

**Standard Bidding Documents
For
Open Competitive Bidding
(Goods)**

April 2015



Tuvalu

INVITATION FOR BID

FOR

[Insert description of Goods]

[Insert date of invitation]

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[To users of this Standard Bidding Document:

Use only for Goods estimated to cost more than the threshold for Open Competitive Bidding.

Notes in blue italics in square brackets are for the user’s guidance in completing the SBD and should be deleted before invitations are issued.

Notes in black italics in square brackets relate to contract award stage and should not be deleted until award is made.

Notes in black italics in round brackets are for the guidance of bidders and should not be deleted]

[This Invitation for Bid must be advertised in accordance with Regulation 37 of the Public Procurement Regulations]

INVITATION FOR BID

IFB No: OCB/_____ *[insert]*

Date: _____ *[insert]*

1. The Government of Tuvalu (GOT) invites sealed bids from eligible and qualified bidders for the supply and delivery *[add "and installation and testing services" if appropriate]* of *[briefly describe the goods]*, funded by its own resources. The *[insert name of department and ministry]*, hereinafter called the Purchaser, is undertaking procurement of these goods using Open Competitive Bidding procedures under the Public Procurement Regulations of Tuvalu.
2. This invitation is open to all bidders except those who are: (1) under notice of debarment by the GOT; or (2) domiciled in a country with which Tuvalu has officially prohibited commercial relations. Eligible bidders must be qualified as follows: *[insert key qualifications specified in ITB Clause 4]*.
3. Eligible and qualified bidders may obtain further information from the Central Procurement Unit of the Ministry of Finance and Economic Development through *[insert name and e-mail address of responsible officer in CPU]*. Bidding Documents may be viewed online at *[insert URL of website]* or inspected in person at the address below on normal working days between the hours of 0900 and 1600 hours.
4. A complete set of Bidding Documents in English will be sent by electronic mail on receipt of the interested bidder's e-mail address, or may be collected in person at the address given below.
5. Bids must be delivered to the address given below on or before *[insert date and time, 35 days after the first day of advertisement]*. Late bids will be rejected. Bids will be opened in public at the address immediately after the closing time, in the presence of bidders' representatives. Members of the public may also attend.
6. ***[Either]:*** *If estimated contract value < AUD 300,000* All bids shall be accompanied by a Bid Securing Declaration as described in the bidding documents.

[Or: *If estimated contract value is > AUD 300,000* All bids shall be accompanied by a Bid Security, as described in the bidding documents, for the amount of AUD *[insert amount of 2% of the estimated contract value rounded up to the nearest AUD 100]*
7. The Purchaser shall award the contract to the bidder that has submitted the lowest evaluated substantially responsive quotation, provided further that the Bidder is determined to be qualified to perform the Contract satisfactorily.

8. The address where the document may be inspected and obtained and where bids must be submitted is:

Amalinda Satupa
Central Procurement Unit
Ministry of Finance Economic and Development
Government of Tuvalu
Funafuti, Tuvalu
Tel: +688 20046
E-mail: ASatupa@gov.tv

9. The Government of Tuvalu will debar a company from bidding and executing any contract for a period stated in the Procurement Suspension and Debarment Procedure issued by the Central Procurement Unit, if it at any time determines that the company has engaged in fraudulent or corrupt practices in competing for or in executing a contract.

10. Any party may lodge a complaint at any stage of the procurement process using the procedure described in Part 13 of the Public Procurement Regulations of Tuvalu.

SECTION 1: INSTRUCTIONS TO BIDDERS

[Instructions to Bidders should not be changed. Amendments, additions and supplemental clauses specific to each procurement transaction may be added at Section II, Bid Data Sheet.]

A. GENERAL

1. Scope of Bid

1.1 On behalf of the Purchaser indicated in the Special Conditions of Contract (SCC) sub-clause 1.1(g), the Central Procurement Unit (CPU) issues this Bidding Document for the supply of Goods and Related Services specified in Section VI, Schedule of Requirements. The name and identification number of this procurement are specified in the **Bid Data Sheet (BDS)**.

2. Source of Funds

2.1 The Government of Tuvalu (GOT) is using its own funds for this procurement, unless a Development Partner is named as providing funds in SCC sub-clause 1.1(j).

3. Fraud and Corruption

3.1 The GOT has a policy of zero tolerance of fraud and corruption and shall reject a proposal for award of a contract, or cancel a contract already awarded, if it determines that the bidder or contractor concerned, or any of its personnel, agents, sub-consultants, subcontractors, non-consulting service providers, and suppliers has directly or indirectly engaged in fraud and corruption in securing a contract or implementing the contract. The bidder or contractor concerned shall be liable to debarment from all future Government contracts for a period stated in the Procurement Suspension and Debarment Procedure issued by the Central Procurement Unit.

3.2 All bidders are required to complete the Statement on Ethical Conduct provided in Section 7, Bidding Forms and submit it with their bid.

4. Eligible Bidders

4.1 A Bidder, and all parties constituting the Bidder, may have the nationality of any country unless otherwise indicated in GCC Sub-Clause 6.1. A Bidder shall be deemed to have the nationality of a country if the Bidder is a citizen or is constituted, incorporated, or registered and operates in conformity with the provisions of the laws of that country. This criterion shall also apply to the determination of the nationality of proposed subcontractors or suppliers for any part of the Contract including Related Services. Any limitation of eligibility stated in GCC Sub-Clause 6.1 shall also apply to the origin of goods and related services to be used in the performance of the Contract. For purposes of this clause, "origin" means the place where the goods are mined, grown, or produced, or the place from which the related services are supplied.

4.2 Bidders should not be associated, nor have been associated in the past, directly or indirectly, with a firm or any of its affiliates which have been engaged by the Purchaser to provide consulting services for the preparation of the design, specifications, and other documents to be used for the procurement.

4.3 A consistent history of litigation or arbitration awards against the Bidder or any partner of a Joint Venture may result in disqualification.

4.4 Bidders found to be in conflict of interest shall be disqualified.

4.5 Bidders and their sub-contractors shall not be under any debarment order issued by the GOT under ITB Sub-Clause 3.1.

4.6 Publicly owned enterprises in Tuvalu may only participate in the bidding if they are legally and financially autonomous, operate under commercial law, and are not a dependent agency of the Purchaser.

4.7 All bidders are required to complete and submit with their bids the appropriate forms contained in Section 7, Bidding Forms.

5. One Bid per Bidder

5.1 Each Bidder shall submit only one Bid. A Bidder who submits or participates in more than one Bid will cause all the Bids with the Bidder's participation to be disqualified. However, this does not limit the participation of subcontractors in more than one bid, provided that the cost of sub-contracted goods or related services (including labor) does not exceed the percentage of the bid price stated in the **BDS**.

6. Cost of Bidding

6.1 The Bidder shall bear all costs associated with the preparation and submission of its Bid, and the Purchaser shall not be responsible or liable for any or all of those costs, regardless of the conduct or outcome of the bidding process.

B. BIDDING DOCUMENTS

7. Contents

7.1 The Bidding Documents comprise the documents listed below and any Addenda issued in accordance with ITB Clause 11:

Invitation for Bid

Section 1: Instructions to Bidders

Section 2: Bid Data Sheet

Section 3: General Conditions of Contract

Section 4: Special Conditions of Contract

Section 5: Technical Specification and Statement of Compliance

Section 6: Schedule of Requirements

Section 7: Bidding Forms

Section 8: Agreement Forms

7.2 The Bidder is advised to examine all instructions, forms, terms, and specifications in the Bidding Documents carefully. Failure to furnish all information or documentation required by the Bidding Document may result in the rejection of the Bid.

8. Clarification of the Bidding Document

8.1 A Bidder may seek clarification of any aspect of the Bidding Document from the CPU in writing at the CPU's address indicated in the BDS. The CPU shall respond in writing, provided that such request is received no later than fourteen (14) calendar days prior to the deadline for submission of Bids.

8.2 The CPU shall copy its response to all Bidders to whom it has supplied the Bidding Document, such response including a description of the inquiry but without identifying the inquirer. Should the CPU deem it necessary to amend the Bidding Document as a result of a clarification, it shall do so following the procedure under ITB Clause 9: Amendment to the Bidding Documents.

9. Amendment to the Bidding Documents

9.1 At any time prior to the deadline for submission of the Bids, the CPU may amend the Bidding Documents by issuing addenda to all bidders to whom it has supplied the Bidding Documents. Every addendum shall form part of the Bidding Documents.

9.2 The CPU may, at its discretion, extend the deadline for submission of Bids to allow Bidders reasonable time to take the addendum into account.

C. PREPARATION OF BIDS

10. Language of the Bid

10.1 All Bids shall be submitted in the English language.

11. Documents Comprising the Bid

11.1 A Bid shall comprise the following documents:

- (a) The Bid Submission Form and a Price Schedule completed in accordance with ITB Clauses 12 and 13;

- (b) written confirmation authorizing the signatory of the Bid to commit the Bidder;
- (c) documentary evidence established in accordance with ITB Clause 14 that the Bidder is eligible to bid and is qualified to perform the contract if its bid is accepted;
- (d) documentary evidence established in accordance with ITB Clause 15 that the goods and related services to be supplied by the Bidder are eligible goods and services and conform to the bidding documents;
- (e) signed Declaration of Ethical Conduct in accordance with ITB Clause 13.2; and
- (f) Bid Securing Declaration or Bid Security furnished in accordance with ITB Clause 19.

12. Bid Submission Form and Price Schedules

12.1 The Bid Submission Form furnished in Section 7, Bidding Forms, must be completed with no alterations to its format, and no substitutes shall be accepted. All blank spaces shall be filled in with the information requested.

12.2 The Bidder shall submit the Price Schedule for Goods, including Related Services whenever Related Services are specified in the Schedule of Requirements, using the forms furnished in Section 7, Bidding Forms.

