



GOVERNMENT OF THE INDEPENDENT STATE OF SAMOA

**BIDDING DOCUMENT FOR THE PROCUREMENT OF WORKS
CONSTRUCTION OF THE NEW COURTHOUSE AND JUDGES
RESIDENCE AT SALELOLOGA, SAVAI**

INSERT WORKS IFB SERIAL NO. MJCASAV/01-2023/2024

BY OPEN COMPETITIVE BIDDING

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PROCURING ENTITY: Ministry of Justice and Courts Administration

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A. General

1. **Scope of Bidding**
 - 1.1 The procuring entity, as specified in the **BDS**, issues this Bidding Document for the procurement of the works as specified in **Section V – Works Requirements**.
 - 1.2 The name and identification number of this Open Competitive Bidding procurement are **specified in the BDS**. The name, identification, and number of lots of are also **provided in the BDS**.
 - 1.3 Throughout this bidding document:
 - (a) “**Contact Entity**” is the procuring entity’s assigned agency or person for conducting the bidding and contract administration processes;
 - (b) “**day**” means calendar day;
 - (c) “**Government**” means the Government of the Independent State of Samoa;
 - (d) the term “**in writing**” means communicated in written form (e.g. by mail, e-mail, fax, telex) with proof of receipt;
 - (e) “**procuring entity**” means the Government or delegate or proxy for the Government and the Executor of the Contract;
 - (f) if the context so requires, “**singular**” means “**plural**” and vice versa.
2. **Source of Funds**
 - 2.1 The procuring entity has received public funds toward the cost of the project **named in the BDS** for the execution of this procurement.
 - 2.2 Payment shall be in accordance with the Government’s Treasury Instructions and Payment Policy.
3. **Fraud and Corruption**
 - 3.1 The procuring entity shall require that the contractor, 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.
 - 3.2 Accordingly, the Government shall clarify the terms where it becomes necessary, but for the purposes of this provision the following are considered unacceptable practices;

- (a) “corrupt practice” means the offering, giving, receiving, or soliciting, directly or indirectly, anything of value to influence improperly the actions of another party;¹
- (b) “fraudulent practice” means any act or omission, including a misrepresentation, that knowingly or recklessly misleads, or attempts to mislead, a party to obtain a financial or other benefit or to avoid an obligation;²
- (c) “collusive practice” means an arrangement between two or more parties³ designed to achieve an improper purpose, including influencing improperly the actions of another party;
- (d) “coercive practice” means 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 party;⁴ and/or
- (e) “obstructive practice” means:
 - (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.

3.3 A person who commits an offence relating to corrupt activities in Samoa shall

- (a) be liable for conviction under the provisions of the laws of the Independent State of Samoa relating to corrupt activities in Samoa;

¹ “Another party” refers to a public official acting in relation to the procurement process or contract execution]. In this context, “public official” includes the Government’s staff and employees of other organizations taking or reviewing procurement decisions.

² “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.

³ “Parties” refers to participants in the procurement process (including public officials) attempting to establish bid prices at artificial, non competitive levels.

⁴ “Party” refers to a participant in the procurement process or contract execution.

- (b) have their bid rejected if it is determined that the bidder is not in compliance with the laws of the Independent State of Samoa relating to corrupt activities in Samoa;
- (c) risk other sanctions in accordance with the Procurement Suspensions and Debarments Procedure.

3.4 The procuring entity will:

- (a) reject a bid if it determines that the bidder 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;
- (b) cancel the portion of the funding appropriation allocated to a contract if it determines at any time that representatives of the procuring entity or of a beneficiary of the appropriation were engaged in corrupt, fraudulent, collusive, or coercive practices during the selection process or the execution of that contract, without the procuring entity having taken timely and appropriate action satisfactory to the procuring entity to remedy the situation or address such practices when they occur;
- (c) sanction a bidder, including declaring ineligible, either indefinitely or for a stated period of time, to be awarded a Government financed contract if it at any time determines that the bidder has, directly or through an agent, engaged in corrupt, fraudulent, collusive, coercive, or obstructive practices in competing for, or in executing, a Government financed contract; and
- (d) have the right to require that, in contracts financed by a Government appropriation, a provision be included requiring bidders to submit audited financial statements and the same to be certified by an independent auditor, and also to permit the Government to inspect their accounts and records and other documents relating to the submission of proposals and contract performance and to have them audited by auditors appointed by the Government.

3.5 Furthermore, bidders shall be aware of the provision stated in GCC 56.1 of **Section VI- General Conditions of Contract** with regard to termination for fraudulent and corrupt behaviour.

4. Eligible Bidders

- 4.1 A bidder may be a natural person, private entity, or government-owned entity or a joint venture (“JV”), under an existing agreement, or with the intent to constitute a legally-enforceable JV (supported by a letter of intent). All partners shall be jointly

and severally liable for the execution of the Contract in accordance with the terms and conditions of Contract. The JV shall nominate a Representative who shall have the authority to conduct all business for and on behalf of any and all the members of the JV during the bidding process and, in the event the JV is awarded the Contract, during contract execution. Unless **specified in the BDS**, there is no limit on the number of members in a JV.

- 4.2 A bidder shall be deemed to have the nationality of a country if the bidder 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 contractors for any part of the Contract including related services.
- 4.3 An eligible bidder (regardless of its country of registration and including any director, officer, manager or supervisor of the bidder) shall not within a period of three (3) years preceding the date of issuance of the invitation to bid have been:
- (a) convicted of any criminal offence, whether in Samoa or elsewhere:
 - (i) relating to his or her professional conduct;
 - (ii) relating to the making of false statements or misrepresentations as to his or her qualifications to enter into a procurement contract;
 - (iii) involving dishonesty; or
 - (iv) under anti-corruption legislation; or
 - (v) suspended or disbarred by administrative or judicial proceedings from participating in procurements, whether in Samoa or elsewhere; or
 - (b) convicted of an offence involving dishonesty, obstruction of justice or a lack of honesty or business integrity; or
 - (c) convicted for an offence involving corruption; or
 - (d) convicted for engaging in anti-competitive practices, whether or not involving collusion; or
 - (e) deliberately neglectful or failed without good cause to perform a contract in accordance with its terms, if so serious in nature as to justify suspension or debarment.
- 4.4 The bidding process is open to all eligible bidders.

- 4.5 A bidder shall not have a conflict of interest. All bidders found to have conflict of interest shall be disqualified. bidders may be considered to have a conflict of interest with one or more parties in the bidding process if:
- (a) they are or have been associated in the past, with a firm or any of its affiliates (including third parties, controlling partner in common or a leading partner of a joint venture, or a common representative) which have been engaged by the procuring entity 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 bidding document; or
 - (b) they are associated, or have been associated in the past, with a firm or any of its affiliates (including third parties, controlling partner in common or a leading partner of a joint venture, or a common representative) that have been hired (or is proposed to be hired) by the procuring entity as Project Manager for the Contract.
- 4.6 Bidders shall not submit more than one bid in this bidding process, except for alternative bids permitted under **ITB 13**. This does not limit the participation of Subcontractors in more than one bid.
- 4.7 A firm that has been sanctioned by the Government in accordance with **ITB 3** 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 shall be made available as **specified in the BDS**.
- 4.8 In accordance with the Instructions, the bidder and any named Subcontractors shall certify in the Bid Submission Form that they are in good standing with the Government and have paid all taxes, duties, fees and other impositions as may be levied in Samoa prior to the award of contract. Evidence of such certification may be required from the successful bidder prior to award of contract.
- 4.9 Foreign Government-owned enterprises and public bodies in Samoa shall be eligible only if they can establish that they:
- (a) are legally and financially autonomous;
 - (b) operate under commercial law; and

(c) are not a dependent agency of the procuring entity or other department or agency of the Government.

4.10 Failure to directly obtain the bidding documents from the procuring entity will result in ineligibility of that bidder from participating in the procurement process.

4.11 Bidders shall provide such evidence of their continued eligibility satisfactory to the procuring entity as the procuring entity shall reasonably request.

4.12 In case a pre-qualification process is conducted prior to the tendering process, this tendering is open only to pre-qualified Bidders **as confirmed in the BDS**.

4.13 Bidders shall be excluded if:

(a) as a matter of law, the Government prohibits commercial relations with that country, provided that the Government is satisfied that such exclusion does not preclude effective competition for the supply of services as required; or

(b) 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 prohibits importation or contracting of general services from that country or payments to a person or entity in that country.

**5. Eligible
Materials,
Equipment and
Services**

5.1 The materials, equipment and services to be supplied under the Contract and financed by the Government may have their origin in any country not that excluded in the list **specified in the BDS** and expenditures under the contract are limited to such materials, equipment and services. At the procuring entity's request, the bidders may be required to provide evidence of the origin of materials, equipment and services.

5.2 For purposes of ITB 5.1 above, "origin" means the place where the materials and equipment are mined, grown, produced or manufactured, and from which the services are provided. Materials and equipment are produced when, through manufacturing, processing, or substantial or major assembling of components, a commercially recognised product is made which differs substantially in its basic characteristics or in purpose or utility from its components.

B. Contents of Bidding Document

- 6. Sections of Bidding Document**
- 6.1 The Bidding Documents consist of Parts 1, 2, and 3, which include all the Sections indicated below, and should be read together with any Addenda issued in accordance with ITB 8.
- PART 1 Bidding Procedures**
- Section I - Instructions to Bidders (“ITB”)
- Section II - Bid Data Sheet (“BDS”)
- Section III - Evaluation and Qualification Criteria
- Section IV - Bidding Forms
- Section IVA - Eligible Countries
- PART 2 Requirements**
- Section V - Works Requirements
- PART 3 Conditions of Contract and Contract Forms**
- Section VI - General Conditions of Contract (“GCC”)
- Section VII – Special Conditions of Contract (“SCC”)
- Section VIII - Contract Forms
- 6.2 “Bidding documents” means the SBD developed and prescribed by the Ministry of Finance for use in public procurement proceedings and all amendments made to the document for the purposes of a procuring entity and documents attached or incorporated by reference, that individually or collectively
- (a) invite bids;
 - (b) establish the objects of a bid;
 - (c) specify the conditions of a proposed procurement contract; and
 - (d) establish the applicable bidding procedures.
- 6.3 The procuring entity is not responsible for the completeness of the Bidding Documents and their Addenda if they were not obtained directly from the procuring entity and by the process stated by the procuring entity in the Invitation to Bidders.
- 6.4 The bidder is expected to examine all instructions, forms, terms, and specifications in the bidding document. Failure to furnish all information or documentation required by the bidding document may result in the rejection of the bid.
- 7. Clarification of Bidding**
- 7.1 A prospective bidder requiring any clarification of the bidding document shall contact the procuring entity in writing at the

**document, Site
Visit, Pre-
Bidding Meeting**

procuring entity's address **indicated in the BDS within 14 working days before closing date and time for submission of Bids or raise his/her inquiries during the pre-bid meeting.** The procuring entity shall respond in writing to any request for clarification, provided that such request is received prior to the deadline for submission of bids, no later than the number of days **stated in the BDS** prior to the deadline for submission of bids, within a period **given in the BDS**. The procuring entity shall forward copies of its response to all bidders who have acquired the bidding document, including a description of the inquiry but without identifying its source.

- 7.2 Should the procuring entity deem it necessary to amend the bidding document as a result of a request for clarification, the Bidding Document may be amended in accordance with the procedure under **ITB 8**.
- 7.3 The bidder may, at the bidder's own expenses, risk and responsibility, visit and examine the Site of works and its surroundings and obtain for itself, on its own risk and responsibility, all information that may be necessary for preparing the bid and entering into a contract for the works.
- 7.4 The procuring entity will arrange for the bidder and any of its personnel or agents to gain access to the relevant site(s), provided that the bidder gives the procuring entity adequate notice of a proposed visit of at least fourteen (14) days. Alternatively, the procuring entity may organise a site visit, if **specified in the BDS**, or visits concurrently with a pre-bid meeting, if one is required. Failure of a bidder to attend a site visit will not be a cause for its disqualification.
- 7.5 No site visits shall be arranged or scheduled after the deadline for the submission of the bids and prior to the award of contract.
- 7.6 The bidder and any of its personnel or agents will be granted permission by the procuring entity to enter upon its premises and lands for the purpose of such visit, but only upon the express condition that the bidder, its personnel, and agents will release and indemnify the procuring entity and its personnel and agents from and against all liability in respect thereof, and will be responsible for death or personal injury, loss of or damage to property, and any other loss, damage, costs, and expenses incurred as a result of the inspection.
- 7.7 The bidder's designated representative may be invited to attend a pre-bid meeting, if provided for in the BDS. The purpose of the

meeting will be to clarify issues and to answer questions on any matter that may be raised at that stage.

- 7.8 The bidder is requested, as far as possible, to submit any questions in writing, to reach the procuring entity not later than the number of days **as indicated in the BDS** before the pre-bid meeting.
- 7.9 Minutes of the pre-bid meeting includes the text of the questions raised, without identifying the source, and the responses given, together with any responses prepared after the meeting, will be transmitted promptly to all bidders who have acquired the bidding document. Any modification to the bidding documents that may become necessary as a result of the pre-bid meeting shall be made by the procuring entity exclusively through the issue of an addendum pursuant to **ITB 8** and not through the minutes of the pre-bid meeting.
- 7.10 Non-attendance at the pre-bid meeting will not be a cause for disqualification of a bidder.

8. Amendment of Bidding Document

- 8.1 At any time prior to the deadline for submission of bids, the procuring entity may amend the bidding documents by issuing an addendum.
- 8.2 Any addendum issued shall form part of the bidding documents and shall be communicated in writing to all who have obtained the bidding documents from the procuring entity.
- 8.3 To give prospective bidders reasonable time in which to take an addendum into account in preparing their bids, the procuring entity may, at its discretion, extend the deadline for the submission of bids, pursuant to **ITB 22.2** of this bidding document.

C. Preparation of Bids

9. Cost of Bidding

- 9.1 The bidder shall bear all costs associated with the preparation and submission of its bid, and the procuring entity shall not be liable for those costs, regardless of the conduct or outcome of the bid process.

10. Language of Bid

- 10.1 The bid as well as all correspondence and documents relating to the same, shall be written in the English language. Supporting documents and other printed materials that are part of the bid may be in another language provided they are accompanied by an accurate translation of the relevant passages of the bid in the English language, in which case and for the purposes of interpreting the Bidding, the translated version shall take precedent.

- 11. Documents Comprising the Bid**
- 11.1 The bid shall comprise the following:
- (a) the Letter of Bid;
 - (b) the completed Schedules in accordance with **ITB 12** and **14**;
 - (c) Bid Security or Bid Securing Declaration, in accordance with **ITB 19**;
 - (d) alternative bids if permissible in accordance with **ITB 13**;
 - (e) written confirmation authorising the signatory of the bid to commit the bidder, in accordance with **ITB 20.2**;
 - (f) documentary evidence in accordance with **ITB 17** establishing the bidder's qualifications to bid and perform the Contract if awarded;
 - (g) Technical Proposal in accordance with **ITB 16**;
 - (h) in the case of a bid submitted by a joint venture (JV), the JV agreement, or letter of intent to enter into a JV including a draft agreement, indicating at least the parts of the works to be executed by the respective partners; and
 - (i) any other document **required in the BDS**.
- 11.2 In addition to the requirements under **ITB 11.1**, bids submitted by a JV shall include a copy of the Joint Venture Agreement entered into by all partners. Alternatively, a Letter of Intent to execute a Joint Venture Agreement in the event of a successful bid shall be signed by all partners and submitted with the bid, together with a copy of the proposed agreement.
- 12. Letter of Bid and Schedules**
- 12.1 The Letter of Bid, Schedules and all documents listed under **ITB 11** shall be prepared using the relevant forms in **Section IV - Bidding Forms**, if so provided. The forms must be completed without any alterations to the text, and no substitutes shall be accepted. All blank spaces shall be filled in with the information requested if information requested is applicable.
- 13. Alternative Bids**
- 13.1 Unless otherwise **indicated in the BDS**, alternative bids shall not be considered.
- 13.2 When alternative times for completion are explicitly invited, a statement to that effect will be **included in the BDS**, as will the method of for the estimated different times for completion.
- 13.3 When **specified in the BDS**, bidders are permitted to submit alternative technical solutions for specified parts of the works. Such parts will be identified in the BDS and described in **Section**

V - Works Requirements. The method for their evaluation will be stipulated in **Section - III - Evaluation and Qualification Criteria.**

14. Bid Prices and Discounts

- 14.1 The prices and discounts quoted by the bidder in the Letter of Bid and in the Schedules shall conform to the requirements specified in this ITB 14.
- 14.2 The bidder shall submit a bid for the whole of the works described in ITB 1.1 by submitting prices for all items of the works, as identified in **Section IV - Bidding Forms – Priced Activity Schedules or Bills of Quantities.** In the case of admeasurement (measure and value) contracts, the bidder shall fill in rates and prices for all items of the works described in the Bill of Quantities. Items against which no rate or price is entered by the bidder will not be paid for by the procuring entity when executed and shall be deemed covered by the rates for other items and prices in the Bill of Quantities.
- 14.3 The price to be quoted in the Letter of Bid shall be the total price of the bid including VAGST, and excluding any discounts offered and withholding tax.
- 14.4 Any unconditional discounts and the methodology for their application shall be quoted in the Letter of Bid in accordance with **ITB 12.1.**
- 14.5 If so indicated in **ITB 1.2**, bids may be invited for individual contracts or for any combination of contracts (packages). Unless otherwise **indicated in the BDS**, prices quoted shall correspond to 100 % of the items specified for each lot and to 100% of the quantities specified for each item of a lot. Bidders wishing to offer any price reduction for the award of more than one (1) Contract shall specify in their bid the price reductions applicable to each package, or alternatively, to individual Contracts within the package. Price reductions or discounts shall be submitted in accordance with **ITB 14.4**, provided the bids for all contracts are submitted and opened at the same time.
- 14.6 Unless otherwise **provided in the BDS** and the GCC, the prices quoted by the bidder shall be fixed. If the prices quoted by the bidder are subject to adjustment during the performance of the Contract in accordance with the provisions of the GCC, the bidder shall furnish the indices and weightings for the price adjustment formulae in the Schedule of Adjustment Data in **Section IV - Bidding Forms** and the procuring entity may require the bidder to justify its proposed indices and weightings. These adjustments shall not be considered in the evaluation of bids.

14.7 All duties, taxes, and other levies payable by the contractor under the Contract, or for any other cause, as of the date **twenty-eight (28)** days prior to the deadline for submission of bids, shall be included in the rates and prices and the total bid price submitted by the bidder. Despite that applicable taxes, duties or other levies are not included such are payable by the contractor and reflected in the Contract as confirmed by the relevant authority prior signing of Contract.

