envelopes marked "**SUBSTITUTION**" shall be opened and read out and exchanged with the corresponding Tender being substituted, and the substituted Tender previously submitted shall not be opened, but returned to the Tenderer. No Tender substitution shall be permitted unless the corresponding substitution notice contains a valid authorisation by means of a copy of the power of attorney to request the substitution and is read out at tender opening.

and

(c) envelopes marked "Modification" shall be opened and read out with the corresponding Tender. No Tender modification shall be permitted unless the corresponding modification notice contains a valid authorisation to request the modification and is read out at Tender opening. Only envelopes that are opened and read out at Tender opening shall be considered further.

27.1 All other envelopes shall be opened and read out identifying the following:

(a) the name of the Tenderer and whether there is a modification; the Tender Prices, including any discounts and alternative offers;

- (b) the presence of a Tender Security or Tender-Securing Declaration if required; and
 - (c) any other details as the Purchaser may consider appropriate. Only discounts and alternative offers read out at Tender opening shall be considered for evaluation. No Tender shall be rejected at Tender opening except for late Tenders, in accordance with ITT 25.1.
- 27.2 The Purchaser shall prepare a record of the Tender opening that shall include as a minimum:
- (a) the name of the Tenderer and whether there is a withdrawal, substitution, or modification;
 - (b) the Tender Price, per lot if applicable, including any discounts, and alternative offers if they were permitted; and
 - (c) the presence or absence of a Tender Security or Tender-Securing Declaration, if one was required. The Tenderers' representatives who are present shall be requested to sign the attendance record sheet. The omission of a Tenderer's signature (or signature of Tenderer's authorised representative) does not invalidate the contents and effect of the record sheet.

A copy of the record may be distributed to all Tenderers who submitted tenders in time.

Evaluation and Comparison of Tenders

- Confidentiality**
- 28.1 Information relating to the examination, evaluation, comparison, and post-qualification of the Tenders, and recommendation of contract award, shall not be disclosed to the Tenderers or any other persons not officially concerned with the tender process until the Contract Award has been formally made to the successful Tenderer.
- 28.2 Any effort by a Tenderer to influence the Purchaser in the examination, evaluation, comparison, and post qualification of the tenders or contract award decisions may result in the rejection of its Tender.
- 28.3 Notwithstanding ITT 28.2, from the time of tender opening to the time of Contract Award, if any Tenderer wishes to contact the Purchaser on any matter related to the tendering process, it should do so in writing.
- Clarification of Tenders**
- 29.1 To assist in the examination, evaluation, comparison and post-qualification of the tenders, the Purchaser may, at its discretion, request in writing from any Tenderer clarification of its Tender. Any clarification submitted by a Tenderer in respect to its Tender that is not in response to a request by the Purchaser or if a Tenderer does not

provided clarification as requested by the Purchaser, the tender shall not be considered and rejected. The Purchaser's request for clarification and the response shall be in writing. No change in the prices or substance of the Tender shall be sought, offered, or permitted, except to confirm the correction of arithmetic errors discovered by the Purchaser in the evaluation of the Tenders in accordance with ITT 31. Any change of price as a result of tax issues must be referred back to the Tenders Board for approval.

**Responsiveness
of Tenders**

- 30.1 The Purchaser's determination of a tender's responsiveness is to be based on the contents of the tender itself.
- 30.2 A substantially responsive Tender is one that conforms to all the terms, conditions, and specifications of the Tender Documents without material deviation, reservation, or omission. A material deviation, reservation, or omission is one that:
- (a) affects in any substantial way the scope, quality, or performance of the Goods and Related Services specified in the Contract; or
 - (b) is inconsistent with the Tender Documents, and substantially limits the Purchaser's rights or the Tenderer's obligations under the Contract; or
 - (c) if rectified would unfairly affect the competitive position of the other Tenderers who have submitted substantially responsive Tenders.
- 30.3 If a tender is not substantially responsive to the Tender Documents, it shall be rejected by the Purchaser and may not subsequently be made responsive by the Tenderer by correction of the material deviation, reservation, or omission.

**Non-conformi-
ties, Errors, and
Omissions**

- 31.1 Provided that a Tender is substantially responsive, the Purchaser may waive any non-conformities or omissions in the Tender that do not constitute a material deviation.
- 31.2 Provided that a tender is substantially responsive, the Purchaser may request that the Tenderer submit the necessary information or documentation, requested by the Purchaser, within a period of time specified in the Principal's request, to rectify minor or non-material non-conformities or omissions in the Tender related to its tender documentation requirements. The Purchaser's request should only be for purpose of seeking clarification and not result in disqualification of a tender. Such omission shall not be related to any aspect of the price of the Tender. Failure of the Tenderer to comply with the request may result in the rejection of its Tender.
- 31.3 Provided that the Tender is substantially responsive, the Purchaser

shall correct arithmetical errors on the following basis:

- (a) if there is a discrepancy between the unit price and the line item total that is obtained by multiplying the unit price by the quantity, the unit price shall prevail and the line item total shall be corrected, unless in the opinion of the Purchaser there is an obvious misplacement of the decimal point in the unit price, in which case the line item total as quoted shall govern and the unit price shall be corrected;
- (b) if there is an error in a total corresponding to the addition or subtraction of subtotals, the subtotals shall prevail and the total shall be corrected; and
- (c) if there is a discrepancy between words and figures, the amount in words shall prevail, unless the amount expressed in words is related to an arithmetic error, in which case the amount in figures shall prevail subject to (a) and (b) above.

31.4 If the Tenderer that submitted the lowest evaluated Tender does not accept the correction of errors, its Tender shall be rejected at the discretion of the Purchaser.

Preliminary Examination of Tenders

32.1 The Purchaser shall examine the Tenders to confirm that all documents and technical documentation requested in ITT 11 have been provided and to determine the completeness of each Tender submitted.

32.2 The Purchaser shall confirm that the following documents and information have been provided in the Tender. If any of these documents or information is missing, the Tender shall be rejected:

- (a) Tender Submission Form in accordance with ITT 12.1;
- (b) Price Schedules in accordance with ITT 12.2; and
- (c) Tender Security or Tender Securing Declaration in accordance with ITT 21 if applicable.

Examination of Terms and Conditions; Technical Evaluation

33.1 The Purchaser shall examine the Tender to confirm that all terms and conditions specified in the GCC and the SCC have been accepted by the Tenderer without any material deviation or reservation.

33.2 The Purchaser shall evaluate the technical aspects of the Tender submitted in accordance with ITT 18, to confirm that all requirements specified in **Section VI- Schedule of Requirements** of the Tender Documents have been met without any material deviation or reservation.

33.3 If, after the examination of the terms and conditions and the technical evaluation, the Purchaser determines that the Tender is not

substantially responsive in accordance with ITT 30, it shall reject the Tender.

Conversion to Single Currency 34.1 For evaluation and comparison purposes, the Purchaser shall convert all tender prices expressed in the submitted Tenders into the amount **specified in the TDS**, using the selling exchange rates established by the source and on the date **specified in the TDS**.

Domestic Preference 35.1 Domestic preference shall not be a factor in tender evaluation, unless otherwise **specified in the TDS and with prior approval by the Tenders Board**.

Evaluation of Tenders 36.1 The Purchaser shall evaluate each tender in accordance with the criteria defined in ITT 36. No other criteria or methodology shall be permitted.

- 36.2 To evaluate a Tender, the Purchaser shall consider the following:
- (a) evaluation will be done for Items or Lots, as **specified in the TDS**; and the Tender Price as quoted in accordance with ITT 14;
 - (b) price adjustment for correction of arithmetic errors in accordance with ITT 31.3;
 - (c) price adjustment due to discounts offered in accordance with ITT 14.4;
 - (d) adjustments due to the application of the evaluation criteria **specified in the TDS** from those set out in **Section III - Evaluation and Qualification Criteria of the Tender Documents**; and
 - (e) adjustments due to the application of a margin of preference, in accordance with ITT 35 if applicable.

36.3 The Purchaser's evaluation of a tender **will exclude and not take into account the following**:

- (a) in the case of Goods manufactured in the Purchaser's Country, sales and other similar taxes, which will be payable on the goods if a contract is awarded to the Tenderer;
- (b) in the case of Goods manufactured outside the Purchaser's Country, already imported or to be imported, customs duties and other import taxes levied on the imported Good, sales and other similar taxes, which will be payable on the Goods if the contract is awarded to the Tenderer; and/or
- (c) any allowance for price adjustment during the period of

execution of the contract, if provided in the tender.

36.4 The Purchaser's evaluation of a tender may require the consideration of other factors, in addition to the Tender Price quoted in accordance with ITT 14. These factors may be related to the characteristics, performance, and terms and conditions of purchase of the Goods and Related Services. The effect of the factors selected, if any, **shall be expressed in monetary terms to facilitate comparison of tenders**, unless otherwise specified in Section III - Evaluation and Qualification Criteria. The criteria used shall be as specified in ITT 36.2 (d).

36.5 If so **specified in the TDS**, this Tender Document shall allow Tenderers to quote separate prices for one or more lots, and the Purchaser may award one or multiple lots to more than one Tenderer. The methodology of evaluation to determine the lowest-evaluated Tenderer, is specified in **Section III- Evaluation and Qualification Criteria of the Tender Documents**.

Comparison of Tenders 37.1 The Purchaser shall compare all substantially responsive Tenders to determine the lowest-evaluated Tender, in accordance with ITT 36.

Post-qualification of the Tenderer 38.1 The Purchaser shall determine to its satisfaction whether the Tenderer that is selected as having submitted the lowest evaluated and substantially responsive tender is qualified to perform the Contract satisfactorily.

38.2 The determination shall be based upon an examination of the documentary evidence of the Tenderer's qualifications submitted by the Tenderer pursuant to ITT 19.

38.3 An affirmative determination shall be a prerequisite for award of the Contract to the Tenderer. A negative determination shall result in disqualification of the tender, in which event the Purchaser shall proceed to the next lowest evaluated Tender to make a similar determination of that Tenderer's capabilities to perform the contract satisfactorily.

Purchaser's Right to Accept Any Tender, and to Reject Any or All Tenders 39.1 The Purchaser reserves the right to accept or reject any tender, and to annul the tendering process and reject all Tenders at any time prior to awarding the contract, without thereby incurring any liability to the Tenderers. In case of annulment of any tenders submitted and specifically, tender securities, the respective Tenderers are immediately notified and given ample time to uplift the tenders and tender securities from the Purchaser.

Award of Contract

- Award Criteria** 40.1 The Purchaser shall award the Contract to the Tenderer whose offer has been determined to be substantially responsive to the Tender Documents, provided further that the Tenderer is determined by the evaluation panel to be qualified to perform the Contract to the satisfaction of the Purchaser. The Tenderer awarded the Contract may also be considered by the Purchaser as the Tenderer with the lowest evaluated tender.
- Purchaser's Right to Vary Quantities at Time of Award** 41.1 At the time the Contract is awarded, the Purchaser reserves the right to increase or decrease the quantity of Goods and Related Services originally specified in **Section VI- Schedule of Requirements**, provided this does not exceed the percentages **specified in the TDS**, and without any change in the unit prices or other terms and conditions of the tender and the Tender Documents.
- Notification of Award** 42.1 Prior to the expiration of the tender validity period, the Purchaser shall notify the successful Tenderer in writing, that its Tender has been accepted. At the same time, the Purchaser must also notify all other Tenderers of the results of the tendering, and shall publish in website of the Ministry of Finance, the results identifying the tender and lot numbers and the following information:
- (i) name of each Tenderer who submitted a Tender; and
 - (ii) name of the winning Tenderer, and the Price it offered, as well as the duration and summary scope of the contract awarded.
- 42.2 Until a formal Contract is prepared and executed, the notification of award shall not constitute a binding Contract.
- 42.3 After publication of the award, unsuccessful Tenderers may request in writing to the Purchaser for a debriefing seeking explanations on the grounds on which their Tenders were not selected. The Purchaser shall promptly respond in writing to any unsuccessful Tenderer who, after Publication of contract award, requests a debriefing.
- 42.4 After the successful Tenderer has been awarded the Contract, the Purchaser will promptly notify each unsuccessful Tenderer and will discharge its tender security, pursuant to ITT 21.4.

Signing of Contract	<p>43.1 After notification, the Purchaser shall send the successful Tenderer the Contract Agreement with the Conditions of Contract for comments to be provided within two (2) weeks from the date the Draft Contract is received by the Tenderer, before the same is reviewed and cleared by the Office of the Attorney-General.</p> <p>43.2 Once both the Tenderer and Purchaser have agreed to the Draft Contract, cleared by the Office of the Attorney General, it shall be finalised and signed as determined by the Purchaser.</p>
Performance Security	<p>44.1 Within twenty eight (28) days of the receipt of notification of award from the Purchaser the successful Tenderer, shall furnish the Performance Security in accordance with GCC 18, using for that purpose the Performance Security Form included in Section IX - Contract Forms, or another Form acceptable to the Purchaser. The Purchaser shall promptly notify the winning Tenderer to each unsuccessful Tenderer and discharge the Tender Securities of the unsuccessful Tenderers pursuant to ITT 21.4.</p> <p>44.2 Failure of the successful Tenderer to submit the above-mentioned Performance Security, comply with local requirements or sign the Contract shall constitute sufficient grounds for the annulment of the award and forfeiture of the Performance Security. In that event the Purchaser may award the Contract to the next lowest evaluated Tenderer, whose offer is substantially responsive and is determined by the Purchaser to be qualified to perform the Contract satisfactorily.</p>
Adjudicator	<p>45.1 The Purchaser proposes the person named in the TDS to be appointed as Adjudicator under the Contract, at the hourly fee specified in the TDS, plus reimbursable expenses. If the Tenderer disagrees with this proposal, the Tenderer should so state in its Tender. If, in the Letter of Acceptance, the Purchaser does not agree on the appointment of the Adjudicator, the Purchaser will request the Appointing Authority designated in the TDS, to appoint the Adjudicator.</p>

The above ITT are approved for use **without amendment** except as provided for in the applicable **TDS**, or as otherwise noted in the **Table of Amendments** below:

TABLE OF AMENDMENTS

Section I Instructions to Tenderers

Amendment No	Date	Amendment details	Initial Chairperson TB

Section II (a) - Tender Data Sheet (TDS)

The following TDS shall be used for the goods to be procured shall complement, supplement, or amend the provisions in the ITT. Whenever there is a conflict, the provisions herein shall prevail over those in the ITT.