12.3 Bidders may offer a discount provided that it is unconditional. The methodology for its application shall be clearly stated on the Bid Submission Form, or in a separate letter on the Bidder's official letterhead that must be referenced and attached to the Bid Submission Form, bearing the Bidder's seal and dated and signed by the bidder's authorized representative.

13. Bid Prices, Currency and Discounts

13.1 All lots and items listed in the Price Schedules must be priced separately. Prices must be all inclusive, including all unconditional discounts offered, and must be entered into the Price Schedules included in Section 7, Bidding Forms, in the following manner:

- (a) For Goods: The price of the Goods delivered at the final destination specified in GCC Sub-Clause 1.1(k), including all customs duties and sales and other taxes already paid or payable, as specified in the **BDS, treatment for the prevention of the introduction or spread of diseases or pests (see GCC Clause 37.1)**, transportation, insurance and any other local services required to convey the Goods to their final destination.
- (b) For Related Services if specified in the Schedule of Requirements: The price of each item of the Related Services inclusive of any applicable taxes.

13.2 The Bidder's separation of price components in accordance with ITB Sub-Clause 13.3 above will be solely for the purpose of facilitating the comparison of bids by the Purchaser and will not in any way limit the Purchaser's right to contract on any of the terms offered.

13.3 All prices shall be quoted by Bidders in Australian Dollars.

13.4 Prices quoted by the Bidder shall be fixed during the period of the Contract and not subject to adjustment on any account, unless otherwise specified in SCC Clause 12.1. A Bid submitted with a price adjustment when a fixed price quotation is required shall be treated as non-responsive and shall be rejected. When a price adjustment is permitted under SCC Clause 12.1, a bid submitted with a fixed price quotation shall not be rejected, but the price adjustment shall be treated as zero.

14. Documents Establishing Eligibility and Qualifications of Bidders

14.1 To establish their eligibility in accordance with ITB Clause 4, Bidders shall provide the required information in the Bid Submission Form included in Section 7.

14.2 The documentary evidence of the Bidder's qualifications to perform the contract if its bid is accepted, shall establish to the Purchaser's satisfaction:

- (a) the constitution or legal status of the Bidder, place of registration, and principal place of business;
- (b) in the case of a Bidder offering to supply goods which the Bidder did not manufacture or otherwise produce, the Bidder has been duly authorized by the Manufacturer or Producer to supply the goods in Tuvalu;
- (c) that the Bidder has satisfactorily completed at least two contracts for supply of similar goods in the preceding three years of not less than 50% of its bid price for this contract;
- (d) that the Bidder has completed contracts in the preceding two years to the total value of at least two times the bid price for this contract;
- (e) that the Manufacturer of the goods, if a different entity from the Bidder, has at least three (3) years' experience in the manufacturing of similar goods;
- (f) that the Bidder has either: (i) cash reserves or access to a line of credit of an amount at least equal to 50% of the bid price for this contract, net of other contractual commitments; or (ii) credit terms with vendors specifically for the goods to be supplied under the contract, and valid for at least six (6) months after the deadline for submission of bids specified in ITB Clause 21; and
- (g) that the Bidder meets any additional qualification criteria listed in **BDS**.

14.3 Sub-contractors' qualifications shall not be taken into account in establishing the Bidder's qualifications to perform the contract.

15. Documents Establishing Conformity of Goods and Related Services

15.1 The documentary evidence of conformity of the Goods and Related Services to the Bidding Documents may be in the form of technical literature, drawings and data, and shall comprise:

- (a) a declaration of the origin of the goods on the price schedule;
- (b) a detailed description of the key technical and performance characteristics of the Goods;
- (c) a list giving full particulars, including available sources and current prices, of spare parts and special tools necessary for the proper and continuing functioning of the Goods for a period to be specified in the **BDS**, following acceptance of the Goods by the Purchaser; and
- (d) an item-by-item statement on the Purchaser's Technical Specification demonstrating substantial responsiveness of the Goods and services to the Technical Specification, or a statement of deviations and exceptions to the provisions of the Technical Specification.

15.2 Standards of workmanship, process, material, and equipment, as well as references to brand names or catalogue numbers specified by the Purchaser in the Schedule of Supply, are intended to demonstrate the type of Goods required and are not restrictive. Bidders may offer other standards of quality, brand names, and/or catalogue numbers, provided that it can demonstrate to the Purchaser's satisfaction that the Goods offered substantially conform or are superior to those described in the Technical Specification.

15.3 Alternative Bids offering non-conforming Goods shall not be considered.

16. Delivery

16.1 The Supplier shall be entirely responsible for the supply and delivery of the Goods and Related Services, if any, at the final destination specified in **SCC 1.1 (j)**.

17. Format and Signing of Bids

17.1 The Bidder shall prepare one original and two copies of the bid, clearly marking each "ORIGINAL BID" or "COPY OF BID," as appropriate. In the event of any discrepancy between them, the original shall prevail.

17.2 The original and the copies of the bid shall be typed or written in indelible ink and shall be signed by the Bidder or a person or persons duly authorized to bind the Bidder to the contract. All pages of the bid, except for un-amended printed literature, shall be initialled by the person or persons signing the bid.

17.3 The Bidder shall furnish information as described in the Form of Bid on commissions or gratuities, if any, paid or to be paid to agents relating to the Bid and to contract execution if the Bidder is awarded the contract.

17.4 The Bid shall contain no alterations or additions, except those to comply with instructions issued by the Purchaser, or to correct errors made by the Bidder, in which case such corrections shall be initialled by the person or persons signing the Bid.

18. Bid Validity

18.1 Bids shall remain valid for the period specified in the BDS after the deadline for bid submission, pursuant to ITB Clause 21. A Bid valid for a shorter period shall be rejected by the Purchaser as nonresponsive.

18.2 Prior to the expiration of the bid validity period, the Purchaser may, in exceptional circumstances, 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 Clause 19, it shall also be extended for the 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.

18.3 If, at the request of the Purchaser, the period of bid validity is extended beyond 60 calendar days from the expiry of the original bid validity, the amounts payable in the awarded contract shall be increased by $\frac{1}{4}$ of 1 per cent per month, or pro rata part thereof, up to the notification of award. Bid evaluation will be based on the Bid prices without taking the above correction into consideration.

19. Bid Securing Declaration and Bid Security

19.1 The Bidder shall furnish as part of its Bid, either:

- (a) a Bid Security in the amount prescribed in the BDS; or
- (b) a signed Bid-Securing Declaration.

The **BDS** indicates which of the above options (a) or (b) is applicable and required by the Purchaser.

19.2 The Bid Security shall, at the Bidder's option, be in the form of a certified cheque or Bank Guarantee from a reputable international bank. Cash is not an acceptable form of Security. If in the form of a Bank Guarantee, the format should be exactly as that included in Section VII, Bidding Forms. The Bid Security shall be valid for 30 calendar days beyond the validity of the Bid as specified in the BDS.

19.3 The Bid Securing Declaration when required should be exactly as the format included in Section 7, Bidding Forms, and shall be valid for 30 calendar days beyond the validity of the Bid.

19.4 Any Bid not accompanied by either an acceptable Bid Security or a Bid Securing Declaration according to the BDS shall be rejected by the Purchaser as non-responsive.

19.5 The Bid Security of the successful Bidder shall be returned once it has signed the Contract and furnished the required Performance Security. The Bid Security of unsuccessful Bidders shall be returned as promptly as possible and not more than seven calendar days after the successful Bidder has furnished a Performance Security.

19.6 The Bid Security shall be forfeited or the Bid Securing Declaration executed if:

- (a) the Bidder withdraws its bid during the period of bid validity specified by the Bidder on the Bid Form, except as provided for in ITB Clause 18.2; or
- (b) the Bidder does not accept arithmetic correction of its Bid Price pursuant to ITB Clause 27; or
- (c) the successful Bidder fails within the specified time to: (i) sign a contract; and (ii) furnish the required Performance Security within the period specified in ITB Clause 34

19.7 The execution of a bid securing declaration will result in the bidder concerned, including all parties to a joint venture, being declared ineligible for all contracts let by the GOT irrespective of the source of funding, for a period that the GOT shall determine commencing from the expiry of the Bid Validity unless, at the Bidder's option, the bidder pays an administrative penalty of 2 (two) per cent of the total bid amount to the Purchaser.

D. SUBMISSION OF BIDS

20. Sealing and Marking of Bids

20.1 The Bidder shall place the original of the Bid in an inner sealed envelope marked "ORIGINAL" and both copies of the Bid in a second inner sealed envelope marked "COPIES". Both of the inner envelopes shall then be enclosed in one sealed outer envelope.

20.2 Both inner and outer envelopes shall be addressed to the Purchaser at the address provided in the **BDS**, bear the name and address of the Bidder, bear the name and identification number of the Contract as defined in the SCC, and carry warnings "DO NOT OPEN BEFORE (*insert time and date*)" where the time and date is the deadline for bid submission as defined in the BDS.

20.3 If any envelope is not sealed and marked as required, the Purchaser shall assume no responsibility for the misplacement or premature opening of the Bid.

21. Deadline for Submission of Bids

21.1 Bids shall arrive at the CPU's address specified in the BDS no later than the deadline for submission indicated in the **BDS**.

21.2 The CPU may, at its discretion, extend the deadline for the submission of Bids by issuing an addendum in accordance with ITB Clause 9, in which case all rights and obligations of the Purchaser and Bidders previously subject to the deadline shall then be subject to the new deadline.

21.3 Any Bid received by the CPU after the deadline prescribed in ITB Sub-Clause 21.1 or Clause 21.2 as applicable, will be rejected and returned unopened to the Bidder.

22. Modification and Withdrawal of Bids

22.1 Bidders may modify or withdraw their bids by giving notice in writing to the CPU before the deadline prescribed in ITB Sub-Clause 21.1.

22.2 The withdrawal of a Bid between the deadline for submission of bids and within the Bid's validity period (and extended validity period when a Bidder agrees to such) may result in the forfeiture of the Bid Security or execution of the Bid Securing Declaration pursuant to ITB Clause 19. No Bid may be modified after the deadline for submission of Bids.