15. Currencies of Bid and Payment

15.1 The currency(ies) of the bid and the currency(ies) of payments shall be the same. The bidder shall quote in Samoan Tala (SAT\$), the portion of the bid price that corresponds to expenditures incurred in Samoa, unless otherwise **specified in the BDS**.

15.2 The bidder may express the bid price for expenditure outside of Samoa in any freely convertible currency. If the bidder wishes to be paid in a combination of amounts in different currencies, it may quote its price accordingly but shall use no more than three freely convertible international currencies in addition to Samoan Tala (SAT\$).

16. Documents Comprising the Technical Proposal

16.1 The bidder shall furnish a Technical Proposal including a statement of the works methods or works program, equipment, personnel, schedule and any other information as stipulated in **Section IV - Bidding Forms** in sufficient detail to demonstrate the adequacy of the bidders' proposal to meet the work requirements and the completion time.

17. Documents Establishing the Qualifications of the bidder

17.1 The bidder shall furnish evidence confirming their eligibility under **ITB 4**. The documentary evidence of the bidder's qualifications to perform the contract if its bid is accepted shall establish to the procuring entity's satisfaction:

- (a) that it has the financial and technical capability necessary to perform the contract, meets the qualification criteria **specified in the BDS**, and has a successful performance history. If a pre-qualification process has been undertaken for the contract(s) for which these bidding documents have been issued, the bidder shall, as part of its bid, update any information submitted with its application for pre-qualification. For the purposes of establishing a bidder's qualifications, **and unless otherwise stated in the BDS**, the experience and/or resources of any Subcontractor will not contribute to the bidder's qualifications and only those of a Joint Venture partner will be considered.

- (b) that the bidder meets each of the qualification criterion specified in **Section III - Evaluation and Qualification Criteria**.

**18. Period of
Validity of Bids**

- 18.1 Bids shall remain valid for the period **specified in the BDS** after the bid submission deadline date prescribed by the procuring entity. A bid valid for a shorter period shall be rejected by the procuring entity as non-responsive.
- 18.2 In exceptional circumstances, prior to the expiration of the bid validity period, the procuring entity may request bidders to extend the period of validity of their bids. The request and the responses shall be made in writing. If a Bid Security is requested in accordance with **ITB 19**, it shall also be extended for a corresponding period. A bidder may refuse the request without forfeiting its bid security. A bidder granting the request shall not be required or permitted to modify its bid.

**19. Bid
Security/Bid
Securing
Declaration**

- 19.1 The bidder shall furnish as part of its bid, a Bid Security or a Bid-Securing Declaration if required, as **specified in the BDS**.
- 19.2 The Bid Security or Bid Securing Declaration shall be in the amount **specified in the BDS** and denominated in Samoan Tala (SAT\$) or the currency of the bid, and shall:
 - (a) at the bidder's option, be in the form of either a letter of credit, bank cheque or an unconditional bank guarantee from a banking institution, or a bond issued by a surety;
 - (b) be issued by a reputable institution selected by the bidder. If the institution issuing the bond is located outside Samoa, it shall have a correspondent financial institution located in Samoa to make it enforceable;
 - (c) be substantially in accordance with one of the forms of Bid Security in **Section IV- Bidding Forms**;
 - (d) be payable promptly upon written demand by the procuring entity in case the conditions listed in **ITB 19.5** 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 bids as extended if applicable, in accordance with **ITB 18.2**.
- 19.3 If a Bid Security or a Bid-Securing Declaration is required in accordance with **ITB 19.1**, any bid not accompanied by a substantially responsive Bid Security or Bid Securing

in accordance with **ITB 19.1** shall be rejected by the procuring entity as being non-responsive.

19.4 The Bid Security of unsuccessful bidders shall be returned as promptly as possible upon the successful bidder's furnishing of the Performance Security pursuant to **ITB 44**.

19.5 The Bid Security may be forfeited:

- (a) if a bidder withdraws or modifies its bid during the period of bid validity in accordance with **ITB 19.1**, and as provided for in **ITB 19.2** if applicable; or
- (b) if a bidder does not accept a correction of errors (arithmetic) in accordance with **ITB 30.2**; or
- (c) if the successful bidder fails to:
 - (i) sign the Contract in accordance with **ITB 43**; and
 - (ii) furnish a Performance Security in accordance with **ITB 44**.

19.6 In the case where a bid securing declaration is forfeited, the bidder will be disqualified for one year from participation in any Government procurement regardless of the source of funding.

19.7 The Bid Security or Bid- Securing Declaration of a JV must be in the name of a legally constituted JV that submits the bid or otherwise in the names of all future partners as named in the letter of intent mentioned in **Section IV - Bidding Forms - Bidder Information Form**.

19.8 If a Bid security is **not required in the BDS**, and if a bidder withdraws its bid during the period of bid validity specified by the bidder in accordance with **ITB 18.1** and **ITB 18.2** where applicable, if the bidder fails to sign the Contract, that bid will be disqualified for one year from participation in any Government procurement regardless of the source of funding.

19.9 If a Bid Securing Declaration is required, it must be in the form in **Section IV - Bidding Forms**, and the same shall remain valid for a period of **twenty-eight (28) days** or beyond the validity period of the bids as extended if applicable, in accordance with **ITB 18.2**.

20. Format and Signing of Bid

20.1 The bidder shall prepare one original of the documents comprising the bid as described in ITB and clearly mark it "**ORIGINAL**". If alternative bids are permitted in accordance with ITB 13, the documents shall be clearly marked "**ALTERNATIVE**". In addition, the bidder shall submit the required amount of copies of

that bid, **in accordance with the BDS** and clearly mark them “**COPY**”. In the event of any discrepancy between the Original and the Copies, the Original prevails.

20.2 The Original and all Copies of the bid shall be typed or written in indelible ink and **shall be signed by the bidder** as follows:

- (a) **In the case of a company**, the bid must be signed by the directors of the company; or
- (b) **In the case of a sole trader**, the bid must be signed by the person whose names are on the business license; and/ or
- (c) **In the case of joint venture (JV)**, the bid must be signed by all parties if so required in accordance with **ITB 4.1**.

20.3 The Bidder may authorize a person by way of a duly executed Power of Attorney to sign the Bid on behalf of the Bidder.

20.4 Any interlineation, erasures, or overwriting shall be valid only if they are signed or initialled by the authorised person signing the bid.

D. Submission and Opening of Bids

21. Sealing and Marking of Bids

21.1 Bidders must always submit their bids by mail or by hand delivery. Bidders submitting bids by mail or by hand delivery, shall enclose the original and each copy of the bid, including alternative bids, if permitted in accordance with ITB 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 **ITB 21.2** and **21.3**. Electronic submission may be **permitted if specified in the BDS**.

21.2 The inner and outer envelopes shall:

- (a) bear the name and address of the bidder;

- (b) be addressed to the procuring entity in accordance with **ITB 22.1**;
 - (c) bear the specific identification of this bidding process indicated in **ITB 1.2** and any additional identification marks as **specified in the BDS**; and
 - (d) bear a warning to the effect that the envelope must not be opened before the time and date for bid opening in accordance with **ITB 25.1** of this bidding document.
- 21.3 If all envelopes are not sealed and marked as required, the procuring entity will assume no responsibility for the misplacement or premature opening of any bid. The procuring entity also assumes no responsibility for delay in courier or any other form of delivery.
- 22. **Deadline for Submission of Bids**
 - 22.1 Bids must be received by the procuring entity at the address and no later than the date and time **indicated in the BDS**.
 - 22.2 The procuring entity may at its discretion, extend the deadline for the submission of bids by amending the bidding document in accordance with **ITB 8**, in which case all rights and obligations of the procuring entity and bidders previously subject to the deadline shall thereafter be subject to the deadline as extended.
- 23. **Late Bids**
 - 23.1 The procuring entity shall not consider any bid that arrives after the deadline for submission of bids, in accordance with **ITB 22**. Any bid received by the procuring entity after the deadline for submission of bids shall be declared late, rejected and returned unopened to the bidder.
- 24. **Withdrawal, Substitution and Modification of Bids**
 - 24.1 A bidder may withdraw, substitute, or modify its bid after it has been submitted by sending a written notice, duly signed by the bidder or an authorised representative of the bidder, and shall include a copy of the authorisation letter in accordance with **ITB 20.2**, (except that withdrawal notices do not require copies). The corresponding substitution or modification of the bid must accompany the respective written notice. All notices must be:
 - (a) prepared and submitted in accordance with **ITB 20** and **ITB 21** (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 procuring entity prior to the deadline prescribed for submission of bids in accordance with **ITB 22**.

24.2 Bids requested to be withdrawn in accordance with **ITB 24.1** shall be returned unopened to the bidders.

24.3 No bid may be withdrawn, substituted, or modified in the interval between the deadline for submission of bids and the expiration of the period of bid validity.

25. Bid Opening

25.1 The procuring entity shall conduct the **bid opening at the address, date and time specified in the BDS** in the presence of bidders (or designated representatives of the bidders) who choose to attend, representatives of the procuring entity and Tenders Board:

25.2 First, envelopes marked “**WITHDRAWAL**” shall be opened and read out and the envelope with the corresponding bid shall not be opened, but returned to the bidder. 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 bidder, the corresponding bid previously submitted will be opened. No bid withdrawal shall be permitted unless the corresponding withdrawal notice contains a valid authorisation to request the withdrawal and is read out at bid opening.

25.3 Next, envelopes marked “**SUBSTITUTION**” shall be opened and read out and exchanged with the corresponding bid being substituted, and the substituted bid previously submitted shall not be opened, but returned to the bidder. No bid 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 bid opening.

25.4 Next, envelopes marked “**MODIFICATION**” shall be opened and read out with the corresponding bid. No bid modification shall be permitted unless the corresponding modification notice contains a valid authorisation to request the modification and is read out at bid opening. Only envelopes that are opened and read out at bid opening shall be considered further.

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

- (a) the name of the bidder and whether there is a modification;
and
- (b) the bid prices, including any discounts and alternative offers;
and

- (c) the presence of a Bid Security or Bid-Securing Declaration if required; and
 - (d) any other details as the procuring entity may consider appropriate. Only discounts and alternative offers read out at bid opening shall be considered for evaluation. No bid shall be rejected at bid opening except for late bids, in accordance with **ITB 23.1**.
- 25.6 The procuring entity shall prepare a record of the bid opening that shall include as a minimum:
- (a) the name of the bidder and whether there is a withdrawal, substitution, or modification;
 - (b) the bid price, per lot if applicable, including any discounts, and alternative offers if they were permitted;
 - (c) the presence or absence of a Bid Security or Bid-Securing Declaration, if one was required.
 - (d) The bidders' representatives who are present shall be requested to sign the attendance record sheet. The omission of a bidder's signature (or signature of bidder's authorised representative) does not invalidate the contents and effect of the record sheet.
- 25.7 A copy of the record shall be distributed to all bidders who submitted bids on time.

E. Evaluation and Comparison of Bids

- 26. Confidentiality**
- 26.1 Information relating to the examination, evaluation, comparison, and post-qualification of the bids and recommendation of contract award, shall not be disclosed to the bidders or any other persons not officially concerned with the bid until the Contract award has been formally communicated to the successful bidders.
- 26.2 Any effort by a bidder to influence the procuring entity in the examination, evaluation, comparison, and post-qualification of the bids or Contract award decisions may result in the rejection of its bid and may be subject to the provisions of the Government's antifraud and corruption policy.
- 26.3 Despite **ITB 26.2**, from the time of bid opening to the time of Contract award, if any bidder wishes to contact the procuring entity on any matter related to the bidding process, it should do so in writing.

- 27. Clarification of Bids**
- 27.1 To assist in the examination, evaluation, and comparison and post-qualification of the bidders, the procuring entity may, at its discretion, request in writing from any bidder for a clarification of its bid. Any clarification submitted by a bidder that is not in response to a request by the procuring entity or if a bidder does not provide clarification as requested by the procuring entity, the bid shall not be considered and rejected. The procuring entity's request for clarification and the response shall be in writing. No change in the prices or substance of the bid shall be sought, offered, or permitted, except to confirm the correction of arithmetic errors discovered by the Bid Evaluation Committee in the evaluation of the bids in accordance with **ITB 30**. Any variation of price as a result of tax issues must be referred back to the Tenders Board for approval.
- 27.2 If a bidder does not provide clarifications of its bid by the date and time set as out in the procuring entity's request for clarification, its bid may be rejected.
- 28. Definitions of Deviations, Reservations and Omissions**
- 28.1 During the evaluation of bids, the following definitions apply:
- (a) "Deviation" is a departure from the requirements specified in the bidding document;
 - (b) "Reservation" is the setting of limiting conditions or withholding from complete acceptance of the requirements specified in the bidding document; and
 - (c) "Omission" is the failure to submit part or all of the information or documentation required in the bidding documents.
- 29. Determination of Responsiveness**
- 29.1 The Bid Evaluation Committee's determination of a bidder's responsiveness is to be based on the contents of the bid itself.
- 29.2 A substantially responsive bid is one that meets the requirements of the bidding document without material deviation, reservation, or omission.
- 29.3 A material deviation, reservation, or omission is one that:
- (a) affects in any substantial way the scope, quality, or performance of the works specified in the Contract; or
 - (b) is inconsistent with the bidding document, and substantially limits the procuring entity's rights or the bidder's obligations under the Contract; or

- (c) if rectified would unfairly affect the competitive position of the other bidders who have submitted substantially responsive bids.

29.4 If a bid is not substantially responsive to the requirements of the bidding documents, it shall be rejected by the Bid Evaluation Committee and may not subsequently be made responsive by correction of the material deviation, reservation, or omission.

30. Non conformities, Errors, and Omissions

30.1 Provided that a bid is substantially responsive, the Bid Evaluation Committee may waive any non-conformities, errors or omissions in the bid that do not constitute a material deviation.

30.2 Provided that a bid is substantially responsive, the Bid Evaluation Committee may request that the bidder submit the necessary information or documentation, requested by the procuring entity, within a period of time specified in their request, to rectify minor or non-material non-conformities, errors or omissions in the bid related to its documentation requirements. The procuring entity's request should only be for the purpose of seeking clarification and not result in disqualification of a bid. Requesting information or documentation on such non-conformities, errors or omissions shall not be related to any aspect of the price of the bid. Failure of the bidder to comply with the request may result in the rejection of its bid.

31. Correction of Arithmetical Errors

31.1 Provided that the bid is substantially responsive, the Bid Evaluation Committee shall correct arithmetical errors on the following basis:

- (a) if there is a discrepancy between the unit price and the total price that is obtained by multiplying the unit price and quantity, the unit price shall prevail and the total price shall be corrected, unless in the opinion of the procuring entity 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.

- 31.2 The amount stated in the bid shall be adjusted by the Bid Evaluation Committee in accordance with the above procedure for the correction of errors and shall be considered as binding upon the bidder. If the bidder does not accept the correction of errors, its bid may be rejected.
- 32. Conversion to Single Currency**
- 32.1 For evaluation and comparison purposes, the Bid Evaluation Committee shall convert all bid prices expressed in the submitted bids into the amount **specified in the BDS**, using the selling exchange rates established by the source and on the date **specified in the BDS**.
- 33. Domestic Preference**
- 33.1 Domestic preference shall not be a factor in bid evaluation, unless otherwise **specified in the BDS**.
- 33.2 If applicable, the percentage of domestic preference which will be applied is **specified in the BDS and bidders must:**
- (a) be registered within Samoa;
 - (b) have majority ownership by Samoan nationals;
 - (c) not subcontract more than ten percent (10%) of the Contract Price, excluding provisional sums, to foreign contractors or non-resident companies (not including those registered in Samoa).
- 34. Subcontractors**
- 34.1 Unless otherwise **stated in the BDS**, the procuring entity does not intend to execute any specific elements of the works by Subcontractors selected in advance by the procuring entity.
- 34.2 The subcontractor's qualifications shall not be used by the bidder to qualify for the works unless their specialised parts of the works were previously designated by the procuring entity **in the BDS** as can be met by subcontractors referred to hereafter as 'Specialised Subcontractors', in which case, the qualifications of the Specialised Subcontractors proposed by the bidder may be added to the qualifications
- 34.3 Bidders may propose subcontracting up to the percentage of total value of contracts or the volume of works as **specified in the BDS**. Subcontractors proposed by the bidder shall be fully qualified for their parts of the works.
- 35. Evaluation of Bids**
- 35.1 The Bid Evaluation Committee shall examine each eligible bid to determine, its responsiveness.
- 35.2 To evaluate a bid, the Bid Evaluation Committee shall consider the following:

- (a) the Bid Price, excluding Provisional Sums and the provision, if any, for contingencies in the Summary Bill of Quantities for admeasurement (measure and value) contracts or Schedule of Prices for lump sum contracts, but including Day-work items where priced competitively;
- (b) price adjustment for correction of arithmetic errors in accordance with **ITB 31.1**;
- (c) price adjustment due to discounts offered in accordance with **ITB 14.3**;
- (d) converting the amount resulting from applying (a) to (c) above if relevant, to a single currency in accordance with **ITB 32**;
- (e) adjustment for non-conformities in accordance with **ITB 30.2**; and
- (f) the application of all the evaluation factors indicated in **Section III - Evaluation and Qualification Criteria**.

35.3 The estimated effect of the price adjustment provisions of the Conditions of Contract applied over the period of execution of the Contract, shall not be taken into account in bid evaluation.

35.4 If the bidding document allows bidders to quote separate prices for different contracts, and to award multiple contracts to a single bidder, the methodology to determine the lowest evaluated price of the contract combinations, including any discounts offered in the Letter of Bidding, is specified in **Section III - Evaluation and Qualification Criteria**.

36. Comparison of Bids

36.1 The Bid Evaluation Committee shall compare all substantially responsive bids to determine the lowest evaluated bid in accordance with **ITB 35**.

37. Abnormally Low Bid

37.1 An Abnormally Low Bid is one where the bid price, in combination with other elements of the bid, appears so low that it raises material concerns as to the capability of the bidder in regards to the bidder's ability to perform the contract for the offered bid price.

37.2 In the event of identification of a potentially Abnormally Low Bid, the procuring entity shall seek written clarifications from the bidder, including detailed price analyses of its bid price in relation to the subject matter of the contract, scope, proposed methodology, schedule, allocation of risks and responsibilities and any other requirements of the bidding document.

