

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

**April 2015**



Tuvalu

## **INVITATION FOR BID**

**FOR**

*[Insert title of works contract]*

*[Insert date of issue of invitation]*

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*[To users of this Standard Bidding Document:*

*Use only for Works estimated to cost more than the threshold in the Public Procurement Regulations at which advertising of Bids is necessary, and less 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.*

*[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 invites sealed bids from eligible and qualified bidders for *[insert brief description of the Works]*, funded by its own resources. The *[insert name of department and ministry]*, hereinafter called the Employer, is undertaking procurement of these goods using Open Competitive Bidding procedures under the Public Procurement Regulations of Tuvalu. The construction period will be *[insert number of calendar days or months]*.
2. This invitation is open to all bidders except those who are: (1) under notice of debarment by the Government of Tuvalu; 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 National Planning 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 may be purchased by interested bidders on the submission of a written application to the address given below and upon payment of a non-refundable fee of AUD *[insert amount]* by remittance to *[insert bank account details]*. The Bidding Documents 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 at or before *[insert date and time, 35 days from the date of first 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 Employer 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 is:

*[Insert name of purchasing ministry or agency, name of concerned officer, office address, telephone and fax numbers and e-mail address]*

9. The address for submission of bids is:

*[Insert name of purchasing ministry or agency, name of concerned officer, office address, and telephone and fax numbers. If this is the same as item 8 above, these two items may be combined.]*

10. The Government of Tuvalu will debar a company from bidding and executing any contract for a period of time it shall determine, if it at any time determines that the company has engaged in corrupt, fraudulent, coercive, collusive or obstructive practices in competing for or in executing a contract.

11. 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 Government of Tuvalu (GOT), the Employer indicated in the Special Conditions of Contract (SCC) Sub-clause 1.1(g) issues this Bidding Document for the construction of works, as described in the **Bid Data Sheet (BDS)**. The name and identification number of this procurement package are specified in the **BDS**.

1.2 The successful Bidder will be expected to complete the Works within the time stated in the **BDS**.

#### 2. Source of Funds

2.1 The 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 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.

3.2 All bidders are required to complete the Statement on Ethical Conduct and Fraud and Corruption which can be found in Section 7, Bidding and Agreement 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. Any limitation of eligibility stated in GCC Sub-Clause 6.1 shall also apply to the origin of materials and equipment to be used in the performance of the Contract. For purposes of this clause, "origin" means the

place where the materials and equipment are mined, grown, or produced, or the place from which they 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 Employer to provide consulting services for the preparation of the design, specifications, and other documents to be used for the procurement.

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

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

4.5 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 Employer.

4.6 All bidders are required to complete and submit with their bids the appropriate forms listed in Section 7, Bidding and Agreement 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. Qualifications of Bidders**

6.1 Bidders shall include the following information and documents with their bids in Section 7, Bidding and Agreement Forms, unless otherwise stated in the **BDS**:

- (a) a preliminary description of the proposed work method and schedule, including drawings and charts as necessary;
- (b) copies of original documents defining the constitution or legal status, place of registration, and principal place of business;
- (c) power of attorney authorising the signatory of the Bid to commit the Bidder;
- (d) total monetary value of construction work performed for each of the last three years;
- (e) details of experience in works of a similar nature and size for each of the last three years, and details of work underway or contractually committed; and names and contact details of clients who may be contacted for further information on those contracts;

- (f) availability of items of major construction equipment proposed to carry out the Contract;
- (g) qualifications and experience of key site management and technical personnel who would work on the Contract;
- (h) copies of audited financial accounts for the last three years
- (i) evidence of adequacy of working capital for this Contract, such as cash on hand and availability of lines of credit;
- (j) authority for the Employer to seek references from the Bidder's banker
- (k) information regarding any litigation in which the Bidder is involved, current or during the last five years, the parties concerned and disputed amounts;

6.2 Bids submitted by a joint venture of two or more firms shall comply with the following requirements unless otherwise stated in the BDS:

- (a) the Bid shall include all the information listed in ITB Sub Clause 6.1 for each joint venture firm;
- (b) each firm in a joint venture shall be required to meet the eligibility requirement described in ITB Clause 4;
- (c) all firms in a joint venture shall be jointly and severally liable for the execution of the Contract;
- (d) one firm shall be authorized to sign the bid, incur liabilities, and receive instructions for and on behalf of any and all firms of the joint venture;
- (e) a copy of the joint venture agreement shall be submitted with the bid; if the joint venture is not constituted at that point, or a Letter of Intent to execute a joint venture agreement shall be signed by all partners and submitted with the bid.

6.3 To qualify for award of the Contract, bidders shall meet the following minimum qualifying criteria:

- (a) demonstrable construction volume of at least that indicated in the **BDS**;
- (b) experience as prime contractor in the construction of at least two works of a nature and complexity equivalent to the Works within the last 5 years (to comply with this requirement, works cited should be at least 70 per cent complete, billed and paid);
- (c) liquid assets and/or credit facilities, net of other contractual commitments and exclusive of any advance payments which may be

made under the Contract, of no less than the amount stated in the BDS;

- (d) proposals for the timely acquisition (own, lease, hire, etc.) of the essential equipment listed in the **BDS**;
- (e) a Contract Manager with five years' experience in works of an equivalent nature and volume, including no less than three years as Manager; and
- (f) any other additional requirement stated in the **BDS**.

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

6.5 The figures for each of the partners of a joint venture shall be added together to determine the Bidder's compliance with the minimum qualifying criteria of ITB Sub Clause 6.3 (a) and (c); however, for a joint venture to qualify, each of its partners must meet at least 25 per cent of minimum criteria of ITB Sub Clause 6.3 (a) and (c), and the partner in charge at least 40 per cent of those minimum criteria. Failure to comply with this requirement will result in rejection of the joint venture's Bid. Proposed Subcontractors' experience and resources will not be taken into account in determining the Bidder's compliance with the qualifying criteria.

## **7. Site Visit**

7.1 The Bidder, at its own responsibility, risk and cost, is encouraged to visit and examine the Site of Works and its surroundings and obtain all information that may be necessary for preparing the Bid and entering into a contract for construction of the Works. The Employer shall, if indicated in the BDS, hold a pre-bid meeting at the date, time and venue indicated in the **BDS**.

## **8. Cost of Bidding**

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

## **B. BIDDING DOCUMENTS**

### **9. Contents**

9.1 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 Specifications

Section 6: Drawings

Section 7: Bills of Quantities

Section 8: Bidding and Agreement Forms

Section 9: Contract Forms

9.2 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.

## **10. Clarification of the Bidding Documents**

10.1 A Bidder may seek clarification of any aspect of the Bidding Documents from the Employer in writing at the Employer's address indicated in the **BDS**. The Employer 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.

10.2 The Employer shall copy its response to all Bidders to whom it has supplied the Bidding Documents, such response including a description of the inquiry but without identifying the inquirer. Should the Employer deem it necessary to amend the Bidding Documents as a result of a clarification, it shall do so following the procedure under ITB Clause 11.

## **11. Amendment to the Bidding Documents**

11.1 At any time prior to the deadline for submission of the Bids, the Employer 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.

11.2 The Employer may, at its discretion, extend the deadline for submission of Bids to allow Bidders reasonable time to take any addenda into account.

## **C. PREPARATION OF BIDS**

### **12. Language of the Bid**

12.1 All Bids shall be submitted in the English language unless otherwise stated in the **BDS**.

### 13. Documents Comprising the Bid

13.1 A Bid shall comprise the following documents:

- (a) The Bid Submission Form in accordance with Section 8;
- (b) written confirmation authorizing the signatory of the Bid to commit the Bidder;
- (c) Priced Bills of Quantities
- (d) documentary evidence established in accordance with ITB Clause 6 that the Bidder is eligible to bid and is qualified to perform the contract if its bid is accepted;
- (e) signed Declaration of Ethical Conduct and Fraud and Corruption in accordance with ITB Clause 3.2;
- (f) Bid Securing Declaration or Bid Security furnished in accordance with ITB Clause 16; and
- (g) any other document as specified in the **BDS**.

### 14. Bid Prices

14.1 The Contract shall be for the whole Works, in accordance with ITB Clause 1.1, based on the priced Bill of Quantities submitted by the Bidder.

14.2 The Bidder shall fill in rates and prices for all items of the Works described in the Bill of Quantities. Items for which no rate or price is entered by the Bidder will not be paid for by the Employer when executed and shall be deemed to be covered by the other rates and prices in the Bill of Quantities.