22.3 Each Bidder's modification or withdrawal notice shall be prepared, sealed, marked, and delivered in accordance with ITB Clause 20, with the outer and inner envelopes additionally marked "MODIFICATION" or "WITHDRAWAL" as appropriate. A modification shall include copies of the relevant pages of the original Bid showing clearly the modifications made by the Bidder.

23. Bid Opening

23.1 The CPU shall open the bids, including modifications made pursuant to ITB Clause 22 in the presence of the bidders' representatives and members of the public who choose to attend, at the time and in the place specified in the BDS.

23.2 Envelopes marked "WITHDRAWAL" shall be opened and read out first. Bids for which an acceptable notice of withdrawal has been submitted pursuant to ITB Clause 22 shall not be opened but returned to the Bidder.

23.3 All other envelopes shall be opened one at a time, reading out: the name of the bidders and stating whether there is any modification; the Bid Prices, including any unconditional discounts quoted in the Bid Submission Form or in a separate letter of discount referenced and attached to the Bid Submission Form; any alternative offers, if allowed; the presence of the Bid Securing Declaration or Bid Security, if required; and any other details that the Purchaser may consider appropriate. Only unconditional discounts and alternative offers, if allowed, that are read out at the bid opening shall be considered for evaluation. No bids shall be rejected at the bid opening except for late bids in accordance with ITB 21.3.

23.4 Bids (and modifications) that are not opened and read out at bid opening shall not be considered further for evaluation, irrespective of the circumstances.

23.5 The CPU shall prepare minutes of the Bid opening, including the information disclosed by the Purchaser in accordance with ITB Sub-Clause 23.3 to those present at the opening. The minutes shall be signed in original by all those present at the bid opening. Immediately upon conclusion of the bid opening, copies of the minutes shall be provided to the bidders and members of the public present at the bid opening. In addition, a copy of the minutes shall be posted promptly on the public notice board at the offices of the Purchaser, and shall also be sent to all those that purchased the bidding documents but were not present at the bid opening.

E. EVALUATION OF BIDS

24. Confidentiality

24.1 Confidentiality shall be maintained by the CPU during the examination, clarification, evaluation, and comparison of bids and recommendations for the award of a contract. No information shall be disclosed to Bidders or to any other persons not officially concerned with such process until the award to the successful Bidder has been announced.

24.2 Any attempt by a Bidder to influence the CPU's evaluation of bids or award decisions may result in the rejection of its Bid.

24.3 If any bidder wishes to contact the CPU on any matter related to the bid during the evaluation stage, it shall do so formally in writing.

25. Clarification of Bids

25.1 The CPU, at its discretion, may ask any Bidder for clarification of its Bid, including the breakdown of unit rates, to assist in the examination, evaluation and comparison of bids. The request for clarification and the response shall be in writing but no change in the price or substance of the Bid shall be sought, offered or permitted, except as may be required to confirm the correction of arithmetical errors discovered by the CPU pursuant to ITB Clause 27.

26. Preliminary Examination of Bids

26.1 The CPU shall examine the bids to determine whether they are complete, whether required securities have been furnished, whether any computational errors have been made, whether the documents have been properly signed, and whether the bids are generally in order.

26.2 A Bid shall be rejected as non-conforming if any of the following documents or information is missing from the submitted Bid:

- (a) the signed original Bid Form, in the format indicated in Section 7, Bidding Forms;
- (b) a Bid Security or Bid Securing Declaration in accordance with ITB Clause 19;

- (c) the Price Schedule in accordance with ITB Clause 13;
- (d) the Bidder's written authorization of the person signing the Bid to commit the Bidder;
- (e) manufacturers' authorizations, if required in accordance with ITB Sub-Clause 14.2(b);

26.3 A Bid shall be rejected as not substantially responsive if it does not conform to all the terms, conditions and specifications of the bidding documents, without material deviation or reservation. A material deviation or reservation is one which:

- (a) affects in a substantial way the objective, scope, quality, or intended performance of the Contract; or
- (b) limits in a substantial way inconsistent with the bidding documents, the Purchaser's rights or the Bidder's obligations under the Contract; or
- (c) if rectified would affect unfairly the competitive position of other Bidders presenting substantially responsive Bids.

26.4 A Bid declared not substantially responsive may not subsequently be made responsive by correction or withdrawal of the nonconforming deviation or reservation.

27. Errors and Omissions

27.1 Arithmetical errors discovered by the CPU shall be rectified in the following manner:

- (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.
- (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.
- (c) If there is a discrepancy between words and figures, the amount in words shall prevail, unless the amount expressed in words relates to an arithmetic error, in which case the amount in figures shall prevail subject to correction if necessary under (a) and (b) above.

27.2 If a Bidder does not accept the correction of the errors, its bid shall be rejected, and its bid security may be forfeited.

27.3 Omissions shall be rectified as follows:

- (a) If the item is included in the Bidder's Price Schedule with no unit and no total price entered, the price of that item shall be assumed to be included in the prices of other items.
- (b) For the purposes of evaluation only, if an item is not included in the Bidder's Price Schedule but was included in the Schedule of Requirements in the Bidding Documents, the omission shall be regarded as a non-material deviation in accordance with ITB Sub-Clause 26.3. The highest unit rate quoted for the same item by other bidders shall be used as the cost for that item, which shall be added to the total bid price of the Bid containing the omission.

28. Evaluation of Responsive Bids

28.1 The CPU shall evaluate and compare the Bids that have been determined to be conforming and substantially responsive in accordance with ITB Clause 26. In the evaluation, the CPU shall only use the factors, methodologies and criteria defined in ITB Clause 28. No other criteria or methodology shall be permitted.

28.2 Evaluation shall be performed on the basis of Items or Lots, as specified in the BDS, and the Bid Price as quoted in accordance with ITB Clause 13, subject to correction of arithmetical errors and adjustment for omissions, in accordance with ITB Clause 27.

28.3 If indicated in the **BDS**, the CPU's evaluation of a bid shall take into account, in addition to the bid price quoted in accordance with **ITB Clause 13**, one or more of the following factors listed in the **BDS**:

- (a) delivery schedule offered in the bid;
- (b) the cost of components, mandatory spare parts, and service; and
- (c) other specific criteria indicated in the **BDS** and/or in the Technical Specifications.

28.4 The CPU reserves the right to accept or reject any non-material variation or deviation. Variations and deviations and other factors which are in excess of the requirements of the bidding documents, or otherwise result in unsolicited benefits for the Purchaser, will not be taken into account in Bid evaluation.

28.5 If specified in the **BDS**, these Bidding Documents shall allow Bidders to quote separate prices for different lots, and shall allow the CPU to award one or multiple lots to one or more Bidders. The methodology of evaluation to determine the lowest evaluated lot combinations is specified in the **BDS**.

F. POST QUALIFICATION AND AWARD

29. Post Qualification

29.1 The CPU shall determine to its satisfaction whether the Bidder that is selected as having submitted the lowest evaluated substantially responsive bid is

qualified to perform the contract satisfactorily, in accordance with the criteria listed in ITB Sub-Clause 14.

29.2 The determination shall be based upon examination of the documentary evidence of the Bidder's qualifications submitted by the Bidder in accordance with ITB Sub-Clause 14.2, clarifications in accordance with ITB Clause 25 and such other information as the CPU deems necessary and appropriate.

29.3 An affirmative determination shall be a prerequisite for award of the contract to the lowest evaluated substantially responsive Bidder. A negative determination shall result in rejection of the Bidder's bid, in which event the Purchaser shall proceed to the next lowest evaluated bid to make a similar determination of that Bidder's capabilities to perform satisfactorily.

30. Purchaser's Right to Accept or Reject Any Bid

30.1 The CPU reserves the right to accept or reject any Bid and to annul the bidding process and reject all Bids at any time prior to contract award, without thereby incurring any liability to any Bidder or any obligation to inform the Bidders of the grounds for the Purchaser's decision.

31. Award Criteria

31.1 Subject to ITB Clause 28, the CPU shall award the contract to the successful Bidder whose bid has been determined to be substantially responsive and has been determined to be the lowest evaluated bid, provided further that the Bidder is determined to be qualified to perform the contract satisfactorily.

32. CPU's Right to Vary Quantities

32.1 The CPU reserves the right at the time of contract award to increase or decrease, by not more than fifteen (15) per cent of the overall bid value, the quantity of goods and services originally specified in the Schedule of Requirements without any change in unit price or other terms and conditions.

33. Notification of Award and Signing of Contract

33.1 Prior to the expiration of the period of bid validity, the CPU shall notify the successful Bidder in writing that its bid has been accepted. The notification of award shall constitute the formation of the Contract.

33.2 At the time of notification of award, the CPU shall send the successful Bidder the Contract Agreement provided in these Bidding Documents, incorporating all agreements between the parties. Within fourteen (14) calendar days of receipt of the Contract Form, the successful Bidder shall sign and date the Contract Agreement and return it to the CPU.

34. Performance Security

34.1 Within fourteen (14) calendar days of the receipt of notification of award from the CPU, the successful Bidder shall furnish the Performance Security in accordance with the GCC and using the format of the Performance Security Form

included in Section 8, Contract Forms. If in the form of a Bank Guarantee, the Performance Security shall be issued by a reputable international bank acceptable to the CPU.

34.2 Upon receipt of the Performance Security, the CPU shall promptly notify each unsuccessful bidder of the results of the bidding and return their Bid Securities or Bid Securing Declarations pursuant to ITB Sub-Clause 19.5.

34.3 Failure of the successful Bidder to comply with the requirements of ITB Clause 34 shall constitute sufficient grounds for cancellation of the award and forfeiture of the Bid Security or execution of the Bid Securing Declaration.

35. Contract Effectiveness

35.1 The contract shall become effective and all delivery periods, liabilities and obligations shall be calculated from a date determined as follows:

- (a) for contracts where an advance payment is requested, from the date of the Supplier's receipt of the advance payment, or
- (b) for contracts funded by an irrevocable letter of credit, from the date of advisement of the letter of credit to the Supplier
- (c) for contracts where no advance payment is requested and no letter of credit is issued, from the date of the signature by both parties of the contract.
- (d) for contracts where both an advance payment and payment by letter of credit are applicable, from the date of the Supplier's receipt of the advance payment.