- 37.3 After evaluation of the price analyses, in the event that the procuring entity determines that the bidder has failed to demonstrate its capability to perform the bid for the offered bid price, the Bid Evaluation Committee shall reject the Bid.
- 38. Unbalanced or front loaded bids**
- 38.1 If the bid that is evaluated as the lowest bid price or most advantageous is, in the Bid Evaluation Committee's opinion, seriously unbalanced or front loaded, the procuring entity may require the bidder to provide written clarifications. Clarifications may include detailed price analyses to demonstrate the consistency of the bid prices with the scope of works, proposed methodology, schedule and any other requirements of the bidding document.
- 38.2 After the evaluation of the information and detailed price analyses presented by the bidder, the Bid Evaluation Committee may as appropriate:
- (a) accept the bid; or
 - (b) require that the total amount of the performance security be increased at the expense of the bidder to a level not exceeding 20 % of the contract Price; or
 - (c) reject the bid.
- 39. Qualification of the Bidder**
- 39.1 The Bid Evaluation Committee shall determine to its satisfaction whether the bidder that is selected as having submitted the lowest evaluated and substantially responsive bid meets the qualifying criteria specified in **Section III - Evaluation and Qualification Criteria**.
- 39.2 The determination shall be based upon an examination of the documentary evidence of the bidder's qualifications submitted by the bidder pursuant to **ITB 17.1**.
- 39.3 An affirmative determination of qualification shall be a prerequisite for award of the Contract to the bidder. A negative determination shall result in disqualification of the Bidding, in which event the Bid Evaluation Committee shall proceed to the next lowest evaluated bid to make a similar determination of that bidder's qualifications to perform satisfactorily.
- 40. Procuring entity's Right to Accept Any Bid, and to Reject Any or All Bids**
- 40.1 The procuring entity reserves the right to accept or reject any bid, and to annul the bidding process and reject all bids at any time prior to awarding the contract, without thereby incurring any liability to the bidders:
- (a) at any time prior to the acceptance of the successful bid;
- or

- (b) after the successful bid is accepted if:
 - (i) the bidder presenting the successful bid is suspended or debarred;
 - (ii) the procurement is cancelled;
 - (iii) the bidder presenting the successful bid is excluded on the grounds of corruption, unfair competition or conflict of interest;
 - (iv) the procurement, the bid or the bidder contravenes or is otherwise not compliant with the provisions of the laws of the Independent State of Samoa.

40.2 In case of annulment of any bids submitted and specifically, bid securities, the respective bidders are immediately notified and given ample time to uplift the bids and bid securities from the procuring entity.

F. Award of Contract

- 41. Award Criteria**
- 41.1 The procuring entity shall award the Contract to the bidder whose offer has been determined to be substantially responsive to the bidding documents, provided further that the bidder is determined by the evaluation panel to be qualified to perform the Contract to the satisfaction of the procuring entity. The bidder awarded the Contract may also be considered by the procuring entity as the bidder with the lowest evaluated bid.
- 41.2 At the time the Contract is awarded, the procuring entity reserves the right to increase or decrease the quantity of the works originally required, provided that this does not exceed the percentages **specified in the BDS**, and without any change in the unit prices or other terms and conditions of the bid and bidding document.
- 42. Notification of Award**
- 42.1 Prior to the expiration of the bid validity period, the procuring entity shall notify the successful bidder in writing, that its bid has been accepted. At the same time, the procuring entity must also notify all other bidders of the results of the bidding, and shall publish in website of the Ministry of Finance, the results identifying the bid and lot numbers and the following information:
- (a) name of each bidder who submitted a bid; and
 - (b) name of the winning bidder, and the Price it offered, as well as the duration and summary scope of the contract awarded.

- 42.2 The date of the notification under **ITB 42.1** establishes the commencement of the **standstill period specified in the BDS**. During this time bidders may request, in writing, a debriefing seeking explanations on the ground on which their bids were not selected, or invoke the ‘right to complain’ in accordance with ITB 45. The request for debriefing may only seek explanations for the grounds on which their bid was not selected.
- 42.3 The procuring entity shall promptly respond in writing to any unsuccessful bidder who requests a debriefing. If the request is made within the standstill period the contract award will be suspended until the debriefing has taken place.
- 42.4 Until a formal Contract is prepared and executed, the notification of award **shall not** constitute a binding Contract.
- 42.5 Within **twenty-eight (28) days** of receipt of notification of award, the successful bidder, if international, shall take to successful completion the necessary actions, in liaison with the relevant authorities, to obtain proper registration, licences and membership as required in order to carry out economic or business activities in Samoa.

43. Signing of Contract

- 43.1 After notification, the procuring entity shall send the successful bidder the Contract Agreement with the Conditions of Contract for any comments before the same is reviewed and cleared by the **Attorney General’s Office (“AGO”)**.
- 43.2 The successful bidder shall return the signed contract **within 28 days** from the date of the Letter of Acceptance and shall sign, date, and return to the procuring entity the signed Contract Agreement and performance security pursuant to **ITB 44**.
- 43.3 On receipt of the signed Contract Agreement and performance security, if required, the procuring entity will immediately notify in writing all unsuccessful bidders, of the final results of the bidding process. This notice will discharge their bid securities pursuant to **ITB 19.4**.
- 43.4 Once both the bidder and procuring entity have agreed to the Contract Agreement as cleared by AGO, the same shall be finalised and signed.
- 43.5 Following signature of the Contract Agreement, the procuring entity shall publish, in the manner prescribed by the Office, the results, identifying the name of the contractor, the contract price

- 44. Performance Security**
- 44.1 Within **twenty-eight (28) days** of the receipt of notification of award from the procuring entity the successful bidder, shall furnish the Performance Security, using for that purpose the Performance Security Form included in **Section VIII - Contract Forms** from an institution acceptable to the procuring entity. The procuring entity shall promptly notify the winning bidder to each unsuccessful bidder and discharge the Bid Securities of the unsuccessful bidders pursuant to **ITB 19.4**.
- 44.2 If the performance security furnished by the successful bidder is in the form of a bond, it shall be issued by a bonding or insurance company that has been determined by the successful bidder to be acceptable to the procuring entity. A foreign institution providing a bond must have a correspondent financial institution located in the Samoa.
- 44.3 Failure of the successful bidder 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 procuring entity may award the Contract to the next lowest evaluated bidder, whose offer is substantially responsive and is determined by the procuring entity to be qualified to perform the Contract satisfactorily.
- 45. Adjudicator**
- 45.1 The procuring entity proposes the person **named in the BDS** to be appointed as Adjudicator under the Contract, at the hourly fee **specified in the BDS**, plus reimbursable expenses. If the bidder disagrees with this proposal, the bidder should so state in their bid. If, in the Letter of Acceptance, the procuring entity does not agree on the appointment of the Adjudicator, the procuring entity will request the Appointing Authority designated in the Special Conditions of Contract (“SCC”) pursuant to Clause 23.1 of the General Conditions of Contract (“GCC”), to appoint the Adjudicator.
- 46. Right to complain**
- 46.1 The bidder has a right to complain in accordance with the Procurement Independent Complaints and Review Procedure (Part K.9 of the Treasury Instructions).
- 46.2 An actual bidder in procurement proceedings who claims to have suffered, or to be likely to suffer harm due to a breach of a duty imposed on a procuring entity by or under the Instructions, may complain to a procuring entity.
- 46.3 Such complaint must be made in writing working days after the date of notification of award of contract. Any complaint received after the 10-day period shall not be considered.

- 46.4 The bidder should submit its complaint in accordance with the procedures to the address **specified in the BDS**.
- 46.5 If a complainant is dissatisfied with the decision of a procuring entity, the complainant has the right to have the complaint and decision of the procuring entity reviewed by an independent adjudicator. To do so, the complainant must submit an Application for Review in writing, to the Secretariat of the Tenders Board.
- 46.6 A complaint or an application for review must be made in accordance with (Part K.9 of the Treasury Instructions).
- 46.7 A complaint referred to the independent adjudicator shall not be entertained and is dismissed unless the independent adjudicator is satisfied:
- (a) that the complainant is an actual bidder who was part of the relevant procurement proceedings in question;
 - (b) that the complainant shows that he/she/it/they had suffered or is likely to suffer harm; and
 - (c) that the harm was due to a breach of a duty imposed on the procuring entity; and
 - (d) that the duty imposed on the relevant procuring entity is provided for under Part K of the Treasury Instructions.

Section II - Bid Data Sheet (BDS)

The following BDS shall be used for the works to be performed and shall complement, supplement, or amend the provisions in the ITB. Whenever there is a conflict, the provisions herein shall prevail over those in the ITB.

ITB Clause Reference	A. General
ITB 1.1	The procuring entity is: Ministry of Justice and Courts Administration
ITB 1.2	The name of the bid is: <i>Construction of the New Courthouse and Judges Residence Buildings at Salelologa, Savaii</i> The number, identification and names of the lots comprising this procurement are: <i>Not Applicable</i> (N/A)
ITB 2.1	The name of the Project is: <i>Construction of the New Courthouse and Judges Residence Buildings at Salelologa, Savaii.</i>
ITB 4.1	Maximum number of members in the JV shall be: <i>N/A</i>
ITB 4.7	The list of debarred firms is the same as those that are excluded by, or are not members of, the World Bank or ADB.
ITB 4.12	A pre-qualification <i>shall not</i> apply.
ITB 5.1	Ineligible countries are: Andorra, Democratic People's Republic of Korea, Liechtenstein, Monaco (World Bank and ADB non-members) and Iraq (UN Security Council) and any other country excluded from the process by the World Bank or ADB. The country of registration must be a member of the World Bank or Asian Development Bank and not under sanction of the UN Security Council.

B. Bidding Documents

ITB 7.1	For <u>clarification purposes</u> only, the procuring entity's address is: Attention: Mr. Aumua Roni Fereti, ACEO Corporate Services Procuring entity: Ministry of Justice & Courts Administration Address: Ground Floor, Ministry of Justice & Courts Administration Office, Mulinu'u City: Apia Country: SAMOA Telephone: 22671 / 22674 Mob.: 7756526 E-mail address: Roni.Fereti@mjca.gov.ws
ITB 7.1	Requests for clarification should be received by the procuring entity no later than: fourteen (14) working days before the deadline for submission of bids stated at ITB 22.1.
ITB 7.4	A site visit will be organised as part of the pre-bid meeting. The site visit will take place at the following date, time and place:

	Date: 15 October 2024 Time: 10.00am Place: Salelologa Township Area opposite Lucia's Lagoon
ITB 7.7	A pre-bid meeting shall take place. <i>The pre-bid meeting shall take place at the following date, time and place:</i> Date: 15 October Time: 10.00am Place: Salelologa Township Area opposite Lucia's Lagoon The Checklist of Requirements will be provided at the pre-bid meeting.
ITB 7.8	Any questions must be submitted five (5) working days before the date of the pre-bid meeting.

C. Preparation of Bids

ITB 11.1(i)	The bidder shall submit with its bid the following additional documents as may reasonably be requested by the procuring entity in the bidding documents: <ul style="list-style-type: none"> (i) current business license, appropriate category in accordance with the industry the works relate to and is valid for at least six (6) months; (ii) current certificate of incorporation, or deed of partnership or joint venture (if applicable) (iii) evidence of payment of immediate past year business income tax (iv) two (2) business references issued within the past six (6) months providing assurances of quality outcomes, business integrity, reliability and financial soundness of the bidder.
ITB 13.1	Alternative bids <i>shall not</i> be permitted.
ITB 13.2	Alternative times for completion <i>are not</i> permitted.
ITB 13.3	Alternative technical solutions <i>shall not</i> be permitted for any parts of the works.
ITB 14.5	<i>Not Applicable</i>
ITB 14.6	The prices quoted by the bidder shall not be adjustable during the bidder's performance of the Contract. If prices shall be adjustable, the methodology is specified in Section III - Evaluation and Qualification Criteria .
ITB 15.1	<i>Not Applicable</i> .
ITB 17.1(a)	The bidder shall submit, with its bid, the following documentary evidence to prove that it has the financial, technical and capability to perform the contract. <ul style="list-style-type: none"> 1. Audited Financial Accounts for the past three (3) financial years. 2. List of similar completed projects in the last ten (10) years including project summary and written client testimonials confirming satisfactory contractor performance. 3. A list of all employees including designation and expertise. 4. A list of all plant and equipment owned by the Contractor.

	The Subcontractor(s) experience and/or resources will not contribute to the bidder's qualifications.
ITB 18.1	The bid validity period shall be One Hundred and Twenty (120) days after the bid submission date.
ITB 19.1 and 19.8	<p>Bid shall include a Bid Security (issued by a bank) included in Section IV - Bidding Forms in the form of an unconditional <u>Bank Guarantee</u></p> <p>A Bid Security submitted in any other form shall not be accepted.</p>
ITB 19.2	The amount of the Bid Security shall be: SAT\$50,000.00
ITB 20.1	In addition to the Original of the bid, the number of Copies is: one (1) complete copy on memory stick and three (3) hard copies

D. Submission and Opening of Bids

ITB 21.1	<p>Bids may be submitted electronically must be via the Government of Samoa's e-tendering portal (https://portal.tenderlink.com/mof_samoa/)</p> <p>The Opening of Bids submitted electronically shall follow the procedures as outlined in Annex 1 to this Section II – Bid Data Sheet.</p> <p>Bidders who submit electronically do not need to submit hard copies.</p> <p>If a Bidder submits both electronic submission and hard copy submission, for the avoidance of doubt, Bids submitted in hard copies shall take precedence and shall be considered the ORIGINAL copy.</p>
ITB 21.2(c)	The inner and outer envelopes shall bear the following additional identification marks: <i>Bid submission for the Construction of the new Courthouse and Judges Residence Buildings at Salelologa, Savaii</i>
ITB 22.1	<p>For bid submission purposes only, bids must be submitted at the following address:</p> <p>Attention: The Secretary, Tenders Board Address: Level 4 Central Bank Building of Samoa, Beach Road City: APIA Country: SAMOA</p> <p>The deadline for the submission of bids is: Date: 18 November 2024 Time: 11:00am (local time)</p>
ITB 25.1	<p>The <u>bid opening</u> shall take place at:</p> <p>Ministry of Finance Level 4 Central Bank of Samoa ("CBS") Building Beach Road</p>

	<p>APIA SAMOA</p> <p>Date and Time: Monday, 18th November 2024 at 11:00am (local time)</p>
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E. Evaluation and Comparison of Bids

ITB 32.1	<p>Bid prices expressed in different currencies shall be converted in: Samoan Tala (SAT\$)</p> <p>The source of exchange rate shall be: Central Bank of Samoa</p> <p>The date for the exchange rate shall be Bid submission date as per ITB 22.1.</p>
ITB 33	Domestic preference <i>shall not</i> be a bid evaluation factor.
ITB 34.1	At this time the procuring entity does not intend to execute certain specific parts of the works by Subcontractors selected in advance.
ITB 34.2	<i>Not Applicable.</i>
ITB 34.3	<p>Contractor's proposed subcontracting: Maximum percentage of subcontracting permitted is: [insert figure]% of the total contract amount or [insert figure]% of the volume of work. <i>Not Applicable</i></p> <p>Bidders planning to subcontract more than 10% of total volume of work shall specify, in the Letter of Bid, the activity(ies) or parts of the works to be subcontracted along with complete details of the subcontractors and their qualification and experience. <i>Not Applicable</i></p>
ITB 41.2	An increase or decrease in the quantity of the works originally required must not exceed: <i>Not Applicable</i>
ITB 42.2	The number of days for standstill shall be fifteen (15) days .
ITB 45.1	<p>The Adjudicator proposed by the procuring entity is: <i>The Institute of Professional Engineers, Samoa</i></p> <p>The hourly fee for this proposed Adjudicator shall be: <i>SAT\$450.00 per hour</i></p> <p>The biographical data of the proposed Adjudicator is as follows: <i>Not Applicable</i></p>
ITB 46.4	<p>Any complaint should be sent to the following address:</p> <p>For the attention of: Papalii John Taimalelagi Afele, Chief Executive Officer Ministry of Justice and Courts Administration Address: PO Box 49 City: Apia</p>

	Country: SAMOA
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Annex I to Section II – Bid Data Sheet

Procedure for Electronic Submission of Bids

1. The Bid shall be electronically submitted via the Government of Samoa's e-Tendering Portal only. The Bidder shall use this, and only this, link to submit its electronic Bid.
2. The Portal shall automatically expire on the submission deadline, specified in the relevant Instruction to Bidder. No extension shall be provided after the expiry date of the tender.
3. At the submission deadline, and not before, TenderLink will forward to the Portal's Administrator access to the tender box electronic keys to open the bids.
4. To ensure the integrity and compliance with **Section II – Bid Data Sheet**, the Opening of the Tender Boxes can only be actioned by the Ministry of Finance's designated Administrator. For security purposes, all openings are dated and time stamped, ensuring compliance of their opening with **ITB 22.1** and **ITB 25.1** of the **BDS**.

Section III - Evaluation and Qualification Criteria

This Section contains all the criteria that the procuring entity shall use to evaluate and qualify the bidders. In accordance with ITB 35 and ITB 36, no other methods, criteria and factors shall be used. The bidder shall provide all the information requested in the forms included in **Section IV - Bidding Forms**.

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1. Evaluation Criteria (ITB 35)

In addition to the criteria listed in ITB Sub-Clause 35.2 (a) – (f) the following criteria shall apply:

- (a) **Assessment of adequacy of Technical Proposal with Requirements**
- (b) **Specific additional Criteria**

2. Qualification Requirements (ITB 39)

After determining the lowest responsive bid in accordance with ITB Sub-Clause 36.1, the procuring entity shall carry out the qualification of the bidder in accordance with ITB Clause 39, using only the requirements specified. Requirements not included in the text below shall not be used in the evaluation of the bidder's qualifications.

(a) Eligibility and Qualification Table

The bidder shall meet the eligibility and qualification criteria and provide the required evidence stipulated in the table as follows;

i) Eligibility

- Conflict of Interest

ii) Historical Contract Non-Performance

- History of Non-Performing Contracts
- Pending Litigation

iii) Financial Situation

- Historical Financial Performance
- Average Annual Construction Turnover
- Current Financial Resources or Position

Using forms in **Section IV - Bidding Forms**, the bidder must demonstrate access to, or availability of, financial resources such as liquid assets, unencumbered real assets, lines of credit, and other financial means, other than any contractual mobilization payments to meet:

- (a) the following cash-flow requirement, and
- (b) the overall cash flow requirements for this contract and its current works commitment.

iv) Experience

- General Construction Experience
- Specific Construction Experience

v) Personnel

The bidder must demonstrate that it has the personnel for the key positions that meet the following requirements:

No.	Position	Total Work Experience (years)	Similar Works Experience (years)
1	Contract Manager	10	5
2	Construction Site	5	3

No.	Position	Total Work Experience (years)	Similar Works Experience (years)
	Manager (Certificate relevant to building construction works)		
3	Construction Site Foreman (Certificate relevant to building construction works)	5	3
4	Registered Electrician	5	3
5	Registered Plumber	5	3

The bidder shall provide details of the proposed personnel and their experience records in the relevant Information Forms included in **Section IV - Bidding Forms**.

vi) Equipment

The bidder must demonstrate that it has the key equipment listed hereafter:

No.	Equipment Type and Characteristics	Minimum Number required
1	20ton Excavator	<u>1</u>
2	5 ton Roller	<u>1</u>
3	Crane	<u>1</u>
4	Vibrator, Screener, Helicopter	<u>2 each</u>
5	Concrete Batching Plant	<u>1</u>

The bidder shall provide further details of proposed items of equipment using the relevant Form in **Section IV - Bidding Forms**.