14.3 All duties, taxes, **fees** and other levies payable by the Contractor under the Contract, or for any other cause, as of the date 28 calendar days prior to the deadline for submission of bids, shall be included in the rates, prices, and total Bid price submitted by the Bidder.

14.4 Rates and 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.

14.5 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.

14.6 All unit rates and prices shall be quoted by Bidders in Australian Dollars.

## 15. Bid Validity

15.1 Bids shall remain valid for the period specified in the **BDS** after the deadline for bid submission, pursuant to ITB Clause 19. A Bid valid for a shorter period shall be rejected by the Employer as nonresponsive.

15.2 Prior to the expiration of the bid validity period, the Employer 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 16, 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.

15.3 If, at the request of the Employer, 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.

## 16. Bid Securing Declaration and Bid Security

16.1 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 Employer.

16.2 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 8, Security Forms. The Bid Security shall be valid for 30 calendar days beyond the validity of the Bid.

16.3 The Bid Securing Declaration when required should be exactly as the format included in Section 8, Security Forms, and shall be valid for 30 calendar days beyond the validity of the Bid.

16.4 Any Bid not accompanied by either an acceptable Bid Security or a Bid Securing Declaration as stated in the BDS shall be rejected by the Employer as non-responsive.

16.5 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.

16.6 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 20; or
- (b) the Bidder does not accept arithmetic correction of its Bid Price pursuant to ITB Clause 25; 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 31.

16.7 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 Employer.

## **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 Employer, or to correct errors made by the Bidder, in which case such corrections shall be initialled by the person or persons signing the Bid.

## **D. SUBMISSION OF BIDS**

### **18. Sealing and Marking of Bids**

18.1 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.

18.2 Both inner and outer envelopes shall be addressed to the Employer 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, 35 days after the date of the first advertisement*]" where the time and date is the deadline for bid submission as defined in the BDS.

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

## **19. Deadline for Submission of Bids**

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

19.2 The Employer may, at its discretion, extend the deadline for the submission of Bids by issuing an addendum in accordance with ITB Clause 11, in which case all rights and obligations of the Employer and Bidders previously subject to the deadline shall then be subject to the new deadline.

19.3 Any Bid received by the Employer after the deadline prescribed in ITB Sub-Clause 19.1 or 19.2 as applicable, will be rejected and returned unopened to the Bidder.

## **20. Modification and Withdrawal of Bids**

20.1 Bidders may modify or withdraw their bids by giving notice in writing to the Employer before the deadline prescribed in ITB Sub-Clause 19.1.

20.2 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 16. No Bid may be modified after the deadline for submission of Bids.

20.3 Each Bidder's modification or withdrawal notice shall be prepared, sealed, marked, and delivered in accordance with ITB Clause 18, 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.

## **21. Bid Opening**

21.1 The Employer shall open the bids, including modifications made pursuant to ITB Clause 20 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.

21.2 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 20 shall not be opened but returned to the Bidder.

21.3 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 Employer 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 Clause 19.3.

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

21.5 The Employer shall prepare minutes of the Bid opening, including the information disclosed by the Employer in accordance with ITB Sub-Clause 21.3 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 Employer, 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**

### **22. Confidentiality**

22.1 Confidentiality shall be maintained by the Employer 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.

22.2 Any attempt by a Bidder to influence the Employer’s evaluation of bids or award decisions may result in the rejection of its Bid.

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

### **23. Clarification of Bids**

23.1 The Employer, 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 Employer pursuant to ITB Clause 25.

## **24. Preliminary Examination of Bids**

24.1 The Employer 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.

24.2 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 and Agreement Forms;
- (b) a Bid Security or Bid Securing Declaration in accordance with ITB Clause 19;
- (c) the priced Bills of Quantities in accordance with ITB Clause 14; and
- (d) the Bidder's written authorization of the person signing the Bid to commit the Bidder.

24.3 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 Employer'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.

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

## **25. Errors and Omissions**

25.1 Arithmetical errors discovered by the Employer 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.

25.2 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 24.3. 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.

## **26. Evaluation of Responsive Bids**

26.1 The Employer shall evaluate and compare only the bids that have been determined to be conforming and substantially responsive in accordance with ITB Sub-clauses 24.2 and 24.3. The Employer shall determine the evaluated bid price for each bid after:

- (a) making any correction for arithmetic errors pursuant to ITB Clause 25.
- (b) excluding provisional sums and the provision, if any, for contingencies in the Bill of Quantities;
- (c) adjusting the price to reflect any discount offered in accordance with ITB Clause 14.5.

26.2 The Employer 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 Employer, will not be taken into account in bid evaluation.

## **F. POST QUALIFICATION AND AWARD**

### **27. Post Qualification**

27.1 The Employer 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 6.

27.2 The determination shall be based upon examination of the documentary evidence submitted by the Bidder, clarifications in accordance with ITB Clause 23 and such other information as the Employer deems necessary and appropriate.

27.3 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 Employer shall proceed to the next lowest evaluated substantially responsive bid to make a similar determination of that Bidder's capabilities to perform satisfactorily.

## **28. Employer's Right to Accept or Reject Any Bid**

28.1 The Employer 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 Employer's decision.

## **29. Award Criteria**

29.1 The Employer shall award the contract to the successful Bidder whose bid has been determined to be substantially responsive and the lowest evaluated bid, provided further that the Bidder is determined to be qualified to perform the contract satisfactorily.

## **30. Notification of Award and Signing of Contract**

30.1 Prior to the expiration of the period of bid validity, the Employer shall notify the successful Bidder by the Letter of Acceptance in Section 7, Bidding and Agreement Forms, that its bid has been accepted. The notification of award shall constitute the formation of the Contract.

30.2 Together with the Letter of Acceptance, the Employer shall send the successful Bidder the Contract Agreement in Section 8, Bidding and Agreement Forms, 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 Employer.

## **31. Performance Security**

31.1 Within fourteen (14) calendar days of the receipt of notification of award from the Employer, the successful Bidder shall furnish the Performance Security in accordance with the GCC and using the format of the Performance Security Form in Section 8, Security Forms. If in the form of a Bank Guarantee, the Performance Security shall be issued by a reputable international bank acceptable to the Employer.

31.2 Upon receipt of the Performance Security, the Employer shall promptly notify each unsuccessful bidder of the results of the bidding and return their Bid Securities pursuant to ITB Sub-Clause 16.5.

31.3 Failure of the successful Bidder to comply with the requirements of ITB Clause 31.1 shall constitute sufficient grounds for cancellation of the award and forfeiture of the Bid Security or execution of the Bid Securing Declaration.

### **32. Advance Payment**

32.1 The Employer shall provide an Advance Payment on the Contract Price as stipulated in the General Conditions of Contract, subject to the maximum amount stated in the Special Conditions of Contract and subject to the provision of an acceptable advance payment security.

### **33. Adjudication**

33.1 The Employer proposes the person named in the BDS to be appointed as Adjudicator under the Contract, at an hourly fee specified in the BDS, plus reimbursable expenses. If the Bidder disagrees with this proposal, the Bidder should so state in the Bid. If, in the Letter of Acceptance, the Employer has not agreed on the appointment of the Adjudicator, the Adjudicator shall be appointed by the Appointing Authority designated in the Conditions of Contract at the request of either party.

### **34. Debriefing**

34.1 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 Employer 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.

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

### **35. Complaints**

35.1 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 Employer 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.