[Instructions for completing the Tender Data Sheet are provided, as needed, in the notes in italics mentioned for the relevant ITT Clauses. Please delete all italicised text, red color, from Tender Document before issuance]

ITT Clause Reference	A. General
ITT 1.1	The Purchaser is: <i>Samoa Ports Authority</i>
ITT 1.2	The name of the tender/project is: <i>Supply of one (1) new Pilot Boat</i>
ITT 2.1	The Source of Funds is: <i>of Government of Samoa, through the Samoa Ports Authority</i>
ITT 2.1	The name of the Project is: <i>Supply of one (1) new Pilot Boat]</i>
	B. Contents of Tendering Documents
ITT 7.1	For <u>Clarification of tender purposes</u> only, the Purchaser's address is: Attention: <i>Soóalo Kuresa Soóalo; General Manager; Samoa Ports Authority</i> Address: <i>Matautu tai</i> City: <i>Apia</i> Country: SAMOA Telephone: <i>0685 64400</i> Facsimile number: <i>0685 25870</i> Electronic mail address: <i>sooalo.kuresa@spasamoa.ws</i>
ITT 7.1	The number of days is: <i>30</i>
	C. Preparation of Tenders

<p>ITT 10.1</p>	<p>The language of the tender is:</p> <ul style="list-style-type: none"> a. for all international tendering, English; and b. for local tendering, English, unless specifically otherwise approved by the Tenders Board. In the latter, all documents shall be issued by the Government and submitted by the Tenderer in Samoan Language.
<p>ITT 11.1 (c)</p>	<p>The written confirmation of authorisation to sign on behalf of the Tenderer shall be:</p> <ul style="list-style-type: none"> (a) a notarized Power of Attorney authorising and assigning the authority of the signatory to sign the Tender in all its parts; and (b) in the case of a Tender submitted by an existing JV joint venture (“JV”), a notarised undertaking signed by all parties: <ul style="list-style-type: none"> (i) stating that all parties shall be jointly and severally liable, if so required in accordance with ITT 4.1, and (ii) nominating a representative who shall have the authority to conduct all business for and on behalf of any and all the parties of the JV during the tendering process and in the event the JV is awarded the Contract, during contract execution.
<p>ITT 11.1 (d)</p>	<p>To establish eligibility to tender, the Tenderer shall complete the Tender Submission Form in all of its details, with the authorized signature declaring that all statements in the Form are TRUE. A fraudulent declaration is an offence punishable under the laws of the Independent State of Sāmoa.</p>
<p>ITT 11.1 (e)</p>	<p>A Certificate of Origin “is” required in support of the Country of Origin declaration in the Price Schedule Forms for imported goods in Section VI – Schedule of Requirements.</p>
<p>ITT 11.1 (f)</p>	<p>Technical Specifications shall be presented in a clearly itemised format identifying major features of material importance as “Specification Required”, against which the Tenderer shall provide “Specification Offered”, for each feature indicating in the column headed “Complies?” : “YES” for compliance (substantial responsiveness) or “NO” for non-compliance</p>
<p>ITT 11.1 (g)</p>	<p>Refer to ITT 19.1(a) concerning the Manufacturer’s Authorization and ITT 19.1(b) concerning in-country Agent representation for provision of after sales service and spare parts support to the Purchaser.</p> <p>If its Tender is accepted the Tenderer shall demonstrate to the Purchaser’s satisfaction that the Tenderer meets each of the Post Qualification Criteria defined in Section III – Evaluation and Qualification Criteria.</p>

TT 11.1 (h)	The Tenderer shall submit with its Tender the following additional documents as may reasonably be requested by the Purchaser in the Tender Documents current business licence, appropriate category in accordance with the industry the Goods and Related Services relate to and is valid for at least six (6) months.
ITT 13.1	<p>Alternative Tenders “shall not be” considered.</p> <p><i>[If alternatives shall be considered, insert:</i></p> <p><i>“A tenderer may submit an alternative tender only with a tender for the base case. The Purchaser shall only consider the alternative tenders offered by the Tenderer whose tender for the base case was determined to be the lowest-evaluated tender.”</i></p> <p>or,</p> <p><i>“A tenderer may submit an alternative tender with or without a tender for the base case. The Purchaser shall consider tenders offered for alternatives as specified in the Technical Specifications of Section VI - Schedule of Requirements. All tenders received, for the base case, shall be evaluated on their own merits in accordance with the same procedure, in accordance with ITT 36.”]</i></p>
ITT 14.5	The Incoterms edition is: Incoterms 2012
ITT 14.6 (b) (i) and (c) (iii)	Place of Destination: <i>Apia, Samoa APW</i>
ITT 14.6 (a) (iii);(b)(ii) and (c)(v)	“Final destination (Project Site)”: <i>Matautu tai, Apia, Samoa</i>
ITT 14.6 (b) (iii)	In addition to the CIP and CIF prices specified in ITT 14.6 (b)(i), the price of the Goods manufactured outside the Purchaser’s Country shall be quoted CIF
ITT 14.7	<p>The prices quoted by the Tenderer shall not be adjustable during the Tenderer’s performance of the Contract. If prices shall be adjustable, the methodology is specified in Section III - Evaluation and Qualification Criteria in the application of which is subject to the prior approval of the Tenders Board.</p> <p><i>APPLICABLE</i></p>
ITT 14.8	<p>Prices quoted for each lot shall correspond at least to <i>[insert percentage less than 100%, if applicable]</i> of the items specified for each lot.</p> <p>Prices quoted for each item of a lot shall correspond at least to <i>[insert percentage less than 100%, if applicable]</i> of the quantities specified for this item of a lot.</p>

	Use of percentages less than 100% shall be fully declared and justified by the Purchaser in its contract award recommendation report submitted to the Tenders Board.
ITT 15.1	The Tenderer is required to quote in Samoan Tala (SAT\$), the portion of the tender price that corresponds to expenditures incurred in Samoa.
ITT 18.3	Period of time the Goods are expected to be functioning (for the purpose of spare parts): <i>20 years</i>
ITT 19.1 (a)	Manufacturer's authorization is: <i>required</i>
ITT 19.1 (b)	After sales service is: <i>required</i> After sales service shall include: <i>spare parts</i>
ITT 20.1	The tender validity period shall be <i>45 days</i>
ITT 21.1	<i>[insert one (1) of the following options:</i> (a) Tender shall include a Tender Security in the form of a <i>Bid Declaration</i> included in Section IV - Tendering Forms .
ITT 21.2	The amount of the Tender Security is \$\$\$ including VAGST and all applicable taxes NA
ITT 21.7	The Government of Samoa will by way of a circular memorandum to all Government departments and public bodies, declare the Tenderer ineligible to be awarded contracts by the Purchaser for a period of <i>one (1) year or twelve (12) months</i> .
ITT 22.1	In addition to the Original of the Tender, the number of Copies is: <i>one (1) complete copy on CD-R" and (3) of hard copies.</i>
	D. Submission and Opening of Tenders
ITT 23.1	Tenderers <i>shall have</i> the option of submitting their tenders electronically.
ITT 23.1 (b)	If Tenderers shall have the option of submitting their tenders electronically, the electronic tendering submission procedures shall be: NA
ITT 23.2 (c)	The inner and outer envelopes shall bear the following additional identification marks: <i>[insert the name and/or number that must appear on the tender envelope to identify this specific tendering process].</i>
ITT 24.1	For tender submission purposes , the Purchaser's address is: Attention: The General Manager, Samoa Ports Authority Floor-Room number: 1st Floor Address: Samoa Ports Authority Head Office, Matautu City: APIA

	<p>Country: SAMOA</p> <p>The deadline for the submission of tenders is:</p> <p>Date: 15 June 2018</p> <p>Time: 11:00am</p>
ITT 27.1	<p>The tender opening shall take place at: Samoa Ports Authority</p> <p>Floor-Room number: 1st Floor</p> <p>Street Address: Samoa Ports Authority Head Office, Matautu</p> <p>City: APIA</p> <p>Country: SAMOA</p> <p>Date: 15 June 2018</p> <p>Time: Opening of tender shall commence from 11:30am</p>
	E. Evaluation and Comparison of Tenders
ITT 34.1	<p>Tender prices expressed in different currencies shall be converted in: SAT\$</p> <p>The source of exchange rate shall be: <i>Central Bank</i></p> <p>The date for the exchange rate shall be <i>15 June 2018</i></p>
	<i>[Select one of the two (2) sample clauses below as appropriate]</i>
ITT 35.1	<p>Domestic preference shall not be a tender evaluation factor</p> <p><i>NA</i></p>
ITT 36.2(a)	<p>Evaluation will be done for.....<i>"Item</i></p> <p>Note:</p> <p><i>[Select one of the two sample clauses below as appropriate</i></p> <p>Tenders will be evaluated for each item and the Contract will comprise the item(s) awarded to the successful Tenderer.</p>

<p>ITT 36.2(d)</p>	<p>Price adjustments in evaluation shall be determined using the following criteria, from amongst those set out in Section III - Evaluation and Qualification Criteria:</p> <p><i>[refer to Schedule III, Evaluation and Qualification Criteria; insert complementary details if necessary] Delete italicized words not applicable this Competitive Tender</i></p> <ul style="list-style-type: none"> (a) Deviation in Delivery schedule: <i>No.</i> (b) Deviation in payment schedule: <i>No</i> (c) the cost of major replacement components, mandatory spare parts, and service: <i>No.</i> (d) the availability in the Purchaser's Country of spare parts and after-sales services for the equipment offered in the tender <i>No.</i> (e) the projected operating and maintenance costs during the life of the equipment <i>No</i> (f) the performance and productivity of the equipment offered; <i>No</i> (g) <i>[insert any other specific criteria]</i> <p>DO NOT USE ANY OF THE ABOVE CRITERIA UNLESS THE PROPOSED METHODOLOGY IS FAIR TO THE TENDERERS, IS TECHNICALLY VALID AND WILL GUARANTEE ACCURATE, RELIABLE AND VERIFIABLE SUPPLIER DATA.</p>
<p>ITT 36.5</p>	<p>Tenderers <i>shall be</i> allowed to quote separate prices for one or more Items.</p> <p><i>[refer to Section III Evaluation and Qualification Criteria, for the evaluation methodology, if appropriate]</i></p>
<p>F. Award of Contract</p>	
<p>ITT 41.1</p>	<p>The maximum percentage by which quantities may be increased is: ten percent (10%)</p> <p>The maximum percentage by which quantities may be decreased is: ten percent (10%)</p> <p>Use of percentages in excess or less than ten percent (10%) requires prior approval of the Tenders Board.</p>

Section II (b) - Tender Preparation Checklist (TPCL)

- This checklist specifies the documents to be completed and submitted for this Tender. All documents marked **YES** in the *“Submission Required?”* column **MUST** be submitted.
- Documents should be collated and submitted in the same order as the checklist to assist in verifying the presence of required documents and facilitating tender evaluation.
- The person **authorised to sign the Tender** shall place their initial in the *“Tenderer to confirm included in Tender”* column once they have checked and ensured its inclusion.
- **This checklist MUST be completed, signed by the person authorised to sign the Tender and submitted with the Tender (in front of the Tender Submission Form). Failure to provide any of the required documents may result in the Tender being disqualified.**
- It is recommended that Tenderers use this checklist while assembling their tender and for a final review before signature and dispatch.
- Tenderers should carefully check all documents submitted with the Tender Submission Form to correct spelling mistakes and arithmetical errors in the Price Schedules, Price and Completion Schedule and Specification Schedules as applicable.
- *Items in the table below in italics are provided for the guidance of Tenderers where particular attention must be paid to the contents of the Tender.*

Abbreviations:

EQC	Evaluation & Qualifications Criteria (SECTION III)	TD	Tender Document
GSWG	Tenders Board Procurement and Contracting Guidelines – Goods, Services & Works January 2013	TF	Tendering Forms (SECTION IV)
ITT	Instructions to Tenderers (SECTION I)	TDS	Tender Data Sheet (SECTION II (a))
TSF	Tender Submission Form (SECTION IV)		

“YES or NO” – delete words not applicable

No	TD Section	Clause Ref	Description	Submission Required? Purchaser to state YES or NO?	Tenderer to confirm inclusion in Tender:
TENDER SUBMISSION FORM					
1	IV	-	3.Tender Submission Form, with all indicated data spaces fully completed and signed by the authorized signatory in accordance with ITT 11.1 (c)/TDS 22.2	YES	
<p><i>Note to Tenderers. The Tender Submission Form must be accompanied by a signed declaration by the Tenderer or authorised representative of the Tenderer declaring that all statements in the form are TRUE. A false declaration is an offence and is punishable upon conviction under the law of the Independent State of Samoa.</i></p>					
TENDER SIGNATORY AUTHORISATION					
2	I	11.1(c)	Notarized Power of Attorney authorising a person to sign on behalf of the Tenderer or Undertaking signed by all parties of a JV nominating a representative to conduct business and sign on behalf of JV.	YES	
TENDERER INFORMATION FORMS					
3	IV	Form 1	Tenderer Information Form – with appropriate attachments for firm, JV or government owned entity	YES	
4	IV	Form 2	Joint Venture Partner Information Form – with appropriate attachments for firm or government owned entity	or NO	
TENDER SECURITY – one of the following					
5	IV	Form 8	Tender Security (Bank Guarantee, bank cheque or other approved financial instrument)	YES	
6	IV	Form 9	Tender Security (Tender Bond)	YES	

No	TD Section	Clause Ref	Description	Submission Required? Purchaser to state YES or NO?	Tenderer to confirm inclusion in Tender:
7	IV	Form 10	Tender Securing Declaration	NO	
ELIGIBILITY – Documents for Samoa or Country of Domicile					
8	I	11.1(h)	Business Licence or Permit – valid at least for next six (6) months or for the period of tender or proposed works (whichever is the longest)	YES	
9	I	11.1(h)	Company Registration – valid at least for next six (6) months	YES	
10	I	11.1(h)	Income Tax Payment to end of last tax year	YES	
11	I	11.1(h)	Two (2) business references issued within the past six (6) months providing assurances of business integrity, reliability and financial soundness. References must be obtained from relevant and credible sources.	YES	
TECHNICAL SCHEDULES					
12	VI	Form 1	List of Goods and Delivery Schedule	YES	
13	VI	Form 2	List of Related Services and Completion Schedule	YES	
14	VI	Form 3	Specifications Schedule, <i>indicating detailed compliance YES or NO for itemised features</i>	YES	
15	VI	Form 4	Manufacturer's drawings	YES	
16	VI	Form 3	Manufacturer's brochures	YES	
17	VI	Form 3	Manufacturer's technical specification sheets	YES	
18	VI	Form 3	Manufacturer's design & performance data	YES	