ELIGIBILITY AND QUALIFICATION TABLE

FACTOR	I. ELIGIBILITY					
SUB-FACTOR	CRITERIA					DOCUMENTATION REQUIRED
	Requirement	Bidder				
		Single Entity	Joint Venture, Consortium or Association			
			All partners combined	Each partner	At least one partner	
a. Nationality	Nationality in accordance with ITB 4.2.	Must meet requirement	Existing JV must meet requirement	Must meet requirement	N / A	Form ELI –1.1 and 1.2, with attachments
b. Conflict of Interest	No- conflicts of interests as described in ITB 4.5.	Must meet requirement	Existing JV must meet requirement	Must meet requirement	N / A	Letter of Bid
c. Government Ineligibility	Not having been declared ineligible by the Government as described in ITB 4.7.	Must meet requirement	Existing JV must meet requirement	Must meet requirement	N / A	Letter of Bid
d. Government Owned Entity	Compliance with conditions of ITB 4.9.	Must meet requirement	Must meet requirement	Must meet requirement	N / A	Form ELI –1.1 and 1.2, with attachments

FACTOR	II. HISTORICAL CONTRACT NON-PERFORMANCE					
SUB-FACTOR	CRITERIA					DOCUMENTATION REQUIRED
	Requirement	Bidder				
		Single Entity	Joint Venture, Consortium or Association			
			All partners combined	Each partner	At least one partner	
a. History of non-performing contracts	Non-performance of a contract did not occur within the last three (3) years prior to the deadline for application submission, based on all information on fully settled disputes or litigation. A fully settled dispute or litigation is one that has been resolved in accordance with the Dispute Resolution Mechanism under the respective contract, and where all appeal instances available to the bidder have been exhausted.	Must meet requirement by itself or as partner to past or existing JV	N / A	Must meet requirement by itself or as partner to past or existing JV	N / A	Form CON - 2

FACTOR	II. HISTORICAL CONTRACT NON-PERFORMANCE					
SUB-FACTOR	CRITERIA					DOCUMENTATION REQUIRED
	Requirement	Single Entity	Bidder			
			Joint Venture, Consortium or Association			
			All partners combined	Each partner	At least one partner	
b. Pending Litigation	All pending litigation shall in total not represent more than 30% of the bidder’s net worth and shall be treated as resolved against the bidder.	Must meet requirement by itself or as partner to past or existing JV	N/A	Must meet requirement by itself or as partner to past or existing JV	N/A	Form CON – 2
c. Litigation History	No consistent history of court/arbitral award decisions against the Bidder ¹ since 1 st January 2018	Must meet requirement	Must meet requirement	Must meet requirement	N/A	Form CON – 2

¹ The bidder shall provide accurate information on the related Bid Form about any litigation or arbitration resulting from contracts completed or ongoing under its execution over the last five years. A consistent history of awards against the bidder or any member of a joint venture may result in failure of the bid.

FACTOR	III. FINANCIAL SITUATION					
SUB-FACTOR	CRITERIA					DOCUMENTATION REQUIRED
	Requirement	Bidder				
		Single Entity	Joint Venture, Consortium or Association			
			All partners combined	Each partner	At least one partner	
a. Historical Financial Performance	Submission of audited balance sheets or if not required by the law of the bidder’s country, other financial statements acceptable to the procuring entity, for the last three (3) financial years to demonstrate the current soundness of the bidder’s financial position and its prospective long-term profitability. As a minimum, a bidder’s net worth calculated as the difference between total assets & total liabilities <u>should be positive</u>	Must meet requirement	N/A	Must meet requirement	N/A	Form FIN – 3.1 with attachments
b. Average Annual Turnover	Minimum average annual turnover of SAT\$1,000,000.00 , calculated as total certified	Must meet requirement	Must meet requirement	Must meet thirty percent (30%) of	Must meet sixty percent (60%) of the requirement	Form FIN –3.2

FACTOR	III. FINANCIAL SITUATION					
SUB-FACTOR	Requirement	CRITERIA				DOCUMENTATION REQUIRED
		Single Entity	Bidder			
			Joint Venture, Consortium or Association			
			All partners combined	Each partner	At least one partner	
	payments received for contracts in progress or completed, within the last three (3) years, or in the 3 years prior to the Covid pandemic.			the requirement	and must be the lead partner.	
c. Financial Resources	The bidder must demonstrate access to, or availability of, financial resources such as liquid assets, unencumbered real assets, lines of credit, and other financial means, other than any contractual advance payments to meet: (i) the following cash-flow requirement for this Contract: SAT\$ 500,000.00 plus	Must meet requirement	Must meet requirement	Must meet thirty percent (30%) of the requirement	Must meet sixty percent (60%) of the requirement and must be the lead partner.	Form FIN –3.3

FACTOR	III. FINANCIAL SITUATION					
SUB-FACTOR	CRITERIA					DOCUMENTATION REQUIRED
	Requirement	Bidder				
		Single Entity	Joint Venture, Consortium or Association			
			All partners combined	Each partner	At least one partner	
	(ii) the overall cash flow requirements for concurrent commitments as determined in FORM-CCC (Section IV - Bidding Forms).					

FACTOR	IV. EXPERIENCE					
SUB-FACTOR	CRITERIA					DOCUMENTATION REQUIRED
	Requirement	bidder				
		Single Entity	Joint Venture, Consortium or Association			
			All partners combined	Each partner	At least one partner	
a. General Experience	Experience under contracts in the role of contractor, subcontractor, or management contractor for at least the last three (3) years prior to the applications submission deadline, and with activity in at least nine (9) months in each year.	Must meet requirement	N/A	Must meet requirement	N/A	Form EXP-4.1
b. Specific Experience	(a) Participation as contractor, management contractor, or subcontractor, in at least two (2) contracts within the last five (5) years , each with a value of at least SAT\$ 800,000.00 that have been successfully and substantially completed and that are similar to the proposed works. The similarity shall be based on the physical size,	Must meet requirement	Must meet requirement. Either one partner must meet requirement or Any two partners must each demonstrate one (1) successfully or substantially	N/A	N/A	Form EXP 4.2(a)

FACTOR	IV. EXPERIENCE					
SUB-FACTOR	CRITERIA					DOCUMENTATION REQUIRED
	Requirement	bidder				
		Single Entity	Joint Venture, Consortium or Association			
			All partners combined	Each partner	At least one partner	
	complexity, methods/ technology or other characteristics as described in Section V - Works Requirements.		completed contract of similar size and nature			
c. Specific Experience	(b) For the above or other contracts executed during the period stipulated in 2.4.2(a) above, a minimum experience in the following key activities: <i>1. Residential & Commercial Buildings</i> <i>2. Concrete or Chip Seal Car Parking</i> <i>3. Site Fencing</i>	Must meet requirement	Must meet requirements	N / A	N/A	Form EXP 4.2(b)

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Bid Security Form.....

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Letter of Bid

The bidder must prepare the Letter of Bid on stationery with its letterhead clearly showing the bidder's complete name and address.

Instructions and Notes in italicised text is for the preparation of these forms and shall be deleted from the final fully edited versions.

Date: _____

IFB No.: _____

To: _____

We, the undersigned, declare that:

- (a) We have examined and have no reservations to the bidding documents, including Addenda issued in accordance with ITB 8;
- (b) We offer to execute in conformity with the bidding documents the following works:
Construction of the new Courthouse and Judges Residence Buildings at Salelologa, Savaii
- (c) The total price of our Bidding, excluding any discounts offered in item (d) below is:
_____ *insert words and figures;*
- (d) The discounts offered and the methodology for their application are:
_____ *; if none state N/A;*

Discounts. *If our bid 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 or state none];*

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 or state not applicable];*

- (e) Our bid shall be valid for the period of time specified in ITB 18.1, from the date fixed for the bid submission deadline in accordance with ITB 22.1, 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 BDS, the prices shall be adjusted accordingly;
- (g) If our bid is accepted, we commit to obtain a **Performance Security** in accordance with ITB 44.1 and 49.1 for the due performance of the contract;
- (h) Our firm, including any subcontractors or contractors for any part of the Contract do not have any conflict of interest according to ITB 4.5;
- (i) Our firm and any associated firm or joint venture party have not been subject to insolvency or bankruptcy or receivership or liquidation proceedings during the immediate past twelve (12) months;

- (j) Our firm, its affiliates or subsidiaries—including any subcontractors or contractors for any part of the contract—has not been declared ineligible by the Government of Samoa or the procuring entity under the laws of the Independent State of Samoa;
- (k) We are not participating, as a bidder or as a subcontractor, in more than one bid in this bidding process in accordance with ITB 4.6 other than for alternative offers permitted under ITB 13 of the bidding documents;
- (l) The following commissions, gratuities, or fees have been paid or are to be paid with respect to the bidding 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 OR Non-Applicable*

Name of Recipient	Address	Reason	Amount
.....
.....
.....

- (m) Our firm, and its principals including any director, officer, manager or supervisor, currently and in the past three years, have not committed criminal offenses involving fraud, corruption or other misconduct signifying unsuitability for participation in any way in the procurement and contracting process;
- (n) Our firm, and its principals including any director, officer, manager or supervisor, currently and in the past three years, have not been suspended or disbarred by administrative or judicial proceedings from participating in procurements, whether in Samoa or elsewhere;
- (o) We certify that we are in good standing with the Government and have paid all taxes, duties, fees and other impositions as may be levied in Samoa prior to the award of contract. We also understand evidence of such certification may be required from the successful bidder prior to award of contract;
- (p) We understand that this bid, 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;
- (q) We understand that you are not bound to accept the lowest evaluated bid or any other bid that you may receive;
- (r) We understand that you are not bound to accept the lowest responsive bid or any other bid that you may receive. We understand that the procuring entity may cancel a procurement at any time prior to the acceptance of the successful bid or after the successful bid is accepted if
 - (i) the bidder presenting the bid is suspended or debarred;

- (ii) the procurement is cancelled;
- (iii) the bidder presenting the successful bid is excluded on the grounds of corruption, unfair competition or conflict of interest; or
- (iv) the procurement, the bid or the bidder contravenes or is otherwise not compliant with the provisions of the laws of the Independent State of Samoa.

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

In the capacity of _____ *insert legal capacity of person signing the Bid Submission Form*

Name: _____ *insert complete name of person signing the Bid Submission Form*

Duly authorised to sign the bid for and on behalf of: _____ *insert complete name of bidder*

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

Priced Activity Schedule

Item	Cost SAT Incl. VAGST
P&G	
Preliminary and General	
Development Consent & Building Permit	
Site Mobilization, Temporary Office, Site Setout	
Health & Safety, Traffic Management, EMP	
Site Clean Up & Demobilize	
As-built Drawings and Operation & Maintenance Manuals	
Site Civil Works	
Rock Breaking / Hardfill / Site Filling	
Excavation, Earthworks, and Backfilling	
Site Fencing & three(3) gates (incl. Security Fencing for Prisoner Entry)	
Landscaping incl. Planters	
Concrete Footpaths & Curbing	
Chip Seal Driveways & Carparking (incl. marking)	
Stormwater Drainage	
Sewage Drainage, Septic tanks and Absorption field	
Water Tank (1No. 5,000Ltr), Concrete Base, hydrant & Pump	
Fire Tanks & Pump	
Generator House	
Genset (~145KVA generator), diesel storage tank, bund & ATS incl. Transformer Upgrade	
Site Services (Electrical & Hydraulics)	
Court House Building	
Foundation Structure	
Ground Floor Structure incl. External Walls	
Steps, Ramps & Balustrades	
Roof Structure & Cladding	
Main Entrances' Facade	
External Windows and Doors	
Internal partitioning, doors and windows	
Flooring system	
Wall finishes	
Ceiling system	
Paint Works	
Electrical incl. fixtures	
Telecom / Data / Multimedia & CCTV / Sound System incl. fixtures	
Mechanical incl. fixtures	
Fire Protection incl. fixtures	
Hydraulics incl. fixtures & Roof Guttering system	
Joinery (incl. court rooms 'rostrum & seating furniture, Reception & Office joinery, Strong Room Shelving, etc.)	
Any other works (Contractor to list-specify)	
Judges' Residence Building	
Foundation Structure	

Ground Floor Structure incl. External Walls	
Steps, Ramps & Balustrades	
Roof Structure & Cladding	
External Windows and Doors	
Internal partitioning , doors and windows	
Flooring system	
Wall & Ceiling Finishes	
Paint Works	
Electrical incl. fixtures	
Telecom / Data system (Wiring & cabling only)	
Mechanical incl. fixtures	
Hydraulics incl. fixtures	
Roof Guttering system	
Fire Protection incl. fixtures	
Joinery (incl. desks, closets in rooms, double-bed size timber bed bases, vanity for HWB, Kitchen & Laundry joinery)	
Clothesline	
Any other works (Contractor to list-specify)	
Total Lump Sum Fee (incl. VAGST & all duties, taxes)	SAT

Notes:

1. The above prices include supply of material, installation, labour, overheads and margin.
-

Schedule of Rates (SoR)

Trade	Unit	Rate (SAT\$)
Block Layer	Sq.m	
Foreman	Hr	
Carpenter	Hr	
Labourer	Hr	
Electrician	Hr	
Painter	Sq.m	
Plumber	Hr	
Roofer	Sq.m	
Stopper/Fixer	Sq.m	
Tiler	Sq.m	

Item	Unit	Rate (SAT\$)
Preliminary & General (per week)	week	
Excavation and replacement of unsuitable material	Cu.m	
Rock breaking	Cu.m	
20 ton Excavator	Hr	
Roller	Hr	
Imported hardfill maximum gap 40 (supply, placement and compaction)	Cu.m	
25 Mpa Concrete (Supply & placement)	Cu.m	
20 Mpa Concrete (Supply & placement)	Cu.m	
D12-D20 Reinforcement (Supply & Install)	Tonne	
Formwork	Sq.m	

Item	Unit	Rate (SAT\$)
8m3 rock filled SoakPit (Complete)	Cu.m	
8" Series Reinforced Blockwork (including 17.5 Mpa corefill)	Sq.m	
6" Series Reinforced Blockwork (including 17.5 Mpa corefill)	Sq.m	
External Painting (incl Materials, 3 coat)	Sq.m	
Internal Painting (incl Materials, 3 coat)	Sq.m	
Roofing (.55BMT Colorbond) including fixings, trims and capping (Supply & Install)	Sq.m	
Tinted Concrete Sealer	Sq.m	
Where rates are not listed, the contractor is to provide additional rates		

Notes:

- 1. The above rates to be inclusive of Overheads, Profit and VAGST.**
- 2. The above rates are to be used for pricing/valuing of any variation works.**

Submitted

by.....

.....(*name of Bidder*)

Bid Security (Bank Guarantee)

The Bank shall fill in this Bank Guarantee in accordance with the instructions indicated on stationery with its letterhead clearly showing complete name and address.

Instructions and Notes in italicized text is for the preparation of these forms and shall be deleted from the final fully edited versions

Beneficiary: *Name and Address of procuring entity*

Indicate here if this guarantee is for an alternative bid and, if so, identify the details of the alternative bid, if applicable.

Date: _____

BID GUARANTEE No.: _____

We have been informed that *name of the bidder* ("bidder") has submitted to you its bid dated *insert date* ("bid") for the execution of *name of contract* under for IFB No. *reference no.*

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

At the request of the bidder, we *name of Bank*, as Guarantor, hereby 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 bidder is in breach of its obligation(s) under the bid conditions, because the bidder:

- (a) has materially modified or withdrawn its bid during the period of bid validity specified by the bidder in the Bid Submission Form; or
- (b) does not accept a correction of errors; or
- (c) having been notified of the acceptance of its bid by the procuring entity during the period of bid 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 bidders.

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

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

Signature(s)

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Site Organization

The bidder shall provide adequate information to **demonstrate a clear, complete and effective organisational structure (with organizational chart)** with related staffing plan and summary of staffing resources that demonstrates quantitatively the planned levels of staff throughout the Contract Period.

Method Statement

The bidder's Method Statement should describe the activities and methods that will be used to estimate production rates for carrying out the works within the Time for Completion proposed. The Method Statement should be consistent with other sections of the Technical Proposal including:

- (i) team composition and proposed organisational structure;
- (ii) equipment to be provided;
- (i) the proposed mobilisation schedule; and
- (iv) the proposed construction schedule.

The Method Statement shall provide a **clear description of the bidder's understanding of the Works Requirements (Section V)**, a proposed strategic approach to achieve the procuring entity's objective of implementing the works to the required standards in both a cost effective and time efficient manner. The statement should further demonstrate a sound technical methodology for carrying out the works.

The Method Statement must be realistic, establish realistic milestones, seek to maximise results with proposed resources and ensure a prompt and effective launch of contract activities.

Inter alia the Method Statement shall include, in sufficient detail, the following elements:

- Surveying and setting out
- Proposed sectioning (if any)
- A Quality Management Plan and Quality Assurance/Quality Control Procedures
- Document Management Systems
- Reporting Procedures
- Community Liaison
- Environmental Management
- A Health, Safety and Traffic Management Plan
- Approach to materials sourcing, testing and storage
- Working alongside other Contractors.
- Any other elements or issues the bidder considers relevant.

Mobilization Schedule

The bidder shall provide adequate information to demonstrate a clear, complete and effective plan for mobilising the necessary personnel and equipment resources. The Mobilisation Schedule should be consistent with the other sections of the proposal including:

- (i) team composition and proposed organizational structure;
- (ii) equipment to be provided; and
- (iii) the proposed construction schedule.

Provide a bar chart, GANTT chart or PERT/CPM diagram clearly showing all proposed mobilization activities with start and finish dates.

Construction Schedule

The bidder shall provide a work plan for the main works activities to be undertaken clearly showing their content and duration, phasing and interrelations, milestones (including interim approvals by the Engineer) and delivery dates of specific tasks/activities or sections of the works taking into account seasonal weather conditions, planned Parliamentary Sitting “no work” times, and existing baseline site conditions.

The proposed work plan should be consistent with the Method Statement, illustrating and understanding of the procuring entity’s requirements and ability to translate these into a feasible work plan. A list of milestones and milestone dates in completing the works should be included.

Satisfactory rating requires a logical and proper sequencing of activities. Provide a detailed bar chart, GANTT chart or PERT/CPM diagram clearly showing all required construction activities with start and finish dates. A critical path should be clearly demonstrated for multiple but related activities and/or sections. The schedule must show the completion of all construction works no later than the Intended Completion Date.