### **36. Publication of Contract Award**

36.1 Promptly after a contract has been awarded, the Employer shall notify in writing all participating bidders of the results of the bid evaluation including the name of the successful bidder. The Employer 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**

<b>ITB CLAUSE No.</b>	<b>DATA</b>
<b>GENERAL</b>	
1.1	The name and identification number of this procurement package are: <i>[insert name and identification number]</i>
1.1	The Works are: <i>[insert brief description of the works]</i>
1.2	The time period for completion of the works is: <i>[insert number]</i> calendar days.
5.1	The limit for sub-contractors is <i>[insert percentage, normally not more than 30%]</i> of the Bid price.
6.1	The qualification information required from bidders is modified as follows: <i>[state any additions to or deletions from the list, otherwise state "no additional or modified requirements"]</i>
6.2	The qualification information required from joint venture bidders is modified as follows: <i>[state any additions to or deletions from the list, otherwise state "no additional or modified requirements"]</i>
6.3 (a)	The average annual volume of construction work of the successful Bidder over the last three years shall be AUD: <i>[insert amount which should not be less than 1.5 times the estimated value of the contract]</i>
6.3 (c)	The minimum amount of liquid assets and/or credit facilities available to the Bidder shall be AUD: <i>[insert amount which should not be less than 3 months of estimated cash flow of the contract]</i>
6.3 (d)	The essential equipment required is: <i>[list the essential equipment that the contractor is required to make available for the contract]</i>
6.3 (f)	The additional requirements are: <i>[list requirements or state "no additional requirements"]</i>
7.1	<b>[Either:]</b> The Employer shall hold a pre-bid conference on <i>[insert date and time]</i> at <i>[insert venue]</i> <b>[Or:]</b> The Employer will not hold a pre-bid conference.
<b>BIDDING DOCUMENTS</b>	
10.1	The Employer's address for seeking clarification of any aspect of the Bidding Document is:  <i>[insert name of officer in charge]</i> Central Procurement Unit Ministry of Finance and National Planning Government Offices Vaiaku Funafuti Tuvalu  <i>[insert phone and fax numbers and e-mail address of officer in charge]</i>



<b>PREPARATION OF BIDS</b>	
12.1	<i>[insert language if other than English, otherwise leave blank]</i>
13.1 (f)	<b>[Either:]</b> Additional documents comprising the Bid are: <i>[list additional documents]</i> <b>[Or:]</b> There are no additional documents
15.1	The Bid shall be valid for <i>[insert number, usually 60]</i> calendar days.
16.1	<b>[select either:]</b>  Bids shall include a Bid-Securing Declaration  <b>[or:]</b>  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>
<b>SUBMISSION OF BIDS</b>	
18.2	The Employers' address for submission of bids is:  Central Procurement Unit Ministry of Finance and National Planning Government Offices Vaiaku Funafuti Tuvalu  For attention of: _____ Telephone number _____ <i>[insert name and number – Bidders need this information for courier service companies, 35 days after the first day of advertisement]</i>
19.1	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]</i>
21.1	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 – must be exactly the same as given in 19.1]</i>
<b>POST QUALIFICATION AND AWARD</b>	
33.1	The Adjudicator proposed by Employer is <i>[insert name and address]</i> , the hourly fee is <i>[insert fee]</i> , the biographical data of the proposed Adjudicator is as below: <i>[provide relevant information, such as education, experience, age, nationality, and</i>

	<p><i>present position; attach additional pages as necessary. <u>The proposed adjudicator should not be a serving government official</u></i></p>
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## SECTION 3: GENERAL CONDITIONS OF CONTRACT

### A. General

1. Definitions      1.1 In this Contract, the following terms shall be interpreted as indicated:
- (a) **Adjudicator** means the person appointed jointly by the Employer and the Contractor to resolve disputes in the first instance, as provided for in GCC Clause 38.2.
  - (b) **Bill of Quantities** means the priced and completed Bill of Quantities forming part of the Contract.
  - (c) **Compensation Events** means events defined in GCC Clause 48.1.
  - (d) **Completion Date** means the date of completion of the Works as certified by the Contract Manager in accordance with GCC Clause 35.
  - (e) **Contract** means the legally binding agreement entered into by the Employer and the Contractor, 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**.
  - (f) **Contract Manager** means the person designated by the Employer to manage the contract on behalf of the Employer.
  - (g) **Contract Price** means the price stated in the Letter of Acceptance and thereafter as adjusted in accordance with the provisions of the Contract.
  - (h) **Contractor** means the person or corporate body defined in the **SCC** who's Bid to execute the Works has been accepted by the Employer.
  - (i) **Contractor's Representative** means the person named in the **SCC** authorized to receive instructions on behalf of the Contractor.
  - (j) **Day** means calendar day.
  - (k) **Day-works** means execution of parts of the works by the Contractor's employees and equipment that

will be paid for on a time basis.

- (l) **Defect** means any part of the Works not executed in accordance with the Contract.
- (m) **Defects Liability Certificate** means the certificate issued by Contract Manager upon rectification of defects in the Works by the Contractor.
- (n) **Defects Liability Period** means the period stated in the **SCC** after the completion date during which the Contractor shall be liable to rectify defects in the Works.
- (o) **Drawings** means blueprints calculations and other information provided or approved by the Employer's Contract Manager for the execution of the Contract.
- (p) **Employer** means the party defined in the **SCC** who employs the Contractor to carry out the Works.
- (q) **Employer's country** means Tuvalu.
- (r) **Equipment** means the Contractor's machinery brought temporarily to the Site to construct the Works.
- (s) **Force Majeure** means an exceptional event or circumstance which: is beyond a party's control; could not reasonably have been foreseen by the party before the Contract was executed; having arisen, such party could not reasonably have avoided or overcome; and, which is not substantially attributable to the other Party.
- (t) **GCC** means the General Conditions of Contract.
- (u) **Intended Completion Date** means the date on which it is intended that the Contractor shall complete construction of the Works.
- (v) **Plant** means equipment having a mechanical, electrical, chemical, or biological function that forms an integral part of the Works.
- (w) **Retention Money** means the aggregate of all monies retained by the Employer pursuant to GCC Clause 47.
- (x) **SCC** means the Special Conditions of Contract.

- (y) **Site** means the area defined in the **SCC** for execution of the Works.
- (z) **Site Manager** means the person designated by the Contractor to manage construction of the Works.
- (aa) **Site Investigation Reports** means reports that were included in the bidding documents, listed in the **SCC**, on the surface and subsurface conditions at the Site.
- (bb) **Start Date** means the latest date when the Contractor shall commence execution of the Works, as stated in the **SCC**.
- (cc) **Subcontractor** means a person or corporate body who has a Contract with the Contractor to execute part of the Works in the Contract.
- (dd) **Temporary Works** means facilities designed, constructed, installed, and later removed by the Contractor that are needed for the execution of the permanent Works.
- (ee) **Variation** means an instruction given by the Employer through the Contract Manager which varies the Works.
- (ff) **Works** means all of the items to be constructed by the Contractor under the Contract and handed over to the Employer.

## 2. Interpretation

- 2.1 In interpreting these Conditions of Contract, singular also means plural, headings have no significance and words have their normal meaning under the language of the Contract unless specifically defined. The Contract Manager will provide instructions clarifying queries about these Conditions of Contract.
- 2.2 If sectional completion is specified in the **SCC**, references in the Conditions of Contract to the Works, the Completion Date, and the Intended Completion Date apply to any Section of the Works, other than specific references to the Completion Date and Intended Completion Date for the whole of the Works.
- 2.3 The documents forming the Contract shall be interpreted in the following order of priority:
  - (a) Agreement
  - (b) Letter of Acceptance

- (c) Contractor’s Bid
  - (d) Special Conditions of Contract
  - (e) General Conditions of Contract
  - (f) Specifications
  - (g) Drawings
  - (h) Bills of Quantities
  - (i) Other documents listed in the **SCC** as forming part of the Contract
3. Language and Law      3.1 The language governing this contract shall be English and the law governing the contract shall be that of Tuvalu.
4. Communications and Notices      4.1 Communications between parties that are referred to in the Conditions shall be effective only when in writing and with proof of receipt. A notice shall be effective only when it is delivered to either the Site Manager or the Contract Manager indicated in GCC Clauses 1.16 and 1.17.
5. Fraud and Corruption      5.1 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.

## **B. The Contractors Rights, Obligations and Responsibilities**

6. Contractor to Construct the Works      6.1 The Contractor shall construct and install the Works in accordance with the Specifications and Drawings.
7. Joint Ventures      7.1 If the Contractor is a joint venture, consortium, or association, all of the parties shall be jointly and severally liable to the Employer 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 Employer.