No	TD Section	Clause Ref	Description	Submission Required? Purchaser to state YES or NO?	Tenderer to confirm inclusion in Tender:
PRICE SCHEDULES					
19	IV	Form 4	Price Schedule: Goods Manufactured Outside the Purchasers Country, to be Imported	YES	
20	IV	Form 5	Goods Manufactured Outside the Purchasers Country, already Imported	YES	
21	IV	Form 6	Goods Manufactured in the Purchaser's Country	YES	
22	IV	Form 7	Price and Completion Schedule –Related Services	YES	
POST QUALIFICATION CRITERIA					
23	IV	Form 11	Manufacturer's Authorisation	NO	
24	III	Clause 3	Representation in Samoa – technical support; servicing , maintenance and spares inventory	NO	
25	III	Clause 3	Documents demonstrating Supplier Financial Capability	NO	
26	III	Clause 3	Documents Demonstrating Supplier Technical Capability and Experience	YES	
27	III	Clause 3	Documents demonstrating capability of the Goods to meet usage requirements	YES	
TENDER PACKAGING & DESPATCH					
29	ITT	11.1	Verify that all items ITT 11.1 (a) to (h) and cross referenced clauses therein are correctly addressed in terms of required content and responses	YES	

No	TD Section	Clause Ref	Description	Submission Required? Purchaser to state YES or NO?	Tenderer to confirm inclusion in Tender:
30	IV & VI		All forms and schedules present and prepared According to Section IV Tendering Forms and Section VI #1. List of Goods & Delivery Schedule, #2. List of Related Services and Completion Schedule & #3 Specifications Schedule, with no alterations to original text, no substitute forms and no data fields without entries	YES	
31	I/ITT		One (1) complete set of documents marked "ORIGINAL" with one (1) compact disc write protected and number of hard copies as specified in TDS	YES	
32	I/ITT	22.2	Original and all copies typed in indelible ink and signed by authorised signatory. Typewritten authorisation attached with names/ positions of signatories clearly printed below signatories	YES	
33	I/ITT	13.1	If permitted, alternative tenders packaged in envelope separate to Original Tender and Copies and clearly marked on all pages as "ALTERNATIVE".	YES	
34	I/ITT	22.3	All amendments, erasures or overwriting signed and initialed by authorised person signing tender	YES	
	I/ITT	21.1-3	All documents packaged up according to ITT 21, clearly and correctly labeled for both Supplier and Tenderer addresses	YES	
	I/ITT	22.1	Arrangements action to ensure Purchaser receipt of tender before submission deadline	YES	
<p>I confirm that I have checked all of the above and have provided all of the documents and information required for this Tender</p> <p>NAME: SIGNATURE: DATE:</p>					

Section III. Evaluation and Qualification Criteria

This Section complements the Instructions to Tenderers (ITT) and the Tender Data Sheet (TDS). It contains the criteria that the Purchaser will use to evaluate a tender and determine whether a Tenderer has the required qualifications. No other criteria shall be used other than those stated here and otherwise the conformity with commercial requirements and Technical Specifications (ITT 18)

[The Purchaser shall select the criteria deemed appropriate for the procurement process, insert the appropriate wording using the samples below or other acceptable wording, and delete all non-applicable text. The methodology for criterion application must be clearly stated in the Tender Data Sheet 36.3(d).]

Contents

1. Evaluation Criteria (ITT 36)
2. Multiple Contracts (ITT 36.6)
3. Post qualification Requirements (ITT 38.2)
4. Domestic Preference (ITT 35.1)

NOTE:

1. To the extent practicable, differences in Tenders resulting from application of Evaluation Criteria shall be expressed as monetary values to be added to tender prices for comparison purposes, after arithmetical correction, adjustment for omissions and application of discounts. These differences may relate to technical characteristics, performance shortfalls and purchase terms and conditions.
2. The Evaluation Criteria shall only be employed if there is strong confidence that the methodology is fair to the Tenderers, which are technically valid and will guarantee accurate, reliable and verifiable Supplier Data.
3. Post qualification need not be applied for acquiring readily available items of known quality from suppliers of good repute. Otherwise only information essential for confirming a Tenderer's capability to successfully undertake the contract should be sought, using key capacity and financial factors, on a pass/ fail basis.
4. The application of Domestic Preference will be infrequent in Samoa and shall in every case be subject to prior approval of the Tenders Board.

1. Evaluation Criteria (ITT 36)

The Purchaser's evaluation of a tender **may take into account**, in addition to the Tender Price quoted in accordance with ITT 14.6, **one or more of the following factors** as specified in ITT 36.2(d) and in the **TDS 36.2(d)**, using the following criteria and methodologies.

- (a) **Delivery schedule.** (as per Incoterms specified in the **TDS 14.5**)
The Goods specified in the List of Goods are required to be delivered within the acceptable time range (after the earliest and before the final date, both dates inclusive) specified in Section VI, Delivery Schedule. No credit will be given to deliveries before the earliest date, and tenders offering delivery after the final date shall be treated as non-responsive. Within this acceptable period, an adjustment, as specified in the TDS 36.2 (d), will be added, for evaluation purposes only, to the tender price of tenders offering deliveries later than the “Earliest Delivery Date” specified in Section VI - Delivery Schedule.
- (b) **Deviation in payment schedule.** *[insert one (1) of the following]*
- (i) *Tenderers shall state their tender price for the payment schedule outlined in the SCC. Tenders shall be evaluated on the basis of this base price. Tenderers are, however, permitted to state an alternative payment schedule and indicate the reduction in tender price they wish to offer for such alternative payment schedule. The Purchaser may consider the alternative payment schedule and the reduced tender price offered by the Tenderer selected on the basis of the base price for the payment schedule outlined in the SCC.*
- or**
- (c) **Cost of major replacement components, mandatory spare parts, and service.** *[insert one (1) of the following]*
- (i) *The list of items and quantities of major assemblies, components, and selected spare parts, likely to be required during the initial period of operation specified in the TDS 18.3, is in the List of Goods. An adjustment equal to the total cost of these items, at the unit prices quoted in each tender, shall be added to the tender price, for evaluation purposes only.*
- or**
- (d) **Availability in the Purchaser’s Country of spare parts and after sales services for equipment offered in the tender.**
An adjustment equal to the cost to the Purchaser of establishing the minimum service facilities and parts inventories, as outlined in **TDS 36.2(d)**, if quoted separately, shall be added to the tender price, for evaluation purposes only.

(e) **Projected operating and maintenance costs.**

Operating and maintenance costs. An adjustment to take into account the operating and maintenance costs of the Goods will be added to the tender price, for evaluation purposes only, if specified in **TDS 36.2(d)**. The adjustment will be evaluated in accordance with the methodology specified in the **TDS 36.2(d)**.

(f) **Performance and productivity of the equipment.** *[insert one of the following]*

(i) Performance and productivity of the equipment. An adjustment representing the capitalized cost of additional operating costs over the life of the plant will be added to the tender price, for evaluation purposes if specified in the **TDS 36.2(d)**. The adjustment will be evaluated using the methodology specified in **TDS 36.3(d)**.

or

(g) Specific additional criteria

*Other specific additional criteria to be considered in the evaluation, and the evaluation method shall be detailed in **TDS 36.2(d)***

3. Post-qualification Requirements (ITT 38.2)

After determining the lowest-evaluated tender in accordance with ITT Sub-Clause 37.1, the Purchaser shall carry out the post-qualification of the Tenderer in accordance with ITT 38, using only the requirements specified. Requirements not included in the text below shall not be used in the evaluation of the Tenderer's qualifications.

(a) **Financial Capability**

The Tenderer shall furnish documentary evidence that it meets the following financial requirement(s): *[indicative requirement(s)..... delete non-applicable]*

- overall company turnover, last three (3) years
- production division turnover, last three (3) years – goods similar to this tender
- contracts of similar value & complexity, past three (3) years
- audited financial statements past three years, showing positive net worth and sufficient cash flow for current project

(b) **Experience and Technical Capacity**

The Tenderer shall furnish documentary evidence to demonstrate that it meets the following experience requirement(s): *[indicative requirements delete non applicable]*

- years in current principal line of business
- production output, last three (3) years, similar units
- **manufacturer authorization**

- government & industry associations accreditation
- ISO and other quality certification
- specific manufacturing facilities
- specific technical expertise
- best practice/ state of the art techniques
- product range
- after sales service, warranty & spare parts support
- **in country support infrastructure & services**
- training for operation & maintenance

(c) **Usage Requirements**

The Tenderer shall furnish documentary evidence to demonstrate that the Goods it offers meet the following usage requirements: *[indicative requirements]*

- key performance levels/ capacities - certifications
- operating efficiency
- reliability
- durability for specified conditions
- occupational health & safety
- current model/ state of the art
- user evaluations/ test reports

Section IV. Tendering Forms

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1. Tenderer Information Form

[The Tenderer shall fill in this Form in accordance with the instructions indicated below. No alterations to its format shall be permitted and no substitutions shall be accepted.]

Date: *[insert date (as day, month and year) of Tender Submission]*

CT No.: *[insert number of tendering process]*

Page _____ of _____ pages

1. Tenderer's Legal Name <i>[insert Tenderer's legal name]</i>
2. In case of JV, legal name of each party: <i>[insert legal name of each party in JV]</i>
3. Tenderer's actual or intended Country of Registration: <i>[insert actual or intended Country of Registration]</i>
4. Tenderer's Year of Registration: <i>[insert Tenderer's year of registration]</i>
5. Tenderer's Legal Address in Country of Registration: <i>[insert Tenderer's legal address in country of registration]</i>
<p>6. Tenderer's Authorised Representative Information:</p> <p>Name: <i>[insert Authorised Representative's name]</i></p> <p>Address: <i>[insert Authorised Representative's Address]</i></p> <p>Telephone/Fax numbers: <i>[insert Authorised Representative's telephone/fax numbers]</i></p> <p>Email Address: <i>[insert Authorised Representative's email address]</i></p>
<p>7. Attached are copies of original documents of: <i>[check (X) the box according to the attached original documents]</i></p> <p><input type="checkbox"/> Articles of Incorporation or Registration of firm named in 1 above, in accordance with ITT 4.1 and 4.2.</p> <p><input type="checkbox"/> In case of JV, letter of intent to form JV or JV agreement, in accordance with ITT 4.1.</p> <p><input type="checkbox"/> In case of a public body from the Purchaser's country, documents establishing legal and financial autonomy and compliance with commercial law, in accordance with ITT 4.6 of the Tender Documents.</p>

2. Joint Venture Partner Information Form

[The Tenderer shall fill in this Form in accordance with the instructions indicated below].

Date: *[insert date (as day, month and year) of Tender Submission]*

CT No.: *[insert number of tendering process]*

Page _____ of _____ pages

1. Tenderer's Legal Name: <i>[insert Tenderer's legal name]</i>
2. JV's Party legal name: <i>[insert JV's Party legal name]</i>
3. JV's Party Country of Registration: <i>[insert JV's Party country of registration]</i>
4. JV's Party Year of Registration: <i>[insert JV's Party year of registration]</i>
5. JV's Party Legal Address in Country of Registration: <i>[insert JV's Party legal address in country of registration]</i>
6. JV's Party Authorized Representative Information Name: <i>[insert name of JV's Party authorised representative]</i> Address: <i>[insert address of JV's Party authorised representative]</i> Telephone/Fax numbers: <i>[insert telephone/fax numbers of JV's Party authorised representative]</i> Email Address: <i>[insert email address of JV's Party authorised representative]</i>
7. Attached are copies of original documents of: <i>[check the box (X) according to the attached original documents]</i> <input type="checkbox"/> Articles of Incorporation or Registration of firm named in 2 above, in accordance with ITT 4.1 and 4.2. <input type="checkbox"/> In case of a public body from the Purchaser's country, documents establishing legal and financial autonomy and compliance with commercial law, in accordance with ITT 4.6.

3. Tender Submission Form

[The Tenderer must prepare this Tender Submission Form under its standard letterhead clearly showing the Tenderer's complete name and address

The Tenderer shall fill in this Form in accordance with the instructions indicated. No alterations to its format shall be permitted and no substitutions shall be accepted. All italicised text is for use in accomplishing these forms and shall be deleted from the final fully edited version.]

Date: *[insert date (as day, month and year) of Tender Submission]*

CT No.: *[insert number of tendering process]*

Request for Tender No.: *[insert No of RFT]*

Alternative No.: *[insert identification No if this is a Tender for an alternative]*

To: *[insert complete name of Purchaser]*

We, the undersigned, declare that:

- (a) We have examined and have no reservations to the Tender Documents, including Addenda No.: _____ *[insert the number and issuing date of each Addenda]* in accordance with Instructions to Tenderers (ITT). 8;
- (b) We offer to supply in conformity with the Tender Documents and in accordance with the Delivery Schedules specified in the Schedule of Requirements the following the Goods and Related Services _____ *[insert a brief description of the Goods and Related Services]*;
- (c) The total price of our Tender, including VAGST and other applicable local taxes but excluding any discounts offered in item (d) below, is: _____ *[insert the total tender price including VAGST in words and figures, indicating the various amounts and the respective currencies, together with separate totals for the Contract prime cost and VAGST and any other applicable taxes]*;
- (d) The discounts offered and the methodology for their application are:

Discounts. If our tender is accepted, the following discounts shall apply. _____ *[Specify in detail each discount offered and the specific item of the Schedule of Requirements to which it applies.]*

Methodology of Application of the Discounts. The discounts shall be applied using the following method: _____ *[Specify in detail the method that shall be used to apply the discounts]*;

- (e) Our tender shall be valid for the period of time specified in **Tender Data Sheet (TDS)** 20.1, from the date fixed for the tender submission deadline in accordance with **TDS** 24.1, and it shall remain binding upon us and may be accepted at any time before the expiration of that period;
- (f) If price adjustment provisions apply according to the TDS, the prices tendered shall be adjusted accordingly
- (g) If our tender is accepted, we commit to obtain a performance security in accordance with ITT 44 and GCC 18 for the due performance of the Contract;
- (h) We, including any subcontractors or suppliers for any part of the contract, have nationality from eligible countries _____ *[insert the nationality of the Tenderer, including that of all parties that comprise the Tenderer, if the Tenderer is a JV, and the nationality each subcontractor and supplier];*
- (i) Our firm, including any subcontractors or suppliers for any part of the Contract do not have any conflict of interest according to ITT 4.4;
- (j) Our firm and any associated firm or joint venture party have not been subject to insolvency or bankruptcy proceeding during the immediate past twelve (12) months;
- (k) Our firm, its affiliates or subsidiaries—including any subcontractors or suppliers for any part of the contract—has not been declared ineligible by the Government of Samoa or the Purchaser under the country laws, official regulations and sanctions procedures, including cross debarment with International Financial Institutions, in accordance with ITT 3.1(d) and 4.6;
- (l) We are not participating, as a tenderer or as a subcontractor, in more than one tender in this tendering process in accordance with ITT 4.4 (ii) other than for alternative offers permitted under ITT 13 of the Tender Documents;
- (m) We are not a government owned entity/ We are a government owned entity but comply with the requirements of ITT 4.7 *[delete non-applicable statement;]*
- (n) The following commissions, gratuities, or fees have been paid or are to be paid with respect to the tendering process or execution of the Contract: *[insert complete name of each Recipient, its full address, the reason for which each commission or gratuity was paid and the amount and currency of each such commission or gratuity]*

Name of Recipient	Address	Reason	Amount
_____	_____	_____	_____

(If none has been paid or is to be paid, indicate "none.")