Equipment

Form EQU

The bidder shall provide adequate information to demonstrate clearly that it has the capability to meet the requirements for the key equipment listed in **Section III, Evaluation and Qualification Criteria**. A separate form shall be prepared, using Bidding Forms EQ-1 that follows, for each item of equipment listed or for alternative equipment proposed by the bidder. For all items of equipment, the bidder should demonstrate ownership or reasonable access to all items of plant and equipment from reputable rental or leasing companies.

A summary list of key equipment should be produced. A satisfactory rating will require clear demarcation of equipment per work team identified in the Site Organisation plan in order to meet the proposed functions, tasks and output of that work team as per the proposed Construction Schedule.

Item of equipment		
Equipment information	Name of manufacturer: ____	Model and power rating: ____
	Capacity: ____	Year of manufacture: ____
Current status	Current location: ____	
	Details of current commitments: ____	
Source	Indicate source of the equipment <input type="checkbox"/> Owned <input type="checkbox"/> Rented <input type="checkbox"/> Leased <input type="checkbox"/> Specially manufactured	

Omit the following information for equipment owned by the bidder.

Owner	Name of owner: ____	
	Address of owner: ____	
	Telephone: ____	Contact name and title: ____
	Fax: ____	Telex: ____
Agreements	Details of rental / lease / manufacture agreements specific to the project: ____	

Personnel Resourcing

Form PER-1: Proposed Personnel

Bidders should provide the names of suitably qualified personnel to meet the specified requirements stated in Section III. The data on their experience should be supplied using the Form below for each candidate.

The data on their experience should be supplied, using Form PER-2 that also follows, **for each candidate**. The procuring entity reserves the right to check submitted personnel experience. Additionally, bidders are advised that changes to proposed personnel for key positions in Form PER-1 prior to commencement of the Contract will not be permitted.

1.	Title of position*: ____
	Name: _____
2.	Title of position*: ____
	Name: _____
3.	Title of position*: ____
	Name: _____
4.	Title of position*: ____
	Name: _____

**As listed in Section III.*

Form PER-2: Resume of Proposed Personnel

Name of bidder: _____		
Position: _____		
Personnel information	Name: _____	Date of birth: _____
	Professional qualifications: _____	
Present employment	Name of Employer: _____	
	Address of Employer: _____	
	Telephone: _____	Contact (manager / personnel officer): _____
	Fax: _____	E-mail: _____
	Job title: _____	Years with present procuring entity: _____

Summarize professional experience over the last ten (10) years, in reverse chronological order. Indicate particular technical and managerial experience relevant to the project.

From	To	Company / Project / Position / Relevant technical and management experience

Bidder's Qualification

To establish its qualifications to perform the Contract in accordance with **Section III - Evaluation and Qualification Criteria**, the bidder shall provide the information requested in the corresponding Bid Information Sheets included hereunder.

Form ELI-1.1: Bidder Information Form

Date: _____
Ref No. and title: _____
Page: _____ of _____ pages

1.	Bidder's name: _____
2.	In case of Joint Venture (JV), name of each member: ____
3.	Bidder's actual or intended country of registration: <i>Indicate Country of Constitution</i>
4.	Bidder's actual or intended year of incorporation: _____
5.	Bidder's Legal address (in country of registration): _____
6.	Bidder's authorized representative information Name: _____ Address: _____ Telephone/Fax numbers: _____ Email address: _____
7.	A. Attached are copies of original documents of <input type="checkbox"/> Articles of Incorporation (or equivalent documents of constitution or association), and/or documents of registration of the legal entity named above, in accordance with ITB Sub-Clause 4.2 <input type="checkbox"/> In case of JV, letter of intent to form JV or JV agreement, in accordance with ITB Sub-Clause 4.1 <input type="checkbox"/> In case of a foreign government-owned enterprises and public body from Samoa, documents establishing legal and financial autonomy and compliance with commercial law, in accordance with ITB 4.9 of the bidding documents. B. Included are the organizational chart, a list of Board of Directors, and the beneficial ownership

Form ELI-1.2: Bidder's JV Information Form

To be completed for each member of Bidder's JV

Date:
Ref No. and title:
Page: of pages

1.	Bidder's JV name: __
2.	JV member's name: _____
3.	JV member's country of registration: _____
4.	JV member's year of constitution: _____
5.	JV member's legal address in country of constitution: __
6.	JV Members authorised representative information Name: _____ Address: _____ Telephone/Fax numbers: _____ Email address: _____
7.	A. Attached are copies of original documents of <input type="checkbox"/> Articles of Incorporation (or equivalent documents of constitution or association), and/or registration documents of the legal entity named above, in accordance with ITB Sub-Clause 4.4. <input type="checkbox"/> In case of JV, letter of intent to form JV or JV agreement, in accordance with ITB Sub-Clause 4.1 <input type="checkbox"/> In case of a foreign government-owned enterprises and a public body from Samoa, documents establishing legal and financial autonomy and compliance with commercial law, in accordance with ITB 4.9 of the bidding documents. B. Included are the organizational chart, a list of Board of Directors, and the beneficial ownership

***Form CON-2: Historical Contract Non-Performance, Pending
Litigation and Litigation History***

Bidder's Name:
Date:
JV Member's Name:
Ref No. and title:
Page: of pages

Non-Performed Contracts in accordance with Section III, Evaluation and Qualification Criteria

- ☐ Contract non-performance did not occur during the stipulated period, in accordance with **Section III, Evaluation and Qualification Criteria**, Sub-Factor 2.2.1
- ☐ Contract(s) not performed during the stipulated period, in accordance with Section III, Evaluation and Qualification Criteria, requirement 2.2.1

Year	Non-performed portion of contract	Contract Identification	Total Contract Amount (current value, SAT\$ equivalent)
Insert year	Insert amount and percentage	Contract identification: <i>indicate complete contract name/number, and any other identification</i> Name of Employer: <i>Insert full name</i> Address of Employer: <i>Insert street/city/country</i> Reason(s) for non-performance: <i>indicate main reason(s)</i>	Insert amount

Pending Litigation, in accordance with Section III, Evaluation and Qualification Criteria

☐ There is no pending litigation in accordance with **Section III, Evaluation and Qualification Criteria**, Sub-Factor 2.2.2

☐ There is pending litigation in accordance with **Section III, Evaluation and Qualification Criteria**, Sub-Factor 2. 2.3 as indicated below.

Year of dispute	Amount in dispute (currency)	Contract Identification	Total Contract Amount (currency), SAT Equivalent (exchange rate)
		Contract Identification: _____ Name of Employer: _____ Address of Employer: _____ Matter in dispute: _____ Party who initiated the dispute: ____ Status of dispute: _____	
		Contract Identification: _____ Name of Employer: _____ Address of Employer: _____ Matter in dispute: _____ Party who initiated the dispute: ____ Status of dispute: _____	

Litigation History in accordance with Section III, Evaluation and Qualification Criteria

☐ No Litigation History in accordance with **Section III, Evaluation and Qualification Criteria**, Sub-Factor 2.2.3.

☐ Litigation History in accordance with **Section III, Evaluation and Qualification Criteria**, Sub-Factor 2.2.2 as indicated below.

Year of award	Outcome as percentage of Net Worth	Contract Identification	Total Contract Amount (currency), SAT Equivalent (exchange rate)
Insert year	Insert percentage	<p>Contract Identification: <i>indicate complete contract name, number, and any other identification</i></p> <p>Name of Employer: <i>insert full name</i></p> <p>Address of Employer: <i>insert street/city/country</i></p> <p>Matter in dispute: <i>indicate main issues in dispute</i></p> <p>Party who initiated the dispute: <i>indicate “Employer” or “services provider”</i></p> <p>Reason(s) for Litigation and award decision: <i>indicate main reason(s)</i></p>	

Form FIN-3.1: Financial Situation and Performance

Bidder's Name:
Date:
JV Member's Name:
Ref No. and title:
Page: of pages

1. Financial data

Types of Financial information in SAT\$ equivalent	Historic information for previous _____ years, _____ (amount in SAT\$ equivalent in 000s)				
	Year 1	Year 2	Year 3	Year 4	Year 5
Statement of Financial Position (Information from Balance Sheet)					
Total Assets (TA)					
Total Liabilities (TL)					
Total Equity/Net Worth (NW)					
Current Assets (CA)					
Current Liabilities (CL)					
Working Capital (WC)					
Information from Income Statement					
Total Revenue					
Profits Before Taxes (PBT)					
Cash Flow Information					
Cash Flow from Operating Activities					

**Refer to ITB Clause 15 for the exchange rate*

2. Sources of Finance

Specify sources of finance to meet the cash flow requirements on general services currently in progress and for future contract commitments.

No.	Source of finance	Amount (SAT\$ equivalent)
1		
2		
3		

3. Financial documents

The Bidder and its parties shall provide copies of financial statements for the past three (3) financial years pursuant **Section III - Evaluation and Qualifications Criteria**, Sub-factor 2.3.3. The financial statements shall:

- (a) reflect the financial situation of the Bidder or in case of JV member, and not an affiliated entity (such as parent company or group member).
 - (b) be independently audited or certified in accordance with local legislation.
 - (c) be complete, including all notes to the financial statements.
 - (d) correspond to accounting periods already completed and audited.
- ☐ Attached are copies of financial statements² for the _____ years required above; and complying with the requirements

² If the most recent set of financial statements is for a period earlier than 12 months from the date of Bid, the reason for this should be justified.

Form FIN-3.2: Average Annual Construction Turnover

Bidder's Name:
Date:
JV Member's Name:
Ref No. and title:
Page: of pages

Annual turnover data (Construction only)			
Year	Amount Currency	Exchange rate	SAT\$ equivalent
<i>indicate year</i>	<i>insert amount and indicate currency</i>		
Average Annual Construction Turnover *			

** See Section III, Evaluation and Qualification Criteria, Sub-Factor 2.3.2.*

Form FIN-3.3: Financial Resources

Specify proposed sources of financing such as liquid assets, unencumbered real assets, lines of credit, and other financial means, net of current commitments, available to meet the total construction cash flow demands of the subject contract or contracts as specified in **Section III- Evaluation and Qualification Criteria** plus the Total Current Cash Flow Requirement from Current Contract Commitments as calculated below.

Cash Flow Requirement	Amount (SAT\$ equivalent)
1. Construction Cash Flow requirement for subject contract (from Section III, Sub Section 2.3.3)	\$ <i>enter amount</i>
2. Total Current Cash Flow Requirement from Current Contract Commitments (from Bidding Form CCC)	\$ <i>enter amount</i>
TOTAL FINANCIAL RESOURCES REQUIRED FOR THIS CONTRACT	\$ <i>enter amount</i>

Financial Resources		
No.	Source of financing	Amount (SAT\$ equivalent)
1		
2		
3		

Form FIN-3.4: Current Contract Commitments / Works in Progress

Bidders and each member to a JV should provide information on their current commitments on all contracts that have been awarded, or for which a letter of intent or acceptance has been received, or for contracts approaching completion, but for which an unqualified, full completion certificate has yet to be issued.

Current Contract Commitments					
No.	Name of Contract	Employer's Contact Address, Tel, Fax	Value of Outstanding Work Current SAT\$ Equivalent	Estimated Completion Date	Average Monthly Invoicing Over Last Six Months SAT\$/month
1					
2					
3					
4					
5					

Form EXP-4.1: General Construction Experience

Bidder's Name:
Date:
JV Member's Name:
Ref No. and title:
Page: of pages

Starting	Ending Year	Contact Identification	Role of Bidder
		Contract name: _____ Brief Description of the general services performed by the Bidder: _____ Amount of Contract: _____ Name of Employer: _____ Address: _____	
		Contract name: _____ Brief Description of the general services performed by the Bidder: _____ Amount of Contract: _____ Name of Employer: _____ Address: _____	
		Contract name: _____ Brief Description of the general services performed by the Bidder: _____ Amount of Contract: _____ Name of Employer: _____ Address: _____	

** List calendar year for years with contracts with at least nine (9) months activity per year starting with the earliest year.*

Form EXP-4.2(a): Specific Construction and Contract Management Experience

Bidder's Name:
Date:
JV Member's Name:
Ref No. and title:
Page: of pages

Similar Contract No.	Information			
Contract Identification:				
Award date:				
Completion date:				
Role of Contract:	Prime services provider <input type="checkbox"/>	Member in JV <input type="checkbox"/>	Management services provider <input type="checkbox"/>	Sub-services provider <input type="checkbox"/>
Total Contract Amount:	SAT\$ _____			
If member in a JV or sub-services provider, specify participation in total Contract Amount:	SAT\$ _____			
Employers Name:				
Address:				
Telephone/fax number:				
E-mail:				

Form EXP-4.2(a) (cont.): Specific Construction and Contract Management Experience

Similar Contract No.	Information
Description of the similarity in accordance with Sub-Factor 2.4.2(a) of Section III:	
1. Amount:	
2. Physical size of required work items:	
3. Complexity:	
4. Methods/Technology:	
5. Construction Rate of key activities:	
6. Other Characteristics:	

Form EXP-4.2(b): General Services Experience in Key Activities

Bidder's Name:

Date:

Bidder's JV Member's Name:

Sub-Contractor's name³ (as per

ITB Clause 34):

Ref No. and title:

Page: of pages

All Sub-contractors for key activities must complete the information in this form as per ITB Clause 34 and Section III, Evaluation and Qualification Criteria.

1. Key Activity No One: _____

	Information			
Contract Identification:				
Award date:				
Completion date:				
Role in Contract:	Prime services provider <input type="checkbox"/>	Member in JV <input type="checkbox"/>	Management services provider <input type="checkbox"/>	Sub-services provider <input type="checkbox"/>
Total Contract Amount:	SAT\$ _____			
Quantity (Volume, number or rate of production, as applicable) performed under the contract per year or part of the year	Total quantity in the contract (i)	Percentage participation (ii)	Actual Quantity Performed (i) x (ii)	
Year 1				
Year 2				
Year 3				
Year 4				
Employer's Name:				
Address:				

³ If applicable

Telephone/fax number:	
E-mail:	

	Information
Description of the key activities in accordance with Sub-Factor 4.2(b) of Section III:	

2. Key Activity No Two: _____

3. Key Activity No. Three: _____

Other
None

Section IVA – Eligible Countries

Eligibility for the Provision of Goods, Works and Services under a Government of Samoa - Financed Procurement

All countries other than those currently designated as **INELIGIBLE** are eligible to tender to provide the goods, works and services, which are the subject of this tender.

Presently **INELIGIBLE** countries are:

- Andorra, Democratic People's Republic of Korea, Liechtenstein, Monaco (not members of the World Bank or Asian Development Bank), and
- Iraq (UN Security Council).

For projects funded solely by a specific donor, please refer to donor concerned for their list of ineligible countries.

The country of registration must be a member of the World Bank or Asian Development Bank and not under sanction of the UN Security Council.

Section V – Works Requirements

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Scope of Works:

The Scope of Works includes, but is not limited to the following:

- 1. Construction of the new Courthouse Building (incl. Civil Works)***
- 2. Construction of the new Judges Residence Building***
- 3. Construction of the Perimeter Fence & Gates (incl. Security Fence for Prisoner Entry)***
- 4. Construction of Generator Shelter***

Specifications : Attached as three separate documents.

1.Architectural Technical Specification.

2.Civil & Structural Specification.

3.Building Services Performance Specification.

Drawings

As part of the Technical Requirements the following Drawings are provided:

Type Of Drawing	Drawing title	Drawing number	Sheet	Revision

Supplementary Information : None

Section VI - General Conditions of Contract

These General Conditions of Contract (“GCC”), read together with the Special Conditions of Contract (“SCC”) and other documents listed therein, shall be a complete document expressing fairly the rights and obligations of both parties.

All references in the GCC to the “SCC” are references to the “SCC Part A – Contract Data”.

The GCC can be used for small admeasurement (measure and value) contracts and lump sum contracts.

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A. General

1. Definitions

- 1.1 In the Conditions of Contract (“these Conditions”), which include Special Conditions of Contract, Parts A and B, and these General Conditions, the following words and expressions shall have the meanings stated. Words indicating persons or parties include corporations and other legal entities, except where the context requires otherwise. Boldface type is used to identify defined terms.
- (a) The **Accepted Contract Amount** has the same meaning as **Contract Price**.
 - (b) The **Activity Schedule** is a schedule of the activities comprising the construction, installation, testing, and commissioning of the works in a lump sum contract. **It includes a lump sum price for each activity**, which is used for valuations and for assessing the effects of Variations and Compensation Events.
 - (c) The **Adjudicator** is the person appointed jointly by the Principal and the contractor to resolve disputes in the first instance as provided for in clause 23.
 - (d) **Bill of Quantities** means the priced and completed Bill of Quantities forming part of the bid.
 - (e) **Compensation Events** are those defined in clause 41 hereunder.
 - (f) The **Completion Date** is the date of completion of the works as certified by the Engineer in accordance with clause 52.1.
 - (g) The **Contract** is the Contract between the Principal and the contractor to execute, complete, and maintain the works. It consists of the documents listed in clause 2.3.
 - (h) **Contract Agreement** means the contract agreement signed between the parties.
 - (i) The **contractor** is the party whose bid to carry out the works has been accepted by the Principal.
 - (j) The **contractor’s bid** is the completed bid document submitted by the contractor to the Principal.
 - (k) The **Contract Price** is the Accepted Contract Amount stated in the Letter of Acceptance and thereafter as

adjusted in accordance with the terms and conditions of Contract.

- (l) **Days** are calendar days; months are calendar months and year means 365 days.
- (m) **Dayworks** are varied work inputs subject to payment on a time basis for the contractor's employees and equipment, in addition to payments for associated materials and plant. Amounts payable for Daywork shall not be subject to adjustment for rise and fall in costs despite that the Contract may provide for adjustment in costs. In determining the value of Daywork, the following must be considered:
 - (i) the amount of wages and allowances paid by the Contractor at the rates obtaining on the Site at the time as established by the Contractor to the satisfaction of the Engineer or at such other rates as may be approved by the Engineer;
 - (ii) the amount paid by the Contractor in accordance with any statute;
 - (iii) the amount of hire charges in respect of constructional plant approved by the Engineer for use on the work in accordance with such hiring rates and conditions as may be agreed between the Engineer and Contractor or, in the absence of agreement, in accordance with such rates and conditions as may be determined by the Engineer;
 - (iv) the amount paid for services, subcontracts and professional fees;
 - (v) the actual cost to the Contractor at the Site of all materials supplied and required for the work;
 - (vi) a charge agreed between the Engineer and Contractor to cover overheads, administrative costs, site supervision, establishment costs, attendance and profit, or in the absence of an agreement, a reasonable charge determined by the Engineer.
- (n) A **Defect** is any part of the works not completed in accordance with the Contract and identified by the Principal and notified to the contractor, either before or after end of the Contract.