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| 8. Works to be Completed by Intended Completion Date | 8.1 The Contractor shall commence the Works on the Commencement Date and shall proceed expeditiously and without delay and complete them by the Intended Completion Date.   |
| 9. Liquidated Damages                                | 9.1 The Contractor shall pay liquidated damages to the Employer at the rate of 1/10 of one per cent of the contract amount for each day that the Completion Date is later than the Intended Completion Date. The total amount of liquidated damages shall not exceed ten per cent of the contract value. The Employer may deduct liquidated damages from payments due to the Contractor. Payment of liquidated damages shall not affect the Contractor's liabilities.   |
| 10. Temporary Works                                  | 10.1 The Contractor shall be responsible for design of Temporary Works and shall obtain approval of the design from the Contract Manager and third parties, if required.  |
| 11. Safety, Security and the Environment             | <p>11.1 The Contractor shall:</p> <ul style="list-style-type: none"> <li>(a) provide all warning signs and provide, erect, maintain and when no longer required remove all barricades, fencing, temporary roadways and footpaths, signs and lighting necessary for the effective protection of property, for traffic and for the safety of others;</li> <li>(b) at all times carry out the Works so as to prevent any damage to or pollution of the environment at the Site and any immediate adjoining areas. In the event that damage to or pollution of the environment is a consequence of the Contractor's negligence in carrying out the Works, the Contractor shall at his expense make good the damage or pollution caused; and</li> <li>(c) comply with the <b>Quarantine Act (2008 Revised Edition) and the Plants Act (2008 Revised Edition) and their supporting Regulations, which require that certain goods are treated for the prevention of the introduction or spread of diseases or pests, prior to their arrival at the port of Funafuti.</b></li> </ul> <p>11.2 The Contractor shall use every reasonable means to</p> |

prevent damage by the Contractor's equipment to any roads adjacent to or on route to the Site.

11.3 The Contractor shall take all reasonable steps to keep the Site and the Works in an orderly state, free from all rubbish and debris, and in such a condition as to avoid danger to persons and property.

11.4 The Contractor shall be responsible for the safety of all activities on the Site.

12. Access to Site

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

13. Discovery

13.1 Anything of historical or other interest or of significant value discovered on the Site shall be the property of the Employer. The Contractor shall notify the Contract Manager of such discoveries and carry out the Contract Manager's instructions for dealing with them.

14. Instructions and Audit

14.1 The Contractor shall carry out all instructions of the Contract Manager which comply with the applicable laws of Tuvalu.

14.2 The Contractor shall permit the Employer to inspect the Contractor's accounts and records relating to the performance of the Contract and to have them audited by auditors appointed by the Government of Tuvalu.

15. Personnel

15.1 The Contractor shall employ the key personnel named in the Schedule of Key Personnel, as referred to in the **SCC**, to carry out the functions stated in the Schedule. The Contract Manager will approve any proposed replacement of key personnel only if their relevant qualifications and abilities are substantially equal to or better than those of the personnel listed in the Schedule.

15.2 If the Contract Manager asks the Contractor to remove a member of the Contractor's staff or work force, stating reasons and citing examples of a lack of professional competence or personal misconduct, the Contractor shall ensure that the person leaves the Site within seven calendar days and has no further connection with the work in the Contract.

15.3 During continuance of the contract, the Contractor and his subcontractors shall abide at all times by all labor laws, including child labor related enactments, and other



relevant rules.

16. Sub-contracting
- 16.1 The Contractor may subcontract to the parties indicated in its bid to the limit specified in the SCC without the prior approval of the Contract Manager. Subcontracting outside of that specifically described in the Contractor's Bid shall require the Project Manager's prior written approval. The Contract may not be assigned to any other party. The Contractor shall be liable for the work of any and all Subcontractors employed by the Contractor.
17. Other Contractors and Public Authorities
- 17.1 The Contractor shall cooperate and share the Site with other contractors, public authorities, utilities, and the Employer between the dates given in the Schedule of Other Contractors, as referred to in the **SCC**. The Contractor shall also provide facilities and services for them as described in the Schedule. The Employer may modify the Schedule of Other Contractors, and shall notify the Contractor of any such modification.
18. Contractor's Risks
- 18.1 From the Starting Date until the Defects Liability Certificate has been issued, the risks of personal injury, death, and loss of or damage to property (including, without limitation, the Works, Plant, Materials, and Equipment) which are not Employer's risks are Contractor's risks.
19. Insurance
- 19.1 The Contractor shall provide, in the joint names of the Employer and the Contractor, insurance cover from the Start Date to the end of the Defects Liability Period, in the amounts and deductibles stated in the **SCC** for the following events which are due to the Contractor's risks:
- (a) loss of or damage to the Works, Plant, and Materials;
  - (b) loss of or damage to Equipment;
  - (c) loss of or damage to property, except the Works, Plant, Materials, and Equipment, in connection with the Contract; and
  - (d) death or personnel injury.
- 19.2 Policies and certificates for insurance shall be delivered by the Contractor to the Contract Manager for the Contract Manager's approval before the Start Date. All such insurance shall provide for compensation to be payable in the types and proportions of currencies required to rectify the loss or damage incurred.

- 19.3 Alterations to the terms of insurance shall not be made without the approval of the Contract Manager.
- 19.4 Both parties shall comply with any conditions of the insurance policies.
- 19.5 If the Contractor does not provide any of the policies and certificates required, the Employer may effect insurance which the Contractor should have provided and recover the premiums the Employer has paid from payments otherwise due to the Contractor or, if no payment is due, the payment of the premiums shall be a debt due.
20. Drawings and Manuals 20.1 If “as built” Drawings and/or operating and maintenance manuals are required, the Contractor shall supply them prior to the issue of the Certificate of Completion. If the Contractor does not supply the Drawings and/or manuals by the dates stated, or they do not receive the Contract Manager’s approval, the Contract Manager shall be entitled to withhold the return of the first portion of the retention monies described in GCC Clause 47.2.
21. Performance Security 21.1 The Performance Security shall be provided to the Employer no later than 14 calendar days after the Contractor’s receipt of the Letter of Acceptance and shall be issued in an amount and form described in the **SCC**. The Performance Security shall be valid until a date 28 calendar days after the date of issue of the Certificate of Completion.
- C. The Employers Rights, Obligations and Responsibilities**
22. Possession of Site 22.1 The Employer shall give possession of all parts of the Site to the Contractor. If possession of a part is not given by the date stated in the Contract Data, the Employer will be deemed to have delayed the start of the relevant activities, and this will be a Compensation Event.
23. Contract Manager’s Decisions 23.1 Except where otherwise provided in Clause 38 the Contract Manager shall decide contractual matters between the Employer and the Contractor in the role of representing the Employer.
24. Delegation 24.1 The Contract Manager may delegate any of his duties and responsibilities to other people except to the Adjudicator, after notifying the Contractor, and may cancel any delegation after notifying the Contractor.
25. Queries on the Contract 25.1 The Contract Manager will clarify queries on the Contract.

26. Permits and Licenses
- 26.1 The Employer shall, if requested by the Contractor, assist him in applying for permits, licenses or approvals, which are required for the Works. Obtaining the necessary permits, licenses and approvals shall however be the sole responsibility of the Contractor, unless the issue of such is at the discretion of the Employer. No delay in obtaining any permit, license or approval that was in force on the date of the invitation for bids will be considered as a force majeure event.
27. Approval by the Contract Manager
- 27.1 All drawings, specifications and designs for temporary or permanent works prepared by the Contractor shall be subject to the prior approval of the Contract Manager, who shall approve them if they comply with the Specifications and Drawings. Such approval if granted will in no way remove the Contractor's responsibility and liabilities for the design of such works.
28. Employer's Risks
- 28.1 From the Start Date until the Defects Liability Certificate has been issued, the Employer's risks are:
- (a) the risk of personal injury, death, or loss of or damage to property, excluding the Works, Plant, Materials, and Equipment, which are due to:
    - (i) use or occupation of the Site by the Works or for the purpose of the Works, which is the unavoidable result of the Works; or
    - (ii) negligence, breach of statutory duty, or interference with any legal right by the Employer or by any person employed by or contracted to him except the Contractor; and
  - (b) the risk of damage to the Works, Plant, Materials, and Equipment to the extent that it is due to a fault of the Employer or in the Employer's design, or due to war or radioactive contamination directly affecting the country where the Works are to be executed
- 28.2 From the Completion Date until the Defects Liability Certificate has been issued, the risk of loss of or damage to the Works, Plant, and Materials is an Employer's risk except loss or damage due to:
- (a) a Defect which existed on the Completion Date;
  - (b) an event occurring before the Completion Date, which was not itself an Employer's risk; or
  - (c) the activities of the Contractor on the Site after the

Completion Date.