- (k) Our firm, and its principals, currently and in the past year, have not committed criminal offenses involving fraud, corruption or other misconduct signifying unsuitability for participation in any way in the procurement and contracting process;
- (l) We understand that this tender, together with your written acceptance thereof included in your notification of award, shall not constitute a binding contract between us, until a formal contract is prepared and executed;
- (m) We understand that you are not bound to accept the lowest evaluated tender or any other tender that you may receive;
- (n) If awarded the Contract, the authorised person named below has the legal capacity to enter into a contract and accordingly shall act as the Supplier's Representative

Signed: _____ *[insert signature of person whose name and capacity are shown below]*

In the capacity of _____ *[insert legal capacity of person signing the Tender Submission Form]*

Name: _____ *[insert complete name of person signing the Tender Submission Form]*

Duly authorised to sign the tender for and on behalf of: _____ *[insert complete name of Tenderer]*

Dated on _____ day of _____, _____ *[insert date of signing]*

Price Schedule Forms

*[The Tenderer shall fill in these Price Schedule Forms in accordance with the instructions indicated. The list of line items in column 1 of the **Price Schedules** shall coincide with the List of Goods and Related Services specified by the Purchaser in the Schedule of Requirements.]*

NOTE:

For evaluation purposes only, prices should include import customs duties and VAGST and other applicable taxes. Despite that applicable taxes or duties are not included in the prices, such are to be paid as determined by the relevant authority prior finalisation and signing of the Contract.

4. Price Schedule: Goods Manufactured Outside the Purchaser's Country, to be Imported

(Group C tenders, goods to be imported)										Date: _____
Currencies in accordance with ITT Sub-Clause 15										CT No: _____
Alternative No: _____										Page N° _____ of _____
1	2	3	4	5	6	7	8	9	10	Total Tender Price per Line item
Line Item N°	Description of Goods	Country of Origin	Delivery Date as defined by Incoterms	Quantity and physical unit	Unit price CIP <i>[insert place of destination]</i> in accordance with ITT 14.6(b)(i)	CIP Price per line item (Col. 5x6)	Price per line item for inland transportation and other services required in the Purchaser's country to convey the Goods to their final destination specified in TDS	Customs duties & charges	VAGST	(Col. 7+8+9+10)
<i>[insert number of the item]</i>	<i>[insert name of good]</i>	<i>[insert country of origin of the Good]</i>	<i>[insert quoted Delivery Date]</i>	<i>[insert number of units to be supplied and name of the physical unit]</i>	<i>[insert unit price CIP per unit]</i>	<i>[insert total CIP price per line item]</i>	<i>[insert the corresponding price per line item]</i>	<i>[insert the corresponding price per line item]</i>	<i>[insert the corresponding price per line item]</i>	<i>[insert total price of the line item]</i>
SUB TOTAL AMOUNT										
VAGST										
TOTAL AMOUNT										

Name of Tenderer *[insert complete name of Tenderer]*

Signature of Tenderer *[signature of person signing the Tender]*

5. Price Schedule: Goods Manufactured Outside the Purchaser's Country, already imported

(Group C tenders, Goods already imported)											Date: _____
Currencies in accordance with ITT Sub-Clause 15											CT No: _____
Currencies in accordance with ITT Sub-Clause 15											Alternative No: _____
Currencies in accordance with ITT Sub-Clause 15											Page N° _____ of _____
1	2	3	4	5	6	7	8	9	10	11	12
Line Item N°	Description of Goods	Country of Origin	Delivery Date as defined by Incoterms	Quantity and physical unit	Unit price including Custom Duties and Import Taxes paid, in accordance with ITT 14.6(c)(i)	Custom Duties and Import Taxes paid per unit in accordance with ITT 14.6(c)(ii), [to be supported by documents]	Unit Price net of custom duties and import taxes, in accordance with ITT 14.6(c)(iii) (Col. 6 minus Col.7)	Price per line item net of Custom Duties and Import Taxes paid, in accordance with ITT 14.6(c)(i) (Col. 5×8)	Price per line item for inland transportation and other services required in the Purchaser's country to convey the goods to their final destination, as specified in TDS in accordance with ITT 14.6(c)(v)	Sales (VAGST) and other taxes paid or payable per item if Contract is awarded (in accordance with ITT 14.6(c)(iv))	Total Tender Price per line item (Col. 9+10)
[insert number of the item]	[insert name of Goods]	[insert country of origin of the Good]	[insert quoted Delivery Date]	[insert of units to be supplied and name physical unit name]	[insert unit price per unit]	[insert custom duties and taxes paid per unit]	[insert unit price net of custom duties and import taxes]	[insert price per line item net of custom duties and import taxes]	[insert price per line item for inland transportation and other services]	[insert sales and other taxes payable per item if Contract is awarded]	[insert total price per line item]
SUB TOTAL AMOUNT											
VAGST AMOUNT											
TOTAL AMOUNT											

Name of Tenderer *[insert complete name of Tenderer]*

Signature of Tenderer *[signature of person signing the Tender]*

Date *[insert date]*

6. Price Schedule: Goods Manufactured in the Purchaser’s Country

Purchaser’s Country _____		(Group A and B tenders)				Date: _____ ICT No: _____ Alternative No: _____ Page N° _____ of _____			
Currencies in accordance with ITT Sub-Clause 15									
1	2	3	4	5	6	7	8	9	10
Line Item N°	Description of Goods	Delivery Date as defined by Incoterms	Quantity and physical unit	Unit price EXW	Total EXW price per line item (Col. 4x5)	Price per line item for inland transportation and other services required in the Purchaser’s Country to convey the Goods to their final destination	Cost of local labor, raw materials and components from with origin in the Purchaser’s Country % of Col. 5	Sales (VAGST) and other taxes payable per line item if Contract is awarded (in accordance with ITT 14.6(a)(ii))	Total Price per line item (Col. 6+7)
[insert number of the item]	[insert name of Good]	[insert quoted Delivery Date]	[insert no of units to be supplied and name physical unit name]	[insert EXW unit price]	[insert total EXW price per line item]	[insert the corresponding price per line item]	[Insert cost of local labor, raw material and components from within the Purchase’s country as a % of the EXW price per line item]	[insert sales and other taxes payable per line item if Contract is awarded]	[insert total price per item]
SUB TOTAL AMOUNT									
VAGST AMOUNT									
TOTAL AMOUNT									

Name of Tenderer *[insert complete name of Tenderer]*

Signature of Tenderer *[signature of person signing the Tender]*

Date *[insert date]*

7. Price and Completion Schedule - Related Services

Currencies in accordance with ITT Sub-Clause 15						Date: _____
						ICT No: _____
						Alternative No: _____
						Page N° _____ of _____
1	2	3	4	5	6	7
Service N°	Description of Services (excludes inland transportation and other services required in the Purchaser's country to convey the goods to their final destination)	Country of Origin	Delivery Date at place of Final destination	Quantity and physical unit	Unit price	Total Price per Service (Col. 5*6 or estimate)
<i>[insert number of the Service]</i>	<i>[insert name of Services]</i>	<i>[insert country of origin of the Services]</i>	<i>[insert delivery date at place of final destination per Service]</i>	<i>[insert number of units to be supplied and name of the physical unit]</i>	<i>[insert unit price per item]</i>	<i>[insert total price per item]</i>
					Sub Total Tender Prices – Related Services	
					Sub Total - VAGST	
					Total Tender Price – Related Services	

Name of Tenderer *[insert complete name of Tenderer]*

Signature of Tenderer *[signature of person signing the Tender]*

Date *[insert date]*

8. Tender Security (Bank Guarantee)

[The Bank shall fill in this Bank Guarantee Form in accordance with the instructions indicated.]

[Government's Name, and Address of Issuing Branch or Office]

Beneficiary: _____ *[Name and Address of Purchaser]*

Date: _____

TENDER GUARANTEE No.: _____

We have been informed that *[name of the Tenderer]* ("Tenderer") has submitted to you its tender dated ("Tender") for the execution of *[name of contract]* under for Tenders No. *[RFT number]* ("RFT").

Furthermore, we understand that, according to your conditions, tenders must be supported by a tender guarantee.

At the request of the Tenderer, we *[name of Bank]* irrevocably undertake to pay you any sum or sums not exceeding in total an amount of *[amount in figures]* (*[amount in words]*) upon receipt by us of your first demand in writing accompanied by a written statement stating that the Tenderer is in breach of its obligation(s) under the tender conditions, because the Tenderer:

- (a) has withdrawn its Tender during the period of tender validity specified by the Tenderer in the Form of Tender; or
- (b) having been notified of the acceptance of its Tender by the Purchaser during the period of tender validity, (i) fails or refuses to execute the Contract Form; or (ii) fails or refuses to furnish the performance security, if required, in accordance with the Instructions to Tenderers.

This guarantee will expire: (a) if the Tenderer is the successful tenderer, upon our receipt of copies of the contract signed by the Tenderer and the performance security issued to you upon the instruction of the Tenderer; or (b) if the Tenderer is not the successful tenderer, upon the earlier of (i) our receipt of a copy of your notification to the Tenderer of the name of the successful tenderer; or (ii) twenty-eight (28) days after the expiration of the Tenderer's Tender.

Consequently, any demand for payment under this guarantee must be received by us at the office on or before that date.

This guarantee is subject to the Uniform Rules for Demand Guarantees, ICC Publication No. 458.

[signature(s)]

9. Tender Security (Tender Bond)

[The Surety shall fill in this Tender Bond Form in accordance with the instructions indicated.]

BOND NO. _____

BY THIS BOND *[name of Tenderer]* as Principal (“Principal”), and *[name, legal title, and address of surety]*, authorised to transact business in *[name of country of Purchaser]*, as Surety (“Surety”), are held and firmly bound unto *[name of Purchaser]* as Obligee (“Purchaser”) in the sum of *[amount of Bond]*² *[amount in words]*, for the payment of which sum, well and truly to be made, we, the said Principal and Surety, bind ourselves, our successors and assigns, jointly and severally, firmly by these presents.

WHEREAS the Principal has submitted a written Tender to the Purchaser dated the ___ day of _____, 20___, for the construction of *[name of Contract]* (“Tender”).

NOW, THEREFORE, THE CONDITION OF THIS OBLIGATION is such that if the Principal:

- (a) withdraws its Tender during the period of tender validity specified in the Form of Tender; or
- (b) having been notified of the acceptance of its Tender by the Purchaser during the period of Tender validity; (i) fails or refuses to execute the Contract Form; or (ii) fails or refuses to furnish the Performance Security, if required, in accordance with the Instructions to Tenderers;

then the Surety undertakes to immediately pay to the Purchaser up to the above amount upon receipt of the Purchaser’s first written demand, without the Purchaser having to substantiate its demand, provided that in its demand the Purchaser shall state that the demand arises from the occurrence of any of the above events, specifying which event(s) has occurred.

The Surety agrees that its obligation will remain in full force and effect up to and including the date (28) days after the date of expiration of the Tender validity as stated in the Invitation to Tender or extended by the Purchaser at any time prior to this date, notice of which extension(s) to the Surety being waived.

IN TESTIMONY WHEREOF, the Principal and the Surety have caused these presents to be executed in their respective names this ___ day of _____ 20__.

Principal: _____ Surety: _____
Corporate Seal (where appropriate) _____

(Signature) (Signature)
(Printed name and title) (Printed name and title)

² The amount of the Bond shall be denominated in the currency of the Purchaser’s country or the equivalent amount in a freely convertible currency.

10. Tender-Securing Declaration

[The Tenderer shall fill in this Form in accordance with the instructions indicated.]

Date: *[date (as day, month and year)]*

Tender No.: *[number of tendering process]*

Alternative No.: *[identification No if this is a Tender for an alternative]*

To: *[complete name of Purchaser]*

We, the undersigned, declare that:

We understand that, according to your conditions, tenders must be supported by a Tender-Securing Declaration.

We accept that we will automatically be suspended from being eligible for tendering in any contract with the Purchaser for the period of time of *[number of months or years]* starting on *[date]*, if we are in breach of our obligation(s) under the tender conditions, because we:

- (a) have withdrawn our Tender during the period of tender validity specified in the Form of Tender; or
- (b) having been notified of the acceptance of our Tender by the Purchaser during the period of tender validity, (i) fail or refuse to execute the Contract; or (ii) fail or refuse to furnish the Performance Security, if required, in accordance with the ITT.

We understand this Tender Securing Declaration shall expire if we are not the successful Tenderer, upon the earlier of (i) our receipt of your notification to us of the name of the successful Tenderer; or (ii) twenty-eight (28) days after the expiration of our Tender.

Signed: *[signature of person whose name and capacity are shown]* In the capacity of *[legal capacity of person signing the Tender Securing Declaration]*

Name: *[complete name of person signing the Tender Securing Declaration]*

Duly authorised to sign the tender for and on behalf of: *[complete name of Tenderer]*

Dated on _____ day of _____, _____ *[date of signing]*
Corporate Seal (where appropriate)

[Note: In case of a Joint Venture, the Tender Securing Declaration must be in the name of all partners to the Joint Venture that submits the tender.]