-
- (o) The **Defects Liability Certificate** is the certificate issued by the **Engineer** upon correction of defects by the contractor.
 - (p) The **Defects Liability Period** is the period **named in the SCC 33.1** and calculated from the Completion Date.
 - (q) **Drawings** means the drawings of the works, as included in the Contract, and any additional and modified drawings issued by (or on behalf of) the Principal in accordance with the Contract and includes calculations and other information provided or approved by the Engineer for the execution of the Contract.
 - (r) The **Engineer** is the person appointed by the Principal and **named in the SCC** (or any other competent person appointed by the Principal and notified to the contractor) who is professionally qualified and registered to assume responsibility for the engineering management, design and implementation of the works (as applicable) in accordance with the Professional Engineers (Registrations) Act 1998) and is responsible for supervising the execution of the works and administering the Contract.

The Registered Engineer is the professionally qualified engineer appointed by the contractor to assume responsibility for the engineering management, design and implementation of the works (as applicable) in accordance with the Professional Engineers (Registrations) Act 1998.

- (s) **Equipment** is the contractor's machinery and vehicles brought temporarily to the Site to construct the works.
- (t) **Force Majeure** means an exceptional event or circumstance which is beyond a Party's control; which such Party could not reasonably have provided against before entering into the Contract; which, having arisen, such Party could not reasonably have avoided or overcome; and, which is not substantially attributable to the other Party.
- (u) **In writing** or **written** means hand-written, type-written, printed or electronically made and resulting in a permanent record;

-
- (v) **The Initial Contract Price** is the Contract Price listed in the Principal's Letter of Acceptance.
- (w) **The Intended Completion Date** is the date on which it is intended that the contractor shall complete the works. The Intended Completion Date is **specified in the SCC**. The Intended Completion Date may be revised only by the Engineer by issuing an extension of time or an acceleration order.
- (x) **Latent condition** refer to:
- (i) physical conditions on the Site or its surroundings, including artificial things but excluding weather conditions at the Site, which differ materially from the physical conditions which should reasonably have been anticipated by the Contractor at the time of the Contractor's bid if the Contractor had:
 - A. examined all information made available in writing by the Principal to the Contractor for the purpose of bidding; and
 - B. examined all information relevant to the risks, contingencies and other circumstances having an effect on the tender and obtainable by the making of reasonable enquiries; and
 - C. inspected the Site and its surroundings; and
 - (ii) any other conditions which the Contract specifies to be latent conditions
- (y) **Letter of Acceptance** means the formal acceptance by the Principal of the bid and denotes the formation of the Contract at the date of acceptance.
- (z) **Materials** are all supplies, including consumables used by the contractor for incorporation in the works.
- (aa) **Party** means the Principal or the contractor, as the context requires.
- (bb) **Plant** is any integral part of the works that shall have a mechanical, electrical, chemical, or biological function.
- (cc) The **Principal** is the party who contracts the contractor to carry out the works, **as specified in the SCC**.
- (dd) **SCC** means the Special Conditions of Contract
- (ee) **The Site** is the area defined as such **in the SCC**.

-
- (ff) **Site Investigation Reports** are those that were included in the Bidding Documents and are factual and interpretative reports about the surface and subsurface conditions at the Site.
 - (gg) **Specification** means the specification of the works included in the Contract and any modification or addition made or approved by the Engineer.
 - (hh) The **Start Date** is **given in the SCC**. It is the latest date when the contractor shall commence execution of the works. It does not necessarily coincide with any of the Site Possession Dates.
 - (ii) A **Subcontractor** is a person or corporate body who has a Contract with the contractor to carry out a part of the works in the Contract which includes work on the Site.
 - (jj) **Temporary works** are works designed, constructed, installed, and removed by the contractor that are needed for construction or installation of the works and the remedying of any defects.
 - (kk) A **Variation** is an instruction given by the Engineer at the direction of, or with the Principal's approval which varies the works and may also be a result of a Compensation Event or latent conditions.
 - (ll) The **works** are what the Contract requires the contractor to construct, install, and turn over to the Principal **as defined in the SCC**.

2. Interpretation

- 2.1 In interpreting these GCC, words indicating one gender include all genders. Words indicating the singular also include the plural and words indicating the plural also include the singular. Headings have no significance. Words have their normal meaning under the language of the Contract unless specifically defined. The Engineer shall provide instructions clarifying queries about these GCC.
- 2.2 If sectional completion is **specified in the SCC**, references in the GCC to the works, the Completion Date, and the Intended Completion Date apply to any Section of the works (other than references to the Completion Date and Intended Completion Date for the whole of the works).
- 2.3 The documents forming the Contract shall be interpreted in the following order of priority:

-
- (a) Contract Agreement,
- (b) Letter of Acceptance,
- (c) Special Conditions of Contract (“GCC”),
- (d) General Conditions of Contract (“SCC”),
- (e) Contractor’s Bid,
- (f) Specifications,
- (g) Drawings,
- (h) Bill of Quantities,¹ and
- (i) any other document **listed in the SCC** as forming part of the Contract.
- 3. Language and Law** 3.1 The language of the Contract is English and the law governing the Contract are the laws of the Independent State of Samoa.
- 4. Engineer’s Decisions** 4.1 Except where otherwise specifically stated, the Engineer shall in consultation with the Principal decide contractual matters between the Principal and the contractor in the role of representing the Principal and to ensure that, the works is carried out and completed in accordance with the Contract.
- 5. Delegation** 5.1 Otherwise **specified in the SCC**, the Engineer may delegate any of his/her duties and responsibilities to other people, except to the Adjudicator after notifying the contractor, and may revoke any delegation after notifying the contractor.
- 6. Communications** 6.1 Communications between parties that are referred to in the Conditions shall be effective only when in writing. A notice shall be effective only when it is delivered.
- 7. Subcontracting** 7.1 The contractor may subcontract with the approval of the Engineer in writing up to a maximum of 20% of the Contract Price. The contractor may not assign the Contract without the approval of the Engineer in writing. Subcontracting shall not alter the contractor’s obligations.
- 7.2 The contractor shall be responsible for the acts, defaults and neglects of any approved sub-contractors.
- 8. Other Contractors** 8.1 The contractor shall cooperate and share the Site with other contractors, public authorities, utilities, and the Principal between the dates given in the Schedule of Other Contractors, as

¹ In lump sum contracts, delete “Bill of Quantities” and replace with “Activity Schedule”.

-
- referred to in the SCC.** The contractor shall also provide facilities and services for them as described in the Schedule. The Principal may modify the Schedule of Other Contractors and shall notify the contractor of any such modification.
- 9. Personnel and Equipment**
- 9.1 The contractor shall employ the key personnel and use the equipment identified in its bid, to carry out the works or other personnel and equipment approved by the Engineer. The Engineer shall approve any proposed replacement of key personnel and equipment only if their relevant qualifications or characteristics are substantially equal to or better than those listed in the bid and at no additional cost to the Principal.
- 9.2 The contractor shall appoint an Engineer for the duration of the works. The registered Engineer shall be a fully qualified corporate member of the Institute of Professional Engineers Samoa (IPES) or be in possession of an alternative professional qualification recognized by IPES as qualifying for corporate membership of IPES and who shall register as a member of IPES within twenty eight (28) days of the Commencement Date.
- 9.3 If the Engineer asks the contractor to remove a person who is a member of the contractor's staff or work force, stating the reasons, the contractor shall ensure that the person leaves the Site within seven (7) days and has no further connection with the work in the Contract.
- 10. Principal's and contractor's risks**
- 10.1 The Principal carries the risks which this Contract states are Principal's risks, and the contractor carries the risks which this Contract states are contractor's risks.
- 11. Principal's risks**
- 11.1 From the Start Date until the Defects Liability Certificate has been issued or until all defects have been rectified to the satisfaction of the Principal (whichever period is longer), the following are the Principal's risks:
- (a) The risk of personal injury, death, or loss of or damage to property (excluding the works, Plant, Materials, and Equipment), which are due to –
 - (i) use or occupation of the Site by the works or for the purpose of the works, which is the unavoidable result of the works; or
 - (ii) negligence, breach of statutory duty, or interference with any legal right by the Principal or by any

person employed by or contracted to him except the contractor.

- (b) The risk of damage to the works, Plant, Materials, and Equipment to the extent that it is due to a fault of the Principal or in the Principal's design, or due to war or radioactive contamination directly affecting where the works are to be executed.
- (c) The risk of the Principal pursuant to sub-clause (a) above does not extend to include losses of that nature brought about by the contractor's employees or subcontractors.

11.2 From the Completion Date until the Defects Liability Certificate has been issued, the risk of loss of or damage to the works, Plant, Materials and Equipment is the Principal's risk except loss or damage due to:

- (a) a Defect which existed on the Completion Date,
- (b) an event occurring before the Completion Date, which was not itself a Principal's risk, or
- (c) the activities of the contractor on the Site after the Completion Date.

12. Contractor's risks and warranties

12.1 From the Starting Date until the Defects Liability Certificate has been issued, the risks of personal injury, death, and loss of or damage to property (including, without limitation, the works, Plant, Materials, and Equipment) which are not Principal's risks are contractor's risks.

12.2 The Contractor warrants to do the following and in the event of anything to the contrary, the Principal shall have the right to take appropriate actions against the Contractor:

- (a) to provide goods and materials of a merchantable quality and of appropriate, reasonably fit for their intended purpose, and suitability of materials;
- (b) compliance with legal requirements;
- (c) to ensure quality workmanship;
- (d) adherence to plans; and
- (e) to ensure that the intended structure for which the works are carried out, is suitability for occupation upon completion of the works; and

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- (f) to carry out the works in question in a proper and workmanlike manner; and
 - (g) where services are provided, that the services concerned be provided with reasonable care and skill.

13. Insurance

13.1 The contractor shall provide, in the joint names of the Principal and the contractor, insurance cover from the Start Date to the end of the Defects Liability Period or an open insurance cover to extend after the Defects Liability Period until all defects have been rectified to the satisfaction of the Principal (whichever period is longer), in the amounts and deductibles **stated in the SCC** for the following events which are due to the contractor's risks:

- (a) loss of or damage to the works, Plant, and Materials;
- (b) loss of or damage to Equipment;
- (c) loss of or damage to property (except the works, Plant, Materials, and Equipment) in connection with the Contract; and
- (d) personal injury or death.

13.2 Policies and certificates for insurance shall be delivered by the contractor to the Principal for the Principal's approval before the Start Date or within 30 days from the date of signing of the Contract. All such insurance shall provide for compensation to be payable in the types and proportions of currencies required to rectify the loss or damage incurred.

13.3 Alterations to the terms of an insurance policy shall not be made without the approval of the Engineer in consultation with the Principal.

13.4 Both parties shall comply with any conditions of the insurance policies.

14. Site Data

14.1 The contractor shall be deemed to have examined any Site Data **referred to in the SCC**, supplemented by any information available to the contractor.

15. Contractor to construct the works

15.1 The contractor shall construct and install the works in accordance with the Specifications and Drawings which forms part of this Contract.

15.2 The contractor shall, in consideration for the Contract Price, execute and complete the works with due care, skill and diligence and in a sound, proper and workman like manner in

accordance with the terms and conditions of this Contract and in conformity with all directions and requirements of the Engineer.

15.3 In performing the works, the contractor shall use high quality materials which are suitable for the works. If the Engineer is of the opinion that any materials or work are unsatisfactory and do not comply with the quality requirements of this Contract, the Engineer may direct the contractor, at no extra cost to the Principal, to remove the materials, demolish or reconstruct the works, replace or correct the material or works as the case may be.

15.4 The contractor shall be responsible for the connection of all water, drainage, sewerage, and electricity services necessary for the completion of the Works and shall apply for all the relevant permits and pay all associated fees and charges that are levied by the appropriate authorities from the Contract Price.

**16. The works to
Be Completed
by the
Intended
Completion
Date**

16.1 The contractor may commence execution of the works on the Start Date and shall carry out the works in accordance with the Program submitted by the contractor, as updated with the approval of the Engineer, and complete them by the Intended Completion Date.

**17. Approval by
the Engineer**

17.1 The contractor shall submit Specifications and Drawings showing the proposed Temporary works to the Engineer for his approval.

17.2 The contractor shall be responsible for design of Temporary works.

17.3 The Engineer's approval shall not alter the contractor's responsibility for design of the Temporary works.

17.4 The contractor shall obtain approval of third parties to the design of the Temporary works, where required.

17.5 All Drawings prepared by the contractor for the execution of the temporary or permanent works, are subject to prior approval by the Engineer before this use.

18. Safety

18.1 The contractor shall be responsible for the safety of all activities on the Site. The contractor shall implement sound and appropriate safety measures to protect members of the public and other third parties from any harm whatsoever and in accordance with all relevant occupational health and safety legislation applicable to the Site and for the purposes of such

legislation the contractor shall be deemed to be in control of the Site at all times for the duration of the Contract.

18.2 The contractor shall ensure that the Site of the works is well secured and protected at all times from any unauthorised entry or any other harm or damage during both working and non-working hours for the duration of the works. The contractor shall pay for any damages or losses whatsoever resulting from any failure to properly secure the Site.

19. Discoveries

19.1 Anything of historical or other interest or of significant value unexpectedly discovered on the Site shall be the property of the Principal. The contractor shall notify the Engineer of such discoveries and carry out the Engineer's instructions for dealing with them.

20. Possession of the Site

20.1 The Principal shall give possession of all parts of the Site to the contractor. If possession of a part is not given by the date **stated in the SCC**, the Principal shall be deemed to have delayed the start of the relevant activities, and this shall be a Compensation Event.

21. Access to the Site

21.1 The contractor shall allow the Engineer and any person authorized by the Engineer access to the Site and to any place where work in connection with the Contract is being carried out or is intended to be carried out.

22. Instructions, Inspections and Audits

22.1 The contractor shall carry out all instructions of the Engineer which comply with the applicable laws where the Site is located.

22.2 The contractor shall permit, and shall cause its Subcontractors and sub consultants to permit the Principal and/or persons appointed by the Principal to inspect the Site and/or the accounts and records of the contractor and its sub-contractors relating to the performance of the Contract and the submission of the bid, and to have such accounts and records audited by auditors appointed by the Principal if requested by the Principal.

22.3 The contractor's and its Subcontractors' and sub consultants' attention is drawn to GCC 57.1 which provides, inter alia, that acts intended to materially impede the exercise of the Principal's inspection and audit rights provided for under GCC 22.2 constitute a prohibited practice subject to contract termination (as well as to a determination of ineligibility pursuant to the Principal's prevailing sanctions procedures).

**23. Appointment
of the
Adjudicator**

- 23.1 The Adjudicator shall be appointed jointly by the Principal and the contractor, at the time of the p Principal's issuance of the Letter of Acceptance. If, in the Letter of Acceptance, the Principal does not agree on the appointment of the Adjudicator, the Principal will request the Appointing Authority **designated in the SCC**, to appoint the Adjudicator within fourteen (14) days of receipt of such request.
- 23.2 Should the Adjudicator resign or die, or should the Principal and the contractor agree that the Adjudicator is not functioning in accordance with the provisions of the Contract, a new Adjudicator shall be jointly appointed by the Principal and the contractor. In case of disagreement between the Principal and the contractor, within thirty (30) days, the Adjudicator shall be designated by the Appointing Authority **designated in the SCC** at the request of either party, within fourteen (14) days of receipt of such request.

**24. Procedure for
Disputes**

- 24.1 If the contractor believes that a decision taken by the Engineer was either outside the authority given to the Engineer by the Contract or that the decision was wrongly taken, the contractor shall notify the Principal and thereafter first enter into good faith negotiations to resolve the dispute in a fair and equitable manner without the need for adjudication or arbitration. If the good faith negotiations do not result in an acceptable resolution contractor within 14 days of the contractor notifying the Principal of a disagreement with the Engineer's decision, the decision shall immediately be referred to the Adjudicator within fourteen (14) days of the notification of the Engineer's decision.
- 24.2 The Adjudicator shall give a decision in writing within twenty-eight (28) days of receipt of a notification of a dispute.
- 24.3 The Adjudicator shall be paid by the hour at the **rate specified in the SCC**, together with reimbursable expenses of the types **specified in the SCC**, and the cost shall be divided equally between the Principal and the contractor, whatever decision is reached by the Adjudicator. Either party may refer a decision of the Adjudicator to an Arbitrator within twenty-eight 28 days of the Adjudicator's written decision. If neither party refers the dispute to arbitration within the above twenty-eight 28 days, the Adjudicator's decision shall be final and binding.

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- 24.4 The arbitration shall be conducted in accordance with the arbitration procedures published by the institution named and in the place specified **in the SCC**.

B. Time Control

25. Program

- 25.1 Within the time **stated in the SCC**, after the date of the Letter of Acceptance, the contractor shall submit to the Engineer for approval a Program showing the general methods, arrangements, order, and timing for all the activities in the works. In the case of a lump sum contract, the activities in the Program shall be consistent with those in the Activity Schedule.
- 25.2 An update of the Program shall be a program showing the actual progress achieved on each activity and the effect of the progress achieved on the timing of the remaining work, including any changes to the sequence of the activities.
- 25.3 The contractor shall submit to the Engineer for approval an updated Program at intervals no longer than the period **stated in the SCC**. If the contractor does not submit an updated Program within this period, the Engineer may withhold the amount **stated in the SCC** from the next payment certificate and continue to withhold this amount until the next payment after the date on which the overdue Program has been submitted. In the case of a lump sum contract, the contractor shall provide an updated Activity Schedule within fourteen (14) days of being instructed to by the Engineer.
- 25.4 The Engineer's approval of the Program shall not alter the contractor's obligations. The contractor may revise the Program and submit it to the Engineer again at any time. A revised Program shall show the effect of Variations and Compensation Events.

26. Extension of the Intended Completion Date

- 26.1 The Engineer shall extend the Intended Completion Date if:
- (a) a Compensation Event occurs; or
 - (b) a Variation is issued which makes it impossible for Completion to be achieved by the Intended Completion Date without the contractor taking steps to accelerate the remaining work, which would cause the contractor to incur additional cost; or
 - (c) any other event occurring on or before the Intended Completion Date which is beyond the reasonable control

of the Contractor including but not limited to industrial conditions or inclement weather; or

- (d) any of the following events whether occurring before, on or after the Intended Completion Date:
 - (i) delays caused by the Principal, Engineer or Principal's employees, consultants, contractors or other agents;
 - (ii) actual quantities of work being greater than the quantities in the Bill of Quantities;
 - (iii) latent conditions;
 - (iv) repudiation or abandonment by a nominated subcontractor;
 - (v) changes in the law;
 - (vi) delays by a public or statutory authority not caused by the Contractor;
 - (vii) any breach of the Contract by the Principal; or
 - (viii) any other cause which is expressly stated in the Contract to be a cause for extension of time to ensure completion of the works.