#### **D. Contract Management**

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| 29. Program              | <p>29.1 Within the time stated in the <b>SCC</b>, the Contractor shall submit to the Contract Manager for approval a Program showing the general methods, arrangements, order, and timing for all the activities in the Works.</p> <p>29.2 The Program shall be updated and submitted to the Contract Manager at intervals no longer than the period stated in the <b>SCC</b> to show the actual progress achieved on each activity and the effect on the timing of the remaining work, including any changes to the sequence of the remaining activities.</p> <p>29.3 If the Contractor does not submit an updated Program within this period, the Contract Manager may withhold the amount stated in the Contract Data from the next payment certificate and continue to withhold this amount until the next payment after the date on which the overdue Program has been submitted.</p> <p>29.4 The Contract Manager's approval of the Program shall not alter the Contractor's obligations. The Contractor may revise the Program and submit it to the Contract Manager again at any time. A revised Program shall show the effect of Variations and Compensation Events.</p> |
| 30. Acceleration of Work | <p>30.1 If the Employer requests the Contractor to finish before the Intended Completion Date, the Contract Manager shall obtain priced proposals for achieving the necessary acceleration from the Contractor. If the Employer accepts these proposals, the Intended Completion Date will be adjusted accordingly and confirmed by both the Employer and the Contractor.</p> <p>30.2 If the Contractor's priced proposals for acceleration are accepted by the Employer, they shall be incorporated in the Contract Price and treated as a Variation.</p>  |
| 31. Suspension of Work   | <p>31.1 The Contract Manager may instruct the Contractor to delay the start or progress of any activity within the Works.</p>   |
| 32. Management Meeting   | <p>32.1 Either the Contract Manager or the Contractor may require the other to attend a management meeting. The business of a management meeting shall be to review progress and plans for the remaining work and to deal with matters raised in accordance with the early warning procedure.</p>   |

- 32.2 The Contract Manager shall prepare minutes of management meetings and provide copies to those attending the meeting and to the Employer. The responsibility of the parties for actions to be taken shall be decided by the Contract Manager either at the management meeting or after the management meeting and stated in writing to all who attended the meeting.
33. Extension of Time
- 33.1 The Contract Manager may extend the Intended Completion Date if a Compensation Event occurs or a Variation is issued which makes it impossible for Completion to be achieved by the Intended Completion Date without acceleration of the remaining work, which would cause the Contractor to incur additional cost.
- 33.2 The Contract Manager shall decide whether and by how much to extend the Intended Completion Date within seven days of the Contractor asking the Contract Manager for a decision upon the effect of a Compensation Event or Variation and submitting full supporting information. If the Contractor fails to give early warning of a delay or has failed to cooperate in dealing with a delay, that failure shall not be considered in deciding the new Intended Completion Date.
34. Variations
- 34.1 When requested by the Contract Manager, the Contractor shall provide a quotation for carrying out a Variation. The Contract Manager shall assess the quotation, which shall be given within seven days of the request or within any longer period stated by the Contract Manager and before the Variation is ordered.
- 34.2 When the works covered by the Variation are on the critical path and the ordering is beyond seven days, the time period beyond seven days shall be added to the time for completion and be regarded as a delay ordered by the Contract Manager in accordance with GCC Clause 48.1(c).
- 34.3 If the work in the Variation corresponds with an item description in the Bill of Quantities and if the quantity of work is below the limit stated in GCC Clause 43.2 or the timing of its execution do not cause the cost per unit of quantity to change, the rate in the Bill of Quantities shall be used to calculate the value of the Variation. If the cost per unit of quantity changes above the limit stated in GCC Clause 41.3, or if the nature or timing of the work in the Variation does not correspond with items in the Bill of Quantities, the quotation by the Contractor shall be in the form of new rates for the relevant items of work.

- 34.5 Where a variation is requested on the grounds of urgency to prevent damage to works, to the site or its immediate environment or for the safety of personnel on the site, the Contract Manager may waive the requirements for quotation and the event shall be treated as a Compensation Event.
- 34.6 All Variations shall be included in updated Programs produced by the Contractor.
35. Completion
- 35.1 The Contractor shall request the Contract Manager to issue a certificate of Completion of the Works. Within ten days of the request, the Contract Manager shall notify the Contractor either that he considers that the Works have been completed or notify the Contractor of the remaining works to be completed.
- 35.2 The Employer shall take over the Site and the Works within seven days of the Contract Manager's issuing a Certificate of Completion.
36. Day-works
- 36.1 The Day-works rates in the Contractor's Bid shall be used for small additional amounts of work only when the Contract Manager has given written instructions in advance for additional work to be paid for in that way.
- 36.2 All work to be paid for as Day-works shall be recorded by the Contractor on forms approved by the Contract Manager. Each completed form shall be verified and signed by the Contract Manager within two days of the work being done.
37. Early Warning
- 37.1 A Party shall notify the other Party as soon as he is aware of any circumstance which may delay or disrupt the Works, or which may give rise to a claim for additional payment. The Contractor shall take all reasonable steps to minimize these effects.
- 37.2 The Contractor shall promptly provide the Contract Manager an estimate of the expected effect of the circumstance or a future event on the Contract Price and Intended Completion Date.
- 37.3 The Contractor shall not be entitled to additional payment for costs that could have been avoided by giving early warning when the Contractor was in a position to provide such warning.
38. Resolution of Disputes
- 38.1 If any dispute or difference shall arise between the Contractor and the Employer in connection with or arising out of the Contract, including any valuation or other decision of the Employer, the parties shall make

every effort to resolve amicably such dispute or difference by mutual consultation.

- 38.2 If mutual consultation fails to resolve a dispute or difference, it shall be referred by either party to an Adjudicator. If the parties cannot agree on an Adjudicator acceptable to both parties, the International Chamber of Commerce (ICC) in Thailand may be asked by either party to provide the CV's of three available adjudicators, none of whom shall be nationals of the Contractor's country should that country be other than Tuvalu. Each party shall then strike off the name of one of the proposed adjudicators and the remaining one shall be appointed. If both parties strike off the same candidate then another round will take place until only one adjudicator remains.
- 38.3 If the Contractor believes that a decision taken by the Contract Manager was either outside the authority given to the Contract Manager by the Contract or that the decision was wrongly taken, the decision shall be referred to the Adjudicator within 14 days of the notification of the Contract Manager's decision.
- 38.4 The Adjudicator shall be paid by the hour at the rate proposed by the ICC Thailand, together with reasonable expenses to cover accommodation, travel and communications as necessary. The cost shall be divided equally between the Employer and the Contractor, whatever decision is reached by the Adjudicator. Either party may refer a decision of the Adjudicator to an Arbitrator within 28 days of the Adjudicator's written decision. If neither party refers the dispute to arbitration within the above 28 days, the Adjudicator's decision will be final and binding.
- 38.5 All disputes arising in connection with the present Contract that cannot be resolved to the satisfaction of either one of the parties through adjudication may be referred to and settled under the Rules of Conciliation and Arbitration of the International Chamber of Commerce by one or more arbitrators appointed in accordance with said Rules. The ruling of the Arbitrator shall be binding on both parties.
- 38.6 Notwithstanding any adjudication or arbitration proceedings no party shall commit an anticipatory breach of contract.

## **E. Quality Control**

39. Identifying      39.1 The Contract Manager shall check the Contractor's work

- Defects and notify the Contractor of any Defects that are found. Such checking shall not affect the Contractor's responsibilities. The Contract Manager may instruct the Contractor to search for a Defect and to uncover and test any work that the Project Manager considers may have a Defect.
40. Tests 40.1 If the Contract Manager instructs the Contractor to carry out a test not specified in the Specification to check whether any work has a Defect and the test shows that it does, the Contractor shall pay for the test and any samples. If there is no Defect, the test shall be a Compensation Event
41. Rectification of Defects 41.1 The Contract Manager shall give notice to the Contractor of any Defects before the end of the Defects Liability Period, as defined in the **SCC**. The Defects Liability Period shall be extended for as long as Defects remain to be rectified.
- 41.2 Every time notice of a Defect is given, the Contractor shall rectify the notified Defect within the length of time specified by the Contract Manager's notice. Any defect noticed by the Contractor shall be rectified by the Contractor before the expiry of the Defects Liability Period.
- 41.3 The Contract Manager shall approve all rectified defects.
- 41.4 If the Contractor has not corrected a defect within the time specified in the Contract Manager's notice, the Contract Manager shall correct it using a third party and the Contractor will pay the third party's cost.
42. Cost of Repairs 42.1 Loss or damage to the Works or Materials to be incorporated in the Works between the Start Date and the end of the Defects Liability Period shall be remedied by the Contractor at the Contractor's cost if the loss or damage arises from the Contractor's acts or omissions.