11. Manufacturer's Authorisation

[The Tenderer shall require the Manufacturer to fill in this Form in accordance with the instructions indicated. This letter of authorisation should be on the letterhead of the Manufacturer and should be signed by a person with the proper authority to sign documents that are binding on the Manufacturer. The Tenderer shall include it in its tender, if so indicated in the TDS.]

Date: *[insert date (as day, month and year) of Tender Submission]*

CT No.: *[insert number of tendering process]*

Alternative No.: *[insert identification No if this is a Tender for an alternative]*

To: *[insert complete name of Purchaser]*

WHEREAS

We *[insert complete name of Manufacturer]*, who are official manufacturers of *[insert type of goods manufactured]*, having factories at *[insert full address of Manufacturer's factories]*, do hereby authorize *[insert complete name of Tenderer]* to submit a tender the purpose of which is to provide the following Goods, manufactured by us *[insert name and or brief description of the Goods]*, and to subsequently negotiate and sign the Contract.

We extend our full guarantee and warranty in accordance with Clause 28 of the General Conditions of Contract, with respect to the Goods offered by the above firm.

Signed: *[insert signature(s) of authorised representative(s) of the Manufacturer]*

Name: *[insert complete name(s) of authorised representative(s) of the Manufacturer]*

Title: *[insert title]*

Dated on _____ day of _____, _____ *[insert date of signing]*

Section V - Eligible Countries

Eligibility for the Provision of Goods, Works and Services in Procurement by the Government of the Independent State of Samoa

1. The Government observes the practice of the multilateral institutions regarding country eligibility wherein, it permits firms and individuals from most countries to offer goods, works and services for its own and some donor financed projects. As an exception, firms of a Country or goods manufactured in a Country may be excluded if:

Para 1.8 (a) (i): as a matter of law or official regulation, the Government of Samoa prohibits commercial relations with that Country, provided that such exclusion does not preclude effective competition for the supply of the Goods or Works required, or

Para 1.8 (a) (ii): by an Act of Compliance with a Decision of the United Nations Security Council taken under **Chapter VII of the Charter of the United Nations**, the Government of Samoa prohibits any import of goods from that Country or any payments to persons or entities in that Country.

2. For the information of Tenderers, at the present time firms, goods and services from the following countries are excluded from this tendering:

- (a) With reference to paragraph 1.8 (a) (i) above

Andora, Democratic People's Republic of Korea, Liechtenstein, Monaco (World Bank and ADB non-members)

PLEASE REFER TO APPROVED MEMBER LISTS OF DONOR INSTITUTIONS

- (b) With reference to paragraph 1.8 (a) (ii) above

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PART 2 – Supply Requirements

Section VI. Schedule of Requirements

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The following specifications define the equipment being sought:

1. List of Goods and Delivery Schedule

[The Purchaser shall fill in this table, with the exception of the column "Tenderer's Offered Delivery Date" to be filled by the Tenderer]

Line Item Or Lot N°	Description of Goods	Quantity	Physical unit	Final (Project Site) Destination as specified in TDS	Delivery (as per Incoterms) Date		
					Earliest Delivery Date after Contract Effective Date	Latest Delivery Date after Contract Effective date	Tenderer's offered Delivery date <i>[to be provided by the tenderer]</i>
<i>[insert item No]</i>	<i>[insert description of Goods]</i>	<i>[insert quantity of item to be supplied]</i>	<i>[insert physical unit for the quantity]</i>	<i>[insert place of Delivery]</i>	<i>[insert the number of days following the date of effectiveness the Contract]</i>	<i>[insert the number of days following the date of effectiveness the Contract]</i>	<i>[insert the number of days following the date of effectiveness the Contract]</i>

Name of Tenderer *[insert complete name of Tenderer]*

Signature of Tenderer *[signature of person signing the Tender]*

Date *[insert date]*

2. List of Related Services and Completion Schedule

[This table shall be filled in by the Purchaser. The Required Completion Dates should be realistic, and consistent with the required Goods Delivery Dates (as per Incoterms), customs clearance & inland transportation times, and site readiness, as applicable]

Service	Description of Service	Quantity ¹	Physical Unit	Place where Services shall be performed	Final Completion Date(s) of Services
<i>[insert Service No]</i>	<i>[insert description of Related Services]</i>	<i>[insert quantity of items to be supplied]</i>	<i>[insert physical unit for the items]</i>	<i>[insert name of the Place]</i>	<i>[insert required Completion Date(s)]</i>

1. If applicable

Name of Tenderer *[insert complete name of Tenderer]*

Signature of Tenderer *[signature of person signing the Tender]*

Date *[insert date]*

3. Technical Specifications

- *REFER TO **SPECIFICATIONS COMPLIANCE SCHEDULE FOLLOWING**, which in dot-point form which should enable preparation of logically sequenced, well-structured specifications which can be easily and thoroughly assessed for compliance*

Tender No.		3A. Goods Specifications Compliance Schedule		Sheet <i>[no.]</i> of <i>[total]</i>
LOT NO		LOT DESCRIPTION		ENTER LOT GENERAL DESCRIPTION
ITEM NUMBER		ITEM DESCRIPTION		ENTER ITEM DESCRIPTION
		PURCHASERS SPECIFICATION REQUIRED	TENDERERS SPECIFICATION OFFERED	Complies YES or NO?
Feature No.	Sub Item			
1	1.1			
	1.2			
	1.3			
	1.4			
	etc			
2	2.1			
	2.2			
	2.3			
	2.4			
	etc			

Name of Tenderer *[insert complete name of Tenderer]*

Signature of Tenderer *[signature of person signing the Tender]*

Date *[insert date]*

Tender No.		3B. Related Services Specifications Compliance Schedule		Sheet <i>[no.]</i> of <i>[total]</i>	
LOT NO		<i>Enter LOT CODE NO</i>		LOT DESCRIPTION	
ITEM NUMBER		<i>ENTER ITEM No</i>		ITEM DESCRIPTION	
		PURCHASERS SPECIFICATION REQUIRED		TENDERERS SPECIFICATION OFFERED	
Feature No.		Sub Item		Complies YES or NO?	
1		1.1			
		1.2			
		1.3			
		1.4			
		etc			
2		2.1			
		2.2			
		2.3			
		2.4			
		etc			

Name of Tenderer *[insert complete name of Tenderer]*

Signature of Tenderer *[signature of person signing the Tender]*

Date *[insert date]*

4. Drawings

This Tendering Document include *[insert “the following” or “no”]* drawings.

[If documents shall be included, insert the following List of Drawings]

List of Drawings		
Drawing No.	Drawing Name	Purpose

5. Inspections and Tests

The following inspections and tests shall be performed: *[insert list of inspections and tests]*

Carefully specify criteria to be used for acceptance- appearance, dimensions, strength grade, destructive and non-destructive tests, functional operation, etc.

PART 3 - Contract

Section VII. General Conditions of Contract

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General Conditions of Contract

Definitions

- 1.1 The following words and expressions shall have the meanings hereby assigned to them:
- (a) **“Contract”** means the Contract Agreement entered into between the Purchaser and the Supplier, together with the Contract Documents referred to therein, including all attachments, appendices, and all documents incorporated by reference therein.
 - (b) **“Contract Documents”** means the documents listed in the Contract Agreement, including any amendments thereto.
 - (c) **“Contract Price”** means the price payable to the Supplier as specified in the Contract Agreement, subject to such additions and adjustments to or deductions from, the Contract Price, as may be made under the Contract.
 - (d) **“Day”** means calendar day.
 - (e) **“Completion”** means the full supply of Goods and the fulfillment of the Related Services by the Supplier in accordance with the terms and conditions set forth in the Contract.
 - (f) **“GCC”** means the General Conditions of Contract.
 - (g) **“Goods”** means all of the commodities, raw material, machinery and equipment, and/or other materials that the Supplier is required to supply to the Purchaser under the Contract.
 - (h) **“Purchaser’s Country”** means the Independent State of Samoa.
 - (i) **“Purchaser”** means the Government or a Government department or public body purchasing the Goods and Related Services, as specified in the **SCC**.
 - (j) **“Related Services”** means the services incidental to the supply of the goods, such as insurance, installation, training and initial maintenance and other such obligations of the Supplier under the Contract.
 - (k) **“SCC”** means the Special Conditions of Contract.

- (l) **“Subcontractor”** means any natural person, private or government entity, or a combination of the above, to whom any part of the Goods to be supplied or execution of any part of the Related Services is subcontracted by the Supplier.
- (m) **“Supplier”** means the natural person, private or government entity, or a combination of the above, whose tender to perform the Contract has been accepted by the Purchaser and is named as such in the Contract Agreement.
- (n) **“The Project Site”** where applicable, means the place named in the SCC.
- (o) **“Effectiveness Date”** means the date the Contract is signed by both parties or such other later date as may be **stated in the SCC.**

Contract Documents 2.1 Subject to the order of precedence set forth in the Contract Agreement, all documents forming the Contract (and all parts thereof) are intended to be correlative, complementary, and mutually explanatory. The Contract Agreement shall be read as a whole.

Fraud and Corruption 3.1 If the Purchaser determines that the Supplier and/or any of its personnel, or its agents, or its Subcontractors, consultants, service providers, suppliers and/or their employees has engaged in corrupt, fraudulent, collusive, coercive or obstructive practices, in competing for or in executing the Contract, then the Purchaser may, after giving fourteen (14) days’ notice to the Supplier, terminate the Supplier’s employment under the Contract and cancel the contract, and the provisions of Clause 35 shall apply as if such expulsion had been made under Sub-Clause 35.1.

- (a) For the purposes of this Sub-Clause:
 - (i) **“corrupt practice”** is the offering, giving, receiving or soliciting, directly or indirectly, of anything of value to influence improperly the actions of another party³;
 - (ii) **“fraudulent practice”** is any act or omission, including a misrepresentation, that knowingly or recklessly misleads,

³ “Another party” refers to a public official acting in relation to the procurement process or contract execution. In this context, “public official” includes Government of Samoa staff and employees of other organizations taking or reviewing procurement decisions.

or attempts to mislead, a party to obtain a financial or other benefit or to avoid an obligation⁴;

(iii) **“collusive practice”** is an arrangement between two or more parties⁵ designed to achieve an improper purpose, including to influence improperly the actions of another party;

(iv) **“coercive practice”** is impairing or harming, or threatening to impair or harm, directly or indirectly, any party or the property of the party to influence improperly the actions of a party⁶; and

(v) **“obstructive practice”** is

(aa) deliberately destroying, falsifying, altering or concealing of evidence material to the investigation or making false statements to investigators in order to materially impede a Government investigation into allegations of a corrupt, fraudulent, coercive or collusive practice; and/or threatening, harassing or intimidating any party to prevent it from disclosing its knowledge of matters relevant to the investigation or from pursuing the investigation; or

(bb) acts intended to materially impede the exercise of the Government’s inspection and audit rights provided for under GCC 11 [Inspections and Audits by the Government].

3.2 Should any employee of the Supplier be determined to have engaged in corrupt, fraudulent, collusive, coercive, or obstructive practice during the purchase of the Goods, then that employee shall be removed.

Interpretation

4.1 If the context so requires it, singular means plural and vice versa.

⁴ “Party” refers to a public official; the terms “benefit” and “obligation” relate to the procurement process or contract execution; and the “act or omission” is intended to influence the procurement process or contract execution.

⁵ “Parties” refers to participants in the procurement process (including public officials) attempting to establish tender prices at artificial, non competitive levels.

⁶ “Party” refers to a participant in the procurement process or contract execution.

4.2 Incoterms

- (a) Unless inconsistent with any provision of the Contract, the meaning of any trade term and the rights and obligations of parties under the Contract shall be as prescribed by Incoterms.
- (b) The terms EXW, CIP, FCA, CFR and other similar terms, when used, shall be governed by the rules prescribed in the current edition of Incoterms specified in the **SCC** and published by the International Chamber of Commerce in Paris, France.

4.3 Entire Agreement

The Contract constitutes the entire agreement between the Purchaser and the Supplier and supersedes all communications, negotiations and agreements (whether written or oral) of the Parties with respect thereto made prior to the date of Contract.

4.4 Amendment

No amendment or other variation of the Contract shall be valid unless it is in writing, is dated, expressly refers to the Contract, and is signed by a duly authorised representative of each party thereto.

4.5 Non-waiver

- (a) Subject to GCC Sub-Clause 4.5(b) below, no relaxation, forbearance, delay, or indulgence by either party in enforcing any of the terms and conditions of the Contract or the granting of time by either party to the other shall prejudice, affect, or restrict the rights of that party under the Contract, neither shall any waiver by either party of any breach of Contract operate as waiver of any subsequent or continuing breach of this Contract.
- (b) Any waiver of a party's rights, powers, or remedies under the Contract must be in writing, dated, and signed by an authorised representative of the party granting such waiver, and must specify the right and the extent to which it is being waived.

4.6 Severability

If any provision or condition of the Contract is prohibited or

rendered invalid or unenforceable, such prohibition, invalidity or unenforceability shall not affect the validity or enforceability of any other provisions and conditions of the Contract.