26.2 The Engineer shall decide whether and by how much to extend the Intended Completion Date within twenty-one (21) days of the contractor asking the Engineer for a decision upon the effect of a Compensation Event or Variation and submitting full supporting information. If the contractor has failed to give early warning of a delay or has failed to cooperate in dealing with a delay, the delay by this failure shall not be considered in assessing the new Intended Completion Date.

26.3 Where more than one event causes concurrent delays and the cause of at least one of those events is not a cause referred to in clause 26.1, then to the extent that the delays are concurrent, the Contract shall not be entitled to an extension of time.

27. Acceleration

27.1 When the Principal wants the contractor to finish before the Intended Completion Date, the Engineer shall obtain priced proposals for achieving the necessary acceleration from the contractor. If the Principal accepts these proposals, the Intended Completion Date shall be adjusted accordingly and confirmed in writing by both the Principal and the contractor.

27.2 If the contractor's priced proposals for an acceleration are accepted by the Principal, they are incorporated into the Contract Price and treated as a Variation.

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| 28. Delays
Ordered by the
Engineer | 28.1 The Engineer may instruct the contractor to delay the start or progress of any activity within the works at the direction of the Principal. |
| 29. Management
Meetings | 29.1 Either the Engineer or the contractor may require the other to attend a management meeting. The business of a management meeting shall be to review the plans for remaining work and to deal with matters raised in accordance with the early warning procedure.

29.2 The Engineer shall record the business of management meetings and provide copies of the record to those attending the meeting and to the Principal. The responsibility of the parties for actions to be taken shall be decided by the Engineer either at the management meeting or after the management meeting and stated in writing to all who attended the meeting. |
| 30. Early Warning | 30.1 The contractor shall warn the Engineer at the earliest opportunity of specific likely future events or circumstances that may adversely affect the quality of the work, increase the Contract Price, or delay the execution of the works. The Engineer may require the contractor to provide an estimate of the expected effect of the future event or circumstance on the Contract Price and Completion Date. The estimate shall be provided by the contractor as soon as reasonably possible.

30.2 The contractor shall cooperate with the Engineer in making and considering proposals for how the effect of such an event or circumstance can be avoided or reduced by anyone involved in the work and in carrying out any resulting instruction of the Engineer. |

C. Quality Control

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| 31. Identifying
Defects | 31.1 The Engineer shall check the contractor's work and notify the contractor of any Defects that are found. Such checking shall not affect the contractor's responsibilities. The Engineer may instruct the contractor to search for a Defect and to uncover and test any work that the Engineer considers may have a Defect. Notification of defects may either be before or after end of the Contract and such defects must be rectified within the Defects Liability Period or until such time that the Principal is satisfied with rectification completed (whichever is the longer period). |
| 32. Tests | 32.1 If the Engineer instructs the contractor to carry out a test not specified in the Specification to check whether any work has a Defect and the test shows that it does, the contractor shall pay for |

the test and any samples. If there is no Defect, the test shall be a Compensation Event.

33. Correction of Defects

- 33.1 The Engineer shall give notice to the contractor of any Defects before the end of the Defects Liability Period, which begins at Completion, and is **defined in the SCC**. The Defects Liability Period shall be extended for as long as Defects remain to be corrected and to the satisfaction of the Principal.
- 33.2 Every time notice of a Defect is given, the contractor shall correct the notified Defect within the length of time specified by the Engineer's notice.
- 33.3 If any work needing rectification during the Defects Liability Period is not commenced or completed by the date required by the Principal, the Principal shall require the rectification to be carried out at the Contractor's expense, but without prejudice to any other rights that the Principal may have against the Contractor with respect to such omission or defect and the cost of the work of rectification incurred by the Principal shall be a debt due from the Contractor.
- 33.4 If it is necessary for the Contractor to carry out work of rectification, the Contractor shall do so at times and in a manner which causes as little inconvenience to the occupants or users of the works as is reasonably possible.

34. Uncorrected Defects

- 34.1 If the contractor has not corrected a Defect within the time specified in the Engineer's notice, the Engineer shall assess the cost of having the Defect corrected, and the contractor shall pay this amount.

D. Cost Control

35. Bill of Quantities or Activity Schedule

- 35.1 In the case of an admeasurement contract (measure and value), the Bill of Quantities shall contain priced items for the works to be performed by the contractor.
- 35.2 The Bill of Quantities is used to calculate the Contract Price. The contractor will be paid for the quantity of the work accomplished at the rate in the Bill of Quantities for each item.
- 35.3 In the case of a lump sum contract, the Activity Schedule shall contain the priced activities for the works to be performed by the contractor. The Activity Schedule is used to monitor and control the performance of activities on which basis the contractor will be paid. If payment for Materials on Site shall be made separately, the

contractor shall show delivery of Materials to the Site separately on the Activity Schedule.

36. Changes in the Contract Price

36.1 In the case of an admeasurement (measure and value) contract:

- (a) If the final quantity of the work done differs from the quantity in the Bill of Quantities for the particular item by more than twenty-five percent (25%), provided the change exceeds one percent (1%) percent of the Initial Contract Price, the Engineer shall adjust the rate to allow for the change.
- (b) The Engineer shall not adjust rates from changes in quantities if thereby the Initial Contract Price is exceeded by more than fifteen percent (15%), except with the prior approval of the Principal.
- (c) If requested by the Engineer, the contractor shall provide the Engineer with a detailed cost breakdown of any rate in the Bill of Quantities.

36.2 In the case of a lump sum contract, the Activity Schedule shall be amended by the contractor to accommodate changes of Program or method of working made at the contractor's own discretion. Prices in the Activity Schedule shall not be altered when the contractor makes such changes to the Activity Schedule.

37. Variations

37.1 No variation of this Contract is binding unless it is agreed to in writing between the Parties.

37.2 All Variations shall be included in updated Programs and in the case of a lump sum contract, also in the Activity Schedule produced by the contractor and shall form part of this Contract.

37.3 The contractor shall provide the Engineer with a quotation for carrying out the Variation when requested to do so by the Engineer. The Engineer shall assess the quotation, which shall be given within seven (7) days of the request or within any longer period stated by the Engineer and before the Variation is ordered.

37.4 If the contractor's quotation is unreasonable, the Engineer may order the Variation and make a change to the Contract Price, which shall be based on the Engineer's own forecast of the effects of the Variation on the contractor's costs.

37.5 If the Engineer decides that the urgency of varying the work would prevent a quotation being given and considered without delaying the work, no quotation shall be given and the Variation shall be treated as a Compensation Event.

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- 37.6 The contractor shall not be entitled to additional payment for costs that could have been avoided by giving early warning.
- 37.7 In the case of an admeasurement (measure and value) contract, if the work in the Variation corresponds to an item description in the Bill of Quantities and if, in the opinion of the Engineer, the quantity of work above the limit stated in GCC 38.1 or the timing of its execution do not cause the cost per unit of quantity to change, the rate in the Bill of Quantities shall be used to calculate the value of the Variation. If the cost per unit of quantity changes, or if the nature or timing of the work in the Variation does not correspond with items in the Bill of Quantities, the quotation by the contractor shall be in the form of new rates for the relevant items of work.
- 37.8 The Engineer or Principal is not obliged to approve a variation for the convenience of the Contractor.
- 38. Cash Flow Forecasts**
- 38.1 When the Program, or, in the case of a lump sum contract, the Activity Schedule, is updated, the contractor shall provide the Engineer with an updated cash flow forecast. The cash flow forecast shall include different currencies, as defined in the Contract, converted as necessary using the Contract exchange rates.
- 39. Payment Certificates**
- 39.1 The contractor shall submit to the Engineer monthly statements of the estimated value of the work executed less the cumulative amount certified previously.
- 39.2 The Engineer shall check the contractor's monthly statement and certify the amount to be paid to the contractor.
- 39.3 The value of work executed shall be determined by the Engineer.
- 39.4 The value of work executed shall comprise:
- (a) In the case of an admeasurement (measure and value) contract, the value of the quantities of work in the Bill of Quantities that have been completed; or
 - (b) In the case of a lump sum contract, the value of work executed shall comprise the value of completed activities in the Activity Schedule.
- 39.5 The value of work executed shall include the valuation of Variations and Compensation Events (where applicable).
- 39.6 The Engineer may exclude any item certified in a previous certificate or reduce the proportion of any item previously certified in any certificate in the light of later information.
- 39.7 The payment of monies by the Principal in accordance with a Progress Payment shall not be taken as evidence against or as an

admission by the Principal that any work specified in such progress certificate has been constructed or carried out in accordance with this Contract as to the value thereof, but will be taken to be payment on account only.

40. Payments

- 40.1 Payments shall be adjusted for deductions for advance payments and retention. The Principal shall pay the contractor the amounts certified by the Engineer within twenty-eight (28) days of the date of each certificate.
- 40.2 If an amount certified is increased in a later certificate or as a result of an award by the Adjudicator or an Arbitrator, the contractor shall be paid interest upon the delayed payment as set out in this clause. Interest shall be calculated from the date upon which the increased amount would have been certified in the absence of dispute.
- 40.3 Unless otherwise stated, all payments and deductions shall be paid or charged in the proportions of currencies comprising the Contract Price.
- 40.4 Items of the works for which no rate or price has been entered in shall not be paid for by the Principal and shall be deemed covered by other rates and prices in the Contract.

41. Compensation Events

- 41.1 The following shall be Compensation Events:
- (a) The Principal does not give access to a part of the Site by the Site Possession Date pursuant to GCC 20.1.
 - (b) The Principal modifies the Schedule of Other Contractors in a way that affects the work of the contractor under the Contract.
 - (c) The Engineer orders a delay or does not issue Drawings, Specifications, or instructions required for execution of the works on time (in which case, the Engineer shall bear the costs of such).
 - (d) The Engineer instructs the contractor to uncover or to carry out additional tests upon work, which is then found to have no Defects.
 - (e) The Engineer unreasonably (and without the Principal's knowledge) does not approve a subcontract to be let (in which case, the Engineer shall bear the costs of such).
 - (f) Ground conditions are substantially more adverse than could reasonably have been assumed before issuance of the Letter of Acceptance from the information issued to bidders

(including the Site Investigation Reports), from information available publicly and from a visual inspection of the Site.

- (g) The Engineer gives an instruction for dealing with an unforeseen condition caused by the Principal or additional work required for safety or other reasons.
- (h) Other contractors, public authorities, utilities, or the Principal does not work within the dates and other constraints stated in the Contract, and they cause delay or extra cost to the contractor.
- (i) The advance payment is delayed.
- (j) The effects on the contractor of any of the Principal's risks.
- (k) The Engineer unreasonably delays issuing a Certificate of Completion (in which case, the Engineer shall bear the costs of such).
- (l) Other Compensation Events as may be described in the Contract or determined by the Engineer shall apply.

41.2 If a Compensation Event would cause additional cost or would prevent the work being completed before the Intended Completion Date, the Contract Price shall be increased and/or the Intended Completion Date shall be extended. The Engineer shall, in consultation with the Principal decide whether and by how much the Contract Price shall be increased and whether and by how much the Intended Completion Date shall be extended. The Engineer must seek endorsement of the Principal before any variation to the Contract Price or extension to Intended Completion Date is effected.

41.3 As soon as information demonstrating the effect of each Compensation Event upon the contractor's forecast cost has been provided by the contractor, it shall be assessed by the Engineer, and the Contract Price shall be adjusted accordingly. If the contractor's forecast is deemed unreasonable, the Engineer shall adjust the Contract Price based on the Engineer's own forecast. The Engineer shall assume that the contractor shall react competently and promptly to the event.

41.4 The contractor shall not be entitled to compensation to the extent that the Principal's interests are adversely affected by the contractor not having given early warning or not having cooperated with the Engineer.

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- 42. Tax, duties and other charges** 42.1 The Engineer shall adjust the Contract Price if applicable taxes, duties, and other levies are changed between the date twenty eight (28) days before the submission of bids for the Contract and the date of the last Completion certificate, as confirmed by the relevant authority. The adjustment shall be the change in the amount of tax payable by the contractor, provided such changes are not already reflected in the Contract Price or are a result of GCC 44.
- 43. Currencies** 43.1 Where payments are made in currencies other than Samoan Tala ST\$, the exchange rates used for calculating the amounts to be paid shall be the exchange rates stated in the contractor's bid.
- 44. Price Adjustment** 44.1 Prices shall be adjusted for fluctuations in the cost of inputs only if **provided for in the SCC**. If so provided, the amounts certified in each payment certificate, before deducting for Advance Payment, shall be adjusted by applying the respective price adjustment factor to the payment amounts due in each currency. A separate formula of the type indicated below applies to each Contract currency:
- $$P_c = A_c + B_c \text{ Imc/Ioc}$$
- where:
- P_c is the adjustment factor for the portion of the Contract Price payable in a specific currency "c."
- A_c and B_c are coefficients² **specified in the SCC**, representing the nonadjustable and adjustable portions, respectively, of the Contract Price payable in that specific currency "c;" and
- Imc is the index prevailing at the end of the month being invoiced and Ioc is the index prevailing twenty-eight (28) days before Bidding opening for inputs payable; both in the specific currency "c."
- 44.2 If the value of the index is changed after it has been used in a calculation, the calculation shall be corrected and an adjustment made in the next payment certificate. The index value shall be deemed to take account of all changes in cost due to fluctuations in costs.
- 45. Retention** 45.1 The Principal shall retain from each payment due to the contractor the proportion of the Contract Price **stated in the SCC** until Completion of the whole of the works.

² *The sum of the two coefficients A_c and B_c should be 1 (one) in the formula for each currency. Normally, both coefficients shall be the same in the formulae for all currencies, since coefficient A, for the nonadjustable portion of the payments, is a very approximate figure (usually 0.15) to take account of fixed cost elements or other nonadjustable components. The sum of the adjustments for each currency are added to the Contract Price.*

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- 45.2 Upon the issue of a Certificate of Completion of the works by the Engineer, in accordance with GCC 51.1, the total amount retained shall be repaid to the contractor when the Defects Liability Period has passed and the Engineer has certified that all Defects notified by the Engineer to the contractor before the end of this period have been corrected. The contractor may substitute retention money with an “on demand” bank guarantee.
- 45.3 If the Principal requires, a retention bond may be used instead of a cash retention, and in which case, the Contractor shall pay to the Principal a retention bond in the value of ten percent (10%) of the Contract Price in the form of a bank guarantee and the same must be valid for the duration of the Contract including the Defects Liability Period. In the case of a retention bond, the money that would have been held or retained is paid out and the retention bond is provided to secure that amount.
- 45.4 A retention ensures that the Contractor adequately and faithfully completes the performance of the works required under the Contract, and acts as a safeguard against defects in case the Contractor fails to correct a defect. Half of the retention is released on certification of Completion of the works, and the remaining half is released upon certification of rectifying any defects.
- 46. Liquidated Damages**
- 46.1 The contractor shall pay liquidated damages to the Principal at the rate per day **stated in the SCC** for each day that the Completion Date is later than the Intended Completion Date. The total amount of liquidated damages shall not exceed the amount **defined in the SCC**. The procuring Principal may deduct liquidated damages from payments due to the contractor. Payment of liquidated damages shall not affect the contractor’s liabilities.
- 46.2 If the Intended Completion Date is extended after liquidated damages have been paid, the Engineer shall correct any overpayment of liquidated damages by the contractor by adjusting the next payment certificate. The contractor shall be paid interest on the overpayment, calculated from the date of payment to the date of repayment, at the rates specified in GCC 40.1.
- 47. Bonus**
- 47.1 The contractor shall not be paid a Bonus where the Completion is earlier than the Intended Completion Date. When this happens, the Engineer shall certify that the works are complete, although they may not be due to be complete.
- 48. Advance Payment**
- 48.1 The Principal shall make advance payment to the contractor of the amounts **stated in the SCC** by the date **stated in the SCC**, against provision by the contractor of an Unconditional Bank Guarantee in

a form and by a bank acceptable to the Principal in amounts and currencies equal to the advance payment. The Guarantee shall remain effective until the advance payment has been repaid, but the amount of the Guarantee shall be progressively reduced by the amounts repaid by the contractor. Interest shall not be charged on the advance payment.

48.2 The contractor is to use the advance payment only to pay for Equipment, Plant, Materials, and mobilization expenses required specifically for execution of the Contract. The contractor shall demonstrate that advance payment has been used in this way by supplying copies of invoices or other documents to the Engineer.

48.3 The advance payment shall be repaid by deducting proportionate amounts from payments otherwise due to the contractor, following the schedule of completed percentages of the works on a payment basis. No account shall be taken of the advance payment or its repayment in assessing valuations of work done, Variations, price adjustments, Compensation Events, Bonuses, or Liquidated Damages.

49. Securities

49.1 The Performance Security shall be provided to the Principal no later than the date specified in the Letter of Acceptance and shall be issued in an amount **specified in the SCC**, by a bank or surety acceptable to the Principal, and denominated in the types and proportions of the currencies in which the Contract Price is payable. The Performance Security shall be valid until a date twenty eight (28) days from the date of issue of the Certificate of Completion in the case of a Bank Guarantee, and until one (1) year from the date of issue of the Completion Certificate in the case of a Performance Bond.

49.2 A Performance Security guarantees quality and satisfactory completion of the works and in accordance with the specifications in the Contract, and is released only upon successful completion of the Defects Liability Period.

50. Dayworks

50.1 If applicable, the Dayworks rates in the contractor's Bidding shall be used only when the Engineer has given written instructions in advance for additional work to be paid for in that way.

50.2 All work to be paid for as Dayworks shall be recorded by the contractor on forms approved by the Engineer. Each completed form shall be verified and signed by the Engineer within two (2) days of the work being done.

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- 50.3 The contractor shall be paid for Dayworks subject to obtaining signed Dayworks forms.
- 51. Cost of Repairs**
- 51.1 Loss or damage to the works or Materials to be incorporated in the works between the Start Date and the end of the Defects Correction periods shall be remedied by the contractor at the contractor's cost if the loss or damage arises from the contractor's acts or omissions.