## **F. Cost Control**

43. Bill of Quantities 43.1 The Bill of Quantities is used to calculate the Contract Price and shall contain items for the construction, installation, testing, and commissioning work to be done by the Contractor. The Contractor is paid for the quantity of the work done at the rate in the Bill of Quantities for each item.
- 43.2 If the final quantity of the work done differs from the quantity in the Bill of Quantities for the particular item by more than 25 per cent and one per cent of the



contract value, the parties shall agree upon an adjustment of the rate to allow for the change in accordance with the provisions for Variations.

43.3 The Contract Manager shall not adjust rates for changes in quantities except with the prior approval of the Employer.

44. Taxes and Duties

44.1 The Contractor shall be entirely responsible for all taxes, duties, license fees and other levies incurred in executing the Contract.

44.2 The Contract Manager shall adjust the Contract Price if taxes, duties, and other levies are changed between the date 28 calendar days before the submission of bids for the Contract and the date of the last Completion certificate. The adjustment shall be the change in the amount of tax, duties and other levies payable by the Contractor, provided such changes are not already reflected in the Contract Price.

**G. Payments to the Contractor**

45. Payment and Currency

45.1 If so specified in the **SCC**, the amounts certified in each payment certificate will be adjusted, before deducting for Advance Payment, by applying the respective price adjustment factor to the payment amounts due in each currency.

45.2 Payment shall be in the currency of the Contractor's Bid.

46. Advance Payment

46.1 Should the Contractor request, the Employer shall make advance payment to the Contractor of the amount stated in the **SCC** within 28 calendar days after the provision by the Contractor of an Advance Payment Guarantee in a form and by a bank acceptable to the Employer in amounts equal to the advance payment. The Guarantee shall remain effective until the advance payment has been repaid, but the amount of the Guarantee shall be progressively reduced by the amounts repaid by the Contractor. Interest will not be charged on the advance payment.

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

46.3 The advance payment shall be repaid by deducting

proportionate amounts from progress payments otherwise due to the Contractor, following measurement of completed Works based on the Bill of Quantities. No account shall be taken of the advance payment or its repayment in assessing valuations of work done, Variations, price adjustments, Compensation Events, Bonuses, or Liquidated Damages.

47. Payment  
Certificates

- 47.1 The Contractor shall submit to the Contract Manager monthly statements of the estimated value of the work executed less the cumulative amount certified previously. The Contract Manager shall check the Contractor's monthly statement and certify the amount to be paid to the Contractor
- 47.2 Payments shall be adjusted for deductions for advance payments and retention. The Employer shall pay the Contractor the amounts certified by the Contract Manager within 28 calendar days of the date of each certificate. If the Employer makes a late payment, the Contractor shall be paid interest on the late payment in the next payment. Interest shall be calculated from the date by which the payment should have been made up to the date when the late payment is made at the rate of one per cent per month or part thereof.
- 47.3 If an amount certified is increased in a later certificate or as a result of an award by the Adjudicator or an Arbitrator, the Contractor shall be paid interest upon the delayed payment at the rate of one per cent per month or part thereof. Interest shall be calculated from the date upon which the increased amount would have been certified in the absence of dispute.

48. Compensa-  
tion Events

- 48.1 The following shall be Compensation Events:
- (a) The Employer does not give access to a part of the Site by the Site Possession Date stated in the Contract Data.
  - (b) The Employer modifies the Schedule of Other Contractors in a way that affects the work of the Contractor under the Contract.
  - (c) The Contract Manager orders a delay or does not issue Drawings, Specifications, or instructions required for execution of the Works on time.
  - (d) The Contract Manager instructs the Contractor to uncover or to carry out additional tests upon work, which is then found to have no Defects.

- (e) The Contract Manager unreasonably does not approve a subcontract to be let.
  - (f) Ground conditions are substantially more adverse than could reasonably have been assumed before issuance of the Letter of Acceptance from the information issued to bidders (including the Site Investigation Reports), from information available publicly and from a visual inspection of the Site.
  - (g) The Contract Manager gives an instruction for dealing with an unforeseen condition, caused by the Employer, or additional work required for safety or other reasons.
  - (h) Other contractors, public authorities or the Employer does not work within the dates and other constraints stated in the Contract, and they cause delay or extra cost to the Contractor.
  - (i) The advance payment is delayed.
  - (j) The effects on the Contractor of any of the Employer's Risks.
  - (k) If the Contractor incurs cost as a result of any of the Employer's Risk events, the Contractor shall be entitled to the amount of such cost.
  - (l) The Contract Manager unreasonably delays issuing a Certificate of Completion.
  - (m) Other Compensation Events described in the Contract or determined by the Contract Manager shall apply.
- 48.2 If a Compensation Event would cause additional cost or would prevent the work being completed before the Intended Completion Date, the Contract Price shall be increased and/or the Intended Completion Date shall be extended, as decided by the Contract Manager.
- 48.3 As soon as information demonstrating the effect of each Compensation Event upon the Contractor's forecast cost has been provided by the Contractor, it shall be assessed by the Contract Manager, and the Contract Price shall be adjusted accordingly. If the Contractor's forecast is deemed unreasonable, the Contract Manager shall adjust the Contract Price based on the Contract Manager's own forecast. The Contract Manager shall assume that the Contractor will react competently and promptly to the event.

- 48.4 The Contractor shall not be entitled to compensation to the extent that the Employer's interests are adversely affected by the Contractor's having not given early warning when it could have done so or not having cooperated with a reasonable instruction from the Contract Manager.
49. Retention
- 49.1 The Employer shall retain ten per cent of each payment due to the Contractor until Completion of the whole of the Works.
- 49.2 On completion of the whole of the Works, half the total amount retained shall be repaid to the Contractor and half when the Defects Liability Period has expired and the Contract Manager has certified that all Defects notified by the Contract Manager to the Contractor have been rectified.
- 49.3 On completion of the whole Works, the Contractor may substitute retention money with an "on demand" Bank guarantee valid for one calendar month beyond the expiry of the Defects Liability Period.
50. Final Payment
- 50.1 Not more than 14 days after either the expiry of the Defects Liability Period, or the rectification of notified defects or the completion of outstanding work, whichever is the later, the Contractor shall submit a final account to the Employer together with any documentation reasonably required to enable the Employer to ascertain the final contract value.
- 50.2 The Contract Manager shall issue a Defects Liability Certificate and certify any final payment that is due to the Contractor within 28 calendar days of receiving the Contractor's account if it is correct and complete. If it is not, the Contract Manager shall issue within 28 calendar days a schedule that states the scope of the corrections or additions that are necessary. If the Final Account is still unsatisfactory after it has been resubmitted, the Contract Manager shall decide on the amount payable to the Contractor and issue a payment certificate.
- H. Termination**
51. Frustration
- 51.1 If the Contract is frustrated by the outbreak of war or by any other event of force majeure and the event continues for a period of 84 calendar days, on the first working day after the 84th the Contract Manager shall issue a notice that the Contract has been frustrated. The Contractor shall make the Site safe and stop work as quickly as possible after receiving this notice and

shall be paid for all work carried out before receiving it and for any work carried out afterwards to which a commitment was made.

52. Default by the Contractor
- 52.1 If the Contractor abandons the Works, refuses or fails to comply with a valid instruction of the Contract Manager or fails to proceed expeditiously and without delay or is, despite a written complaint, in breach of the Contract, the Employer may give notice referring to this Sub-Clause and stating the default.
- 52.2 If the Contractor has not taken all practicable steps to remedy the default within 14 calendar days after the Contractor's receipt of the Employer's notice, the Employer may, by a second notice given within a further 21 calendar days, terminate the Contract. The Contractor shall then demobilize from the Site leaving behind Materials and Plant and any Contractor's Equipment, which, as the Employer instructs in the second notice, is to be used until the completion of the Works.
- 52.3 All Materials on the Site, Plant, Equipment, purchased as part of the contract including equipment for operation and maintenance (excluding the contractors own equipment), Temporary Works, and Works shall be deemed to be the property of the Employer if the Contract is terminated because of the Contractor's default.
53. Default by the Employer
- 53.1 If the Employer fails to pay the Contractor in accordance with the Contract, or is, despite a written complaint, in breach of the Contract, the Contractor may give notice referring to this Sub-Clause and stating the default. If the default is not remedied within seven days after the Employer's receipt of this notice, the Contractor may suspend the execution of all or parts of the Works.
- 53.2 If the default is not remedied within 28 calendar days after the Employer's receipt of the Contractor's notice, the Contractor may, by a second notice given within a further 21 calendar days, terminate the Contract. The Contractor shall then demobilize from the Site.
54. Parties Right to Terminate
- 54.1 The Employer or the Contractor may terminate the Contract if the other party causes a fundamental breach of the Contract.
- 54.2 Fundamental breaches of Contract shall include, but shall not be limited to, the following:
- (a) the Contractor stops work for 28 days when no

stoppage of work is shown on the current Program and the stoppage has not been authorized by the Contract Manager;