- | | | |
|-------------------------------------|--------------------|--|
| Language | 5.1 | The Contract as well as all correspondence and documents relating to the Contract exchanged by the Supplier and the Purchaser, shall be written in the language specified in the SCC . Supporting documents and printed literature that are part of the Contract may be in another language provided they are accompanied by an accurate translation of the relevant passages in the language specified, in which case, for purposes of interpretation of the Contract, this translation shall govern. The Purchaser may confirm authenticity of translation otherwise. |
| | 5.2 | The Supplier shall bear all costs of translation to the governing language and all risks of the accuracy of such translation, for documents provided by the Supplier. |
| Joint Consortium Association | Venture, or | 6.1 |
| | | If the Supplier is a joint venture, consortium, or association, all of the parties shall be jointly and severally liable to the Purchaser for the fulfillment of the provisions of the Contract and shall designate one party to act as a leader with authority to bind the joint venture, consortium, or association. The composition or the constitution of the joint venture, consortium, or association shall not be altered without the prior consent of the Purchaser. |
| Eligibility | 7.1 | The Supplier and its Subcontractors shall have the nationality of an eligible country. A Supplier or Subcontractor shall be deemed to have the nationality of a country if it is a citizen or constituted, incorporated, or registered, and operates in conformity with the provisions of the laws of that country. |
| | 7.2 | All Goods and Related Services to be supplied under the Contract and financed by the Government shall have their origin in Eligible Countries. For the purpose of this Clause, origin means the country where the goods have been grown, mined, cultivated, produced, manufactured, or processed; or through manufacture, processing, or assembly, another commercially recognised article results that differs substantially in its basic characteristics from its components. |
| Notices | 8.1 | Any notice given by one party to the other pursuant to the Contract shall be in writing to the address specified in the SCC . The term “in writing” means communicated in written form with proof of receipt. |
| | 8.2 | A notice shall be effective when delivered or on the notice’s effective date, whichever is later. |

- Governing Law** 9.1 The Contract shall be governed by and interpreted in accordance with the laws of the Independent State of Samoa, unless otherwise specified in the **SCC**.
- Settlement of Disputes** 10.1 The Purchaser and the Supplier shall make every effort to resolve amicably by direct informal negotiation any disagreement or dispute arising between them under or in connection with the Contract.
- 10.2 If, after twenty-eight (28) days, the Parties have failed to resolve their dispute or difference by such mutual consultation, then either the Purchaser or the Supplier may give notice to the other party of its intention to commence arbitration, as hereinafter provided, as to the matter in dispute, and no arbitration in respect of this matter may be commenced unless such notice is given. Any dispute or difference in respect of which a notice of intention to commence arbitration has been given in accordance with this Clause shall be finally settled by arbitration. Arbitration may be commenced prior to or after delivery of the Goods under the Contract. Arbitration proceedings shall be conducted in accordance with the rules of procedure specified in the **SCC**.
- 10.3 Notwithstanding any reference to arbitration herein,
(a) the Parties shall continue to perform their respective obligations under the Contract unless they otherwise agree; and
(b) the Purchaser shall pay the Supplier any monies due the Supplier.
- Inspections and Audit by the Government** 11.1 The Supplier shall permit, and shall cause its Subcontractors and consultants to permit, the Government and/or persons appointed by the Government to inspect the Supplier's offices and all accounts and records relating to the performance of the Contract and the submission of the tender, and to have such accounts and records audited by auditors appointed by the Government if requested by the Government. The Supplier's and its Subcontractors and consultants' attention is drawn to Clause 3 [Fraud and Corruption], which provides, *inter alia*, that acts intended to materially impede the exercise of the Government's inspection and audit rights provided for under this Sub-Clause 11.1 constitute a prohibited practice subject to contract termination (as well as to a determination of ineligibility pursuant to the Government's prevailing sanctions procedures).
- Scope of Supply** 12.1 The Goods and Related Services to be supplied shall be as specified in the Schedule of Requirements in accordance with **Section VI**.

- Delivery and Documents** **and** 13.1 Subject to GCC Sub-Clause 33.1, the Delivery of the Goods and Completion of the Related Services shall be in accordance with the Delivery and Completion Schedule specified in the Schedule of Requirements at **Section VI** of the Tender Documents. The details of shipping and other documents to be furnished by the Supplier are specified in the **SCC**.
- Supplier's Responsibilities** 14.1 The Supplier shall supply all the Goods and Related Services included in the Scope of Supply in accordance with GCC Clause 12, and the Delivery and Completion Schedule, as per GCC Clause 13.
- Contract Price** 15.1 Prices charged by the Supplier for the Goods supplied and the Related Services performed under the Contract shall not vary from the prices quoted by the Supplier in its Tender, with the exception of any price adjustments authorised in the **SCC**.
- Terms of Payment** 16.1 The Contract Price, including any Advance Payments, if applicable, shall be paid as specified in the **SCC**.
- 16.2 The Supplier's request for payment shall be made to the Purchaser in writing, accompanied by invoices describing, as appropriate, the Goods delivered and Related Services performed, and by the documents submitted pursuant to GCC Clause 13 and upon fulfillment of all other obligations stipulated in the Contract.
- 16.3 Payments shall be made promptly by the Purchaser, but in no case later than sixty (60) days after submission of an invoice or request for payment by the Supplier, and after the Purchaser has accepted it.
- 16.4 The currencies in which payments shall be made to the Supplier under this Contract shall be those in which the tender price is expressed.
- 16.5 In the event that the Purchaser fails to pay the Supplier any payment by its due date or within the period set forth in the **SCC**, the Purchaser shall pay to the Supplier interest on the amount of such delayed payment at the rate shown in the **SCC**, for the period of delay until payment has been made in full, whether before or after judgment or arbitration award.

- Taxes and Duties**
- 17.1 For goods manufactured outside the Purchaser's Country, the Supplier shall be entirely responsible for all taxes, stamp duties, license fees, and other such levies imposed outside the Purchaser's Country.
- 17.2 For goods manufactured within the Purchaser's country, the Supplier shall be entirely responsible for all taxes, duties, license fees, etc., incurred until delivery of the contracted Goods to the Purchaser.
- 17.3 If any tax exemptions, reductions, allowances or privileges may be available to the Supplier in accordance with the laws of the Independent State of Samoa, the Purchaser shall use its best efforts to enable the Supplier to benefit from any such tax savings to the maximum allowable extent.
- Performance Security**
- 18.1 The Supplier shall, within twenty-eight (28) days of the notification of contract award, provide a performance security for the performance of the Contract in the amount specified in the **SCC**.
- 18.2 The proceeds of the Performance Security shall be payable to the Purchaser as compensation for any loss resulting from the Supplier's failure to complete its obligations under the Contract.
- 18.3 As specified in the **SCC**, the Performance Security, if required, shall be denominated in the currency(ies) of the Contract, or in a freely convertible currency acceptable to the Purchaser; and shall be in one of the format stipulated by the Purchaser in the **SCC**, or in another format acceptable to the Purchaser.
- 18.4 The Performance Security shall be discharged by the Purchaser and returned to the Supplier not later than twenty-eight (28) days following the date of Completion of the Supplier's performance obligations under the Contract, including any warranty obligations, unless specified otherwise in the **SCC**.
- Copyright**
- 19.1 The copyright in all drawings, documents, and other materials containing data and information furnished to the Purchaser by the Supplier herein shall remain vested in the Supplier, or, if they are furnished to the Purchaser directly or through the Supplier by any third party, including suppliers of materials, the copyright in such

materials shall remain vested in such third party. Future use of any drawings, documents or other materials, is subject to prior approval of the party having copyright ownership of the same.

**Confidential
Information**

- 20.1 The Purchaser and the Supplier shall keep confidential and shall not, without the written consent of the other party hereto, divulge to any third party any documents, data, or other information furnished directly or indirectly by the other party hereto in connection with the Contract, whether such information has been furnished prior to, during or following completion or termination of the Contract. Notwithstanding the above, the Supplier may furnish to its Subcontractor such documents, data, and other information it receives from the Purchaser to the extent required for the Subcontractor to perform its work under the Contract, in which event the Supplier shall obtain from such Subcontractor an undertaking of confidentiality similar to that imposed on the Supplier under GCC Clause 20.
- 20.2 The Purchaser shall not use such documents, data, and other information received from the Supplier for any purposes unrelated to the contract. Similarly, the Supplier shall not use such documents, data, and other information received from the Purchaser for any purpose other than the performance of the Contract.
- 20.3 The obligation of a party under GCC Sub-Clauses 20.1 and 20.2 above, however, shall not apply to information that:
- (a) the Purchaser or Supplier need to share with the Bank or other institutions participating in the financing of the Contract;
 - (b) now or hereafter enters the public domain through no fault of that party;
 - (c) can be proven to have been possessed by that party at the time of disclosure and which was not previously obtained, directly or indirectly, from the other party; or
 - (d) otherwise lawfully becomes available to that party from a third party that has no obligation of confidentiality.
- 20.4 The above provisions of GCC Clause 20 shall not in any way modify any undertaking of confidentiality given by either of the Parties

hereto prior to the date of the Contract in respect of the supply or any part thereof.

20.5 The provisions of GCC Clause 20 shall survive completion or termination, for whatever reason, of the Contract.

Subcontracting

21.1 The Supplier shall notify the Purchaser in writing of all subcontracts awarded under the Contract if not already specified in the tender. Such notification, in the original tender or later shall not relieve the Supplier from any of its obligations, duties, responsibilities, or liability under the Contract.

21.2 Subcontracts shall comply with the provisions of GCC Clauses 3 and 7.

Specifications and Standards

and 22.1 Technical Specifications and Drawings

(a) The Goods and Related Services supplied under this Contract shall conform to the technical specifications and standards mentioned in **Section VI - Schedule of Requirements** and, when no applicable standard is mentioned, the standard shall be equivalent or superior to the official standards whose application is appropriate to the Goods' country of origin.

(b) The Supplier shall be entitled to disclaim responsibility for any design, data, drawing, specification or other document, or any modification thereof provided or designed by or on behalf of the Purchaser, by giving a notice of such disclaimer to the Purchaser.

(c) Wherever references are made in the Contract to codes and standards in accordance with which it shall be executed, the edition or the revised version of such codes and standards shall be those specified in the Schedule of Requirements. During Contract execution, any changes in any such codes and standards shall be applied only after approval by the Purchaser and shall be treated in accordance with GCC Clause 33.

Packing Documents

and 23.1 The Supplier shall provide such packing of the Goods as is required to prevent their damage or deterioration during transit to their final destination, as indicated in the Contract. During transit, the packing shall be sufficient to withstand, without limitation, rough handling and exposure to extreme temperatures, salt and precipitation, and

open storage. Packing case size and weights shall take into consideration, where appropriate, the remoteness of the goods' final destination and the absence of heavy handling facilities at all points in transit.

23.2 The packing, marking, and documentation within and outside the packages shall comply strictly with such special requirements as shall be expressly provided for in the Contract, including additional requirements, if any, specified in the **SCC**, and in any other instructions ordered by the Purchaser.

Insurance

24.1 Unless otherwise specified in the **SCC**, the Goods supplied under the Contract shall be fully insured—in a freely convertible currency from an eligible country—against loss or damage incidental to manufacture or acquisition, transportation, storage, and delivery, in accordance with the applicable Incoterms or in the manner specified in the **SCC**.

Transportation

25.1 Unless otherwise specified in the **SCC**, responsibility for arranging transportation of the Goods shall be in accordance with the specified Incoterms.

Inspections and Tests

26.1 The Supplier shall at its own expense and at no cost to the Purchaser carry out all such tests and/or inspections of the Goods and Related Services as are specified in the **SCC**.

26.2 The inspections and tests may be conducted on the premises of the Supplier or its Subcontractor, at point of delivery, and/or at the Goods' final destination, or in another place in the Purchaser's Country as specified in the **SCC**. Subject to GCC Sub-Clause 26.3, if conducted on the premises of the Supplier or its Subcontractor, all reasonable facilities and assistance, including access to drawings and production data, shall be furnished to the inspectors at no charge to the Purchaser.

26.3 The Purchaser or its designated representative shall be entitled to attend the tests and/or inspections referred to in GCC Sub-Clause 26.2, provided that the Purchaser bear all of its own costs and expenses incurred in connection with such attendance including, but not limited to, all traveling and board and lodging expenses.

- 26.4 Whenever the Supplier is ready to carry out any such test and inspection, it shall give a reasonable advance notice, including the place and time, to the Purchaser. The Supplier shall obtain from any relevant third party or manufacturer any necessary permission or consent to enable the Purchaser or its designated representative to attend the test and/or inspection.
- 26.5 The Purchaser may require the Supplier to carry out any test and/or inspection not required by the Contract but deemed necessary to verify that the characteristics and performance of the Goods comply with the technical specifications codes and standards under the Contract, provided that the Supplier's reasonable costs and expenses incurred in the carrying out of such test and/or inspection shall be added to the Contract Price. Further, if such test and/or inspection impedes the progress of manufacturing and/or the Supplier's performance of its other obligations under the Contract, due allowance will be made in respect of the Delivery Dates and Completion Dates and the other obligations so affected.
- 26.6 The Supplier shall provide the Purchaser with a report of the results of any such test and/or inspection.
- 26.7 The Purchaser may reject any Goods or any part thereof that fail to pass any test and/or inspection or do not conform to the specifications. The Supplier shall either rectify or replace such rejected Goods or parts thereof or make alterations necessary to meet the specifications at no cost to the Purchaser, and shall repeat the test and/or inspection, at no cost to the Purchaser, upon giving a notice pursuant to GCC Sub-Clause 26.4.
- 26.8 The Supplier agrees that neither the execution of a test and/or inspection of the Goods or any part thereof, nor the attendance by the Purchaser or its representative, nor the issue of any report pursuant to GCC Sub-Clause 26.6, shall release the Supplier from any warranties or other obligations under the Contract.
- Liquidated Damages** 27.1 Except as provided under GCC Clause 32, if the Supplier fails to deliver any or all of the Goods by the Date(s) of delivery or perform the Related Services within the period specified in the Contract, the Purchaser may without prejudice to all its other remedies under the Contract, deduct from the Contract Price, as liquidated damages, a

sum equivalent to the percentage specified in the **SCC** of the delivered price of the delayed Goods or unperformed Services for each week or part thereof of delay until actual delivery or performance, up to a maximum deduction of the percentage specified in those **SCC**. Once the maximum is reached, the Purchaser may terminate the Contract pursuant to GCC Clause 35.

Warranty

- 28.1 The Supplier warrants that all the Goods are new, unused, and of the most recent or current models, and that they incorporate all recent improvements in design and materials, unless provided otherwise in the Contract.
- 28.2 Subject to GCC Sub-Clause 22.1(b), the Supplier further warrants that the Goods shall be free from defects arising from any act or omission of the Supplier or arising from design, materials, and workmanship, under normal use in the conditions prevailing in the country of final destination.
- 28.3 Unless otherwise specified in the **SCC**, the warranty shall remain valid for twelve (12) months after the Goods, or any portion thereof as the case may be, have been delivered to and accepted at the final destination indicated in the **SCC**, or for eighteen (18) months after the date of shipment from the port or place of loading in the country of origin, whichever period concludes earlier.
- 28.4 The Purchaser shall give notice to the Supplier stating the nature of any such defects together with all available evidence thereof, promptly following the discovery thereof. The Purchaser shall afford all reasonable opportunity for the Supplier to inspect such defects.
- 28.5 Upon receipt of such notice, the Supplier shall, within the period specified in the **SCC**, expeditiously repair or replace the defective Goods or parts thereof, at no cost to the Purchaser.
- 28.6 If having been notified, the Supplier fails to remedy the defect within the period specified in the **SCC**, the Purchaser may proceed to take within a reasonable period such remedial action as may be necessary, at the Supplier's risk and expense and without prejudice to any other rights which the Purchaser may have against the Supplier under the Contract.