36. Debriefing

36.1 After publication of the award of contract, an unsuccessful bidder has the right to request a debriefing to ascertain why its bid was unsuccessful and the CPU shall provide a debriefing. No commercial confidences shall be breached and no detailed information concerning other bids shall be disclosed other than the information already read out at bid opening.

36.2 Within 14 calendar days of a bidder's request for debriefing, the debriefing shall either be delivered in writing by the CPU or at a meeting chaired by a representative of the CPU, at the discretion of the CPU. If a meeting is held, minutes shall be prepared and signed by both parties.

37. Complaints

37.1 A complaint may be made by any party at any stage of the procurement process. Complaints received during the bid evaluation process shall be reviewed by the CPU and a response issued only after the evaluation is completed. Complaints shall be made, and will be received and attended to, in accordance with the procedure defined in Part 13 of the Public Procurement Regulations of Tuvalu.

38. Publication of Contract Award

38.1 Promptly after a contract has been awarded, the CPU shall notify in writing all participating bidders of the results of the bid evaluation including the name of the successful bidder. The CPU shall also publish the names of the successful and unsuccessful bidders on the Government website and public notice board in the Government Offices.

SECTION 2: BID DATA SHEET

ITB CLAUSE No.	DATA
GENERAL	
1.1	The name and identification number of this procurement package are: <i>[insert name and identification number]</i>
5.1	The limit for sub-contractors is <i>[insert percentage, normally not more than 30%]</i> of the Bid price.
BIDDING DOCUMENT	
8.1	<p>The CPU's address for seeking clarification of any aspect of the Bidding Document is:</p> <p>Amalinda Satupa Head, Central Procurement Unit Ministry of Finance and National Planning Government Offices Vaiaku, Funafuti Tuvalu</p> <p>Tel: +688 20046 E-mail: ASatupa@gov.tv</p>
13.1	Customs duties, sales and other taxes: <i>[insert either "none" or, if introduced by GOT, list the rates of tax applicable]</i>
14.2 (g)	<i>[insert any other qualification criteria]</i>
15.1 (c)	<i>[insert number of years]</i>
18.1	Bids shall remain valid for <i>[insert number, usually 60]</i> days
19.1	<p><i>[select one of the following:]</i></p> <p>Bids shall include a Bid-Securing Declaration <i>[or:]</i></p> <p>Bids shall include a Bid Security in the amount of AUD <i>[insert amount calculated as 2% of the estimated cost of the contract, rounded up to the next AUD 100]</i></p>
BID SUBMISSION	
20.2	<p>The CPU's address for submission of bids is:</p> <p>Central Procurement Unit Ministry of Finance and National Planning Government Offices Vaiaku Funafuti Tuvalu</p> <p>For attention of: _____ Telephone number _____ <i>[insert name and number – Bidders need</i></p>

	<i>this information for courier service companies]</i>
21.1	The deadline for submission of bids is <i>[insert 24 hour clock time]</i> hours on <i>[insert day of the week, date, month and year, 35 days after the first day of advertisement]</i>
23.1	The bid opening shall take place at: <i>[insert room name or number and floor]</i> Government Offices Vaiaku Funafuti Tuvalu on <i>[insert same day of the week, date, month and year as 21.1]</i> at exactly <i>[insert same 24 hour clock time as 21.1]</i>
EVALUATION OF BIDS	
28.2	Bids will be evaluated on a <i>[insert either "item-wise" or "lot-wise"]</i> basis.
28.3 (a)	<i>[State either:]</i> Not applicable. The Purchaser requires that the Goods shall be delivered not later than the date specified in the Schedule of Requirements. Bids that offer delivery beyond the date specified will be rejected as non-responsive. <i>[or:]</i> The Goods are required to be delivered within the date range specified in the Schedule of Requirements. No credit will be given to earlier deliveries and Bids offering delivery beyond the last date in the range will be treated as non-responsive. Within the date range, an adjustment of 1/10 of one per cent per day will be added for evaluation purposes to the bid price of Bids offering deliveries later than the earliest date specified in the Schedule of Requirements.
28.3 (b)	<i>[State either:]</i> Not applicable <i>[if components, mandatory spare parts, and service are not included in the Schedule of Requirements]</i> <i>[or:]</i> The list of items and quantities of components, mandatory spare parts and service likely to be required during use of the Goods is annexed to the Technical Specifications. The total cost of these items, at the unit prices quoted in each Bid, will be added to the Bid price.
28.4 (c)	<i>[State either "Not Applicable" or list here any additional evaluation criteria. For larger items of Goods, the cost of disposal after their useful life should be one additional criterion.]</i>

28.6	<p>Bidders <i>[insert “shall “or “shall not”]</i> be allowed to quote separate prices for one or more lots.</p> <p><i>[If “shall” has been inserted above, add the following:]</i></p> <p>The Purchaser shall award contract(s) for multiple lots to the Bidder that offers the lowest evaluated combination(s) of bids and meets the post-qualification criteria. The Purchaser’s evaluation shall take into account: (i) the lowest evaluated bid for each lot; and (ii) any discount per lot and the methodology for its application as offered by the Bidder.</p>
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SECTION 3: GENERAL CONDITIONS OF CONTRACT

[General Conditions of Contract contain provisions that should be used unchanged. Amendments and supplemental clauses specific to each procurement transaction may be added at Section 4, Special Conditions of Contract.]

1. Definitions
 - 1.1 In this Contract, the following terms shall be interpreted as indicated:
 - (a) **Contract** means the legally binding agreement entered into by the Purchaser and the Supplier, as recorded in the Contract Form signed by the parties, including all attachments and appendices thereto and all documents incorporated by reference therein as named and referenced in the SCC.
 - (b) **Contract Price** means the price payable to the Supplier under the Contract for the full and proper performance of its contractual obligations.
 - (c) **Goods** mean all of the equipment, machinery, and/or other materials which the Supplier is required to supply to the Purchaser under the Contract.
 - (d) **Related Services** means those services such as installation, commissioning, provision of technical assistance, training, and other such obligations of the Supplier covered under the Contract.
 - (e) **GCC** means the General Conditions of Contract
 - (f) **SCC** means the Special Conditions of Contract.
 - (g) **Purchaser** means the organization purchasing the Goods, as named in the SCC.
 - (h) **Purchaser's country** is Tuvalu.
 - (i) **Supplier** means the individual or firm supplying the Goods and Services under this Contract and named in the SCC.
 - (j) **Destination** means the place or places where the Supplier shall deliver the Goods to the Purchaser and perform the Related Services, as named in the SCC.
 - (k) **Day** means calendar day.
2. Application
 - 2.1 These General Conditions of Contract shall apply to the extent that they are not superseded by provisions of

other parts of the Contract.

3. Fraud and Corruption
- 3.1 The Government of Tuvalu has a policy of zero tolerance of fraud and corruption and shall reject a proposal for award of a contract, or cancel a contract already awarded, if it determines that the bidder or contractor concerned, or any of its personnel, agents, sub-consultants, subcontractors, non-consulting service providers, and suppliers has directly or indirectly engaged in fraud and corruption in securing a contract or implementing the contract. The bidder or contractor concerned shall be liable to debarment from all future Government contracts for a period stated in the Procurement Suspension and Debarment Procedure issued by the Central Procurement Unit.
4. Language
- 4.1 The language governing this contract shall be English unless otherwise stated in the **SCC**.
5. Joint Ventures
- 5.1 If the Supplier is a joint venture, consortium, or association, all of the parties shall be jointly and severally liable to the Purchaser for the fulfilment of the provisions of the Contract and shall designate one party to act as a leader with authority to bind the joint venture, consortium, or association. The composition or the constitution of the joint venture, consortium, or association shall not be altered without the prior consent of the Purchaser.
6. Eligibility
- 6.1 Eligible suppliers, subcontractors, materials, equipment and services are those defined in the **SCC**.
7. Notices
- 7.1 Any Notice given by one party to the other pursuant to the Contract shall be in writing to the address specified in the **SCC**. The term "in writing" means communicated in written form with proof of receipt.
- 7.2 A Notice shall be effective when delivered or on the Notice's effective date, whichever is later.
8. Applicable Law
- 8.1 The Contract shall be governed by and interpreted in accordance with the laws of Tuvalu.
9. Resolution of Disputes
- 9.1 If any dispute or difference of any kind whatsoever shall arise between the Purchaser and the Supplier in connection with or arising out of the Contract, the parties shall make every effort to resolve amicably such dispute or difference by mutual consultation.
- 9.2 If mutual consultation fails to resolve a dispute, an Adjudicator acceptable to both parties shall be appointed to resolve the dispute. The Adjudicator shall be paid an

hourly rate agreeable to both parties, together with reasonable expenses to cover accommodation, travel and communications as necessary. The cost shall be divided equally between the Purchaser and Supplier, whatever decision is reached by the Adjudicator. Either party may refer a decision of the Adjudicator to an Arbitrator within 28 calendar days of the Adjudicator's written decision. If neither party refers the dispute to arbitration within the above 28 calendar days, the Adjudicator's decision will be final and binding.

9.3 All disputes arising in connection with the present Contract that cannot be resolved to the satisfaction of either one of the parties through adjudication shall be referred to arbitration under procedures described in the Arbitration Act, 2008 Revised Edition. The ruling of the Arbitrator shall be binding on both parties.

9.4 Notwithstanding any adjudication or arbitration proceedings no party shall commit an anticipatory breach of contract.

10. Scope of Supply

10.1 The Goods and Related Services to be supplied shall be as specified in **Section 6, Schedule of Requirements**.

11. Delivery and Documents

11.1 The Supplier shall be entirely responsible for the supply, including delivery, of the Goods and Related Services, if any, at the final destination.