- (b) the Contract Manager instructs the Contractor to delay the progress of the Works, and the instruction is not withdrawn within 28 calendar days;
- (c) the Employer or the Contractor is made bankrupt or goes into liquidation other than for a reconstruction or amalgamation;
- (d) a payment certified by the Contract Manager is not paid by the Employer to the Contractor within 84 calendar days of the date of the Contract Manager's certificate;
- (e) the Contract Manager gives Notice that failure to rectify a particular Defect is a fundamental breach of Contract and the Contractor fails to rectify it within a reasonable period of time determined by the Contract Manager;
- (f) the Contractor does not maintain a Performance Security if required under the Contract;
- (g) the Contractor has delayed the completion of the Works by 100 calendar days being the maximum amount of liquidated damages; and
- (h) the Contractor, in the judgment of the Employer has engaged in corrupt or fraudulent practices in competing for or in executing the Contract, as defined under GCC Clause 5.

54.3 When either party to the Contract gives notice of a breach of Contract for a cause other than those listed under GCC Clause 54.2 above, the Contract Manager shall decide whether the breach is fundamental.

54.4 Notwithstanding the above, the Employer may terminate the Contract for convenience.

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

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

54.7 If a Party is declared insolvent under any applicable law,

the other Party may by notice terminate the Contract immediately. The Contractor shall demobilize from the Site leaving behind in the case of the Contractor's insolvency any Contractor's Equipment which the Contract Manager instructs in the notice shall be used until the completion of the Works.

55. Payment on Termination

- 55.1 If the Contract is terminated because of a fundamental breach of Contract by the Contractor, the Contract Manager shall issue a certificate for the value of the work done and Materials ordered less advance payments received up to the date of the issue of the certificate and less the percentage to apply to the value of the work not completed, as indicated in GCC Clause 9.1. Additional Liquidated Damages shall not apply. If the total amount due to the Employer exceeds any payment due to the Contractor, the difference shall be a debt payable to the Employer.
- 55.2 If the Contract is terminated for the Employer's convenience or because of a fundamental breach of Contract by the Employer, the Contract Manager shall issue a certificate for the value of the work done, Materials ordered, the reasonable cost of removal of Equipment, repatriation of the Contractor's personnel employed solely on the Works, and the Contractor's costs of protecting and securing the Works, and less advance payments received up to the date of the certificate.
- 55.3 After termination under Clause 55.2, the Contractor shall be entitled to payment of the unpaid balance of the value of the Works executed and of the Materials and Plant reasonably delivered to the Site, adjusted by the following:
- (a) any sums to which the Contractor is entitled under GCC 47.1;
  - (b) the Cost of the Contractor's suspension and demobilization; and
  - (c) any sums to which the Employer is entitled.
- 55.4 The net balance due shall be paid or repaid within 28 days of the Notice of termination.

## 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
<b>GENERAL</b>	
1.1 (e)	The name and identification number of this Contract are: <i>[insert name and identification number]</i>
1.1 (h)	The Contractor is: <i>[insert full name and registered address of contractor before signing the Contract]</i>
1.1 (i)	The Contractor's Authorized Representative is: <i>[insert full name and registered address of contractor's representative before signing the Contract]</i>
1.1 (n)	The Defects Liability Period is <i>[insert number of calendar days starting from Intended Completion Date]</i>
1.1 (p)	The Employer is: <i>[insert name and address of department and ministry acting as the Employer and add phone and facsimile numbers and e-mail address of contact point]</i>
1.1 (y)	The Site is located at: <i>[insert address]</i> as defined on drawing number: <i>[insert number]</i>
1.1 (z)	<i>[Either:]</i> Reports available on site investigations are: <i>[insert names and dates of reports]</i> <i>[Or:]</i> No reports are available.
1.1 (bb)	The Start Date shall be: <i>[Insert expected date. Change this date to the actual date before signing the contract]</i>
2.2	<i>[Either:]</i> Sectional Completions are: <i>[insert details of parts of the Works and dates when they are to be completed]</i> <i>[Or:]</i> There are no sectional completion dates.
2.3 (i)	<i>[Either:]</i> The following additional documents shall form part of the Contract: <i>[insert names of documents]</i> <i>[Or:]</i> There are no additional documents.
<b>CONTRACTORS RIGHTS, OBLIGATIONS AND RESPONSIBILITIES</b>	
15.1	The Contractor's key personnel are: <i>[insert a list of names and functions before signing the Contract]</i>
17.1	<i>[Either:]</i> The schedule of other contracts and contractors is: <i>[insert names of contracts and contractors and brief description of the scope of each contract]</i> <i>[Or:]</i> There are no other contracts on or near the site that are likely to interfere with construction of the Works.
19.1	The minimum amounts of insurance and deductibles are: (a) for loss or damage to the Works, Plant and Materials: <i>[insert</i>



	<p><i>amounts]</i></p> <p>(b) for loss or damage to Equipment: <i>[insert amounts]</i></p> <p>(c) for loss or damage to property excluding the Works, Plant, Materials and Equipment: <i>[insert amounts]</i></p> <p>(d) for death or personal injury:</p> <p style="padding-left: 40px;">(i) of the Contractor’s employees: <i>[insert amounts]</i></p> <p style="padding-left: 40px;">(ii) of third parties: <i>[insert amounts]</i></p>
21.1	The Performance Security amount is AUD <i>[insert amount, being ten per cent of the estimated Contract Price]</i> in the form of an unconditional (on demand) Bank Guarantee in the form and wording shown Section 8, Security Forms.
<b>CONTRACT MANAGEMENT</b>	
29.1	The permitted time for submission of a Program for the Works is <i>[insert number]</i> calendar days from the date of the Letter of Acceptance.
29.2	The period between Program updates is <i>[insert number]</i> calendar days. The amount to be withheld for late submission of a Program update is AUD: <i>[insert amount]</i>
<b>QUALITY CONTROL</b>	
41.1	The Defects Liability Period shall be <i>[insert number of calendar days]</i> from the Completion Date. <i>[the usual minimum is 182 days and maximum 365 days]</i>
<b>PAYMENTS TO THE CONTRACTOR</b>	
45.1	<i>[Either:]</i> No adjustments shall be made. <i>[This applies if a contract is less than 18 months duration]</i> <i>[Or:]</i> The payment shall be increased by one half of one per cent for each entire month starting from the nineteenth month after the Start Date.
46.1	The Advance Payment shall be AUD <i>[insert amount, usually between 10% and 15% of the estimated contract value]</i>

## **SECTION 5: TECHNICAL SPECIFICATIONS**

*[The Technical Specification should be inserted here.]*

*[There will be standard clauses on materials that can be reused in many different contracts but also clauses specific to the type of works to be constructed under the contract.]*

*[The Technical Specification shall have a clause stating that all materials to be incorporated in the permanent Works will be new and unused.]*

## **SECTION 6: DRAWINGS**

### List of Drawings

*[Insert here a list of drawings from the Site Plan to detailed engineering drawings that will enable the Bidders to price the Works through the Bills of Quantities. The drawings themselves 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 7: BILLS OF QUANTITIES

### **[Objectives:**

*To permit bids to be prepared accurately based on unit rates for all items that make up the Works; and*

*To enable periodic and accurate valuation of Works executed.*

*The Works should be itemized in the Bill of Quantities(BOQ) to distinguish between the different types of Works, locations and other circumstances that impact on a Bidder's costs. The BOQ should be as simple and brief as possible and a typical format is:*

<b>Item No.</b>	<b>Item Description</b>	<b>Unit</b>	<b>Quantity</b>	<b>Rate (AUD)</b>	<b>Amount (AUD) (Quantity × Rate)</b>

*The Employer should complete the first four columns leaving unit rates and amounts to be entered by the Bidder.*

### **Day-work Schedule (Clause 36 of the GCC)**

*A Day-work Schedule provides rates for paying for small items of unforeseen work outside the scope of the BOQ. It should consist of a list of time-based rates for various classes of labour, materials and constructional plant to be priced by the Bidder.*