Patent Indemnity

29.1 The Supplier shall, subject to the Purchaser's compliance with GCC Sub-Clause 29.2, indemnify and hold harmless the Purchaser and its employees and officers from and against any and all suits, actions or administrative proceedings, claims, demands, losses, damages, costs, and expenses of any nature, including attorney's fees and expenses, which the Purchaser may suffer as a result of any infringement or alleged infringement of any patent, utility model, registered design, trademark, copyright, or other intellectual property right registered or otherwise existing at the date of the Contract by reason of:

- (a) the installation of the Goods by the Supplier or the use of the Goods in the country where the Site is located; and
- (b) the sale in any country of the products produced by the Goods.

Such indemnity shall not cover any use of the Goods or any part thereof other than for the purpose indicated by or to be reasonably inferred from the Contract, neither any infringement resulting from the use of the Goods or any part thereof, or any products produced thereby in association or combination with any other equipment, plant, or materials not supplied by the Supplier, pursuant to the Contract.

29.2 If any proceedings are brought or any claim is made against the Purchaser arising out of the matters referred to in GCC Sub-Clause 29.1, the Purchaser shall promptly give the Supplier a notice thereof, and the Supplier may at its own expense and in the Purchaser's name conduct such proceedings or claim and any negotiations for the settlement of any such proceedings or claim.

29.3 If the Supplier fails to notify the Purchaser within twenty-eight (28) days after receipt of such notice that it intends to conduct any such proceedings or claim, then the Purchaser shall be free to conduct the same on its own behalf.

29.4 The Purchaser shall, at the Supplier's request, afford all available assistance to the Supplier in conducting such proceedings or claim, and shall be reimbursed by the Supplier for all reasonable expenses incurred in so doing.

29.5 The Purchaser shall indemnify and hold harmless the Supplier and its employees, officers, and Subcontractors from and against any and all suits, actions or administrative proceedings, claims, demands, losses, damages, costs, and expenses of any nature, including attorney's fees and expenses, which the Supplier may suffer as a result of any infringement or alleged infringement of any patent, utility model, registered design, trademark, copyright, or other intellectual property right registered or otherwise existing at the date of the Contract arising out of or in connection with any design, data, drawing, specification, or other documents or materials provided or designed by or on behalf of the Purchaser.

Limitation of Liability

30.1 Except in cases of negligence or willful misconduct:

- (a) the Supplier shall not be liable to the Purchaser, whether in contract, tort, or otherwise, for any indirect or consequential loss or damage, loss of use, loss of production, or loss of profits or interest costs, provided that this exclusion shall not apply to any obligation of the Supplier to pay liquidated damages to the Purchaser; and
- (b) the aggregate liability of the Supplier to the Purchaser, whether under the Contract, in tort or otherwise, shall not exceed the amount specified in the SCC, provided that this limitation shall not apply to the cost of repairing or replacing defective equipment, or to any obligation of the supplier to indemnify the purchaser with respect to patent infringement.

Change in Laws and Regulations

31.1 Unless otherwise specified in the Contract, if after the date of 28 days prior to date of Tender submission, any law, regulation, ordinance, order or bylaw having the force of law is enacted, promulgated, abrogated, or changed in the place of the Purchaser's country where the Site is located (which shall be deemed to include any change in interpretation or application by the competent authorities) that subsequently affects the Delivery Date and/or the Contract Price, then such Delivery Date and/or Contract Price shall be correspondingly increased or decreased, to the extent that the Supplier has thereby been affected in the performance of any of its obligations under the Contract. Notwithstanding the foregoing, such additional or reduced cost shall not be separately paid or

credited if the same has already been accounted for in the price adjustment provisions where applicable, in accordance with GCC Clause 15.

Force Majeure

- 32.1 The Supplier shall not be liable for forfeiture of its Performance Security, liquidated damages, or termination for default if and to the extent that its delay in performance or other failure to perform its obligations under the Contract is the result of an event of Force Majeure.
- 32.2 For purposes of this Clause, “Force Majeure” means an event or situation beyond the control of the Supplier that is not foreseeable, is unavoidable, and its origin is not due to negligence or lack of care on the part of the Supplier. Such events may include, but not be limited to, acts of the Purchaser in its sovereign capacity, wars or revolutions, fires, floods, epidemics, quarantine restrictions, and freight embargoes, and any change in Government policy or new development involving the Government.
- 32.3 If a Force Majeure situation arises, the Supplier shall promptly notify the Purchaser in writing of such condition and the cause thereof. Unless otherwise directed by the Purchaser in writing, the Supplier shall continue to perform its obligations under the Contract as far as is reasonably practical, and shall seek all reasonable alternative means for performance not prevented by the Force Majeure event.

Change Orders and Contract Amendments

- 33.1 The Purchaser may at any time order the Supplier through notice in accordance GCC Clause 8, to make changes within the general scope of the Contract in any one or more of the following:
- (a) drawings, designs, or specifications, where Goods to be furnished under the Contract are to be specifically manufactured for the Purchaser;
 - (b) the method of shipment or packing;
 - (c) the place of delivery; and
 - (d) the Related Services to be provided by the Supplier.
- 33.2 If any such change causes an increase or decrease in the cost of, or the time required for, the Supplier’s performance of any provisions under the Contract, an equitable adjustment shall be made in the Contract Price or in the Delivery/Completion Schedule, or both, and

the Contract shall accordingly be amended by written variation agreed to between the Parties. Any claims by the Supplier for adjustment under this Clause must be asserted within twenty-eight (28) days from the date of the Supplier's receipt of the Purchaser's change order.

33.3 Prices to be charged by the Supplier for any Related Services that might be needed but which were not included in the Contract shall be agreed upon in advance by the parties and shall not exceed the prevailing rates charged to other parties by the Supplier for similar services.

33.4 Subject to the above, no variation in or modification of the terms of the Contract shall be made except by written amendment signed by the Parties.

Extensions of Time

34.1 If at any time during performance of the Contract, the Supplier or its subcontractors should encounter conditions impeding timely delivery of the Goods or completion of Related Services pursuant to GCC Clause 13, the Supplier shall promptly notify the Purchaser in writing of the delay, its likely duration, and its cause. As soon as practicable after receipt of the Supplier's notice, the Purchaser shall evaluate the situation and may at its discretion extend the Supplier's time for performance, in which case the extension shall be ratified by the parties by written amendment of the Contract.

34.2 Except in case of Force Majeure, as provided under GCC Clause 32, a delay by the Supplier in the performance of its Delivery and Completion obligations shall render the Supplier liable to the imposition of liquidated damages pursuant to GCC Clause 26, unless an extension of time is agreed upon, pursuant to GCC Sub-Clause 34.1.

Termination

35.1 Termination for Default

(a) The Purchaser, without prejudice to any other remedy for breach of Contract, by written notice of default sent to the Supplier, may terminate the Contract in whole or in part:

(i) if the Supplier fails to deliver any or all of the Goods within the period specified in the Contract, or within any extension thereof granted by the Purchaser

- pursuant to GCC Clause 34;
- (ii) if the Supplier fails to perform any other obligation under the Contract; or
 - (iii) if the Supplier, in the judgment of the Purchaser has engaged in fraud and corruption, as defined in GCC Clause 3, in competing for or in executing the Contract.
- (b) In the event the Purchaser terminates the Contract in whole or in part, pursuant to GCC Clause 35.1(a), the Purchaser may procure, upon such terms and in such manner as it deems appropriate, Goods or Related Services similar to those undelivered or not performed, and the Supplier shall be liable to the Purchaser for any additional costs for such similar Goods or Related Services. However, the Supplier shall continue performance of the Contract to the extent not terminated.

35.2 Termination for Insolvency

- (a) The Purchaser may at any time terminate the Contract by giving notice to the Supplier if the Supplier becomes bankrupt or otherwise insolvent. In such event, termination will be without compensation to the Supplier, provided that such termination will not prejudice or affect any right of action or remedy that has accrued or will accrue thereafter to the Purchaser.

35.3 Termination for Convenience

- (a) The Purchaser, by notice sent to the Supplier, may terminate the Contract, in whole or in part, at any time for its convenience. The notice of termination shall specify that termination is for the Purchaser's convenience, the extent to which performance of the Supplier under the Contract is terminated, and the date upon which such termination becomes effective.
- (b) The Goods that are complete and ready for shipment within twenty-eight (28) days after the Supplier's receipt of notice of termination shall be accepted by the Purchaser at the Contract terms and prices. For the remaining Goods, the Purchaser may elect:
 - (i) to have any portion completed and delivered at the Contract terms and prices; and/or

- (ii) to cancel the remainder and pay to the Supplier an agreed amount for partially completed Goods and Related Services and for materials and parts previously procured by the Supplier.

- Assignment** 36.1 Neither the Purchaser nor the Supplier shall assign, in whole or in part, their obligations under this Contract, except with prior written consent of the other party.
- Export Restriction** 38.1 Despite any obligation under the Contract to complete all export formalities, any export restrictions attributable to the Purchaser, to the country of the Purchaser, or to the use of the products/goods, systems or services to be supplied, which arise from trade regulations from a country supplying those products/goods, systems or services, and which substantially impede the Supplier from meeting its obligations under the Contract, shall release the Supplier from the obligation to provide deliveries or services, always provided, however, that the Supplier can demonstrate to the satisfaction of the Purchaser that it has completed all formalities in a timely manner, including applying for permits, authorisations and licenses necessary for the export of the products/goods, systems or services under the terms of the Contract.
- 38.2 Termination of the Contract on this basis shall be for the Purchaser's convenience pursuant to Sub-Clause 35.3.
- Indemnity** 39.1 Subject to the provisions of the Contract, the Supplier must at all times indemnify the Purchaser, 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 Supplier, its Officers, employees, agents or sub-contractors in connections with this Contract.
- Supplier's Acknowledgement** 40.1 The Supplier acknowledges that before entering into this Contract, the Supplier was given a copy of the Contract and is aware of right to seek independent legal advice on its terms if the supplier so

desires, and given reasonable opportunity to take such advice.

40.2 The Supplier also warrants that the representative who will be executing this Contract on behalf of the Supplier has all the power authority to execute this Contract.

40.3 The Supplier now signs this Contract in agreement to all terms and conditions set out therein.

Counterpart

41.1 The Parties may execute this Contract in multiple counterparts, each of which constitutes an original, and all of which, collectively, constitute only one agreement. The signatures of all the Parties need not appear on the same counterpart, and delivery of an executed counterpart signature page by facsimile is acceptable as executing and delivering this Agreement in the presence of the other Parties to this Agreement. This Agreement is effective upon delivery of one executed counterpart from each party to the other parties. This clause shall not apply if the counterpart is not required.

The above General Conditions of Contract are approved for use ***without amendment*** except as provided in the applicable Special Conditions of Contract, or as otherwise noted in the Table of Amendments below.

Section VIII. Special Conditions of Contract

The following Special Conditions of Contract (SCC) shall supplement and / or amend the General Conditions of Contract (GCC). Whenever there is a conflict, the provisions herein shall prevail over those in the GCC.

[The Purchaser shall insert the appropriate wording using the samples below or other acceptable wording, and delete the text in italics]

GCC 1.1(i)	The Purchaser is: <i>Samoa Ports Authority</i>
GCC 1.1 (n)	The Project Site(s)/Final Destination(s) is/are: <i>Apia International Port</i>
GCC 1.1 (o)	The Effectiveness Date is: <i>[insert date of execution or other nominated date]</i>
GCC 4.2 (a)	The meaning of the trade terms shall be as prescribed by Incoterms or as prescribed by the Tenders Board if otherwise.
GCC 4.2 (b)	The version edition of Incoterms shall be INCOTERMS 2012
GCC 5.1	The language shall be: <i>English</i>
GCC 8.1	For notices , the Purchaser's address shall be: Attention: <i>Soóalo Kuresa Soóalo</i> Street Address: <i>Matautu tai</i> Floor/ Room number: City: <i>Apia</i> Country: Sāmoa Telephone: <i>0685 64400</i> Facsimile number: <i>0685 25870</i> Electronic mail address: <i>sooalo.kuresa@spasamoa.ws</i>
GCC 9.1	The governing law shall be the laws of the Independent State of Samoa
GCC 10.2	The rules of procedure for arbitration proceedings pursuant to GCC Clause 10.2 shall be as follows: <i>[The tender documents should contain one clause to be retained in the event of a Contract with a foreign Supplier and one clause to be retained in the event of a Contract with a Supplier who is a national of the Purchaser's country. At the time of finalizing the Contract, the respective applicable clause should be retained in the Contract. The following explanatory note should therefore be inserted as a header to GCC 10.2 in the tendering document.]</i>

“Clause 10.2 (a) shall be retained in the case of a Contract with a foreign Supplier and clause 10.2 (b) shall be retained in the case of a Contract with a national of the Purchaser’s country.”]

(a) Contract with foreign Supplier:

[For contracts entered into with foreign suppliers, International commercial arbitration may have practical advantages over other dispute settlement methods. Among the rules to govern the arbitration proceedings, the Purchaser may wish to consider the United Nations Commission on International Trade Law (UNCITRAL) Arbitration Rules of 1976, the Rules of Conciliation and Arbitration of the International Chamber of Commerce (ICC), the Rules of the London Court of International Arbitration or the Rules of Arbitration Institute of the Stockholm Chamber of Commerce.]

If the Purchaser chooses the UNCITRAL Arbitration Rules, the following sample clause should be inserted:

GCC 10.2 (a)—Any dispute, controversy or claim arising out of or relating to this Contract, or breach, termination or invalidity thereof, shall be settled by arbitration in accordance with the UNCITRAL Arbitration Rules as at present in force.

If the Purchaser chooses the Rules of ICC, the following sample clause should be inserted:

GCC 10.2 (a)—All disputes arising in connection with the present Contract shall be finally settled under the Rules of Conciliation and Arbitration of the International Chamber of Commerce by one or more arbitrators appointed in accordance with said Rules.

If the Purchaser chooses the Rules of Arbitration Institute of Stockholm Chamber of Commerce, the following sample clause should be inserted:

GCC 10.2 (a)—Any dispute, controversy or claim arising out of or in connection with this Contract, or the breach termination or invalidity thereof, shall be settled by arbitration in accordance with the Rules of the Arbitration Institute of the Stockholm Chamber of Commerce.