11.2 Delivery of the goods shall be made by the Supplier in accordance with the terms specified in the Schedule of Requirements. The details of shipping and/or other documents to be furnished by the Supplier are specified in the **SCC**.

12. Contract Price

12.1 Prices charged by the Supplier for Goods delivered and Services performed under the Contract shall not vary from the prices quoted by the Supplier in its bid, with the exception of any price adjustments in the Purchaser's request for bid validity extension in accordance with **ITB Sub-Clause 18.3** or the Purchaser exercising its right to vary quantities at the time of award in accordance with **ITB Clause 32**.

13. Payment

13.1 The method and conditions of payment are specified in the **SCC**.

13.2 The Supplier's request(s) for payment shall be made to the Purchaser in writing, accompanied by an invoice describing, as appropriate, the Goods delivered and Related Services performed, and by documents submitted pursuant to **GCC Clause 11.2**, and upon

fulfilment of other obligations stipulated in the Contract.

- 13.3 Payment shall be made in the currency of the bid price of the Supplier.
14. Taxes and Duties
- 14.1 The Supplier shall be entirely responsible for all taxes, duties, license fees, and other incidental charges incurred until delivery of the contracted Goods to the Purchaser.
15. Risk and Title
- 15.1 Risk and title of the goods shall pass to the Purchaser upon delivery to the Destination as described in the **GCC Clause 1.1. (j)** and as defined in the **SCC**.
16. Permits, Approvals and Licences
- 16.1 Whenever the supply of Goods and Related Services requires that the Supplier obtain permits, approvals, and import and other licenses from local public authorities, the Purchaser shall, if so required by the Supplier, make its best effort to assist the Supplier in complying with such requirements in a timely and expeditious manner.
17. Performance Security
- 17.1 The Performance Security shall be provided to the Purchaser no later than 14 calendar days after the Supplier's receipt of the Notification of Award and shall be issued in an amount of 10 per cent of the Contract Value by an unconditional bank guarantee issued by a reputable international bank acceptable to the Purchaser in the form described in **Section 8, Contract Forms**, or a cashier/managers check from a reputable international bank acceptable to the Purchaser, at the Supplier's option. The Performance Security shall be valid until a date one calendar month beyond the date of final delivery date of the goods. The currency shall be that of the Contract.
- 17.2 Once the Supplier's warranty obligations as described in **GCC clause 24** begin and prior to the expiry of the original performance security, the Performance Security shall be reduced to an amount of five (5) per cent of the contract value and the amended Performance Security will remain valid until a date 30 calendar days after the date of expiry of the Supplier's warranty.
- 17.3 The proceeds of the Performance Security shall be payable to the Purchaser as compensation for any loss resulting from the Supplier's failure to complete its obligations under the Contract.
18. Confidentiality
- 18.1 Subject to **GCC Clause 3** the Supplier shall not, without the Purchaser's prior written consent, disclose the Contract, or any provision thereof, or any specification, plan, drawing, pattern, sample, or information furnished

by or on behalf of the Purchaser in connection therewith, to any person other than a person employed by the Supplier in the performance of the Contract. Disclosure to any such employed person shall be made in confidence and shall extend only so far as may be necessary for purposes of such performance.

- 18.2 The provisions of this Clause shall survive completion or termination for whatever reason of the Contract.
19. Subcontracts
- 19.1 The Supplier shall notify the Purchaser in writing of all subcontracts awarded under this Contract if not already specified in the bid. Such notification, in the original bid or later, shall not relieve the Supplier from any liability or obligation under the Contract.
- 19.2 Subcontracts shall comply with the provisions of **GCC Clauses 3 and 6**.
20. Standards
- 20.1 The Goods shall conform to the standards mentioned in the Technical Specifications and, when no applicable standard is mentioned, to the authoritative standards appropriate to the country of origin of the Goods. Such standards shall be the latest issued by the concerned institution.
21. Packing and Marking
- 21.1 The Supplier shall provide such packing of the Goods as is required to prevent their damage or deterioration during transit to their destination, as indicated in the Contract. The packing shall be sufficient to withstand, without limitation, rough handling during transit and exposure to extreme temperatures, salt and precipitation, and open storage. Packing case size and weights shall take into consideration, where appropriate, the remoteness of the Goods' destination and the absence of heavy handling facilities at all points in transit.
- 21.2 The packing, marking, and documentation within and outside the packages shall comply strictly with such special requirements as shall be expressly provided for in the Contract, including additional requirements, if any, specified in the **SCC**, and in any subsequent instructions issued by the Purchaser.
22. Inspection and Tests
- 22.1 The Purchaser or its representative shall have the right to inspect and/or to test the Goods to confirm their conformity to the Contract specifications at no extra cost to the Purchaser. The **SCC** and the **Technical Specifications** shall specify what inspections and tests the Purchaser requires, if any, and where they are to be conducted. The Purchaser shall notify the Supplier in

writing in a timely manner, of the identity of any representatives retained for these purposes.

22.2 The Purchaser bear all of its own costs and expenses incurred in connection with attendance at such inspection and testing, including but not limited to, all traveling and board and lodging expenses.

22.3 The Purchaser may require the Supplier to carry out any test and/or inspection not required by the Contract but deemed necessary to verify that the characteristics and performance of the Goods comply with the technical specifications, codes and standards under the Contract, provided that the Supplier's reasonable costs and expenses incurred in the carrying out of such test and/or inspection shall be added to the Contract Price. Further, if such test and/or inspection impede the progress of manufacturing and/or the Supplier's performance of its other obligations under the Contract, due allowance shall be made in respect of the Delivery Dates and Completion Dates and the other obligations so affected.

22.4 Should any inspected or tested Goods fail to conform to the Specifications, the Purchaser may reject the Goods, and the Supplier shall either replace the rejected Goods or make alterations necessary to meet specification requirements free of cost to the Purchaser. The costs of any repeated tests and inspections necessitated by a failure of the goods to pass inspection shall be to the Supplier's account and deducted from the sums due to the Supplier and the contract value reduced accordingly.

22.5 Any inspections and tests undertaken in no way relieve the Supplier of any of its obligations under the Contract.

23. Liquidated Damages

23.1 With the exception of force majeure events as described in **GCC Clause 27** and subject to contract amendments as described in **GCC Clause 28**, if the Supplier fails to deliver any or all of the Goods or to perform the Services within the period(s) specified in the Contract, the Purchaser shall, without prejudice to its other remedies under the Contract, deduct from the Contract Price, as liquidated damages, one tenth of one per cent per day subject to a maximum of ten per cent of the contract price. Once the maximum is reached, the Purchaser may consider termination of the Contract pursuant to **GCC Clause 31**.

24. Warranty

24.1 The Supplier warrants that the Goods supplied under the Contract are new, unused, of the most recent or current models, and incorporate all recent improvements in design and materials unless provided otherwise in the

Contract.

- 24.2 The Supplier further warrants that all Goods supplied under the Contract shall have no defect arising from design, materials, or workmanship, except when the design and/or material is required by the Purchaser's specifications or from any act or omission of the Supplier, that may develop under normal use of the supplied Goods in the conditions prevailing in the country of final destination.
- 24.3 This warranty shall remain valid for twelve (12) months after the Goods, or any portion thereof, have been delivered to and accepted at the final destination indicated in the Contract or any other time period indicated in the **SCC**.
- 24.4 The Purchaser shall promptly notify the Supplier in writing of any claims arising under this warranty.
- 24.5 Within 21 calendar days of receipt of such Notice, the Supplier shall, shall expeditiously repair or replace the defective Goods or parts thereof, at no cost to the Purchaser.
- 24.6 If the Supplier, having been notified, fails to remedy the defect(s) within 21 calendar days, the Purchaser may proceed to take such remedial action as it deems necessary, at the Supplier's risk and expense and without prejudice to any other rights which the Purchaser may have against the Supplier under the Contract.
- 24.7 Delays in remedial action beyond 21 calendar days shall be subject to liquidated damages at the rate described in **GCC Clause 23** without prejudice to any other rights or remedies which the Purchaser may have against the Supplier under the Contract.
25. Patent Indemnity
- 25.1 The Supplier shall indemnify the Purchaser against all third-party claims of infringement of patent, trademark, or industrial design rights arising from use of the Goods or any part thereof in Tuvalu.
26. Limitation of Liability
- 26.1 Except in cases of criminal negligence or wilful misconduct, and in the case of infringement pursuant to **GCC Clause 25**:
- (a) the Supplier shall not be liable to the Purchaser, whether in contract, tort, or otherwise, for any indirect or consequential loss or damage, loss of use, loss of production, or loss of profits or interest costs,

provided that this exclusion shall not apply to any obligation of the Supplier to pay liquidated damages to the Purchaser; and

- (b) the aggregate liability of the Supplier to the Purchaser, whether under the Contract, in tort or otherwise, shall not exceed the total Contract Price, provided that this limitation shall not apply to the cost of repairing or replacing defective equipment.

27. Force Majeure
- 27.1 The Supplier shall not be liable for forfeiture of its Performance Security, liquidated damages, or termination for default if and to the extent that a delay in performance or other failure to perform its obligations under the Contract is the result of an event of Force Majeure.
- 27.2 For purposes of this Clause, "Force Majeure" means an event or situation beyond the control of the Supplier that is not foreseeable, is unavoidable, and its origin is not due to negligence or lack of care on the part of the Supplier. Such events may include but shall not be limited to, acts of the Purchaser in its sovereign capacity, wars or revolutions, fires, floods, epidemics, quarantine restrictions, and freight embargoes.
28. Change Orders
- 28.1 The Purchaser may at any time, by a written order given to the Supplier pursuant to **GCC Clause 7**, make changes within the general scope of the Contract in any one or more of the following:
- (a) drawings, designs, or specifications, where Goods to be furnished under the Contract are to be specifically manufactured for the Purchaser;
 - (b) the method of shipment or packing;
 - (c) the place of delivery; and
 - (d) the Related Services to be provided by the Supplier.
- 28.2 If any such change order causes an increase or decrease in the cost of, or in the time required for, the Supplier's performance of the provisions under the Contract, an equitable adjustment shall be made in the Contract Price or delivery schedule, or both, and the Contract shall accordingly be amended. Any claims by the Supplier for adjustment under this clause must be asserted within thirty (30) calendar days from the date of the Supplier's receipt of the Purchaser's change order.