### **Provisional Sums**

*A provisional sum for physical contingencies (quantity overruns) should be included in the BOQ, priced by the Employer at 5-10% of the estimated cost of the Works.*

*The Employer may also include provisional sums in the BOQ for nominated subcontractors to supply special goods and equipment for incorporation into the Works (for example, mechanical and electrical items that would not normally be supplied by a civil engineering contractor. The Employer would normally select such specialized subcontractors through a procurement package and advise the Works contractor to enter into a subcontract with the winner, using the provisional sum in the BOQ to pay the subcontractor. In such cases, the BOQ should also include an item to be priced by the Bidders for attendance on the subcontractor.]*

## SECTION 8: BIDDING AND AGREEMENT FORMS

### 1. Bid Submission Form

*(Reproduce on Bidding Company’s Letter Heading.)*

Date: \_\_\_\_\_ (day, month year)

IFB No: OCB/ \_\_\_\_\_ (see IFB)

To: *[insert name of Employer – see Section 1]*

Offices of the Government of Tuvalu

Vaiaku

Funafuti

Tuvalu

In conformity with the Bidding Documents and in accordance with the Conditions of Contract, we offer to construct *[insert a brief description of the Works]*. The total price of our Bid, excluding any discount offered, is AUD *(insert amount in words and figures)*. We agree to complete the works according to the Technical Specification and the Drawings and within the time allowed.

The discount offered and the methodology for its application is: *(Insert the discount offered in AUD in words and figures and explain the methodology for its application. If provided in a separate letter as per ITB 14.5 state "shown on the letter of discount attached to this Bid Submission Form."; If no discounts are offered, state "no discounts are offered")*.

We hereby confirm that this bid will remain valid for *(insert same number of days as in Data Sheet 15.1)* calendar days after the deadline for submission of bids.

If our bid is accepted, we commit to obtain a Performance Security in accordance with ITB Clause 31 and GCC Clause 21 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 of Recipient	Address	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 note and accept without reservation the Government’s right to audit and inspect any and all records relating both to the preparation of our bid, and if our bid is successful, the execution of the resulting contract.

Signed: \_\_\_\_\_ Print name: \_\_\_\_\_

In the capacity of: \_\_\_\_\_ *[insert job title]*

Name and address of bidder: \_\_\_\_\_

\_\_\_\_\_

Affix company seal:

Phone number: \_\_\_\_\_

Fax number: \_\_\_\_\_

E-mail address: \_\_\_\_\_

**2. Declaration on Ethical Conduct**

*(Bidders shall sign this Declaration and include in their bids)*

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 the Public Procurement Regulations of Tuvalu; should we become aware of the potential for a conflict of interest, we will advise the Employer immediately; and
  - (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 Employer, 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 to be determined by the Government.

Authorised signature: \_\_\_\_\_

Name and job title: \_\_\_\_\_

Name and address of Bidder: \_\_\_\_\_

\_\_\_\_\_

Telephone No: \_\_\_\_\_

Fax No: \_\_\_\_\_

E-mail address: \_\_\_\_\_

Affix company seal:

### 3. Qualification Information

*(The following information is to be provided by bidders and shall be used for purposes of post qualification. This information shall not be incorporated in the Contract. Attach additional pages as necessary.)*

1. Provide the following information for individual Bidders or individual members of Joint Ventures:

1.1 Constitution or legal status of Bidder: *(attach copy)*

Place of registration: *(insert)*

Principal place of business: *(insert)*

Power of attorney of signatory of Bid: *(attach)*

1.2 Annual value in AUD of construction works performed in each of the last three years (refer to ITB Clause 6.1 (d))

Year 1 ( 20\_\_ ) amount:

Year 2 ( 20\_\_ ) amount:

Year 2 ( 20\_\_ ) amount:

1.3 Number of contracts of a nature and value similar to the Works performed as prime Contractor over the last five years (refer to ITB Clause 6.1 (e)) *(state number and total value of all contracts)*

1.4 Details of contracts underway or contractually committed (Refer to ITB Clause 6.1 (e))

Location	Client Name and Contact Details	Brief Description of Contract	Value (AUD)
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1.5 Availability of items of major construction equipment proposed to carry out the Contract (Refer to ITB Clause 6.1 (f))

Item	Manufacturer and Age	Condition	Owned or Leased
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1.6 Qualifications and experience of key site management and technical personnel who would work on the Contract (refer to ITB Clause 6.1 (g) and GCC Clause 15.1). (Note: the Employer reserves the right to request a signed CV for verification)



Name	Position	Total Years of Experience	Years of Experience in this Position
1.7	Copies of audited financial accounts for the last three years (refer to ITB Clause 6.1 (h) <i>(attach copies)</i> )		
1.8	Evidence of adequacy of working capital for this Contract, such as cash on hand and availability of lines of credit (refer to ITB Clause 6.1 (i) <i>(attach evidence)</i> )		
1.9	Authority for the Employer to seek references from the Bidder's banker (refer to ITB Clause 6.1 (j) <i>(attach letter of authority)</i> )		
1.10	Information regarding litigation in which the Bidder is involved, currently or during the last five years, the parties concerned and disputed amounts (refer to ITB Clause 6.1 (k) <i>(attach summary of information for each case, or state "none")</i> )		
1.11	A preliminary description of the proposed work method and schedule, including drawings and charts as necessary <i>(attach description)</i>		

#### 4. Letter of Acceptance

*[The Letter of Acceptance shall be the basis for formation of the Contract as described in ITB Clause 30. 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 Employer's letter heading]*

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

Date: \_\_\_\_\_

IFB No: OCB/\_\_\_\_\_

Dear Sirs,

#### **NOTIFICATION OF AWARD**

*[insert description of the Works]*

We are pleased to notify you that your Bid submitted on *[insert date of bid submission]* for the above Works, 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 30 and 31 and GCC Clause 21, 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 Employer]*

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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:

## 5. Contract Agreement

### CONTRACT AGREEMENT

THIS CONTRACT AGREEMENT is made on the \_\_\_ day of \_\_\_\_\_, 20\_\_

BETWEEN

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

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

WHEREAS the Contractor invited bids for certain Works, *[insert brief description of Works]* and has accepted a Bid by the Contractor to construct those Works 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 Employer and the Contractor, and each shall be read and construed as an integral part of the Contract:
  - (a) Agreement
  - (b) Letter of Acceptance
  - (c) Contractor’s Bid
  - (d) Special Conditions of Contract
  - (e) General Conditions of Contract
  - (f) Specifications
  - (g) Drawings
  - (h) Bills of Quantities
  - (i) Declaration on Ethical Conduct
  - (j) *[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 Employer to the Contractor as hereinafter mentioned, the Contractor hereby covenants with the Employer to execute the Works and to remedy defects therein in conformity in all respects with the provisions of the Contract.
5. The Employer hereby covenants to pay the Contractor in consideration of executing the Works 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 Employer

\_\_\_\_\_  
*[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 Contractor

\_\_\_\_\_  
*[signed by authorized representative of the Contractor]*

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

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

## SECTION 9: SECURITY FORMS

### 1. 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 Employer)*

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 Employer)* of the Government of Tuvalu

We have been informed that *(insert name of the Bidder<sup>1</sup>)* (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

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<sup>1</sup> *[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.]*

furnish the Performance Security 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.

**2. 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 Employer]*

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 Employer 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 and Performance 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\_\_

### 3. 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 Employer)*

PERFORMANCE GUARANTEE No: *(insert number)*

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

We have been informed that *(insert complete name of Contractor)* (hereinafter called "the Contractor") has entered into Contract No. *(insert number)* dated *(insert day, month and year)* with you, for the execution of [*description of the Works*] (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 Contractor, 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 Contractor to be in default under the Contract, without cavil or argument, or your needing to prove or to show grounds or reasons for your demand or the sum specified therein.

This Guarantee shall expire no later than *(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.



#### 4. Bank Guarantee for Advance Payment

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

##### **Bank Guarantee for Advance Payment**

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

ADVANCE PAYMENT GUARANTEE No: *(insert number)*

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

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

Furthermore, we understand that, according to the Conditions of Contract, an advance payment is to be made to the Contractor 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 Contractor is in breach of its obligation under the Contract because the Contractor used the advance payment for purposes other than towards the execution of the Works.

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 Contractor under the Contract until *(insert Intended Completion Date 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.