If the Purchaser chooses the Rules of the London Court of International Arbitration, the following clause should be inserted:

GCC 10.2 (a)—Any dispute arising out of or in connection with this Contract, including any question regarding its existence, validity or

	<p>termination shall be referred to and finally resolved by arbitration under the Rules of the London Court of International Arbitration, which rules are deemed to be incorporated by reference to this clause.</p> <p>(b) Contracts with Supplier national of the Purchaser's country: In the case of a dispute between the Purchaser and a Supplier who is a national of the Independent State of Samoa, the dispute shall be referred to adjudication or arbitration in accordance with the Arbitration Act 1976, Independent State of Samoa. This modality may also apply to foreign Suppliers who are prepared to submit to this option</p>
GCC 13.1	<p>Details of Shipping and other Documents to be furnished by the Supplier are</p> <p><i>[insert the required documents, such as a negotiable bill of lading, a non-negotiable sea way bill, an airway bill, a railway consignment note, a road consignment note, insurance certificate, Manufacturer's or Supplier's warranty certificate, inspection certificate issued by nominated inspection agency, Supplier's factory shipping details etc].</i></p> <p>The above documents shall be received by the Purchaser before arrival of the Goods and, if not received, the Supplier will be responsible for any consequent expenses.</p>
GCC 15.1	<p>The prices charged for the Goods supplied and the related Services performed <i>[insert "shall" or "shall not," as appropriate]</i> be adjustable.</p> <p>If prices are adjustable, the following method shall be used to calculate the price adjustment <i>[see attachment to these SCC for a sample Price Adjustment Formula]</i></p>
GCC 16.1	<p>Sample provision only</p> <p>The method and conditions of payment to be made to the Supplier under this Contract shall be as follows:</p> <p>Payment for Goods supplied from abroad: Payment of foreign currency portion shall be made in <i>[currency of the Contract Price]</i> in the following manner:</p> <p>(i) Advance Payment: Ten percent (10%) of the Contract Price shall be paid within thirty (30) days of signing of the Contract, and upon submission of claim and a bank guarantee for equivalent amount valid until the Goods are delivered and in the form provided in the tendering documents or another form acceptable to the Purchaser.</p>

	<p>(ii) On Shipment: Eighty percent (80%) of the Contract Price of the Goods shipped shall be paid through irrevocable confirmed letter of credit opened in favor of the Supplier in a bank in its country of origin, upon the submission of documents specified in GCC Clause 13.</p> <p>(iii) On Acceptance: Ten percent (10%) of the Contract Price of Goods received shall be paid within thirty (30) days of receipt of the Goods upon submission of claim supported by the acceptance certificate issued by the Purchaser.</p>
GCC 16.5	<p>The payment-delay period after which the Purchaser shall pay interest to the supplier shall be <i>[insert number]</i> days from the date of payment approval.</p> <p>The interest rate that shall be applied is <i>[insert number]</i> % of the Contract Price.</p>
GCC 18.1	<p>A Performance Security <i>[insert “shall” or “shall not” be required]</i> <i>[If a Performance Security is required, insert “the amount of the Performance Security shall be: [insert amount] of the Contract Price.</i></p> <p><i>[The amount of the Performance Security is usually expressed as a percentage of the Contract Price. The percentage varies according to the Purchaser’s perceived risk and impact of non-performance by the Supplier. A 10% percentage is used under normal circumstances]</i></p>
GCC 18.3	<p>The Performance Security shall be in the form of : <i>[insert “a Bank Guarantee” or “a Performance Bond”]</i></p> <p>The Performance security shall be denominated in <i>[insert “a freely convertible currency acceptable to the Purchaser”]</i></p>
GCC 18.4	<p>Discharge of the Performance Security shall take place: <i>not later than twenty-eight (28) days following the expiration of the warranty period or extension thereof as follows:</i></p> <p><i>[please insert]</i></p>
GCC 23.2	<p>The packing, marking and documentation within and outside the packages shall be: <i>[insert in detail the type of packing required, the markings in the packing and all documentation required]</i></p>

GCC 24.1	<p>The insurance coverage shall be as specified in the Incoterms.</p> <p>If not in accordance with Incoterms, insurance shall be as follows: <i>[insert specific insurance provisions agreed upon, including coverage, currency an amount]</i></p> <p>The Supplier must insure the Goods in an amount equal to 110 percent of the CIF price of the Goods from “Warehouse” to “Warehouse” on “All Risks” basis <i>(specify A, B or C)</i>, including War Risks, Civil Disturbance and Strikes . [“B” will usually be sufficient]</p>
GCC 25.1	<p>Responsibility for transportation of the Goods shall be as specified in the Incoterms.</p> <p>If not in accordance with Incoterms, responsibility for transportations shall be as follows: <i>[insert “The Supplier is required under the Contract to transport the Goods to a specified place of final destination within the Purchaser’s Country, defined as the Project Site, transport to such place of destination in the Purchaser’s country, including insurance and storage, as shall be specified in the Contract, shall be arranged by the Supplier, and related costs shall be included in the Contract Price”; or any other agreed upon trade terms (specify the respective responsibilities of the Purchaser and the Supplier)]</i></p>
GCC 26.1	<p>The inspections and tests shall be performed: <i>[insert nature, frequency, procedures for carrying out the inspections and tests]</i></p>
GCC 26.2	<p>The Inspections and tests shall be conducted at: <i>[insert name(s) of location(s)]</i></p>
GCC 27.1	<p>The liquidated damage shall be: zero point five percent (0.5%) of the Contract Price per week.</p>
GCC 27.1	<p>The maximum amount of liquidated damages shall be: ten percent (10%) of the Contract Price.</p>
GCC 28.3	<p>The period of validity of the Warranty shall be: <i>[insert number] days</i></p> <p>For purposes of the Warranty, the place(s) of final destination(s) shall be: <i>[insert name(s) of location(s)]</i></p>
GCC 28.5	<p>The period for repair or replacement shall be: <i>[insert number(s)] days.</i></p>
GCC 30.1 (b)	<p>The aggregate liability of the Supplier to the Purchaser shall not exceed <i>three-hundred per cent (300%) of the Contract Price.</i></p>

Attachment: Sample Price Adjustment Formula

If in accordance with GCC Sub-Clause 15.1, prices shall be adjustable, the following method shall be used to calculate the price adjustment:

Prices payable to the Supplier, as stated in the Contract, shall be subject to adjustment during performance of the Contract to reflect changes in the cost of labor and material components in accordance with the formula:

$$P_1 = P_0 [a + bL_1 + cM_1] - P_0$$

$$L_0 \quad M_0$$

$$a+b+c = 1$$

in which:

- P_1 = adjustment amount payable to the Supplier.
- P_0 = Contract Price (base price).
- a = fixed element representing profits and overheads included in the Contract Price and generally in the range of five (5) to fifteen (15) percent.
- b = estimated percentage of labor component in the Contract Price.
- c = estimated percentage of material component in the Contract Price.
- L_0, L_1 = labor indices applicable to the appropriate industry in the country of origin on the base date and date for adjustment, respectively.
- M_0, M_1 = material indices for the major raw material on the base date and date for adjustment, respectively, in the country of origin.

The coefficients a , b , and c as specified by the Purchaser are as follows:

$a = [insert\ value\ of\ coefficient]$

$b = [insert\ value\ of\ coefficient]$

$c = [insert\ value\ of\ coefficient]$

The Tenderer shall indicate the source of the indices and the base date indices in its tender.

Base date = thirty (30) days prior to the deadline for submission of the tenders.

Date of adjustment = $[insert\ number\ of\ weeks]$ weeks prior to date of shipment (representing the mid-point of the period of manufacture).

The above price adjustment formula shall be invoked by either party subject to the following further conditions:

- (a) No price adjustment shall be allowed beyond the original delivery dates unless specifically stated in the extension letter. As a rule, no price adjustment shall be allowed for periods of delay for which the Supplier is entirely responsible. The Purchaser will, however, be entitled to any decrease in the prices of the Goods and Services subject to adjustment.
- (b) If the currency in which the Contract Price P_0 is expressed is different from the currency of origin of the labor and material indices, a correction factor will be applied to avoid incorrect adjustments of the Contract Price. The correction factor shall correspond to the ratio of exchange rates between the two currencies on the base date and the date for adjustment as defined above.
- (c) No price adjustment shall be payable on the portion of the Contract Price paid to the Supplier as advance payment.

Section IX. Contract Forms

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1. Letter of Acceptance

[On letterhead paper of the Purchaser]

[Date]

To: *[name and address of the Supplier]*

SUBJECT: Notification of Award Contract No.:

SUPPLY OF

This is to notify you that your Tender dated *[insert date]* for execution of the *[name of the Contract and identification number, as given in the Special Conditions of Contract]* for the Contract Price of the equivalent of *[insert amount in numbers and words] [insert name of currency]*, as corrected and modified in accordance with the Instructions to Tenderers is hereby accepted by our Agency.

We request you to furnish the Performance Security within *[insert number]* days from the date of this letter in accordance with the Special Conditions of Contract, using for that purpose the Performance Security form (#3) which is provided in Section IX (Contract Forms) of the Tender Documents.

In accordance with Instructions to Tenderers Clause 42 Notification of Award, this letter shall serve as a binding contract until the final contract is prepared and executed.

Authorised Signature: _____

Name and Title of Signatory: _____

Name of Agency: _____

Attachment: Draft Contract

2. Contract Agreement

[The successful Tenderer shall fill in this form in accordance with the instructions indicated]

THIS CONTRACT AGREEMENT is made on this *[insert: number]* day of *[insert: month]*, *[insert: year]*.

BETWEEN

- (1) *[insert complete name of Purchaser]*, a *[insert description of type of legal entity, for example, an agency of the Ministry of ... of the Government of the Independent State of Samoa, or corporation incorporated under the laws of the government of the Independent State of Samoa]* (“Purchaser”), of the one part; and
- (2) *[insert name of Supplier]*, a corporation incorporated under the laws of *[insert: country of Supplier]* and having its principal place of business at *[insert: address of Supplier]* (“Supplier”) of the other part.

WHEREAS the Purchaser invited Tenders for the supply of certain Goods and Related Services, as specified in *[insert brief description of Goods and Services]* (“Goods”).

AND the Purchaser has accepted the Tender by the Supplier for the supply of the Goods and *[insert description of the]* Related Services (“Services”) in accordance with the terms and conditions as set out in this Contract.

the sum of *[and figures, expressed in the Contract currency(ies)]* (“Contract Price”).

NOW THIS AGREEMENT WITNESSETH AS FOLLOWS:

1. In this Agreement words and expressions shall have the same meanings as are respectively assigned to them in the General and Special Conditions of Contract referred to and they shall be deemed to form and be read and construed as part of this Contract.
2. In consideration of the payments to be made by the Purchaser to the Supplier as hereinafter mentioned, the Supplier hereby covenants with the Purchaser to provide the Goods and Services and to remedy the defects therein in conformity with the provisions of this Contract.
3. The Purchaser covenants to pay the Supplier in the amount not exceeding **[INSERT CONTRACT PRICE IN WORDS]** (**INSERT CONTRACT PRICE IN FIGURES**) inclusive of all applicable taxes and other related costs (“Contract Price”) in consideration of the provision of the Goods and Services

in full compliance and in accordance with the terms and conditions of the Contract including but not limited to remedying the defects.

4. The documents forming this Contract shall comprise the following and each shall be read and construed as an integral part of the Contract:
 - (a) Contract Agreement
 - (b) Notification of Award
 - (c) General Conditions of Contract ("GCC")
 - (d) Special Conditions of Contract ("SCC")
 - (e) The Supplier's Tender
 - (f) Technical Requirements (including Schedule of Requirements and Technical Specifications)
 - (g) Supplier's Tender Price Schedule
 - (h) *[Add here any other document(s) where applicable]*

IN WITNESS WHEREOF the Parties hereto have caused this Agreement to be executed in accordance with the laws of the Independent State of Samoa on the day, month and year indicated above.

EXECUTED by [insert details] **FOR THE** [insert],)
for and on behalf of the **INDEPENDENT STATE**)
STATE OF SAMOA)

In the presence of:)

.....
(Witness Name)

.....
(Designation)

EXECUTED by [insert details] **FOR THE** [insert],)
for and on behalf of the [**INSERT SUPPLIER**])

in the presence of:)

.....
Director

.....
(Director/Secretary)

3. Performance Security

[The bank, as requested by the successful Tenderer, shall fill in this form in accordance with the instructions indicated]

Date: *[insert date (as day, month, and year)]*

CT No. and title: *[insert no. and title of tendering process]*

Bank's Branch or Office: *[insert complete name of Guarantor]*

Beneficiary: *[insert complete name of Purchaser]*

PERFORMANCE GUARANTEE No.: *[insert Performance Guarantee number]*

We have been informed that *[insert complete name of Supplier]* ("Supplier") has entered into Contract No. *[insert number]* dated *[insert day and month]*, *[insert year]* with you, for the supply of *[description of Goods and related Services]* ("Contract").

Furthermore, we understand that, according to the conditions of the Contract, a Performance Guarantee is required.

At the request of the Supplier, we hereby irrevocably undertake to pay you any sum(s) not exceeding *[insert amount(s)¹ in figures and words]* upon receipt by us of your first demand in writing declaring the Supplier to be in default under the Contract, without cavil or argument, or your needing to prove or to show grounds or reasons for your demand or the sum specified therein.

This Guarantee shall expire no later than the *[insert number]* day of *[insert month]* *[insert year]*,² and any demand for payment under it must be received by us at this office on or before that date.

This guarantee is subject to the Uniform Rules for Demand Guarantees, ICC Publication No. 458, except that subparagraph (ii) of Sub-article 20(a) is excluded.

.....
Authorised Signatures for Bank and Supplier

Note

Italicized text following is for guidance on how to prepare this guarantee and is to be deleted from final document

¹The Bank shall insert the amount(s) specified in the SCC and denominated, as specified in the SCC, either in the currency(ies) of the Contract or a freely convertible currency acceptable to the Purchaser.

²Dates established in accordance with Clause 18.4 of the General Conditions of Contract ("GCC"), taking into account any warranty obligations of the Supplier under Clause 16.2 of the GCC intended to be secured by a partial Performance Guarantee. The Purchaser should note that in the event of an extension of the time to

perform the Contract, the Purchaser would need to request an extension of this Guarantee from the Bank. Such request must be in writing and must be made prior to the expiration date established in the Guarantee. In preparing this Guarantee, the Purchaser might consider adding the following text to the Form, at the end of the penultimate paragraph: "We agree to a one-time extension of this Guarantee for a period not to exceed [six (6) months] [one (1) year], in response to the Purchaser's written request for such extension, such request to be presented to us before the expiry of the Guarantee."