- 28.3 Subject to **GCC Clause 7**, no variation in or modification of the terms of the Contract shall be made except by written amendment signed by the parties.
29. Extension of Time
- 29.1 If at any time during performance of the Contract, the Supplier or its subcontractor(s) should encounter conditions impeding timely delivery of the Goods and performance of related Services, the Supplier shall promptly notify the Purchaser in writing of the fact of the delay and its likely duration and its cause(s). As soon as practicable after receipt of the Supplier's notice, the Purchaser shall evaluate the situation and may at its discretion extend the Supplier's time for performance, with or without liquidated damages, in which case the extension shall be ratified by the parties by amendment of Contract.
- 29.2 Throughout the period of contract performance up to and including the Purchaser's acceptance of the Goods, the Supplier shall provide monthly progress reports on the status of manufacturer, assembly, packing, consolidation and shipment.
30. Spare Parts
- 30.1 As specified in the **SCC**, the Supplier may be required to provide any or all of the following materials, notifications and information pertaining to spare parts manufactured or distributed by the Supplier:
- (a) such spare parts as the Purchaser may elect to purchase from the Supplier, provided that this election shall not relieve the Supplier of any warranty obligations under the Contract;
 - (b) in the event of termination of production of the spare parts:
 - (i) advance notification to the Purchaser of the pending termination, in sufficient time to permit the Purchaser to procure needed requirements; and
 - (ii) following such termination, furnishing at no cost to the Purchaser, the drawings and specifications of the spare parts if requested.
31. Termination for Default
- 31.1 Without prejudice to any other remedy for breach of Contract, the Purchaser may, by giving written notice of default sent to the Supplier, terminate this Contract in whole or in part if:
- (a) the Supplier fails to deliver any or all of the Goods within the period(s) specified in the Contract, or

within any extension thereof granted by the Purchaser pursuant to **GCC Clause 29**; or

- (b) the Supplier fails to perform any other obligation(s) under the Contract; or
- (c) the Supplier or its representatives, agents or subcontractors, in the judgment of the Purchaser, has engaged in corrupt or fraudulent practices in competing for or in executing the Contract as defined under **GCC clause 3.1**.

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| 32. Termination for Insolvency | 32.1 The Purchaser may, by giving written notice to the Supplier, terminate the Contract if the Supplier becomes bankrupt or otherwise insolvent. In this event, termination shall be without compensation to the Supplier, provided that such termination shall not prejudice or affect any right of action or remedy which has accrued or will accrue thereafter to the Purchaser. |
| 33. Termination for Convenience | <p>33.1 The Purchaser may, by giving written notice sent to the Supplier, terminate the Contract, in whole or in part, at any time for its convenience. The notice of termination shall specify that termination is for the Purchaser's convenience, the extent to which performance of the Supplier under the Contract is terminated, and the date upon which such termination becomes effective.</p> <p>33.2 The Goods that are complete and ready for shipment within thirty (30) calendar days after the Supplier's receipt of notice of termination shall be accepted by the Purchaser at the Contract terms and prices. For the remaining Goods, the Purchaser may elect to:</p> <ul style="list-style-type: none"> (a) have any portion completed and delivered at the Contract terms and prices; and/or (b) cancel the remainder and pay to the Supplier an agreed amount for partially completed Goods and Services and for materials and parts previously procured by the Supplier. |
| 34. Assignment | 34.1 The Supplier shall not assign in whole or in part its obligations to perform under this Contract, except with the Purchaser's prior written consent. |
| 35. Transport of Goods | 35.1 The Supplier is required under the Contract to transport the Goods to the destination. Transport, including insurance and storage as specified in the Contract, shall be arranged by the Supplier and all related costs are deemed to be included in the Contract Price. The Supplier shall be free to use transportation through |

carriers registered in any eligible country, in accordance with **GCC sub-clause 6.1**.

36. Insurance

36.1 The Goods supplied under the Contract shall be fully insured in Australian dollars against loss or damage incidental to manufacture or acquisition, transportation, storage and delivery at the destination. The insurance shall be obtained and paid for by the Supplier in an amount equal to 110 per cent of the value of the goods from the source of manufacture or acquisition to the destination on an "All Risk" basis including War Risks and Strikes. The Supplier shall provide insurance through firms registered in any eligible country, in accordance with **GCC sub-clause 6.1**.

37. Fumigation

37.1 The Quarantine Act (2008 Revised Edition) and the Plants Act (2008 Revised Edition) and their supporting Regulations, require that certain goods are treated for the prevention of the introduction or spread of diseases or pests. The Purchaser shall apply for an Import Permit for such goods, which will specify the treatment required, usually fumigation. The Import Permit will be given to the Supplier, who shall be responsible for ensuring that treatment is carried out in accordance with the conditions stated on the Import Permit, including the provision of a Fumigation Certificate by the fumigator and an Inspection Certificate by the quarantine authorities at the port where fumigation is carried out. Upon arrival at the Port of Funafuti, Tuvalu, the Fumigation Certificate and Inspection Certificate shall be presented to the authorities with the shipping documents. All costs incurred in complying with this Clause are deemed to be included in the Supplier's prices.

SECTION 4: SPECIAL CONDITIONS OF CONTRACT

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

GCC CLAUSE No.	SPECIAL CONDITIONS OF CONTRACT
1.1 (a)	<p>The name and identification number of this Contract are: <i>[insert name and identification number]</i></p> <p>The Contract comprises the following documents:</p> <ul style="list-style-type: none"> (a) The Contract Agreement (b) The Special Conditions of Contract (c) The General Conditions of Contract (d) The Technical Specifications <i>[add "and Drawings" if drawings are used to supplement the Technical Specifications]</i> (e) The Schedule of Requirements (f) The Supplier's Bid Forms and original Price Schedules (g) The Purchaser's Notification of Award (h) The Instructions to Bidders (i) <i>[add titles of other documents that form part of the contract, such as manufacturers' data sheets and specifications]</i>
1.1 (g)	<p>The Purchaser is: <i>[insert full name of department and ministry acting as the Purchaser and add phone and facsimile numbers and e-mail address of contact point]</i></p>
1.1 (i)	<p>The Supplier is: <i>[insert full legal name of the company or joint venture acting as the Supplier before signing the contract]</i></p>
1.1 (j)	<p>The Destination is: the Port of Funafuti, Tuvalu</p>
4.1	<p>English <i>[change to another language if English is not to be used]</i></p>
6.1	<p>Eligible suppliers, subcontractors, materials, equipment and services are those originating from countries with which Tuvalu has not prohibited commercial relations. In addition, eligible suppliers and subcontractors are those not under notice of debarment by the Government of Tuvalu.</p>
7.1	<p>The Purchaser's address for Notice is:</p> <p><i>[insert full name and address of ministry or agency acting as the Purchaser. Include the contact person and his/her e-mail address if</i></p>

	<p><i>servicing of Notice is to be permitted by electronic mail]</i></p> <p>The Supplier's address for Notice is:</p> <p><i>[Before contract is signed, insert full legal name and address of the Supplier, the contact person and his/her e-mail address if servicing of Notice is to be permitted by electronic mail]</i></p>
11.2	<p>Documents to be provided are:</p> <ul style="list-style-type: none"> (a) <i>[insert number]</i> copies of the Supplier's invoice showing the description of the Goods and the quantity, unit price and total amount of the Goods; (b) The Bill of Lading or Airway Bill; (c) The packing list itemised by carton numbers; (d) The Certificates of Origin of all Goods; (e) The Fumigation and Inspection Certificates if fumigation was required by the Import Permit (f) The Manufacturers' or Supplier's Warranty Certificates for all Goods; (g) The original Receipt issued by the Purchaser's Representative at the Destination; (h) The Completion Report on Related Services countersigned by the Purchaser's Representative <i>[if Related Services are included in the Contract]</i> <p><i>[This is a sample list and may be amended by the Purchaser before issuing the Bidding Documents to allow for any other documentation required under the laws of Tuvalu.]</i></p>
13.1	<p><i>This is a sample provision.</i></p> <p>The method and conditions of payment to be made to the Supplier under this Contract shall be as follows:</p> <ul style="list-style-type: none"> (a) Advance Payment: Ten (10) per cent of the Contract Price shall be paid within fourteen (14) calendar days of signing of the Contract, and upon submission of a claim and provision of a bank guarantee for the amount of the advance payment, valid until the date of the delivery of Goods specified in the Contract, and in the format provided in the Bidding Documents. (b) Delivery to Destination: Eighty (80) per cent of the Contract Price of the Goods delivered shall be paid within thirty (30) calendar days of submission of a claim and the

	<p>documents specified in GCC Clause 11.2.</p> <p>(c) On Acceptance: Ten (10) per cent of the Contract Price of the Goods received shall be paid within thirty (30) calendar days of receipt of a claim and supported by the acceptance certificate issued by the Purchaser.</p> <p>The Supplier may forgo the advance payment at its own option in which instance the payment upon Delivery to Destination will be increased to ninety (90) per cent of the Contract Price of the goods delivered. In this case, a Performance Security in line with GCC Clause 17.1 shall not be required by the Purchaser.</p>
15.1	Risk and title shall pass on acceptance of the Goods at <i>[insert full name and address of the place where the goods are to be delivered]</i>
21.2	<p><i>[Either:]</i></p> <p>The packing, marking and documentation within and outside the packages shall be: <i>[insert any additional requirements for packing, marking and documentation]</i></p> <p><i>[Or:]</i></p> <p>No additional requirements.</p>
22.1	<p><i>[Either:]</i></p> <p>The inspections and tests shall be as follows: <i>[Describe the inspections and tests with appropriate links to the Technical Specifications and define where they are to be carried out. It is good practice to test large and expensive items of mechanical and electrical equipment at the source of manufacture to ensure that they meet the performance requirements.]</i></p> <p><i>[Or:]</i></p> <p>No tests are planned. However this in no way limits the Purchaser's right to test any and all goods subject to the provisions of GCC Clause 22.3.</p>
24.3	<p><i>[Either:]</i> The warranty period shall be <i>[insert number]</i> months.</p> <p><i>[Or:]</i> The warranty period remains at 12 months.</p>
30.1	<p><i>[Suggested provision:]</i> The Supplier shall carry sufficient inventories to assure ex-stock supply of the following spare parts for the Goods: <i>[list the most critical spare parts]</i>.</p> <p>Other spare parts and components shall be supplied as promptly as possible, but in any case within one month of the Purchaser placing an order.</p>

SECTION 5: TECHNICAL SPECIFICATIONS

[Detailed and precise specifications for the required goods must be written and inserted here.]