E. Finishing the Contract

- 52. Completion**
- 52.1 The contractor shall request the Engineer to issue a Certificate of Completion of the works, and the Engineer shall do so upon deciding that the whole of the works is completed.
- 53. Taking Over**
- 53.1 The Principal shall take over the Site and the works within seven (7) days of the Engineer's issuing a certificate of Completion.
- 54. Final Account**
- 54.1 The contractor shall supply the Engineer with a detailed account of the total amount that the contractor considers payable under the Contract before the end of the Defects Liability Period or before completion of rectification of defects to satisfaction of Principal.
- 54.2 The Engineer shall issue a Defects Liability Certificate and certify any final payment that is due to the contractor within fifty six (56) days of receiving the contractor's account (if it is correct and complete) provided that the Engineer has approved that all defects identified before and after end of Contract have been rectified and that the Principal is satisfied with such rectification. If it is not, the Engineer shall issue within fifty six (56) days a schedule that states the scope of the corrections or additions that are necessary. If the Final Account is still unsatisfactory after it has been resubmitted, the Engineer shall decide on the amount payable to the contractor and issue a payment certificate.
- 55. Operating and Maintenance Manuals**
- 55.1 If "as built" Drawings and/or operating and maintenance manuals are required, the contractor shall supply them by the dates **stated in the SCC**.
- 55.2 If the contractor does not supply the Drawings and/or manuals by the dates **stated in the SCC** pursuant to GCC 55.1, or they do not receive the Engineer's approval, the Engineer shall withhold the amount **stated in the SCC** from payments due to the contractor.
- 56. Termination**
- 56.1 The Principal or the contractor may terminate the Contract if the other party causes a fundamental breach of the Contract.
- 56.2 Fundamental breaches of Contract shall include, but shall not be limited to, the following:

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- (a) the contractor stops work for twenty eight (28) days when no stoppage of work is shown on the current Program and the stoppage has not been authorized by the Engineer;
 - (b) the Engineer instructs the contractor to delay the progress of the works, and the instruction is not withdrawn within twenty eight (28) days;
 - (c) the Principal or the contractor is declared bankrupt or goes into liquidation other than for a reconstruction or amalgamation;
 - (d) a payment certified by the Engineer is not paid by the Principal to the contractor within eighty four (84) days of the date of the Engineer's certificate;
 - (e) the Engineer gives Notice that failure to correct a particular Defect is a fundamental breach of Contract and the contractor fails to correct it within a reasonable period of time determined by the Engineer;
 - (f) the contractor does not maintain a Security, which is required;
 - (g) the contractor has delayed the completion of the works by the number of days for which the maximum amount of liquidated damages can be paid, as **defined in the SCC**; or
 - (h) if the contractor, in the judgment of the Principal, has engaged in corrupt or fraudulent practices in competing for or in executing the Contract, pursuant to GCC 57.1.

56.3 When either party to the Contract gives notice of a breach of Contract to the Engineer for a cause other than those listed under GCC 56.2 above, the Engineer shall decide whether the breach is fundamental or not.

56.4 Despite the above, the Principal may terminate the Contract for convenience.

56.5 If the Contract is terminated, the contractor shall stop work immediately, make the Site safe and secure, and leave the Site as soon as reasonably possible.

57. Fraud and Corruption

57.1 If the Principal determines that the contractor and/or any of its personnel, or its agents, or its Subcontractors, services providers, contractors and/or their employees has engaged in corrupt, fraudulent, collusive, coercive or obstructive practices, in competing for or in executing the Contract, then the Principal may, after giving fourteen (14) days' notice to the contractor,

terminate the Contract and expel the contractor from the Site, and the provisions of GCC 56 shall apply as if such expulsion had been made under GCC 56.5 [Termination by the Principal].

57.2 Should any employee of the contractor be determined to have engaged in corrupt, fraudulent, collusive, coercive, or obstructive practice during the execution of the works, then that employee shall be removed in accordance with GCC 9.

57.3 For the purposes of this paragraph:

- (a) “corrupt practice” is the offering, giving, receiving or soliciting, directly or indirectly, of anything of value to influence improperly the actions of another party;³
- (b) “fraudulent practice” is any act or omission, including a misrepresentation, that knowingly or recklessly misleads, or attempts to mislead, a party to obtain a financial or other benefit or to avoid an obligation;⁴
- (c) “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;
- (d) “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 party;⁶
- (e) “obstructive practice” is
 - (i) 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

³ “Another party” refers to a public official acting in relation to the procurement process or contract execution].

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 bid prices at artificial, non competitive levels.

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

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- (ii) acts intended to materially impede the exercise of the Government's inspection and audit rights provided for under Sub-Clause 22.2.

- 58. Payment upon Termination**
- 58.1 If the Contract is terminated because of a fundamental breach of Contract by the contractor, the Engineer shall issue a certificate for the value of the work done and Materials ordered less advance payments received up to the date of the issue of the certificate and less the percentage to apply to the value of the work not completed, as **indicated in the SCC**. Additional Liquidated Damages shall not apply. If the total amount due to the Principal exceeds any payment due to the contractor, the difference shall be a debt payable to the Principal.
- 58.2 If the Contract is terminated for the Principal's convenience or because of a fundamental breach of Contract by the Principal, the Engineer shall issue a certificate for the value of the work done, Materials ordered, the reasonable cost of removal of Equipment, repatriation of the contractor's personnel employed solely on the works, and the contractor's costs of protecting and securing the works, and less advance payments received up to the date of the certificate.
- 59. Property**
- 59.1 All Materials on the Site, Plant, Equipment, Temporary works, and works shall be deemed to be the property of the Principal if the Contract is terminated because of the contractor's default.
- 60. Release from Performance**
- 60.1 If the Contract is frustrated by the outbreak of war or by any other event entirely outside the control of either the Principal or the contractor, the Engineer shall certify that the Contract has been frustrated. The contractor shall make the Site safe and stop work as quickly as possible after receiving this certificate and shall be paid for all work carried out before receiving it and for any work carried out afterwards to which a commitment was made.
- 61. Suspension of funding**
- 61.1 In the event that the Government suspends the funding to the Principal, from which part of the payments to the contractor are being made:
- (a) The Principal is obligated to notify the contractor of such suspension within seven (7) days of having received the Government's suspension notice.
- (b) If the contractor has not received sums due it within the twenty eight (28) days for payment provided for in GCC 40.1, the contractor may immediately issue a fourteen (14)-days' termination notice.

- 62. Assignment** 62.1 The contractor shall not assign its obligations and agreed not to its rights under this contract without in either case, prior written approval from the Principal.
- 63. Confidentiality** 63.1 The contractor's and the Principal's personnel shall disclose all such confidential and other information as may be reasonably required in order to verify compliance with the Contract and allow its proper implementation. Each of them shall treat the details of the Contract as private and confidential, except to the extent necessary to carry out their respective obligations under the Contract or to comply with applicable laws.
- 63.2 Each of them shall not publish or disclose any particulars of the works prepared by the other party without the previous agreement of the other party. However, the contractor shall be permitted to disclose any publicly available information or information otherwise required to establish his qualifications to complete for other projects.
- 63.3 Confidential information
means that: (a) is by its
nature confidential;
(b) is designated by the Principal as confidential; or
(c) the contractor knows or ought to know is confidential.
- 64. Indemnity** 64.1 The contractor shall keep the Principal fully and effectively indemnified against all losses, damages or injuries, including but not limited to, legal fees and expenses suffered by the Principal, where such loss, damage or injury is the result of a wrongful action, negligence or breach of this Contract by the contractor or its agent, servants or representatives, including the use or violation of any copyright work or trademark or literary property or patented invention, article or appliance.

Section VII - Special Conditions of Contract

Number of GC Clause	Amendments of, and Supplements to, Clauses in the General Conditions of Contract
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A. General

GCC 1.1 (r)	The Engineer is: VeS Architects & Associates Email: ves.architects@gmail.com Mob: +685 7220924 / 7772819		
GCC 1.1 (w)	The Intended Completion Date for the whole of the works shall be six hundred (600), calendar days from commencing date.		
GCC 1.1 (cc)	The Principal is:		
	Principal	The Office of the Clerk of the Legislative Assembly	
	Address	PO Box 49, Apia	SAMOA
	Authorised Representative	Papalii John Taimalelagi Afele	
GCC 1.1 (ee)	The Site is located at: <i>Salelologa, Savaii, Samoa.</i>		
GCC 1.1 (hh)	The Start Date shall be within five (5) working days from date of contract signing.		
GCC 1.1 (ll)	The works consist of: <i>The Construction of a new Courthouse & Judges' Residence buildings and site civil works on a 4 acre site in Salelologa, Savaii.</i>		
GCC 2.2	Sectional Completions are: NOT APPLICABLE		
GCC 2.3(i)	The following documents also form part of the Contract: <div><input type="checkbox"/> Successful Bidder Bid Document (incl. Priced Activity Schedule) <input type="checkbox"/> Performance Security under Clause 49.1 <input type="checkbox"/> Evidence of Insurances under Clause 13.2 <input type="checkbox"/> Construction Work Flow Program <input type="checkbox"/> Construction Drawings & Specifications</div>		
GCC 5.1	The Engineer <u>may not</u> delegate any of his duties and responsibilities.		
GCC 8.1	Schedule of other contractors:		

Number of GC Clause	Amendments of, and Supplements to, Clauses in the General Conditions of Contract
	<i>TBC</i>
GCC 13.1	<p>The minimum insurance amounts and deductibles shall be:</p> <p>(a) For loss or damage to the works, Plant and Materials: 125% of the Contract Price, with a maximum deductible of SAT\$100,000;</p> <p>(b) For loss or damage to Equipment: SAT\$500,000, with a maximum deductible of nil;</p> <p>(c) For loss or damage to property (except the works, plant, materials and equipment) in connection with Contract: SAT\$250,000, with a maximum deductible of SAT\$50,000; and</p> <p>(d) For personal injury or death:</p> <p>(a) Of the contractor's employees: SAT\$1,000,000 with a maximum deductible of nil; and</p> <p>(b) Of other people: SAT\$1,000,000 with a maximum deductible of nil.</p>
GCC 14.1	Site Data are: Topographic Survey Plan
GCC 20.1	The Site Possession Date(s) shall be: Within twenty-eight (28) days from Contract Start Date.
GCC 23.1 & GCC 23.2	Appointing Authority for the Adjudicator: Principal.
GCC 24.3	<p>Hourly rate and types of reimbursable expenses to be paid to the Adjudicator: SAT\$ <insert rate/hr> plus;</p> <p>reimbursable expenses (insert acceptable expenses), if applicable</p> <p>Refer to Section II – Bid Data Sheet : ITB Clause 45.1</p>
GCC 24.4	All disputes arising in connection with the Contract shall be, settled under the Arbitration Act 1976 of Samoa (Act) by one or more arbitrators appointed in accordance with the said Act.

B. Time Control

GCC 25.1	The contractor shall submit for approval a Program for the works within fourteen (14) days from the date of the Letter of Acceptance.
GCC 25.3	<p>The period between Program updates is thirty (30) calendar days</p> <p>The amount to be withheld for late submission of an updated Program is: 5% percent of any outstanding invoice amount due for payment.</p>

C. Quality Control

Number of GC Clause	Amendments of, and Supplements to, Clauses in the General Conditions of Contract
GCC 33.1	The Defects Liability Period is: 12 months

D. Cost Control

GCC 44.1	The contract is not subject to price adjustment in accordance with GCC Clause 44. The following coefficients apply if price adjustment is applicable: Not Applicable.
GCC 45.1	The proportion of payments retained is: ten percent (10%) of the contract value
GCC 46.1	The liquidated damages for the whole of the works is zero-point zero five percent (0.05%) per calendar day. The maximum amount of liquidated damages for the whole of the works is ten percent (10) % of the Contract Price.
GCC 48.1	An Advance Payment will apply The Advance Payments shall be: ten percent (10%) of the Contract Price and shall be paid to the contractor no later than one month after the start date.
GCC 49.1	A Performance Security shall apply in the amount of ten percent (10 %) of the Contract Price and in the form of an unconditional on demand Bank Guarantee.

E. Finishing the Contract

GCC 55.1	The date by which operating and maintenance manuals are required is two (2) weeks after the issue of the Certificate of Completion. The date by which “as built” drawings are required is two (2) weeks after the issue of the Certificate of Completion.
GCC 55.2	The amount to be withheld for failing to produce “as built” drawings and/or operating and maintenance manuals by the date required in GCC 55.1 is five percent (5)% of the Contract Price
GCC 56.2 (g)	A fundamental breach applies . If applicable the maximum number of days is: two hundred (200) of working days (consistent with period for liquidated damages)
GCC 58.1	The percentage to apply to the value of the work not completed, representing the Principal’s additional cost for completing the works, is one hundred and twenty five percent (125%) .

Section VIII - Contract Forms

This Section contains forms which once completed, will form part of the Contract.

When required, the forms for Performance Security and Advance Payment Security shall only be completed after contract award by the successful bidder.

Table of Forms

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On letterhead paper of the Principal

Letter of Acceptance

..... *Date.*

To: *Name and address of the contractor.*

Subject: *Notification of Award Contract No.*

This is to notify you that your bid dated *insert date* for execution of the *insert name of the contract and identification number, as given in the BDS* for the Contract Price of the equivalent of *insert amount in numbers and words and name of currency*, as corrected and modified in accordance with the Instructions to Bidders is hereby accepted by insert name of Principal.

You are requested to furnish the Performance Security within **28 days** in accordance with the Conditions of Contract, using for that purpose the Performance Security Form included in **Section VIII - Contract Forms** of the bidding documents.

Choose one of the following statements:

We accept that _____ (*insert the name of Adjudicator proposed by the bidder*) be appointed as the Adjudicator.

Or

We do not accept that _____ (*insert the name of the Adjudicator proposed by the bidder*) be appointed as the Adjudicator, and by sending a copy of this Letter of Acceptance to the President of the Institute of Professional Engineers Samoa the Appointing Authority, we are hereby requesting such Authority to appoint the Adjudicator in accordance with ITB 42.1 and GCC 23.1.

Authorized Signature:

Name and Title of Signatory:

Name of Agency:

Attachment: Contract Agreement

Contract Agreement

DATED: _____ (day) _____ (month) _____ (year).

PARTIES: **THE GOVERNMENT OF THE INDEPENDENT STATE OF SAMOA** acting by and through the **INSERT MINISTER RESPONSIBLE, HONOURABLE INSERT MINISTER'S NAME**, (“Principal”);

AND: **INSERT NAME OF CONTRACTOR** duly incorporated, whose place of business is at Insert place (“contractor”).

WHEREAS the Principal is desirous for the services provider to execute *name of the Contract* (“works”);

AND the Principal has accepted a bid by the contractor for the execution and completion of the works in accordance with the terms and conditions set out in this Contract;

AND the contractor agrees to carry out the works at the agreed price as set out in this Contract and in accordance with terms and conditions of this Contract.

NOW THEREFORE the Principal and the contractor (collectively “the Parties”) agree as follows:

1. In this Contract, words and expressions shall have the same meanings as are respectively assigned to them in the Contract documents 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 Principal to the contractor as hereinafter mentioned, the contractor covenants with the Principal to execute and complete the works and remedy any defects therein in conformity in all respects with the provisions of the Contract.
3. The Principal covenants to pay the contractor in the amount not exceeding (INSERT CONTRACT PRICE IN WORDS), (INSERT CONTRACT PRICE IN FIGURES) inclusive of VAGST and other taxes in consideration of the execution and completion of the works in full compliance and in accordance with the terms and conditions of this Contract including but not limited to the remedying defects.
4. The documents forming the Contract shall comprise the following and be interpreted in the following order of priority.
 - (a) Contract Agreement;
 - (b) the Letter of Acceptance;
 - (c) Special Conditions of Contract (“SCC”);
 - (d) General Conditions of Contract (“GCC”);
 - (e) Contractor’s bid;
 - (f) Specifications;

- (g) Drawings;
- (h) Bill of Quantities; and
- (i) any other documents listed in the SCC to form part of the Contract.

IN WITNESS WHEREOF, the parties hereto have caused this Contract to be signed in their respective names as of the day and year first above written –

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

In the presence of:)

.....
(Witness Name & Signature)

.....
(Witness Designation)

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

in the presence of:)

.....
Director

.....
(Director/Company Secretary)

Performance Security

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

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

IFB No. and title: *insert no. and title of bidding process*

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

Beneficiary: *insert complete name of Principal*

PERFORMANCE GUARANTEE No.: *insert Performance Guarantee number*

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

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

At the request of the contractor, we as guarantor, hereby irrevocably undertake to pay you any sum(s) not exceeding *insert amount(s)*⁴ *in figures and words* upon receipt by us of your first demand in writing declaring the contractor 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*⁵ 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. 758, except that subparagraph (ii) of Sub-article 20(a) is excluded.

.....

Authorised Signatures for Bank and contractor

⁴ *The 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 procuring entity.*

⁵ *Dates established in accordance with Clause 49.1 of the General Conditions of Contract ("GCC"), taking into account any warranty obligations of the Services provider under Clause 16.2 of the GCC intended to be secured by a partial Performance Guarantee. The procuring entity should note that in the event of an extension of the time to perform the Contract, the procuring entity 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 procuring entity 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 procuring entity's written request for such extension, such request to be presented to us before the expiry of the Guarantee."*

Bank Guarantee for Advance Payment

The bank, as requested by the successful bidder, shall fill in this form in accordance with the instructions indicated on its own Letter Head

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

IFB No. and title: *insert number and title of bidding process*

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

Beneficiary: *insert legal name and address of Principal*

ADVANCE PAYMENT GUARANTEE No.: *insert Advance Payment Guarantee no.*

We, *insert legal name and address of bank*, have been informed that *insert complete name and address of contractor* ("contractor") has entered into Contract No. *insert number* dated *insert date* of Agreement with you, for the supply of *insert types of works to be executed* ("Contract").

Furthermore, we understand that, according to the conditions of the Contract, an advance is to be made against an advance payment guarantee.

At the request of the contractor, we as guarantor hereby irrevocably undertake to pay you any sum or sums not exceeding in total an amount of *insert amount(s)*⁶ *in figures and words* upon receipt by us of your first demand in writing declaring that the contractor is in breach of its obligation under the Contract because the contractor used the advance payment for purposes other than toward delivery of the goods.

It is a condition for any claim and payment under this Guarantee to be made that the advance payment referred to above must have been received by the contractor on its account *insert number and domicile of the account*.

The maximum amount of this guarantee shall be progressively reduced by the amount of the advance payment repaid by the contractor as specified in copies of interim statements or payment certificates which shall be presented to us. This guarantee shall expire, at the latest, upon our receipt of a copy of the interim payment certificate indicating that ninety (90) percent of the Contract Price, has been certified for payment, or on the [insert date], whichever is earlier. Consequently, any demand for payment under this guarantee must be received by us at this office on or before that date.

⁶ The 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 procuring entity.

This Guarantee shall remain valid and in full effect from the date of the advance payment received by the contractor under the Contract until *insert date*⁷.

This Guarantee is subject to the Uniform Rules for Demand Guarantees, International Chamber of Commerce Publication No. 758.

.....
Authorised Signatures for Bank and contractor

⁷ Insert the Delivery date stipulated in the Contract Delivery Schedule. The procuring entity should note that in the event of an extension of the time to perform the Contract, the procuring entity 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 procuring entity 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 procuring entity's written request for such extension, such request to be presented to us before the expiry of the Guarantee."