[Clarity and precision is a prerequisite for bidders to respond realistically and competitively to the requirements of the Purchaser. In the context of Open Competitive Bidding, the specification must be drafted to permit the widest possible competition while presenting a clear statement of the required standards of workmanship and performance of the goods (and services if any) to be procured. The specification shall require that the manufactured Goods, and all the parts incorporated therein, be new and unused.]

[The Purchaser shall enter the item-by-item specification in the "REQUIRED" column of the table below. The "OFFERED" column shall be left blank for the bidders to complete.]

Item	Goods/Services REQUIRED	Goods/Services OFFERED ^{1/}
1		
2		
3		
4		
5		
6		
7		
8		
9		
10		

^{1/} Bidders shall enter "comply" if their offer exactly matches the requirement. Otherwise they shall describe the item offered and highlight the differences with the required specification.

[If drawings are required to enhance the Technical Specification, provide a list of drawings included in the bidding documents here.]

List of Drawings

[The drawings should either be included after this page if their size permits, or grouped in a separate folder attached at the end of the bidding document.]

SECTION 6: SCHEDULE OF REQUIREMENTS

1. Goods

*[The procuring entity must complete columns 1 to 6 inclusive]
(Bidders must complete column 7)*

1	2	3	4	5	6	7
Item	Description of Goods	Quantity	Unit	Destination (SCC cl. 1.1 (j))	Delivery (days after contract effectiveness – ITB cl. 35)	
					Maximum Required by Purchaser	Bidder's Offer

2. Related Services

[The Purchaser should complete this table. Days allowed for the Completion of Services should be realistic and consistent with the required Goods delivery date(s)]

Item	Description of Service	Location of Services	Completion of Services (days after contract effectiveness – ITB cl. 35)

SECTION 7: BIDDING FORMS

1. Bidder Information Form

(The Bidder shall complete this Form. In the case of Joint Venture, Consortium or Association, the required information should be provided for each party on a separate copy of this Form. No alterations to the format shall be permitted.)

Date: _____ (day, month year)

IFB No: OCB/ _____ (see IFB)

1.	Bidder’s Legal Name:	
2.	For Joint Venture, Legal Name of each party:	
3.	Bidder’s Country of Registration:	
4.	Bidder’s Year of Registration:	
5.	Bidder’s Legal Address in Country of Registration:	
6.	Bidder’s Authorized Representative: Name:	
	Address:	
	Telephone No:	
	Fax No:	
	e-mail:	

We attach certified copies of: *(check the boxes of documents attached)*

- Registration, or Articles of Incorporation, of company named in 1 above
- Joint Venture Agreement
- Letter of Intent to form Joint Venture

(signed)

(print name and position in company)

2. Bid Submission Form

(The Bidder shall complete this Form in accordance with the instructions indicated, which may then be deleted. No alterations to the format shall be permitted.)

Date: _____ (day, month year)

IFB No: OCB/ _____ (see IFB)

To: *(insert complete name of Purchaser)*

We, the undersigned, declare that:

We have examined and have no reservations to the Bidding Documents, including Addendum No.:__ issued on _____. *(list all addenda and dates of issue);*

We offer to supply in conformity with the Bidding Documents and in accordance with the Delivery Schedules specified in the Schedule of Requirements, the following Goods and Related Services: *(insert a brief description of the Goods and Related Services);*

The total price of our Bid, excluding any discounts offered in item (d) below, is AUD *(insert the total bid price in words and figures);*

The discount offered and the methodology for its application is: *(Insert the discount offered in AUD, if any, in words and figures and explain the methodology for its application. If provided in a separate letter as per ITB 12.3 state "shown on the letter of discount attached to this Bid Submission Form")*

Our bid shall be valid for the period of time specified in ITB Sub-Clause 18.1, from the bid submission deadline in accordance with ITB Sub-Clause 21.1, and it shall remain binding upon us and may be accepted at any time before the expiration of that period;

If our bid is accepted, we commit to obtain a Performance Security in accordance with ITB Clause 34 and GCC Clause 17 for the due performance of the Contract;

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: *(if none, insert "None")*

Name and address of Recipient	Reason for payment	Amount
_____	_____	_____
_____	_____	_____
_____	_____	_____

We understand that this bid, together with your written acceptance thereof by your notification of award, shall constitute a binding contract between us, until a formal contract is prepared and executed.

We understand that you are not bound to accept the lowest evaluated bid or any other bid that you may receive.

(signed)

(print name and position in company)

Duly authorized to sign the bid for and on behalf of: *(insert complete name of Bidder)*

Affix Company Seal:

3. Declaration on Ethical Conduct

The undersigned, as the authorised representative of the Bidder, confirms that in the preparation of our bid:

1. We, our employees, associates, agents, shareholders, partners and consultants, or their relatives or associates:
 - (a) have no relationship that could be regarded as a conflict of interest as defined in Regulation 71 of the Public Procurement Regulations of Tuvalu; should we become aware of the potential for a conflict of interest, we will advise the Purchaser immediately;
 - (b) have not entered into any corrupt or fraudulent practices during the preparation of this bid.
2. No unauthorised payments in cash or in kind in connection with this procurement proceeding have been made or will be made by us, our employees, associates, agents, shareholders, partners and consultants, or by their relatives or associates, to any employees, associates, agents, partners or consultants of the Purchaser, or to their relatives and associates.
3. We understand that if we are found to be in breach of this Declaration, we shall be debarred from any contracts with the Government of Tuvalu for a period stated in the Procurement Suspension and Debarment Procedure issued by the Central Procurement Unit.

Authorised signature: _____

Name and job title: _____

Name and address of Bidder: _____

Telephone No: _____

Fax No: _____

E-mail address: _____

Affix company seal:

4. Price and Delivery Schedule – (i) Goods

*[The procuring entity must complete columns 1 to 5 inclusive]
 (Bidders must complete columns 6 and 7)*

1	2	3	4	5	6	7
Item	Description of Goods/Services	Quantity	Unit	Delivery Period (maximum days from start of contract)	Rate (AUD)	Amount (AUD) (3 × 6)
Total FOB Amount						
Documentation and Other Charges						
Freight, Shipping and Insurance to Funafuti						
Total Cost CIF Funafuti						

(Bidders may add extra rows in the table if required)

4. Price and Completion Schedule – (ii) Related Services

The bidder must complete this Schedule if any Related Services will form part of the Contract.

IFB No: OCB/ _____ (see IFB)

1	2	3	4
Item	Description of Related Services	Completion of Related Services (days from start of contract – ITB cl. 35)	Amount AUD ^{1/}
Total for Related Services AUD			

^{1/} The amount shall include all of the Bidder’s costs in providing the Related Services at the Destination.

TOTAL BID PRICE (Goods + Related Services) AUD	
---	--

Name of Bidder: _____

Signature of Bidder: _____ (person authorised to sign the Bid)

Date: _____ (day, month, year)

Affix Company Seal:

6. Manufacturer's Authorisation

(If indicated in ITB Sub-Clause 14.2(b) and required in the BDS, the Bidder shall require the Manufacturer to fill in this Form in accordance with the instructions indicated. This letter of authorization shall be on the letterhead of the Manufacturer and shall be signed by a person with the authority to sign documents that are binding on the Manufacturer. The Bidder shall include it in its bid, if so indicated in the BDS. In case the bidder is an authorized dealer/retailer of a Distributor representing the Manufacturer, a general certificate issued by the authorized Distributor must be submitted.)

Date: _____ (day, month year)

IFB No: OCB/ _____ (see IFB)

To: *(insert complete name of Purchaser)*

We *(insert complete name of Manufacturer)*, who are official manufacturers of *(insert type of Goods manufactured)*, having factories at *(insert full address of factory manufacturing the Goods)*, do hereby authorize *(insert full name of Bidder)* to submit a bid, the purpose of which is to provide *(insert brief description of the Goods)* manufactured by us, and to subsequently negotiate and sign a Contract with *(insert full name of Purchaser)* of the Government of Tuvalu.

We hereby extend our full guarantee and warranty in accordance with Clause 24 of the General Conditions of Contract, with respect to the Goods offered by the above bidder.

(signed)

(print name and position in company)

Duly authorized to sign the bid for and on behalf of: *(insert complete name of Manufacturer)*

Affix Company Seal:

Dated on _____ day of _____, 20____ *(insert date of signing)*

7. Bid Security

(If the Bidder is required to provide a Bid Security under ITB Clause 19.1 and the BDS and chooses to provide the Bid Security through a Bank Guarantee, the Bidder's bank shall provide the Guarantee on its own letter heading to conform exactly with the wording below)

Banker's Guarantee

TO: *(insert full name and address of Purchaser)*

BID GUARANTEE No: *(insert number)*

Date: *(insert date of issue of Bid Guarantee)*

Valid until: *(insert date which is 30 calendar days after the expiry of the bid validity period)*

Beneficiary: *(insert full name of Purchaser)* of the Government of Tuvalu

We have been informed that *(insert name of the Bidder¹)* (hereinafter called "the Bidder") will be submitting to you its bid dated *(insert date)* (hereinafter called "the Bid") for the execution of *(insert name of Contract)* under IFB No: OCB/___ *(insert reference number from ITB)*.

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

At the request of the Bidder, we hereby irrevocably undertake to pay you any sum or sums not exceeding in total an amount of Australian Dollars *(insert amount in figures and words)* upon receipt by us of your first demand in writing accompanied by a written statement the Bidder is in breach of its obligation(s) under the bid conditions, because the Bidder:

- (a) has withdrawn its Bid during the period of bid validity stated in the Bid Submission Form; or
- (b) having been notified by you of your acceptance of its Bid during the period of bid validity stated in the Bid Submission Form, or extended by you at any time prior to expiration of that period, has failed or refused to either: (i) accept arithmetic corrections of its Bid price in accordance with the Instructions to Bidders; or (ii) to execute the Contract; or (iii) to furnish the Performance Security in accordance with the Instructions to Bidders.

¹ *[If the Bid is being submitted by a Joint Venture, the Bid Security shall be in the name of the Joint Venture. If the Joint Venture has not been legally constituted at the time of bidding, the Bid Security shall be in the names of all future partners as named in the letter of intent submitted with the Bid in accordance with the Instructions to Bidders.]*

This Guarantee shall expire: (a) if the Bidder is the successful Bidder, upon our receipt of a copy of the Contract signed by the Bidder and a copy of 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 of the name of the successful bidder, or (ii) 30 calendar days after the expiration of the original Bid validity period.

Any demand for payment under this Guarantee must be received by us at this office on or before the date of its expiry.

This Guarantee is subject to the Uniform Rules for Demand Guarantees, ICC Publication No. 758.

(signed by responsible officer of the issuing bank)

Affix official Seal of the bank.

8. Bid Securing Declaration

(The Bidder shall complete and sign this form if a Bid Securing Declaration is required under ITB Clause 19.1)

Date: _____

Invitation for Bid No: OCB/ _____

To: *[name and address of Purchaser]*

We, the undersigned, declare that:

1. We understand that this bid must be supported by a Bid Securing Declaration.
2. We accept that, if we are in breach of our obligations under the bidding conditions, we shall be debarred from bidding for any contract with the Government of Tuvalu for a period that it may determine, starting from the date when the Purchaser executes this Declaration. The Government of Tuvalu can debar us if:
 - (a) we withdraw our Bid during the period of bid validity specified in the Bid Submission Form; or
 - (b) having been notified of the acceptance of our Bid during the period of bid validity, we: (i) fail or refuse to execute the Form of Contract; or (ii) do not accept the correction of mathematical errors in accordance with the Instructions to Bidders; or (iii) fail or refuse to furnish the Performance Security, in accordance with the ITB Clause 34
3. If we are not named as the successful bidder, we understand that this Bid Securing Declaration shall expire 30 calendar days after the expiry of the validity of our Bid.
4. We understand that if we are a Joint Venture, the Bid Securing Declaration must be in the name of the Joint Venture that submits the bid. If the Joint Venture has not been legally constituted at the time of bidding, the Bid Securing Declaration shall be in the names of all future partners in the Joint Venture, as named in our bid.

Signed: _____ Print name: _____

In the capacity of: _____ *[insert job title]*

Duly authorized to sign the Bid for and on behalf of: _____ *[name of company or joint venture]*

Dated on this ____ day of _____, 20__

SECTION 8: CONTRACT FORMS

1. Contract Agreement

[This Form is to be completed by the Purchaser prior to signing the Contract]

CONTRACT AGREEMENT

THIS CONTRACT AGREEMENT is made on the ____ day of _____, 20__

BETWEEN

(1) *[insert full name of Purchaser]* an Agency of the Government of Tuvalu incorporated under the laws of Tuvalu and having its principal place of business at *[insert address of Purchaser]* (hereinafter called “the Purchaser”), and

(2) *[insert full name of Supplier]*, a corporation incorporated under the laws of *[insert country of Supplier]* and having its principal place of business at *[insert address of Supplier]* (hereinafter called “the Supplier”).

WHEREAS the Purchaser invited bids for certain Goods and Related Services, *[insert brief description of Goods and Related Services]* and has accepted a Bid by the Supplier for the supply of those Goods and Related Services in the sum of *[insert currency and Contract Price in words and figures]* (hereinafter called “the Contract Price”).

NOW THIS AGREEMENT WITNESSETH AS FOLLOWS:

1. In this Agreement words and expressions shall have the same meanings as are respectively assigned to them in the Conditions of Contract referred to.
2. The following documents shall constitute the Contract between the Purchaser and the Supplier, and each shall be read and construed as an integral part of the Contract:
 - (a) This Contract Agreement
 - (b) Special Conditions of Contract
 - (c) General Conditions of Contract
 - (d) Technical Requirements including the Schedule of Requirements and Technical Specifications
 - (e) The Supplier’s Bid and original Price and Completion Schedule
 - (f) The Purchaser’s Notification of Award
 - (g) The Performance Security

- (h) Declaration on Ethical Conduct
 - (i) *[add any other documents]*
3. This Contract shall prevail over all other Contract documents. In the event of any discrepancy or inconsistency within the Contract documents, the documents shall prevail in the order listed above.
 4. In consideration of the payments to be made by the Purchaser to the Supplier as hereinafter mentioned, the Supplier hereby covenants with the Purchaser to provide the Goods and Services and to remedy defects therein in conformity in all respects with the provisions of the Contract.
 5. The Purchaser hereby covenants to pay the Supplier in consideration of the provision of the Goods and Services and the remedying of defects therein, the Contract Price or such other sum as may become payable under the provisions of the Contract at the times and in the manner prescribed by the Contract.

IN WITNESS whereof the parties hereto have caused this Agreement to be executed in accordance with the laws of Tuvalu on the day, month and year indicated above.

For and on behalf of the Purchaser

[signed]

in the capacity of: *[insert title or designation and affix official Seal]*

in the presence of: *[insert name, title and signature of official witness]*

For and on behalf of the Supplier

[signed by authorized representative of the Supplier]

in the capacity of: *[insert title or designation and affix official Seal]*

in the presence of: *[insert name, title and signature of official witness]*

2. Performance Security

Performance Security

(The winning Bidder's bank shall provide this Security on its own letter heading to conform exactly to the wording below, with the winning Bidder and its bank inserting the information as indicated)

BENEFICIARY: *(insert full name and address of Purchaser)*

PERFORMANCE GUARANTEE No: *(insert number)*

Date: *(insert date of issue of Performance Guarantee)*

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

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

At the request of the Supplier, we hereby irrevocably undertake to pay you any sum(s) not exceeding Australian dollars *(insert amount in figures and words, equal to 10 per cent of the contract price)* upon receipt by us of your first demand in writing declaring the Supplier to be in default under the Contract, without cavil or argument, or your needing to prove or to show grounds or reasons for your demand or the sum specified therein.

This Guarantee shall expire no later than *(insert day, month and year, established in accordance with GCC Clause 17.1)* 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 hereby excluded.

(signed by responsible officer of the issuing bank)

Affix official Seal of the bank.

3. Bank Guarantee for Advance Payment

[If the Contract provides for an advance payment to the Supplier, the Supplier's bank shall provide this Guarantee on its own letter heading to conform exactly to the wording below, with the Supplier and its bank inserting the information as indicated.]

Bank Guarantee for Advance Payment

BENEFICIARY: *(insert full name and address of Purchaser)*

ADVANCE PAYMENT GUARANTEE No: *(insert number)*

Date: *(insert date of issue of Performance Guarantee)*

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

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

At the request of the Supplier, we hereby irrevocably undertake to pay you any sum or sums not exceeding in total an amount of Australian Dollars *(insert amount in figures and words, equal to the advance payment amount specified under SCC Clause 13.1)* upon receipt by us of your first demand in writing declaring that the Supplier is in breach of its obligation under the Contract because the Supplier used the advance payment for purposes other than towards the supply and delivery of the Goods.

It is a condition for any claim and payment under this Guarantee that the advance payment must have been received by the Supplier on its account *(insert name, number and domicile of the Supplier's account)*.

This Guarantee shall remain valid and in full effect from the date of the advance payment received by the Supplier under the Contract until *(insert date for Delivery of Goods from the Price and Completion Schedule plus 30 calendar days)*.

This Guarantee is subject to the Uniform Rules for Demand Guarantees, ICC Publication No. 758.

(signed by responsible officer of the issuing bank)

Affix official Seal of the bank.

4. Notification of Award

[The Notification of Award shall be the basis for formation of the Contract as described in ITB Clause 33. The format of the letter shall be completed based on the notes below and sent to the successful Bidder in duplicate after evaluation of bids has been completed and approved by the Procurement Review Committee.]

[Reproduce on Purchaser's letter heading]

To: *[name and address of winning bidder]*

For attention: *[name of authorised representative provided in the Bid]*

Date: _____

IFB No: OCB/_____

Dear Sirs,

NOTIFICATION OF AWARD

[insert description of Goods and Related Services, making clear whether the award is for the whole bid or for only one or more lots.]

We are pleased to notify you that your Bid submitted on *[insert date of bid submission]* for the above Goods and Related Services, inclusive of all taxes and duties and as arithmetically corrected in accordance with the Instructions to Bidders, is hereby accepted in the sum of Australian dollars *[insert amount in words and figures]*.

We attach herewith in duplicate the Contract Agreement and the Contract Documents forming part of the Contract. Pursuant to ITB Clauses 33 and 34 and GCC Clause 17, you are instructed to: (a) sign and date both copies of this letter and all attachments; and (b) execute the Performance Security. You are required to return to us one set of the signed documents together with the Performance Security not later than 14 days after your receipt of this Notification of Award.

Yours faithfully,

[signed by representative of the Purchaser]

I hereby return one set of this Notification of Award, the Contract Agreement and the Contract Documents, all duly signed. I also attach the Performance Security.

_____ *[signed]*

Supplier's authorised representative

_____ *[date]*

Affix Company Seal: