



**GOVERNMENT OF THE INDEPENDENT STATE OF SAMOA**

**BIDDING DOCUMENT FOR THE PROCUREMENT OF CONSULTING  
SERVICES**

**FOR THE PROCUREMENT OF PROJECT MANAGER FOR THE  
DETAILED DESIGN AND CONSTRUCTION OF THE SAVALALO NEW  
FLEA MARKET**

**SLC-PMSAV-2022.**

**BY OPEN COMPETITIVE BIDDING**

**ISSUED ON: 21st August 2022**

**PROCURING ENTITY: Samoa Land Corporation**

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## SECTION 1 – LETTER OF INVITATION

*The Implementing agency must prepare the Letter of Invitation on official stationery with its letterhead clearly showing the Agency's complete name and address*

***Note:** All italicised text is for use in preparing this form and shall be deleted from the final fully edited versions.*

*If Applicable, insert Invitation No.*

*21st August 2022*

*Insert: To All Local Qualified Bidders*

Dear Mr/Ms:

- (a) The Government of Samoa (“procuring entity”) has available Donor *funds from the Government of New Zealand* toward the cost of *Detailed Design and Construction of the New Savalalo Flea Market Project*. The procuring entity intends to apply a portion of the funds to payments under the contract for which this Request for Proposals is issued.
- (b) The Samoa Land Corporation now invites proposals to provide the following consulting services: Project Manager for the detailed design and construction of the New Savalalo Flea Market Project. More details on the services are provided in the Terms of Reference.  
  
NA - Shortlisted consultants are not to transfer this invitation to any other firm.
- (c) A firm will be selected under **Quality and Cost Selection Method** and procedures described in this RFP, in accordance with Treasury Instructions – Section 6: Procurement & Contracting (Part K Amended 2020).
- (d) The RFP includes the following documents:
  - Section 1 - Letter of Invitation
  - Section 2 - Instructions to consultants (including Data Sheet)
  - Section 3 - Technical Proposal - Standard Forms
  - Section 4 - Financial Proposal - Standard Forms
  - Section 5 - Terms of Reference
  - Section 6 - Standard Forms of Contract
- (e) Please inform us in writing, before the closing date of submission, at the following address [inform@samoaland.gov.ws](mailto:inform@samoaland.gov.ws), upon receipt:
  - i. That you received the Letter of Invitation; and
  - ii. Whether you will submit a proposal alone or in association with other firms.

**Yours sincerely,**

Ulugia Petelo Kavesi  
General Manager  
Samoa Land Corporation  
Tuanaimato,  
APIA.

## SECTION 2 – INSTRUCTION TO CONSULTANTS

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## Instructions to Consultants

### 1. Definitions

- (a) “consultant” means any entity or person that may provide or provides the services to the procuring entity under the Contract;
- (b) “Contract” means the Contract signed by the Parties and all the documents listed in its General Conditions of Contract (GCC), the Special Conditions of Contract (SCC), and the Appendices;
- (c) “Data Sheet” means such part of the Instructions to consultants used to reflect specific country and assignment conditions;
- (d) “Day” means calendar day;
- (e) “Government” means the Government of the Independent State of Samoa;
- (f) “Instructions to Consultants” or “ITC” (Section 2 of the RFP) means the document which provides shortlisted consultants with all information needed to prepare their Proposals;
- (g) “in writing” means a communication in hand or machine written type and includes messages by facsimile, e-mail and other electronic forms of communications with proof of receipt.
- (h) “Joint Venture (JV)” means an association with or without a legal personality distinct from that of its members, of more than one Consultant where one member has the authority to conduct all business for and on behalf of any and all the members of the JV, and where the members of the JV are jointly and severally liable to the procuring entity for the performance of the contract.
- (i) “Letter of Invitation” or “LOI” (Section 1 of the RFP) means the Letter of Invitation being sent by the procuring entity to the shortlisted consultants;
- (j) “Personnel” means professionals and support staff provided by the consultant or by any Sub-consultant and assigned to perform the services or any part of the services; “Foreign Personnel” means such professionals and support staff who at the time of being so provided had their domicile outside Samoa; “Local Personnel” means such professionals and support staff who at the time of being so provided had their domicile in Samoa;

- (k) “procuring entity” means any Government Ministry or public body engaging in procurement and the agency with which the selected consultant signs the Contract;
- (l) “professional staff” means, collectively any personnel of the Consultant, Sub-consultant or JV member(s) whose skills, qualifications, knowledge and experience are critical to the performance of the consulting services under the contract and whose CV is taken into account in the technical evaluation of the Consultant’s Proposal. It may also include personnel who are assigned to perform the consulting services or any part thereof under the contract and whose CVs are not evaluated individually.
- (m) “Proposal” means the Technical Proposal and the Financial Proposal;
- (n) “Request for Proposal” or “RFP” means the document to be prepared by the procuring entity for the selection of consultants, based on the SBD;
- (o) “services” means the tasks or obligations to be performed by the consultant pursuant to the Contract;
- (p) “Sub-consultant” means any person or entity with which the consultant subcontracts any part of the services;
- (q) “Terms of Reference” or “TOR” means the document included in the RFP as Section 5 which explains the objectives, scope of services, activities, tasks to be performed, respective responsibilities of the procuring entity and the consultant and expected results and deliverables of the assignment.
- (r) if the context so requires, “singular” means “plural” and vice versa.

## **2. Introduction**

- 2.1 The procuring entity named in the Data Sheet will select a consulting firm or organisation (the consultant) from those listed in the LOI, in accordance with the method of selection specified in the Data Sheet.
- 2.2 The shortlisted consultants are invited to submit a Technical Proposal and a Financial Proposal, or a Technical Proposal only, as specified in the Data Sheet, for consulting services required for the assignment named in the Data Sheet. The name and identification number of this international competitive bidding (RFP) procurement are specified in the Data Sheet.

- 2.3 The Proposal will be the basis for contract negotiations and ultimately for a signed Contract with the selected consultant, although any terms or conditions (relating to application of taxes, duties or levies required by law) may change prior finalisation of the Contract provided that the correct application is confirmed by the Ministry for Revenue and such change agreed to by both Parties.
- 2.4 Consultants should familiarise themselves with local conditions and take them into account in preparing their Proposals.
- 2.5 The consultant may also attend a pre-proposal conference, at their own expense, if one is specified in the Data Sheet. Consultants should contact the procuring entity or procuring entity's representative named in the Data Sheet to arrange for their visit or to obtain additional information on the pre-proposal conference. Consultants should ensure that these officials are advised of the visit in adequate time to allow them to make appropriate arrangements
- 2.6 The procuring entity will make available at no cost to the consultants the inputs and facilities specified in the Data Sheet. The procuring entity shall also endeavour to assist the firm in expediting the process to obtaining licenses and permits needed to carry out the services and make available relevant project data and reports.
- 2.7 Consultants shall bear all costs associated with the preparation and submission of their proposals and contract negotiation. The procuring entity is not bound to accept any proposal and reserves the right to annul the selection process at any time prior to Contract award, without incurring any liability to the consultants.

### **3. Conflict of Interest**

- 3.1 The consultant is required to provide professional, objective, and impartial advice and at all times hold the procuring entity's interests paramount, strictly avoid conflicts with other assignments or their own corporate interests and act without any consideration for future work.
- 3.2 Without limitation on the generality of the foregoing, *consultants*, and any of their affiliates, shall be considered to have a conflict of interest and shall not be contracted, under any of the circumstances set forth below:
  - (i) A consultant who are or have been associated in the past, with a firm or any of its affiliates which have been engaged



by the procuring entity to provide consulting services for the preparation of the design, specifications, and other documents to be used for the procurement of consulting services under these bidding documents; or

- |                                  |       |  |
|----------------------------------|-------|--|
|                                  | (ii)  | A consultant that submits more than one Proposal in this bidding process, however, this does not limit the participation of subcontractors in more than one Proposal.  |
| <b>Conflicting Activities</b>    | (iii) | A firm that has been engaged by the procuring entity to provide goods, works or services other than consulting services for a project, and any of its affiliates, shall be disqualified from providing consulting services related to those goods, works or services. Conversely, a firm hired to provide consulting services for the preparation or implementation of a project, and any of its affiliates, shall be disqualified from subsequently providing goods or works or services other than consulting services resulting from or directly related to the firm's consulting services for such preparation or implementation. For the purpose of this paragraph, services other than consulting services are defined as those leading to a measurable physical output, for example surveys, exploratory drilling, aerial photography, and satellite imagery. |
| <b>Conflicting Assignments</b>   | (iv)  | A consultant (including its Personnel and Sub-consultants) or any of its affiliates shall not be hired for any assignment that, by its nature, may be in conflict with another assignment of the consultant to be executed for the same or for another procuring entity. For example, a consultant hired to prepare engineering design for an infrastructure project shall not be engaged to prepare an independent environmental assessment for the same project, and a consultant assisting a procuring entity in the privatisation of public assets shall not purchase, nor advise purchasers of, such assets. Similarly, a consultant hired to prepare Terms of Reference for an assignment should not be hired for the assignment in question.  |
| <b>Conflicting Relationships</b> | (v)   | A consultant (including its Personnel and Sub-consultants) that has a business or family relationship with a member of the procuring entity's staff who is directly or indirectly involved in any part of: (i) the preparation of the Terms of Reference of the assignment; (ii) the selection process for such assignment; or (iii) supervision of the Contract, may not be awarded a Contract, unless the conflict stemming  |

from this relationship has been resolved in a manner acceptable to the procuring entity throughout the selection process and the execution of the Contract.

3.3 Consultants must disclose any situation of actual or potential conflict that impacts their capacity to serve the best interest of the procuring entity, or that may reasonably be perceived as having this effect. Failure to disclose said situations may lead to the disqualification of the consultant or termination of its Contract and/or sanctions by the Government.

3.4 No agency or current employees of the procuring entity shall work as consultants under their own ministries, departments or agencies. On the other hand, former government employees of the procuring entity may be recruited to work for their former ministries, departments or agencies is acceptable provided that there is no conflict of interest. When the consultant nominates any person employed in a Government ministry or public body<sup>1</sup> (other than for the procuring entity) in their technical proposal, such personnel must have written authorisation from the Public Service Commission in the case of an employee in a Government Ministry or certification from the appointing authority of an employee in a public body. Such authorisation must confirm and allow for such employee to work and commit full-time to the consulting services (outside of his or her official position with Government Ministry or public body). Such certification shall be provided to the procuring entity by the consultant as part of his or her technical proposal.

#### **Unfair Advantage**

3.5 If a shortlisted consultant could derive a competitive advantage from having provided consulting services related to the assignment in question, the procuring entity shall make available to all shortlisted consultants together with this RFP all information that would in that respect give such consultant any competitive advantage over competing consultants.

#### **4. Fraud and Corruption**

4.1 All participants in the selection process as well as consultants and their sub-consultants must observe the highest standard of ethics during the selection and execution

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<sup>1</sup> The reference to public body shall have the same meaning as defined under the *Public Finance Management Act 2001*;

of contracts.<sup>2</sup> For the purposes this section, the procuring entity:

- (a) Defines, for the purposes of this provision, the terms set forth below as follows:
  - (i) “corrupt practice ” is the offering, giving, receiving or soliciting, directly or indirectly, of anything of value to influence improperly the actions of another party;
  - (ii) “fraudulent practice ” is any act or omission, including misrepresentation, that knowingly or recklessly misleads, or attempts to mislead, a party to obtain financial or other benefit or to avoid an obligation;
  - (iii) “collusive practices ” is an arrangement between two or more parties designed to achieve an improper purpose, including to influence improperly the actions of another party;
  - (iv) “coercive practices ” is impairing or harming, or threatening to impair or harm, directly or indirectly, any party or the property of the party to influence improperly the actions of a party;
  - (v) “obstructive practice” means:
    - (aa) deliberately destroying, falsifying, altering or concealing of evidence material to the investigation or making false statements to investigators in order to materially impede a Government investigation into allegations of a corrupt, fraudulent, coercive, or collusive practice; and/or threatening, harassing, or intimidating any party to prevent it from disclosing its knowledge of matters relevant to the investigation or from pursuing the investigation; or
    - (bb) acts intended to materially impede the exercise of the Government’s inspection and audit rights.

#### 4.2 The procuring entity will:

- (i) reject a proposal for award if it determines that the consultant recommended for award has, directly or

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<sup>2</sup> In this context, any action taken by a consultant or a sub-consultant to influence the selection process or contract execution for undue advantage is improper.

through an agent, engaged in corrupt, fraudulent, collusive, coercive, or obstructive practices in competing for the contract in question;

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

4.3 A person who commits an offence relating to corrupt activities in Samoa Shall:

- (a) be liable for conviction under the provisions of the laws of the Independent State of Samoa relating to corrupt activities in Samoa;
- (b) have their bid rejected if it is determined that the consultant is not in compliance with the laws of the Independent State of Samoa relating to corrupt activities in Samoa;

- (c) risk other sanctions in accordance with the Procurement Suspensions and Debarments Procedure. The bidding process is open to all eligible bidders.

- 4.4 Furthermore, consultants shall be aware of the provision stated in **GCC 35.1** of this bidding document with regard to termination.

## **5. Eligibility**

- 5.1 A consultant may be a natural person, private entity, or government-owned entity or a joint venture (JV), under an existing agreement, or with the intent to constitute a legally-enforceable JV (supported by a letter of intent). All partners shall be jointly and severally liable for the execution of the Contract in accordance with the terms and conditions of Contract. The JV shall nominate a Representative who shall have the authority to conduct all business for and on behalf of any and all the members of the JV during the bidding process and, in the event the JV is awarded the Contract, during contract execution. Unless specified in the Data Sheet, there is no limit on the number of members in a JV.

- 5.2 A consultant shall be deemed to have the nationality of a country if the consultant is a citizen or is constituted, or incorporated, and operates in conformity with the provisions of the laws of that country. This criterion shall also apply to the determination of the nationality of proposed subcontractors or suppliers for any part of the Contract including related services.

- 5.3 An eligible consultant (regardless of its country of registration and including any director, officer, manager or supervisor of the consultant) shall not within a period of 3 years preceding the date of issuance of the invitation to bid have been:

- (a) convicted of any criminal offence, whether in Samoa or elsewhere:
  - (i) relating to his or her professional conduct;
  - (ii) relating to the making of false statements or misrepresentations as to his or her qualifications to enter into a procurement contract;
  - (iii) involving dishonesty; or
  - (iv) under anti-corruption legislation; or

- (b) suspended or disbarred by administrative or judicial proceedings from participating in procurements, whether in Samoa or elsewhere; or
  - (c) convicted of an offence involving dishonesty, obstruction of justice or a lack of honesty or business integrity; or
  - (d) convicted for an offence involving corruption; or
  - (e) convicted for engaging in anti-competitive practices, whether or not involving collusion; or
- 5.4 deliberately neglectful or failed without good cause to perform a contract in accordance with its terms, if so serious in nature as to justify suspension or debarment.
- 5.5 The bidding process is open to all eligible consultants.
- 5.6 A consultant shall not have a conflict of interest. All consultants found to have conflict of interest shall be disqualified. consultants may be considered to have a conflict of interest with one or more parties in the bidding process if they are or have been associated in the past, with a firm or any of its affiliates which have been engaged by the procuring entity to provide consulting services for the preparation of the design, specifications, and other documents to be used for the procurement of the goods to be purchased under this bidding document; or that has been hired (or is proposed to be hired) by the procuring entity as Project Manager for the Contract.
- 5.7 A firm that has been sanctioned by the Government in accordance with ITC 4 shall be ineligible to be awarded a contract, or benefit from a Government-financed contract, financially or otherwise, during such period of time as the Government shall determine.
- 5.8 In accordance with the Instructions, the consultant and any named Sub-consultants shall certify in the Bid Submission Form that they are in good standing with the Government and have paid all taxes, duties, fees and other impositions as may be levied in Samoa prior to the award of contract. Evidence of such certification may be required from the successful consultant prior to award of contract.
- 5.9 Foreign Government-owned enterprises and public bodies in Samoa shall be eligible only if they can establish that they:
- (i) are legally and financially autonomous,

- (ii) operate under commercial law, and
- (iii) are not a dependent agency of the procuring entity.

- 5.10 Failure to directly purchase or receive the bidding documents from the procuring entity will result in ineligibility of that consultant from participating in the procurement process.
- 5.11 Consultant shall provide such evidence of their continued eligibility satisfactory to the procuring entity as the procuring entity shall reasonably request.
- 5.12 In case a shortlisted consultant intends to associate with consultants who have been shortlisted and/or individual expert(s), such other consultants and/or individual expert(s) shall be subject to the same eligibility criteria.

**6. Proposal by Consultants and Sub-Consultants**

- 6.1 Shortlisted consultants (including members of a JV) may only submit one proposal. If a consultant submits or participates in more than one proposal, all such proposals shall be disqualified. However, this does not limit the participation of the same Sub-consultant, including individual experts, to more than one proposal.

**7. Validity of Proposal**

- 7.1 The Data Sheet indicates how long consultants' Proposals must remain valid after the submission date. A Proposal valid for a shorter period shall be rejected by the procuring entity as non-responsive. During this period, consultants shall maintain the availability of professional staff nominated in the Proposal.
- 7.2 If it is established that any professional staff nominated in the consultant's Proposal was not available at the time of Proposal submission or was included in the Proposal without his/her confirmation, such Proposal may be disqualified and rejected for further evaluation and may be subject to sanctions in accordance with Clause 4 of this ITC.
- 7.3 The procuring entity will use its best efforts to complete negotiations within this period. However, should the need arise, the procuring entity may request consultants to extend the validity period of their proposals. Consultants who agree to such extension shall confirm that they maintain the availability of the professional staff nominated in the Proposal

- 7.4 Consultants have the right to refuse to extend the validity of their Proposals and the original Proposal will not be evaluated further
- 7.5 If any of the professional staff become unavailable for the extended validity period, the consultant shall provide a written adequate justification and evidence satisfactory to the procuring entity together with the substitution request. In such case, a replacement professional staff shall have equal or better qualifications and experience than those of the originally proposed professional staff. The technical evaluation score, however, will remain to be based on the evaluation of the CV of the original professional staff.
- 7.6 If the Consultant fails to provide a replacement professional staff with equal or better qualifications, or if the provided reasons for the replacement or justification are unacceptable to the procuring entity, such Proposal will be rejected.
- 7.7 The Consultant shall not subcontract the whole of the consulting services.
- 8. Clarification and Amendment of RFP Documents**
- 8.1 Consultants may request a clarification of any of the RFP documents up to the number of days indicated in the Data Sheet before the submission of Proposals. Any request for clarification must be in writing and delivered by post mail or facsimile or hand delivered to the procuring entity's address indicated in the Data Sheet. The procuring entity will respond in writing and will hand deliver or post mail or facsimile written copies of the response (including an explanation of the query but without identifying the source of inquiry) to all consultants to their respective addresses.
- 8.2 Should the procuring entity deem it necessary to amend the RFP as a result of a clarification, it shall do so following the procedure under paragraph 8.3.
- 8.3 At any time before the submission of Proposals, the procuring entity may amend the RFP by issuing an addendum in writing. The addendum shall be sent to all consultants and will be binding on them. Consultants shall acknowledge receipt of all amendments. To give consultants reasonable time in which to take an amendment into account in their Proposals the procuring entity may, if the amendment is substantial, extend the deadline for the submission of Proposals.



- 9. Cost of Preparation of Proposal**
- 9.1 The consultant shall bear all costs associated with the preparation and submission of its Proposal, and the procuring entity shall not be responsible or liable for those costs.
- 9.2 The procuring entity shall incur no liability by virtue of it exercising its power to cancel a procurement.
- 10. Preparation of Proposals**
- 10.1 The Proposal as well as all related correspondence exchanged by the consultants and the procuring entity, shall be written in the English language. Supporting documents and printed literature that are part of the Proposal may be in another language provided they are accompanied by an accurate translation of the relevant passages into the English language, in which case, for purposes of interpretation of the Proposal, such translation shall govern.
- 10.2 In preparing their Proposal, consultants are expected to examine in detail the documents comprising the RFP. Material deficiencies in providing the information requested will result in rejection of a Proposal.
- 10.3 The Proposal shall comprise the documents and forms listed in the Data Sheet without omission or modification to their format.
- 10.4 In addition to the requirements under ITC 10.3, Proposals submitted by a JV shall include a copy of the JV Agreement entered into by all partners. Alternatively, a Letter of Intent to execute a JV Agreement in the event of a successful Proposal shall be signed by all partners and submitted with the Proposal, together with a copy of the proposed agreement.
- 10.5 While preparing the Technical Proposal, consultants must give particular attention to the following:
- (a) If a shortlisted consultant considers that it may enhance its expertise for the assignment by associating with other consultants in a joint venture or sub-consultancy, it may associate with either: (a) non-shortlisted consultant(s); or (b) shortlisted consultants if permitted in the Data Sheet. A shortlisted consultant must first obtain the approval of the procuring entity if it wishes to enter into a joint venture with non-shortlisted or shortlisted consultant(s). In case of association with non-shortlisted consultant(s) in a JV or sub-consultancy, the shortlisted consultant shall act as lead member. In case of a joint venture, all partners shall be jointly and severally liable. If shortlisted

consultants form a JV then any of them may be lead member.

- (b) Although the Proposal is based on the number of professional staff-months or budget estimated by the consultants, the Data Sheet must show either the estimated number of professional staff-months or the budget for executing the assignment. This estimate is indicative, and the Proposal shall be based on the consultant's own estimates for the same.
- (c) For fixed-budget-based assignments (SFB), the available budget is given in the Data Sheet, and the Financial Proposal shall not exceed this budget, while the estimated number of professional staff-months shall not be disclosed.
- (d) Alternative professional staff shall not be proposed, and only one curriculum vitae (CV) is required to be submitted for each position.

## **11. Technical Proposal Format and Content**

11.1 Depending on the nature of the assignment, consultants are required to submit a Full Technical Proposal (FTP), or a Simplified Technical Proposal (STP). The Data Sheet indicates the format of the Technical Proposal to be submitted. Submission of the wrong type of Technical Proposal will result in the Proposal being deemed non-responsive. The Technical Proposal shall provide the information indicated in the following paragraphs from (a) to (g) using the attached Standard Forms (Section 3). Paragraph (c)(ii) indicates the recommended number of pages for the description of the approach, methodology and work plan of the STP. A page is considered to be one printed side of A4 or letter size paper.

- (a) (i) For the FTP only: a brief description of the consultants' organisation and an outline of recent experience of the consultants and, in the case of joint venture, for each partner, on assignments of a similar nature is required in Form TECH-2 of Section 3. For each assignment, the outline should indicate the names of Sub-consultants/ professional staff who participated, duration of the assignment, contract amount, and consultant's involvement. Information should be provided only for those assignments for which the consultant was legally contracted by the client as a corporation or as one of the major firms

within a joint venture. Assignments completed by individual professional staff working privately or through other consulting firms cannot be claimed as the experience of the consultant, or that of the consultant's associates, but can be claimed by the professional staff themselves in their CVs. Consultants should be prepared to substantiate the claimed experience if so requested by the procuring entity.

- (ii) For the STP the above information is not required and Form TECH-2 of Section 3 shall not be used.
- (b)
  - (i) For the FTP only: comments and suggestions on the Terms of Reference including workable suggestions that could improve the quality or effectiveness of the assignment; and on requirements for counterpart staff and facilities (including administrative support, office space, local transportation, equipment, data, and other matters to be provided by the procuring entity (Form TECH-3 of Section 3)).
  - (ii) For the STP Form TECH-3 of Section 3 shall not be used; the comments and suggestions, if any, on matters referred to in clause 3.4(b)(i), should be incorporated into the description of the approach and methodology (refer to following sub-paragraph 3.4(c)(ii)).
- (c)
  - (i) For the FTP, and STP: a description of the approach, methodology and work plan for performing the assignment covering the following subjects: technical approach and methodology, work plan, and organisation and staffing schedule. Guidance on the content of this section of the Technical Proposals is provided under Form TECH-4 of Section 3. The work plan should be consistent with the Work Schedule (Form TECH-8 of Section 3) which will show in the form of a bar chart the timing proposed for each activity.
  - (ii) For the STP only: the description of the approach, methodology and work plan should normally consist of 10 pages, including charts, diagrams, and comments and suggestions, if any, on Terms of Reference and counterpart staff and facilities.

- (d) The list of proposed professional staff team by area of expertise, the position that would be assigned to each staff team member, and their tasks (Form TECH-5 of Section 3).
- (e) Estimates of the staff input (staff-months of foreign and local professionals) needed to carry out the assignment (Form TECH-7 of Section 3). The staff-months input should be indicated separately for home office and field activities, and for foreign and local professional staff.
- (f) CVs of the professional staff signed by the staff themselves or by the authorized representative of the professional staff (Form TECH-6 of Section 3).
- (g) For the FTP only: a detailed description of the proposed methodology and staffing for training, if the Data Sheet specifies training as a specific component of the assignment.

11.2 The Technical Proposal shall not include any financial information. A Technical Proposal containing financial information shall be declared non responsive.

## **12. Financial Proposal**

12.1 The Financial Proposal shall be prepared using the attached Standard Forms (Section 4). It shall list all costs associated with the assignment, including: (a) remuneration for staff (foreign and local, in the field and at the consultants' home office); and (b) reimbursable expenses indicated in the Data Sheet.

12.2 If specified in the Data Sheet, these costs should be broken down by activity and, if appropriate, into foreign and local expenditures. All activities and items described in the Technical Proposal must be priced separately; activities and items described in the Technical Proposal but not priced, shall be assumed to be included in the prices of other activities or items.

## **13. Taxes**

13.1 The consultant may be subject to local taxes, duties, fees or other levies as required by law, on amounts payable by the procuring entity to the consultant, under the Contract. The procuring entity will state in the Data Sheet if the consultant is subject to payment of any local taxes, duties, fees or other levies required by law.

13.2 Any such amounts shall not be included in the Financial Proposal as they will not be evaluated. Any applicable local taxes, duties, fees or other levies will be discussed at contract negotiations and any such applicable amounts will be included in the Contract prior finalisation and signing of the Contract.

**14. Currency of Proposal and Payment**

14.1 The currency(ies) of the Proposal and currency(ies) of payments shall be the same. Consultants may express the price of their services in a maximum of three freely convertible currencies.

14.2 The consultants shall quote the portion of their price representing local cost in the Samoan Tala (SAT\$) unless otherwise specified in the Data Sheet.

14.3 Commissions and gratuities, if any, paid or to be paid by consultants and related to the assignment will be listed in the Financial Proposal Form FIN-1 of Section 4.

**15. Submission, Sealing and Marking of Proposals**

15.1 The original proposal and all copies shall be typed, digitally entered or written in permanent ink. And stamped by a person duly authorised to sign on behalf of the consultant. It shall contain no interlineations or overwriting, except as necessary to correct errors made by the consultants themselves. The authorised representative must initial such corrections.

15.2 The written confirmation of authorisation to sign on behalf of consultants shall be:

(a) Although notarized Power of Attorney authorising and assigning the authority of the signatory to sign the bid in all its parts; and

(b) in the case of a bid submitted by an existing JV joint venture (“JV”), a notarised undertaking signed by all parties:

(i) stating that all parties shall be jointly and severally liable, if so required in accordance with ITC 5.1, and

(ii) nominating a representative who shall have the authority to conduct all business for and on behalf of any and all the parties of the JV during the bidding process and in the event the JV is awarded the Contract, during contract execution.

15.3 The consultant shall prepare on original can clearly mark it as “ORIGINAL”. The consultant shall submit copies of the proposal in the number specified in the Data Sheet and clearly

mark them “COPY”. If there are discrepancies between the original and the copies of the Technical Proposal, the original prevails.

15.4 The original and all copies of the Technical Proposal shall be placed in one sealed envelope clearly marked “Technical Proposal”. Similarly, the original Financial Proposal (if required under the selection method indicated in the Data Sheet) shall be placed in one sealed envelope clearly marked “Financial Proposal” followed by the RFP number and the name of the assignment, and a warning note stating: “Do Not Open With The Technical Proposal.”

15.5 The envelopes containing the Technical and Financial Proposals shall be placed together in one envelope (“outer envelope”) and sealed. This outer envelope shall bear the submission address, reference number and title of the RFP, and a note clearly marked stating: “Do Not Open, Except in Presence of the Official Appointed, before [insert the time and date of the submission deadline indicated in the Data Sheet]”.

15.6 The procuring entity shall not be responsible for misplacement, losing or premature opening if the outer envelope is not sealed and/or marked as stipulated. This circumstance may be case for Proposal rejection. If a Financial Proposal which has been submitted is not placed in a separate sealed envelope and duly marked as specified.

15.7 The Proposals must be sent to the address(es) indicated in the Data Sheet and received by the procuring entity no later than the time and the date indicated in the Data Sheet. Any proposal received by the procuring entity after the deadline for submission shall be returned unopened.

## **16. Opening of Technical Proposals**

16.1 The procuring entity shall conduct the Proposal opening in public at the address, date and time specified in the Data Sheet and in accordance with ITC Sub-Clauses 16.2 to 16.7. The envelopes with the Financial Proposal shall remain sealed and shall be securely stored with a reputable public auditor or independent authority until they are opened in accordance with ITC 20.

16.2 Envelopes marked “WITHDRAWAL” shall be opened and read out and the envelope with the corresponding Proposal shall not be opened but returned to the consultant. If the withdrawal envelope does not contain a copy of the “power of attorney” confirming the signature as a person duly authorized

to sign on behalf of the consultant, the corresponding Proposal will be opened. No Proposal withdrawal shall be permitted unless the corresponding withdrawal notice contains a valid authorization to request the withdrawal and is read out at Proposal opening.

16.3 Envelopes marked “MODIFICATION” shall be opened and read out with the corresponding Proposal. No Proposal modification shall be permitted unless the corresponding modification notice contains a valid authorization to request the modification and is read out at Proposal opening. Only envelopes that are opened and read out at Proposal opening shall be considered further.

16.4 All other envelopes shall be opened one at a time, reading out: (i) the name and the country of the consultant or, in case of a JV, the name of the JV, the name of the lead member and the names and the countries of all members; (ii) the presence or absence of a duly sealed envelope with the Financial Proposal; (iii) any modifications to the Proposal submitted prior to Proposal submission deadline; and (iv) any other information deemed appropriate or as indicated in the Data Sheet.

16.5 The procuring entity shall prepare a record of the Proposal opening.

16.6 The consultants’ representatives who are present shall be requested to sign the attendance sheet.

16.7 A copy of the record shall be distributed to all consultants who submitted proposals in time.

## **17. Proposal Evaluation**

17.1 From the time the Proposals are opened to the time the Contract is awarded, the consultants should not contact the procuring entity on any matter relating to its Technical or Financial Proposal. Any effort by consultants to influence the procuring entity in the examination, evaluation, ranking of Proposals, and recommendation for award of Contract may result in the rejection of the consultants’ Proposal.

17.2 Evaluators of Technical Proposals shall have no access to the Financial Proposals until the technical evaluation is concluded.

17.3 The consultant is not permitted to alter or modify its Proposal in any way after the Proposal submission deadline except as

permitted under ITC 7.5. While evaluating the Proposals, the procuring entity will conduct the evaluation solely on the basis of the submitted Technical and Financial Proposals.

**18. Evaluation of Technical Proposals**

18.1 The Bid Evaluation Committee shall evaluate the Technical Proposals on the basis of their responsiveness to the TOR, applying the evaluation criteria, sub-criteria, and point system specified in the Data Sheet.

18.2 A proposal may be rejected at this stage if it does not respond to important aspects of the RFP or if it fails to achieve a minimum technical score if so indicated in the Data Sheet.

**19. Financial Proposals for QBS**

19.1 Following the ranking of technical Proposals, when selection is based on quality only (QBS), the first ranked consultant is invited to negotiate its proposal and the Contract in accordance with ITC 21.

19.2 Where Technical and Financial Proposals have been submitted in separate envelopes. Only the Financial Proposal of the first ranked consultant will be opened. Any other Financial Proposals will be returned once the Contract has been signed.

**20. Public Opening and Evaluation of Financial Proposals (only for QCBS, SFB and LCS)**

20.1 After the technical evaluation is completed the procuring entity shall inform the consultants who submitted a proposal the technical scores. Those consultants whose Proposals did not meet the minimum qualifying mark or were considered non responsive to the RFP will be advised that their Financial Proposals will be returned unopened after completing the selection process.

20.2 The procuring entity shall simultaneously notify in writing consultants that have secured the minimum qualifying mark, the date, time and location for opening the Financial Proposals. The opening date should allow consultants sufficient time to make arrangements for attending the opening. Consultants' attendance at the opening of Financial Proposals is optional.

20.3 The Financial Proposals shall be opened in the presence of the consultants or their respective representatives, Tenders Board and representatives of the procuring entities. The name of the consultants and the technical scores of the consultants shall be read aloud. The Financial Proposal of the consultants who met the minimum qualifying mark will then be inspected to confirm that they have remained sealed and unopened. These



Financial Proposals shall be opened, and the total prices read aloud and recorded.

20.4 A copy of the record shall be sent to all consultants who submitted Proposals.

20.5 The Bid Evaluation Committee will correct any computational errors. When correcting computational errors, in case of discrepancy between a partial amount and the total amount, the partial amount prevails; and in case of discrepancy between numerals in words and figures the numerals in word form prevails. In addition, activities and items described in the Technical Proposal and not priced, shall be assumed to be included in the prices of other activities or items. In case an activity or line item is quantified in the Financial Proposal differently from the Technical Proposal:

- (a) If the Time-Based form of contract has been included in the RFP, the Bid Evaluation Committee shall correct the quantification indicated in the Financial Proposal so as to make it consistent with that indicated in the Technical Proposal, apply the relevant unit price included in the Financial Proposal to the corrected quantity and correct the total Proposal cost;
- (b) if the Lump-Sum form of contract has been included in the RFP, no corrections are applied to the Financial Proposal in this respect.

20.6 For evaluation purposes, prices shall be converted to a single currency specified in the Data Sheet using the selling rates of exchange, source and date indicated in the Data Sheet.

20.7 In case of QCBS, the lowest evaluated Financial Proposal (FM) will be given the maximum financial score (Sf) of 100 points. The financial scores (Sf) of the other Financial Proposals will be computed as indicated in the Data Sheet. Proposals will be ranked according to their combined technical (St) and financial (Sf) scores using the weights (T = the weight given to the Technical Proposal; P = the weight given to the Financial Proposal; T + P = 1) indicated in the Data Sheet:  $S = St \times T\% + Sf \times P\%$ . The firm achieving the highest combined technical and financial score will be invited for negotiations.

20.8 In the case of Selection under fixed budget (SFB) the procuring entity will select the firm that submitted the highest ranked Technical Proposal within the budget. Proposals that exceed the indicated budget will be rejected.

20.9 In the case of the Least-Cost Selection (LCS) the Bid Evaluation Committee will select the lowest proposal among those that passed the minimum technical score.

20.10 In both SFB and LCS cases the evaluated proposal price according to paragraph 20.5 shall be considered, and the selected firm is invited for negotiations.

## **21. Negotiation**

21.1 Negotiations will be held at the date and address indicated in the Data Sheet. The invited consultant will, as a pre-requisite for attendance at the negotiations, confirm availability of all professional staff. Failure to confirm availability may result in the rejection of the consultants' Proposal and the procuring entity shall move to the next ranked consultant.

21.2 The consultant's representative who attends the negotiations must be authorised to negotiate and sign the Contract on behalf of the consultant.

21.3 Failure of the consultant or its representative(s) to attend any negotiations may result in the procuring entity proceeding to negotiate with the next-ranked consultant.

21.4 The procuring entity shall prepare minutes of the negotiations that will be signed by both parties.

### **Technical Negotiations**

21.5 Negotiations will include a discussion of the Technical Proposal, the proposed technical approach and methodology, work plan, and organisation and staffing, and any suggestions made by the consultant to improve the TOR. The procuring entity and the consultants will finalize the Terms of Reference, staffing schedule, work schedule, logistics, and reporting. These documents will then be incorporated in the Contract as "Description of Services". These discussions shall not substantially change the TOR to such an extent that the price, quality or evaluation of the Proposal may be impacted.

### **Financial Negotiations**

21.6 If applicable, it is the responsibility of the consultant, before starting financial negotiations, to contact the local tax authorities to determine the local tax amount to be paid by the consultant under the Contract. The financial negotiations will include a clarification (if any) of the consultant's tax liability in Samoa, and the manner in which it will be reflected in the

Contract. Despite any matter agreed at financial negotiations, any applicable tax or matter relating to the same may be confirmed at any time after the said negotiations but before finalisation and signing of the Contract.

21.7 In the cases of QCBS, SFB and LCS, unless there are exceptional reasons, the financial negotiations will involve neither the remuneration rates for staff nor other proposed unit rates.

21.8 In the case of QBS consultants will provide the procuring entity with the information on remuneration rates described in the Appendix attached to Section 4 - Financial Proposal - Standard Forms of this RFP.

**Availability of professional staff or experts**

21.9 The procuring entity will not consider substitutions during contract negotiations unless both parties agree that undue delay in the selection process makes such substitution unavoidable or for reasons such as death or medical incapacity.

21.10 Any proposed substitute requires the procuring entity's approval. Any proposed substitute shall have equivalent or better qualifications and experience than the original candidate to address the same criteria, is paid at the same rate as the original candidate and submitted by the consultant within the period of time specified in the letter of invitation to negotiate the Contract.

21.11 If it is established that professional staff were offered in the proposal without confirming their availability, the consultant may be disqualified and subject to the Government's antifraud and corruption policy.

**Conclusion of the negotiations**

21.12 Negotiations will conclude with a review of the draft Contract. To complete negotiations the procuring entity and the consultant will initial the agreed Contract.

21.13 If negotiations fail, the procuring entity shall notify the consultant of the issues and disagreements and provide one last chance to respond. If agreement cannot be reached the procuring entity will invite the consultant whose Proposal received the second highest score to negotiate a Contract. Once the procuring entity has commenced fresh negotiations, negotiations with the previous consultant cannot be reopened.

**22. Award of Contract and**

22.1 After completing negotiations, the procuring entity shall award the Contract to the selected consultant, publish the

**Standstill  
Period**

awarding of the Contract to the consultant on the Ministry of Finance website, and promptly notify all consultants who have submitted proposals with regards status of their proposals.

- 22.2 The date of the notification under ITC 22.1 establishes the commencement of the standstill period specified in the Data Sheet. During this time consultants may request, in writing, a debrief or invoke the ‘right to complain’ in accordance with ITC 24. The request for debriefing may only seek explanations for the grounds on which their proposal was not selected.
- 22.3 The procuring entity shall promptly respond in writing to any unsuccessful consultant who requests a debrief. If the request is made within the standstill period the contract award will be suspended until the debrief has taken place.
- 22.4 Until a formal Contract is prepared and executed, the initialled Contract shall constitute a binding Contract
- 22.5 After Contract signing between the procuring entity and the successful consultant the procuring entity shall return any unopened Financial Proposals to the unsuccessful consultants.
- 22.6 The consultant is expected to commence the assignment on the date and at the location specified in the Data Sheet.

**23. Confidentiality**

- 23.1 Information relating to the examination, evaluation, comparison, and post-qualification of the proposals and recommendation of contract award, shall not be disclosed to the consultants or any other persons not officially concerned with the proposal process until the Contract Award has been formally made to the successful consultant.
- 23.2 Any effort by a consultant to influence the procuring entity in the examination, evaluation, comparison, and post qualification of the proposals or contract award decisions may result in the rejection of its proposal and may be subject to the provisions of the Government’s antifraud and corruption policy.
- 23.3 Notwithstanding ITC 23.2, from the time of proposal opening to the time of Contract Award, if any consultant

wishes to contact the procuring entity on any matter related to the bidding process, it should do so in writing.

**24. Right to Complain**

24.1 The consultant has a right to complain in accordance with the Procurement Complaints Review Procedure (Instructions K9).

24.2 A potential or actual consultant in procurement proceedings who claims to have suffered, or to be likely to suffer harm due to a breach of a duty imposed on a procuring entity by or under the Instructions, may complain to a procuring entity.

24.3 Such complaint must be made in writing -

- (i) within 10 days of when the consultant submitting it became aware of the circumstances giving rise to the complaint or when the consultant should have become aware of those circumstances, whichever is earlier; or
- (ii) in any event within 5 days of the date of notification of the proposed award of the contract.

24.4 The consultant should submit its complaint in accordance with the procedures to the address specified in the Data Sheet.

24.5 A complaint shall not be entertained unless the complainant has identified the specific act or omission alleged to constitute a breach of duty on the part of the procuring entity.

## Data Sheet

*Instructions and Notes for completing the Bidding Data Sheet are provided as needed in italicised text in the sections for the relevant ITC Clauses and shall be deleted from the final fully edited version including this note.*

ITC Clause Reference	A. General
2.1	Name of the procuring entity: <i>Samoa Land Corporation</i>
2.1	Method of selection: <i>insert one of the following: QCBS,</i>
2.2	Financial Proposal to be submitted together with Technical Proposal: <i>insert YES</i>
2.2	Name of assignment is: <i>Project Manager For Detailed Design and Construction of the Savalalo New Flea Market Project</i> RFP No.: <b>SLC-PMSAV-2022</b>
2.5	A pre-proposal conference will be held: <i>YES</i> <i>[If “Yes”, fill in the following, if “No”, Delete the following]</i> Date of pre-proposal Conference: Friday, 2 <sup>nd</sup> September 2022_____
	Time: 11.00am_____
	Address: SLC Main Office, Tuanaimato, APIA_____
	Telephone: 24881_____
	Facsimile: _____
	E-mail: <a href="mailto:inform@samoaland.gov.ws">inform@samoaland.gov.ws</a> / <a href="mailto:p.vitale@samoaland.gov.ws">p.vitale@samoaland.gov.ws</a> _____
	Contact person/conference coordinator: Faletoa Peniamina Vitale_____
2.6	The procuring entity will provide the following inputs and facilities: <i>NA</i>
5.1	Maximum number of members in the JV shall be: <i>N/A</i>
7.1	The proposal validity period shall be a <i>60 days</i> calendar days after the Proposal submission date i.e. until <i>19<sup>th</sup> November 2022</i> .

8.1	<p>Clarification may be requested no later than 7 days before the submission date.</p> <p>Attention: Ulugia Petelo Kavesi, General Manager</p> <p>Procuring entity: <i>SLC</i></p> <p>Address: <i>Tuanaimato</i></p> <p>City: <i>APIA</i></p> <p>Country: <b>Samoa</b></p> <p>Facsimile number: <i>NA</i></p> <p>Electronic mail address: <i>inform@samoaland.gov.ws</i></p>
10.5 (a)	<p>Shortlisted Consultants may associate with</p> <p>(a) non-shortlisted Consultant(s): <i>No</i></p> <p>Or</p> <p>(b) other shortlisted Consultants: <i>No</i></p>
10.5 (b)	<p><i>Select one of the following two sentences or if not used, delete or state 'Not applicable'. <b>Not Applicable:</b></i></p> <p>The estimated number of professional staff-months required for the assignment is: <i>insert number NA</i></p> <p>or</p> <p>For estimated total cost of this assignment is not <i>available</i>.</p> <p><b><i>Special Note: the total proposed cost of the whole Project is SAT\$25 million.</i></b></p> <p><i>In the case of Selection under Fixed Budget Assignments select the following sentence</i></p> <p>The Financial Proposal shall not exceed the available budget of: <i>NA</i></p>
10.5 (c)	<p>The total available budget for this assignment is: <i>NA (exclusive of taxes)</i>. Proposals exceeding the total available budget will be rejected.</p>
11.1	<p>The format of the Technical Proposal to be submitted is:</p> <p>Full Technical Proposal (FTP): <b>YES</b> _____</p> <p>or</p> <p>Short Technical Proposal (STP): <b>NO</b> _____</p> <p><i>check the applicable format then insert YES or NO</i></p>
11.1 (g)	<p>Training is a specific component of this assignment: <b>NO</b></p> <p><i>If yes, provide appropriate information</i></p>
11.2	<p>The costs in the Financial Proposal <i>/shall not</i> be broken down by activity and foreign and local expenditure.</p>

<b>12.1</b>	<p><i>List the applicable Reimbursable expenses in foreign and in local currency. A sample list is provided below for guidance: items that are not applicable should be deleted, others may be added. If the procuring entity wants to define ceilings for unit prices of certain Reimbursable expenses, such ceilings should be indicated in this SC 3.6 NA</i></p> <p><b>Not Applicable</b></p>
<b>13.1</b>	<p>Amounts payable by the procuring entity to the consultant under the contract are subject to all applicable local taxation, duty, fee or other levy as required by law:</p> <p><b>YES</b></p>
<b>14.2</b>	<p>Consultant to state local cost in the national currency: <b>YES</b></p>
<b>15.3</b>	<p>Consultant must submit the original and <b>3</b> copies of the Technical Proposal, and the original of the Financial Proposal.</p>
<b>15.7</b>	<p>For bid submission purposes, the procuring entity's address is:</p> <p>Attention: The Secretary, Tenders Board</p> <p>Floor-Room number: 4th Floor</p> <p>Address: Central Bank Building of Samoa, Beach Road</p> <p>City: APIA</p> <p>Country: SAMOA</p> <p>The deadline for the submission of bids is:</p> <p>Date: <b>Monday, 19<sup>th</sup> September 2022</b></p> <p>Time: 11:00am</p>
<b>16.1</b>	<p>The bid opening shall take place at:</p> <p>Ministry of Finance</p> <p>Floor-Room number: 4th Floor</p> <p>Street Address: Central Bank of Samoa Building, Beach Road</p> <p>City: APIA</p> <p>Country: SAMOA</p> <p>Date: <b>Monday, 19<sup>th</sup> September 2022</b></p> <p>Time: 11:30am</p>



18.1	<p><i>Select one of the following options depending on whether FTP or STP is required</i></p> <p>Criteria, sub-criteria, and point system for the evaluation of <b><u>Full Technical Proposals</u></b> are:</p> <p style="text-align: right;"><u>Points</u></p> <p>(i) <u>Specific experience of the consultants relevant to the assignment:</u> <span style="float: right;"><b>[20 Points]</b></span></p> <p>The Contractor's Team Leader shall be legally registered to work in Samoa as a Qualified Structural and Civil Engineer and must be a member of the IPES with at least 20 years direct working experience as a Project Manager for Building Construction Projects in Samoa with the total value of over \$10 million tala.</p> <p>(ii) <u>Adequacy of the proposed methodology and work plan in responding to the Terms of Reference:</u></p> <p>a) Technical approach and methodology <span style="float: right;"><b>[20 Points]</b></span></p> <p>b) Work plan <span style="float: right;"><b>[10 Points]</b></span></p> <p>c) Organization and staffing <span style="float: right;"><b>[10 Points]</b></span></p> <p style="text-align: right;"><b>Total points for criterion (ii): [40 Points]</b></p> <p>(iii) <u>Key professional staff qualifications and competence for the assignment:</u></p> <p>a) Team Leader – Qualified Structural and Civil Engineer <span style="float: right;"><b>[15 Points]</b></span></p> <p>A current member of IPES holding <b>Certificate of Professional Engineer (CPENG membership)</b> for at least 5 years now with a bachelor's degree in structural and civil engineering from a recognisable tertiary institution approved by the IPES Board.</p> <p>b) Architect</p> <p>Minimum qualification is a Bachelor's degree in architecture and have 10 years' experience <span style="float: right;"><b>5 Points</b></span></p> <p>c) Clerk of Works –</p> <ul style="list-style-type: none"> <li>• Minimum qualification is Diploma in construction management or related field with 10 years working experience. <span style="float: right;"><b>5 Points</b></span></li> </ul> <p style="text-align: right;"><b>Total points for criterion (iii): [25 Points]</b></p> <p>Sub Criteria:</p> <p style="text-align: right;">Experience in the Apia Township Area <b>15 Points</b></p> <p>The Consultant should possess a sound knowledge and good experience of over 5 years of the Apia Township Area including associated hazard risks</p>
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	<p>like flooding, cyclones, strong winds, fire etc, the Apia Drainage and other utility systems that connect with the Proposed Site.</p> <p><b>Total weight: 100 Points</b></p> <p>The minimum technical score <math>S_t</math> required to pass is: <b>75%</b></p>
<b>20.6</b>	<p>The single currency for price conversions is: <i>Samoa Tala</i></p> <p>The source of official selling rates is: <i>CBS</i></p> <p>The date of exchange rates is: 19<sup>th</sup> September 2022</p>
<b>20.7</b>	<p>The formula for determining the financial scores is the following:</p> <p><i>Insert the following formula</i></p> <p><math>S_f = 100 \times FM / F</math>, in which <math>S_f</math> is the financial score, FM is the lowest price and F the price of the proposal under consideration.</p> <p>The weights given to the Technical (T) and Financial (P) Proposals are:</p> <p>T = 0.8 or 80%, and</p> <p>P = 0.2 or 20%</p> <p>Proposals are ranked according to their combined technical (<math>S_t</math>) and financial (<math>S_f</math>) scores using the weights (T = the weight given to the Technical Proposal; P = the weight given to the Financial Proposal; T + P = 1) as following: <math>S = S_t \times T\% + S_f \times P\%</math>.</p>
<b>21.1</b>	<p>Expected date and address for contract negotiations: 28<sup>th</sup> October 2022, Samoa Land Corporation, Tuanaaimato, APIA.</p>
<b>22.2</b>	<p>The number of days for standstill shall be <b>15</b> days.</p> <p><i>Note: the minimum allowed by the Instructions is fifteen (15) days.</i></p>
<b>22.6</b>	<p>Expected date for commencement of, and location of, consulting services:</p> <p><i>31<sup>st</sup> October 2022, Samoa Land Corporation, Tuanaaimato, APIA.</i></p>

<b>24.4</b>	<p>Any complaint should be sent to the following address:</p> <p>For the attention of: <i>Ulugia Petelo Kavesi</i></p> <p><i>General Manager, SLC</i></p> <p>Address: <i>Tuanaimato</i></p> <p>City: <i>APIA</i></p> <p>Country: <b>SAMOA</b></p>
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## SECTION 3 – TECHNICAL PROPOSAL STANDARD FORMS

*Instructions and Comments in the editable sections is to provide guidance to consultants for the preparation of their Technical Proposals; they should not appear on the Technical Proposals to be submitted.*

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## Form TECH-1: Technical Proposal Submission Form

*Prepare using consultant's stationery with its letterhead clearly showing business name, address and contact details*

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

To: Mr Ulugia Petelo Kavesi

The General Manager

Samoa Land Corporation

Tuanaimato, APIA

SAMOA.

We, the undersigned, declare that:

We, the undersigned, offer to provide without reservations the consulting services for *Insert title of assignment* in accordance with your Request for Proposal (RFP) No. *Insert RP No.* dated *Insert Date*, our Proposal (s) and the following attestations

We are hereby submitting our Proposal, which: *delete non-applicable*<sup>1</sup>

includes this Technical Proposal, and a Financial Proposal sealed under a separate envelope.

includes this Technical Proposal only.

Our Proposal shall be valid for a period of insert number of days from Data Sheet calendar days from the date fixed for proposal submission deadline in accordance with the RFP documents and it shall remain binding on us and may be accepted at any time before expiration of that period.

If negotiations are held during the period of validity of the Proposal, i.e., before the date indicated in Paragraph Reference 15.7 of the Data Sheet, we undertake to negotiate on the basis of the proposed staff. Our Proposal is binding upon us and subject to the modifications resulting from Contract negotiations.

Select one of the following statements<sup>2</sup>

We are submitting our Proposal in association/ as a consortium/as a joint venture with: *Insert a list with full name and address of each associated consultant and indicate the lead member.* We have attached a copy *insert: "of our letter of intent to form a joint venture"*

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<sup>1</sup> In case Paragraph Reference 2.2 of the Data Sheet requires to submit a Technical Proposal only, replace this sentence with: "We are hereby submitting our Proposal, which includes this Technical Proposal only."

<sup>2</sup> Delete in case no association is foreseen

*or, if a JV is already formed, “of the JV agreement”* signed by every participating member, which details the likely legal structure of and the confirmation of joint and severable liability of the members of the said joint venture.

*Or*

*If the Consultant’s Proposal includes Sub-consultants, insert the following: We are submitting our Proposal with the following firms as Sub-consultants: **Insert a list with full name and address of each Sub-consultant.***

Our firm and all associated consultants:

- (i) have satisfied all the legal requirements to carry on business in Samoa and, if our headquarters are outside Samoa, of our entitlement to carry on business in Samoa;
- (ii) are not subject to or anticipate being subject to legal proceedings, either in Samoa or another jurisdiction, that would materially affect our ability or legal capacity to carry out the contract;
- (iii) meet the eligibility requirements as stated in ITC 5, and we confirm our understanding of our obligation to abide by the Government’s policy in regard to prohibited practices as per ITC 4.
- (iv) are participating as a consultant in only one proposal in accordance with ITC 6.1, notwithstanding that sub-consultants including individual consultants may participate in more than one proposal
- (v) do not have any conflict of interest in accordance with ITC 3
- (vi) have not been subject to insolvency or bankruptcy or receivership or liquidation proceedings during the immediate past twelve (12) months;
- (vii) has not been declared ineligible by the Government of Samoa or the procuring entity under the laws of the Independent State of Samoa;
- (viii) are not a government owned entity/ We are a government owned entity but comply with the requirements of ITC 5.8 ~~delete non-applicable statement;~~
- (ix) and its principals including any director, officer, manager or supervisor, currently and in the past three years, have not committed criminal offenses involving fraud, corruption or other misconduct signifying unsuitability for participation in any way in the procurement and contracting process;
- (x) and its principals including any director, officer, manager or supervisor, currently and in the past three years, have not been suspended or disbarred by administrative or judicial proceedings from participating in procurements, whether in Samoa or elsewhere.

We certify that we are in good standing with the Government and have paid all taxes, duties, fees and other impositions as may be levied in Samoa prior to the award of contract. We also understand evidence of such certification may be required from the successful consultant prior to award of contract.

We undertake, if our Proposal is accepted, to initiate the consulting services related to the assignment not later than the date indicated in Paragraph 22.6 of the Data Sheet.

We hereby declare that all the information and statements made in this Proposal are true and accept that any misinterpretation contained in it may lead to our disqualification. We understand that you are not bound to accept the lowest responsive Proposal or any other Proposal that you may receive. We understand that the procuring entity may cancel a procurement at any time prior to the acceptance of the successful Proposal or after the successful Proposal is accepted if

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

We understand you are not bound to accept any Proposal you receive.

We remain,

Yours sincerely,

Authorized Signature:

Name and Title of Signatory:

Name of Firm:

Address:

## Form TECH-2: Consultant's Organisation and Experience

### A – Consultant's Organisation

*Provide here a brief (two pages) description of the background and organisation of your firm or entity and each associate for this assignment*

### B – Consultant's Experience

- List only previous similar assignments successfully completed in the last [10 to 20] years*
- Using the format below, provide information on each assignment for which your firm, and each associate for this assignment, was legally contracted either individually as a corporate entity or as one of the major companies within an association, for carrying out consulting services similar to the ones requested under this assignment. Assignments completed by the consultant's professional staff working privately or through other consulting firms cannot be claimed as the relevant experience of the consultant, or that of the consultant's partners or sub-consultants, but can be claimed by the professional staff themselves in their CVs. The consultant should be prepared to substantiate the claimed experience by presenting copies of relevant documents and references if so requested by the procuring entity.*

Assignment name:	Approx. value of the contract (in any currency):
Country: Location within country:	Duration of assignment (months):
Name of Client:	Total No. of staff-months of the assignment:
Address:	Approx. value of the services provided by your firm under the contract (in current US\$ or Euro):
Start date (month/year): Completion date (month/year):	No. of professional staff-months provided by associated consultants:
Name of associated consultants, if any:	Name of senior professional staff of your firm involved and functions performed (indicate most significant profiles such as Project Director/Coordinator, Team Leader):
Narrative description of Project:	
Description of actual services provided by your staff within the assignment:	

*Firm's Name:*



## **Form TECH-3: Comments and Suggestions on the Terms of Reference and on Counterpart Staff and Facilities to be provided by the procuring entity**

### **A – On the Terms of Reference**

*Present and justify here any modifications or improvement to the Terms of Reference you are proposing to improve performance in carrying out the assignment (such as deleting some activity you consider unnecessary, or adding another, or proposing a different phasing of the activities). Such suggestions should be concise and to the point and incorporated in your Proposal.*

### **B – On Counterpart Staff and Facilities**

*Comment here on counterpart staff and facilities to be provided by the procuring entity according to Paragraph Reference 2.6 of the Data Sheet including: administrative support, office space, local transportation, equipment, data, etc.*

## **Form TECH-4: Description of Approach, Methodology and Work Plan for Performing the Assignment**

*Technical approach, methodology and work plan are key components of the Technical Proposal. You are suggested to present your Technical Proposal (inclusive of charts and diagrams) and the Proposal must be divided into the following three chapters:*

*a) Technical Approach and Methodology,*

*b) Work Plan, and*

*c) Organization and Staffing,*

*a) Technical Approach and Methodology. In this chapter you should explain your understanding of the objectives of the assignment, approach to the services, methodology for carrying out the activities and obtaining the expected output, and the degree of detail of such output. You should highlight the problems being addressed and their importance and explain the technical approach you would adopt to address them. You should also explain the methodologies you propose to adopt and highlight the compatibility of those methodologies with the proposed approach. Please do not just repeat/copy the TOR here.*

*b) Work Plan. In this chapter you should propose the main activities of the assignment, their content and duration, phasing and interrelations, milestones (including interim approvals by the procuring entity), and delivery dates of the reports. The proposed work plan should be consistent with the technical approach and methodology, showing understanding of the TOR and ability to translate them into a feasible working plan. A list of the final documents, including reports, drawings, and tables to be delivered as final output, should be included here. The work plan should be consistent with the Work Schedule of Form TECH-8.*

*c) Organisation and Staffing. In this chapter you should propose the structure and composition of your team. You should list the main disciplines of the assignment, the key expert responsible, and proposed technical and support staff.*

## Form TECH-5: Team Composition and Task Assignments

[illegible]

## Form TECH-6: Curriculum Vitae (CV) for Proposed Professional Staff

**1. Proposed Position:** *note only one candidate shall be nominated for each position*\_\_\_\_\_

**2. Name of Firm:** *Insert name of firm proposing the staff*\_\_\_\_\_

**3. Name of Staff:** *Insert full name*\_\_\_\_\_

**4. Date of Birth:** \_\_\_\_\_ **Nationality:** \_\_\_\_\_

**5. Education:** *Indicate college/university and other specialized education of staff member, giving names of institutions, degrees obtained, and dates of obtainment* \_\_\_\_\_

**6. Membership of Professional Associations:** \_\_\_\_\_

**7. Other Training:** *Indicate significant training since degrees under 5 - Education were obtained*\_\_\_\_\_

**8. Countries of Work Experience:** *List countries where staff has worked in the last ten years*\_\_\_\_\_

**9. Languages:** *For each language indicate proficiency: good, fair, or poor in speaking, reading, and writing* \_\_\_\_\_

**10. Employment Record:** *Starting with present position, list in reverse order every employment held by staff member since graduation, giving for each employment (see format here below): dates of employment, name of employing organisation, positions held.:*

**From: Year** \_\_\_\_\_ **To: Year** \_\_\_\_\_

**Employer:** \_\_\_\_\_

**Positions held:** \_\_\_\_\_

11. Detailed Tasks Assigned	12. Work Undertaken that Best Illustrates Capability to Handle the Tasks Assigned
(i) <i>List all tasks to be performed under this assignment</i>	<i>Among the assignments in which the staff have been involved, indicate the following information for those assignments that best illustrate staff capability to handle the tasks listed under point 11.</i>

	Name of assignment or project:
	Year:
	Location:
	Client:
	Main project features:
	Positions held:
	<b>Activities performed:</b>

### 13. Certification:

I, the undersigned, certify that to the best of my knowledge and belief, this CV correctly describes me, my qualifications, and my experience. I understand that any wilful misstatement described in the CV may lead to my disqualification or dismissal, if engaged. I certify that I have been informed by the firm that it is including my CV in the Proposal for the *name of project and contract*. I confirm that I will be available to carry out the assignment for which my CV has been submitted in accordance with the implementation arrangements and schedule set out in the Proposal.

**OR**

*If CV is signed by the firm's authorized representative and the written agreement attached*

I, as the authorized representative of the firm submitting this Proposal for the *name of project and contract*, certify that I have obtained the consent of the named expert to submit his/her CV, and that I have obtained a written representation from the expert that s/he will be available to carry out the assignment in accordance with the implementation arrangements and schedule set out in the Proposal.

\_\_\_\_\_  
*Signature of staff member or authorised representative of the staff*

Date: \_\_\_\_\_  
*Day/Month/Year*

Full name of authorized representative: \_\_\_\_\_

### Form TECH-7: Staffing Schedule<sup>3</sup>

No.	Name of Staff	Staff input (in the form of a bar chart) <sup>4</sup>													Total staff-month input		
		1	2	3	4	5	6	7	8	9	10	11	12	n	Home	Field <sup>5</sup>	Total
<b>Foreign</b>																	
1		[Home]															
		[Field]															
2																	
3																	
n																	
										<b>Subtotal</b>							
<b>Local</b>																	
1		[Home]															
		[Field]															
2																	
n																	
										<b>Subtotal</b>							
										<b>Total</b>							

<sup>3</sup> For professional staff the input should be indicated individually; for Support Staff it should be indicated by category (e.g.: draftsmen, clerical staff, etc.).

<sup>4</sup> Months are counted from the start of the assignment. For each staff indicate separately staff input for home and field work.

<sup>5</sup> Field work means work carried out at a place other than the consultant's home office.

■ Full time input

▨ Part time input

**Form TECH-8: Work Schedule**

No.	Activity <sup>1</sup>	Months <sup>2</sup>												
		1	2	3	4	5	6	7	8	9	10	11	12	n
1														
2														
3														
4														
5														
n														

- 1 Indicate all main activities of the assignment, including delivery of reports (e.g.: inception, interim, and final reports), and other benchmarks such as procuring entity approvals. For phased assignments indicate activities, delivery of reports, and benchmarks separately for each phase.
- 2 Duration of activities shall be indicated in the form of a bar chart

## SECTION 4 – FINANCIAL PROPOSAL STANDARD FORMS

*Instructions and Notes in the editable sections is to provide guidance to the consultants for the preparation of their Financial Proposals; they should not appear on the Technical Proposals to be submitted.*

***Note:** The Appendix “Financial Negotiations - Breakdown of Remuneration Rates” is to be only used for financial negotiations when Quality-Based Selection method is adopted, according to the indications provided under paragraph 19 of Section 2.]*

### Table of Forms

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## Form FIN-1: Financial Proposal Submission Form

*Location, Date*

To: The General Manager,

Samoa Land Corporation

Tuanaimato,

APIA,

Samoa

Dear *Insert name*

We, the undersigned, offer to provide the consulting services for *Insert title of assignment* in accordance with your Request for Proposal dated *Insert Date* and our Technical Proposal. Our attached Financial Proposal is for the sum of *Insert amount(s) in words and figures*<sup>1</sup>. This amount is exclusive of the local taxes, which shall be identified by the procuring entity and relevant local authorities during negotiations or at any time prior finalisation and signing of a Contract and shall be added to the above amount.

Our Financial Proposal shall be binding upon us subject to the modifications resulting from Contract negotiations, up to expiration of the validity period of the Proposal, i.e. before the date indicated in Paragraph Reference 15.7 of the Data Sheet.

Commissions and gratuities paid or to be paid by us to agents relating to this Proposal and Contract execution, if we are awarded the Contract, are listed below<sup>2</sup>:

Name and Address of Agent	Amount and Currency	Purpose of Commission or Gratuity
_____	_____	_____
_____	_____	_____
_____	_____	_____

We understand you are not bound to accept any Proposal you receive.

We remain,

Yours sincerely,

Authorised Signature: *in full and initials* \_\_\_\_\_

Name and Title of Signatory: \_\_\_\_\_

<sup>1</sup> Amounts must coincide with the ones indicated under Total Cost of Financial proposal in Form FIN-2.

<sup>2</sup> If applicable, replace this paragraph with: "No commissions or gratuities have been or are to be paid by us to agents relating to this Proposal and Contract execution."

Name of Firm: \_\_\_\_\_

Address: \_\_\_\_\_

**Form FIN-2: Summary of Costs**

<b>ITEM</b>	<b>COSTS</b>			
	<i>Indicate Foreign Currency #1<sup>1</sup></i>	<i>Indicate Foreign Currency #2<sup>1</sup></i>	<i>Indicate Foreign Currency #3<sup>1</sup></i>	<i>Indicate Local Currency</i>
Total Costs of Financial Proposal <sup>2</sup>				

1 Indicate between brackets the name of the foreign currency. Maximum of three currencies; use as many columns as needed and delete the others.

2 Indicate the total costs, net of local taxes, to be paid by the procuring entity in each currency. Such total costs must coincide with the sum of the relevant Subtotals indicated in all Forms FIN-3 provided with the Proposal.

### Form FIN-3: Breakdown of Costs by Activity<sup>1</sup>

<b>Group of Activities (Phase):</b> <sup>2</sup> _____ _____	<b>Description:</b> <sup>3</sup> _____ _____			
<b>COST COMPONENT</b>	<b>COSTS</b>			
	<i>Indicate Foreign Currency #1</i> <sup>4</sup>	<i>Indicate Foreign Currency #2</i> <sup>4</sup>	<i>Indicate Foreign Currency #3</i> <sup>4</sup>	<i>Indicate Local Currency</i>
Remuneration <sup>5</sup>				
Reimbursable Expenses <sup>5</sup>				
Subtotals	_____		_____	

- 1 Form FIN-3 shall be filled at least for the whole assignment. In case some of the activities require different modes of billing and payment (e.g.: the assignment is phased, and each phase has a different payment schedule), the consultant shall fill a separate Form FIN-3 for each group of activities. For each currency, the sum of the relevant Subtotals of all Forms FIN-3 provided must coincide with the Total Costs of Financial Proposal indicated in Form FIN-2.
- 2 Names of activities (phase) should be the same as or correspond to the ones indicated in the second column of Form TECH-8.
- 3 Short description of the activities whose cost breakdown is provided in this Form.
- 4 Indicate between brackets the name of the foreign currency. Use the same columns and currencies of Form FIN-2.
- 5 For each currency, Remuneration and Reimbursable Expenses must respectively coincide with relevant Total Costs indicated in Forms FIN-4, and FIN-5.

## Form FIN-4A: Breakdown of Remuneration<sup>1</sup> (Time-Based)

*This Form FIN-4 shall only be used when the Time-Based Form of Contract has been included in the RFP*

Group of Activities (Phase): _____							
Name <sup>2</sup>	Position <sup>3</sup>	Staff-month Rate <sup>4</sup>	Input <sup>5</sup> (Staff-months)	Indicate Foreign Currency #1 <sup>6</sup>	Indicate Foreign Currency #2 <sup>6</sup>	Indicate Foreign Currency #3 <sup>6</sup>	Indicate Local Currency <sup>6</sup>
<b>Foreign Staff</b>							
_____	_____	[Home]	_____				
		[Field]	_____				
_____	_____		_____				
			_____				
_____	_____		_____				
			_____				
_____	_____		_____				
			_____				
_____	_____		_____				
			_____				
<b>Local Staff</b>							
_____	_____	[Home]	_____				
		[Field]	_____				
_____	_____		_____				
			_____				
_____	_____		_____				
			_____				

Total Costs							

- 1 Form FIN-4A shall be filled for each of the Forms FIN-3 provided.
- 2 Professional staff should be indicated individually; Support Staff should be indicated per category (e.g.: draftsmen, clerical staff).
- 3 Positions of professional staff shall coincide with the ones indicated in Form TECH-5.
- 4 Indicate separately staff-month rate and currency for home and field work.
- 5 Indicate, separately for home and field work, the total expected input of staff for carrying out the group of activities or phase indicated in the Form.
- 6 Indicate between brackets the name of the foreign currency. Use the same columns and currencies of Form FIN-2. For each staff indicate the remuneration in the column of the relevant currency, separately for home and field work. Remuneration = Staff-month Rate x Input.

## Form FIN-4B: Breakdown of Remuneration<sup>1</sup> (Lump-Sum)

*This Form FIN-4 shall only be used when the Lump-Sum Form of Contract has been included in the RFP. Information to be provided in this Form shall only be used to establish payments to the consultant for possible additional services requested by the procuring entity*

Name <sup>2</sup>	Position <sup>3</sup>	Staff-month Rate <sup>4</sup>
<b>Foreign Staff</b>		
		[Home]
		[Field]
<b>Local Staff</b>		
		[Home]
		[Field]

- 1 Form FIN-4B shall be filled in for the same professional and support staff listed in Form TECH-7.
- 2 Professional staff should be indicated individually; support staff should be indicated per category (e.g.: draftsmen, clerical staff).
- 3 Positions of the professional staff shall coincide with the ones indicated in Form TECH-5.
- 4 Indicate separately staff-month rate and currency for home and field work.

## Form FIN-5A: Breakdown of Reimbursable Expenses<sup>1</sup> (Time-Based)

*This Form FIN-5 shall only be used when the Time-Based Form of Contract has been included in the RFP*

<b>Group of Activities (Phase):</b> _____								
No.	Description <sup>2</sup>	Unit	Unit Cost <sup>3</sup>	Quantity	Indicate Foreign Currency #1 <sup>4</sup>	Indicate Foreign Currency #2 <sup>4</sup>	Indicate Foreign Currency #3 <sup>4</sup>	Indicate Local Currency <sup>4</sup>
	Per diem allowances	Day						
	International flights <sup>5</sup>	Trip						
	Miscellaneous travel	Trip						
	Communication costs between <i>Insert place</i> and <i>Insert place</i>				_____			
	Drafting, reproduction of							
	Equipment, instruments, materials, supplies, etc.				_____			
	Shipment of personal							
	Use of computers,							
	Laboratory tests.							
	Subcontracts							
	Local transportation costs							
	Office rent, clerical							
	Procuring entity's personnel <sup>6</sup> training				_____			
<b>Total Costs</b>								



- 1 Form FIN-5A should be filled for each of the Forms FIN-3 provided, if needed.
- 2 Delete items that are not applicable or add other items according to Paragraph Reference 3.6 of the Data Sheet.
- 3 Indicate unit cost and currency.
- 4 Indicate between brackets the name of the foreign currency. Use the same columns and currencies of Form FIN-2. Indicate the cost of each reimbursable item in the column of the relevant currency.  $\text{Cost} = \text{Unit Cost} \times \text{Quantity}$ .
- 5 Indicate route of each flight, and if the trip is one- or two-ways.
- 6 Only if the training is a major component of the assignment, defined as such in the TOR.

## Form FIN-5B: Breakdown of Reimbursable Expenses (Lump-Sum)

(This Form FIN-5 shall only be used when the Lump-Sum Form of Contract has been included in the RFP. Information to be provided in this Form shall only be used to establish payments to the consultant for possible additional services requested by the procuring entity)

No.	Description <sup>1</sup>	Unit	Unit Cost <sup>2</sup>
_____	Per diem allowances	Day	
_____	International flights <sup>3</sup>	<u>Trip</u>	
_____	Miscellaneous travel expenses	<u>Trip</u>	
	Communication costs between [Insert place] and [Insert place]		
	Drafting, reproduction of reports		
	Equipment, instruments, materials, supplies, etc.		
_____	Shipment of personal effects	<u>Trip</u>	
_____	Use of computers, software		
_____	Laboratory tests.		
	Subcontracts		
	Local transportation costs		
	Office rent, clerical assistance		
	Training of the procuring entity's personnel <sup>4</sup>		

- 
- 1 Delete items that are not applicable or add other items according to Paragraph Reference 3.6 of the Data Sheet.
- 2 Indicate unit cost and currency.
- 3 Indicate route of each flight, and if the trip is one- or two-ways.
- 4 Only if the training is a major component of the assignment, defined as such in the TOR.

## **Appendix: Financial Negotiations – Breakdown of Remuneration Rates**

*To be deleted unless the method of selection is QBS*

### **(i) Review of Remuneration Rates**

- 1.1 The remuneration rates for staff are made up of salary, social costs, overheads, fee that is profit, and any premium or allowance paid for assignments away from headquarters. To assist the firm in preparing financial negotiations, a Sample Form giving a breakdown of rates is attached (no financial information should be included in the Technical Proposal). Agreed breakdown sheets shall form part of the negotiated contract.
- 1.2 The procuring entity is charged with the custody of government funds and is expected to exercise prudence in the expenditure of these funds. The procuring entity is, therefore, concerned with the reasonableness of the firm's Financial Proposal, and, during negotiations, it expects to be able to review audited financial statements in support of the firm's remuneration rates, certified by an independent auditor. The firm shall be prepared to disclose such audited financial statements for the last three years, to substantiate its rates, and accept that its proposed rates and other financial matters are subject to scrutiny. Rate details are discussed below.

#### **(i) Salary**

This is the gross regular cash salary paid to the individual in the firm's home office. It shall not contain any premium for work away from headquarters or bonus (except where these are included by law or Government regulations).

#### **(ii) Bonus**

This is the gross regular cash salary paid to the individual in the firm's home office. It shall not contain any premium for work away from headquarters or bonus (except where these are included by law or Government regulations).

#### **(iii) Social Costs**

Social costs are the costs to the firm of staff's non-monetary benefits. These items include, *inter alia*, social security including pension, medical and life insurance costs, and the cost of a staff member being sick or on vacation. In this regard, the cost of leave for public holidays is not an acceptable social cost nor is the cost of leave taken during an assignment if no additional staff replacement has been provided. Additional leave taken at the end of an assignment in accordance with the firm's leave policy is acceptable as a social cost.

#### **(iv) Cost of Leave**

The principles of calculating the cost of total days leave per annum as a percentage of basic salary shall normally be as follows:

$$\text{Leave cost as percentage of salary}^1 = \frac{\text{total days leave} \times 100}{[365 - w - ph - v - s]}$$

It is important to note that leave can be considered a social cost only if the procuring entity is not charged for the leave taken.

(v) **Overheads**

Overhead expenses are the firm's business costs that are not directly related to the execution of the assignment and shall not be reimbursed as separate items under the contract. Typical items are home office costs (partner's time, no billable time, time of senior staff monitoring the project, rent, support staff, research, staff training, marketing, etc.), the cost of staff not currently employed on revenue-earning projects, taxes on business activities and business promotion costs. During negotiations, audited financial statements, certified as correct by an independent auditor and supporting the last three years' overheads, shall be available for discussion, together with detailed lists of items making up the overheads and the percentage by which each relates to basic salary. The procuring entity does not accept an add-on margin for social charges, overhead expenses, etc., for staff who are not permanent employees of the firm. In such case, the firm shall be entitled only to administrative costs and fee on the monthly payments charged for subcontracted staff.

(vi) **Fee or Profit**

The fee or profit shall be based on the sum of the salary, social costs, and overhead. If any bonuses paid on a regular basis are listed, a corresponding reduction in the profit element shall be expected. Fee or profit shall not be allowed on travel or other reimbursable expenses, unless in the latter case an unusually large amount of procurement of equipment is required. The firm shall note that payments shall be made against an agreed estimated payment schedule as described in the draft form of the contract.

(vii) **Away from Headquarters Allowance or Premium**

Some consultants pay allowances to staff working away from headquarters. Such allowances are calculated as a percentage of salary and shall not draw overheads or profit. Sometimes, by law, such allowances may draw social costs. In this case, the amount of this social cost shall still be shown under social costs, with the net allowance shown separately. For concerned staff, this allowance, where paid, shall cover home education, etc.; these and similar items shall not be considered as reimbursable costs.

(viii) **Subsistence Allowances (per diems & living allowances)**

---

<sup>1</sup> Where *w* = weekends, *ph* = public holidays, *v* = vacation, and *s* = sick leave.

Subsistence allowances are not included in the rates but are paid separately and in local currency. No additional subsistence is payable for dependents – the subsistence rate shall be the same for married and single team members. Per diems and living allowances shall be in accordance with those established approved by the Government of Samoa Ministry of Finance, unless otherwise established by particular donor policies. In the absence of the above, UNDP standard rates for the particular country may be used as reference to determine subsistence allowances.

(ix) **Reimbursable expenses**

- 2.1 The financial negotiations shall further focus on such items as out-of-pocket expenses and other reimbursable expenses. These costs may include, but are not restricted to, cost of surveys, equipment, office rent, supplies, international and local travel, computer rental, mobilisation and demobilisation, insurance, and printing. These costs may be either unit rates or reimbursable on the presentation of invoices, in foreign or local currency.

(x) **Advance Payment Bank Guarantee**

- 3.1 Payments to the firm, including payment of any advance based on cash flow projections covered by a bank guarantee, shall be made according to an agreed estimated schedule ensuring the firm regular payments in local and foreign currency, as long as the services proceed as planned.

## Sample Form

Consulting Firm:  
Assignment:

Country:  
Date:

### Consultant's Representations Regarding Costs and Charges

We confirm that:

- (a) the basic salaries indicated in the attached table are taken from the firm's payroll records and reflect the current salaries of the staff members listed which have not been raised other than within the normal annual salary increase policy as applied to all the firm's staff;
- (b) attached are true copies of the latest salary slips of the staff members listed;
- (c) the away from headquarters allowances indicated below are those that the consultants have agreed to pay for this assignment to the staff members listed;
- (d) the factors listed in the attached table for social charges and overhead are based on the firm's average cost experiences for the latest three years as represented by the firm's financial statements; and
- (e) said factors for overhead and social charges do not include any bonuses or other means of profit-sharing.

\_\_\_\_\_  
*Name of Consulting Firm*

\_\_\_\_\_  
Signature of Authorized Representative

\_\_\_\_\_  
Date

Name: \_\_\_\_\_

Title: \_\_\_\_\_

## Consultant's Representations Regarding Costs and Charges

(Expressed in *insert name of currency*)

Personnel		1	2	3	4	5	6	7	8
Name	Position	Basic Salary per Working Month/Day/Year	Social Charge <sup>1</sup>	Overhead <sup>1</sup>	Subtotal	Fee <sup>2</sup>	Away from Headquarters Allowance	Proposed Fixed Rate per Working Month/Day/Hour	Proposed Fixed Rate per Working Month/Day/Hour <sup>1</sup>
<b>Home Office</b>									
<b>Field</b>									

1. Expressed as percentage of 1
2. Expressed as percentage of 4

## SECTION 5 – TERMS OF REFERENCE

### 1. Background

The Government of Samoa through the Samoa Land Corporation “The Principal” invites tenders for Consultancy Services (Request for Proposals) for the position of a Project Manager to manage and oversee the Stages 2 and 3 (Detailed Design and Construction) of the Savalalo New Flea Market Project.

The Savalalo New Flea Market Project has three stages, namely:

- Stage 1 – Preparation of Concept design;
- Stage 2 – Detailed design;
- Stage 3 – Construction

The Stage 1 - Preparation of the Concept Design is completed and the winning concept design will be used for the Stages 2 and 3 of this Project. SLC will advertise together the Stages 2 and 3 of the Project publicly upon the appointment of a Project Manager.

Thus, this tender is to seek a Project Manager which will be effectively act as coordination link on behalf of the “Principal” (The Government of Samoa through the Samoa Land Corporation or GOS/SLC) and the Contractor. Specifically, the Project manager will check and verify that the Contractor is fully complied with all approved technical and non-technical work requirements, designs, specifications, National Building and Service Codes, Contract terms and conditions, etc, leading to the successful execution and timely completion of the Stages 2 and 3 of the Project.

#### **Objective(s) of the Assignment:**

The main objective of this Tender is to seek a qualified Project Manager to represent the GOS/SLC or “The Principal” in terms of the overall management and supervision of the Stages 2 and 3 of this Project from the Pre-tendering, Tendering and Execution stages and successful completion. This will include but not limited to the followings:

- Planning
- Tendering Documentation and Process/ To include Requirements of Detailed Designs with relevant variations, Applicable Codes and Environmental Reviews.
- Construction Phases
  - Project Time Management
  - Project Cost Management
  - Project Quality Management
  - Project Safety Audit
  - Status Reporting
  - Bill Checking and Payment Certification
  - Final Testing/Project Close Out

### 2. Scope of consulting services, Tasks (Components) and Expected Deliverables

- Planning:



Prepare a tentative master construction programme to indicate the sequence of works with timeframe starting from the preparation of tender documentation, Tender process and the construction stage and completion stage.

- **Tendering Documentation and Process:**

- Finalise with SLC additional changes already approved to the Concept Design.
- Prepare overall budgetary cost estimates based on approved concept design after incorporating new changes.
- Prepare approved tender documents based on the GOS standard bidding documents for detailed design and build tender.
- Ensure to include in the Scope of Works for the Bidders to re-submit the amended Concept Design after incorporating changes as approved which also fully account in their total bidding costs.
- To include in the SOW all approved national Building Codes and default AS/NZS (Australian and New Zealand Standards) with the absent of applicable local standards.
- To include in the SOW detailed design for the following aspects, which are subject to the project manager certification first before execution. The project manager should also consider all hazard risks associated with the Site like flooding, storm winds, fire etc in reviewing and certification of these designs. The detailed designs shall include Structural design, Civil design, Electrical design, Mechanical design, Fire design, Hydraulic design, Communication design and any other important design to include.
- To include in the SOW for the Bidder the application and certification of permits and other relevant reviews like cadastral and topographical surveys, geotechnical investigation for foundation design, Environmental and Social and Safeguards including 3 Public Consultations and the preparation of a PEAR if required, and an EIA and Development Consent in preparation for the Building Permit.
- Address all submitted RFI's and response in due time;
- Assist the Tender's Board Evaluation Sub Committee for the evaluation process.
- Assist and advise on the final negotiations with the winning bidder and preparation of letters of awards.
- Assist and advise in the Preparation of Contract Documents before signing with the winning bidder.
- Update budgets and initial program based on final winning bid.

**Construction Phases:**

- ***Project Time Management***
  - Update the detailed activity-wise Master Programme which shall be in conjunction with the Contractor master plan.
  - Identify the specific activities with inter-activity dependency, sequencing and activity duration (including reports and graphs) to the SLC.
  - Prepare a work breakdown structure (WBS) for the project dividing the scope into smaller work packages and review detailed designs/drawings issued by Contractor before constructability.
  - Monitor progress of work and reporting.

- Set up weekly and monthly meetings with SLC, Contractors and all possible stakeholders where necessary to discuss the progress and issues to be resolved.
- Review monthly progress of the works, compare with planned programme and submit status report to SLC.
- Set up Site Visit by SLC, Cabinet and any approved Sub Committee from time to time.
- Advise on any modifications in construction if any, due to site condition and advice on variations and estimated cost.
- Promptly advise on hold-ons in building items due to delay in procurement of material and equipment for SLC to consider.
- ***Project Cost Management***
  - Prepare cash flow for the project based on the construction programme schedule and recommend any important terms proposed by the contractors and suppliers
  - Review monthly project cost between planned cost v/s actual cost and forecast for any major effect of changes especially inflation.
- ***Project Quality Management***
  - Ensure the Contractor is in compliance to drawings and specifications during execution in every section of the construction.
  - Set quality control procedures such as Concrete Testing and all other Construction Building material used at all time before used especially Concrete (Ready Mix) for every section of the work,
  - Prepare checklists, etc to facilitate with the daily reviews.
  - Inspect and ensure that standards of workmanship are achieved.
  - Ensure documentation of quality procedures implemented.
  - Inspect completed works and recommend corrective action for any non-compliance, faulty, error or omission during construction.
  - Ensure that the contractor will conform to quality standards in carrying out appropriate tests and inspections.
  - Ensure that the correction of defects pointed out by the Project manager or the Client is properly resolved and implemented.
- ***Project Safety Audit***
  - Check that Health and Safety Requirements by MCIL and MOH Acts and Regulations are provided and included in the Contractor's Safety Management Plan.
  - Monitor and advise on site safety procedures and methods to ensure that these guidelines are adhered to at all times on Site.
  - Inspect building materials for potential hazards.
  - Ensure that the Site is installed or protected with safety measures at all times both inside and outside.
  - Check to ensure that the Insurance to cover for public liabilities and all personnel involved by the Contractor is in place before commencement of works.
- ***Status Reporting***
  - Submit Monthly Progress Reports of work against master schedule to SLC.
  - Submit a Cost of project against budget with any latest significant movement in price that may constitute a major effect on the Project.

- Provide Quality issues and non-compliances, delay in procurement or shortage of building materials and recommendations for SLC to consider
  - Progress photographs by e-mail, graphs, power points presentation etc.
  - Provide any other report or further assistance requested by SLC from time to time.
  - ***Bill Checking and Payment Certification***
    - Verification of Bills and certification for payment, and a regular payment reconciliation statement to SLC.
    - Preparation of variation statements if any and provide recommendation to SLC
  - ***Final Testing/Project Close Out***
    - Ensure inspection, testing and commissioning of various equipment's installed and material used in every section of the project to satisfy the performance requirements as prescribed in the Contract.
    - To submit a completion report, 'As Built' Drawings (obtained from contractors) and a final comparative statements with regard to physical and financials inputs and outputs as compared to the original estimates and forecasts, on completion of the work.
    - Obtain and submit warranties and guarantees to SLC if any.
    - Prepare and submit closure report.
    - Commissioning and handing over of project.
3. **Team Composition & Qualification Requirements for the Key Experts (and any other requirements which will be used for evaluating the Key Experts under Data Sheet 18.1 of the ITC)**

**The Project Management Team shall be made up of the following qualified personnel:**

- **1. Team Leader –:**

Shall be a well-qualified Structural and Civil Engineer. Legally registered to work in Samoa and shall have at least 20 years direct working experience as a Project Manager for Building Construction Projects in Samoa with total value of over \$10 million tala. Direct working experience involves being as a leading partner or in the top position of the Project Management Team. Shall have a Minimum qualification of a Bachelor's degree in structural and civil engineering, construction management or related field from a recognisable tertiary institution approved by the IPES Board.
- Shall be proven to have the legal and healthy capacity and readily available to start working immediately in Samoa for the term of the Stages 2 and 3 of the project of not less than 15 consecutive months.
- Must be a current member of the IPES and is holding the Certificate of Professional Engineer (CPENG membership) for five or more years now.
- Fluent with the project management software.

- Should possess sound knowledge and good experience of the history background of the Site including all hazard risks associated with the Apia Township area as well as all public drainages and other service systems nearby and/or surrounding the Site area at Savalalo.
- Updated with National Building Codes (SNBC) and default AS/NZS (Australian and New Zealand Standards) with the absent of applicable local standards.

## **2. Architect:-**

- Should hold a Bachelor's degree in architecture or related field. Should have at least 5 years working experience in architect and construction management works. Fluency in software programs related to construction designs and management, including project Management software and able to read and verify the designs at different levels of the design and build work.

## **3. Clerk of Works:**

- Should hold a minimum qualification of a diploma in construction management or related field. Should have at least 10 years working experience as a clerk of works and/or construction management. Good communication skills and report writing Shall be proven fit and healthy to start working immediately on a daily basis on Site from the commencement until the completion of work for an estimated construction term of 15 consecutive months.

## **4. Outputs and Time Schedule**

At a minimum, list the following:

- (a) format, frequency, and contents of outputs and reports;
- (b) number of copies, and requirements to electronic submission (or on CD ROM).  
Final reports shall be delivered in CD ROM in addition to the specified number of hard copies;
- (c) dates of submission;
- (d) persons (indicate names, titles, submission address) to receive them; etc.

*If no reports are to be submitted, state here "Not applicable."*

If the services consist of or include the supervision of civil works, the following action that require prior approval by the procuring entity shall be added: "Taking any action under a civil works contract designating the Consultant as "Engineer", for which action, pursuant to such civil works contract, the written approval of the procuring entity as "procuring entity" is required."

**All the Reports as stated under the Scope of Works are to be included in the Contractor's Work Plan provided under the Technical Response section.**

## **5. Data, Local Services, Personnel, and Facilities to be provided by the procuring entity**

Procuring entity's Input and Counterpart Personnel

- (a) services, facilities and property to be made available to the Consultant by the procuring entity: **None** \_\_\_\_\_ *[list/specify]*
- (b) Professional and support counterpart personnel to be assigned by the procuring entity to the Consultant's team: **None** \_\_\_\_\_ *[list/specify]*
- \_\_\_\_\_

## SECTION 6b – STANDARD FORMS OF CONTRACT

### Foreword

**Lump-Sum Contract.** This type of contract is used mainly for assignments in which the scope and the duration of the consulting services and the required output of the consultant are clearly defined. Payments are linked to outputs (deliverables) such as reports, drawings, bill of quantities, bidding documents, or software programs. Lump-sum contracts are easier to administer because they operate on the principle of a fixed price for a fixed scope, and payments are due on clearly specified outputs and milestones. Nevertheless, quality control of the consultant's outputs by the procuring entity is paramount.

# GOVERNMENT OF THE INDEPENDENT STATE OF SAMOA



## STANDARD FORM OF CONTRACT

### Consultants' Services

Lump-Sum

# CONTRACT FOR CONSULTANTS' SERVICES

Lump-Sum

Between

[Name of the Procuring Entity ]

And

[Name of the Consultant ]



# STANDARD BIDDING DOCUMENTS

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## I. FORM OF CONTRACT

### Contract Agreement Lump-Sum

This CONTRACT (“Contract”) is made the day day of the month of month, year, between, on the one hand, name of procuring entity (“procuring entity”) and, on the other hand, name of consultant (“consultant”).

***Note:** If the consultant consist of more than one entity, the above should be partially amended to read as follows: “... (“procuring entity”) and, on the other hand, a joint venture/consortium/association consisting of the following entities, each of which will be jointly and severally liable to the procuring entity for all the consultant’s obligations under this Contract, namely, [name of consultant] and [name of consultant] (“consultant”).*

#### **WHEREAS**

- (a) the procuring entity has requested the consultant to provide certain consulting services as defined in this Contract (“Services”);
- (b) the consultant, having represented to the procuring entity that it has the required professional skills, and personnel and technical resources, has agreed to provide the Services on the terms and conditions set forth in this Contract;
- (c) the procuring entity has available budget appropriations toward the cost of the Services and intends to apply a portion of the proceeds of such funds to eligible payments under this Contract, it being understood:
  - (i) that payments by the Government are made only at the request of the procuring entity and upon approval by the Government;
  - (ii) that such payments will be subject, in all respects, to the terms and conditions of the agreement providing for the use of funds; and
  - (iii) that no party other than the procuring entity shall derive any rights from the agreement providing for the funds or have any claim to the funds proceeds;

**NOW THEREFORE** the parties agree as follows:

1. The following documents attached form an integral part of this Contract:
  - (a) The General Conditions of Contract (GCC);
  - (b) The Special Conditions of Contract (SCC);
  - (c) The following Appendices: ***Note:** If any of these Appendices are not used, the words “Not Used” should be inserted below next to the title of the Appendix*  
Appendix A: Description of Services *Not used*

Appendix B: Reporting Requirements *[Not used]*

Appendix C: Key Personnel and Sub-consultants *[Not used]*

Appendix D: Breakdown of Contract Price in Foreign Currency *[Not used]*

Appendix E: Breakdown of Contract Price in Local Currency *[Not used]*

Appendix F: Services and Facilities Provided by the procuring entity *[Not used]*

Appendix G: Form of Advance Payment Guarantee *[Not used]*

2. The mutual rights and obligations of the procuring entity and the consultant shall be as set forth in the Contract, in particular:
- (a) the consultants shall carry out the Services in accordance with the provisions of the Contract; and
  - (b) the procuring entity shall make payments to the consultants in accordance with the provisions of the Contract.

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

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

In the presence of: )

.....

(Witness Name & Signature)

.....

(Witness Designation)

**EXECUTED** by [insert details] **FOR THE** [insert, )  
 for and on behalf of the )  
**INSERT NAME OF CONSULTANT** ) .....

in the presence of: )

.....

Director

.....

(Director/Secretary)

*[Note: if the consultant consists of more than one entity, all these entities should appear as signatories, e.g., in the following manner:*

**EXECUTED** by insert details **FOR THE** insert, )

for and on behalf of the members of the consultant )

**INSERT NAME OF MEMBER** ) .....

in the presence of: )

.....

(Authorised Representative)

**INSERT NAME OF MEMBER** ) .....

in the presence of: )

.....

(Authorised Representative)

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## 1. General Provisions

### 1.1 Definitions

- (a) Unless the context otherwise requires:
- (b) “Applicable Law” means the laws and any other instruments having the force of law in the Independent State of Samoa (“Samoa”), or in such other country as may be specified in the SCC.
- (c) “consultant” means any private or public entity that is to provide the Services to the procuring entity under the Contract.
- (d) “Contract” means the Contract signed by the Parties (including the GCC, SCC, and the Appendices as listed in Clause 1 of the Contract)
- (e) “Contract Price” means the price to be paid for the performance of the Services, in accordance with Clause 6;
- (f) “Effective Date” means the date on which this Contract comes into force and effect pursuant to Clause GC 2.1.
- (g) “Foreign Currency” means any currency other than the currency of Samoa.
- (h) “GCC” means these General Conditions of Contract.
- (i) “Government” means the Government of the Independent State of Samoa.
- (j) “Local Currency” means the currency of the Independent State of Samoa.
- (k) “Member” means any of the entities that make up the joint venture/consortium/association, and “Members” means all these entities.
- (l) “Party” means the procuring entity or the consultant, as the case may be, and “Parties” means both of them.
- (m) “Personnel” means persons hired by the consultant or by any Sub-consultants and assigned to the performance of the Services or any part of the Services. “Foreign Personnel” means such professionals and support staff who at the time of being so provided had their domicile outside Samoa; “Local Personnel” means such professionals and support staff who at the time of being so provided had their domicile inside Samoa; and “Key Personnel” means the Personnel referred to in Clause 4.2(a) of the GCC.

- (n) “procuring entity” means any Government Ministry or public body engaging in procurement and the agency with which the selected consultant signs the Contract;
- (o) “SCC” means the Special Conditions of Contract by which the GCC may be amended or supplemented.
- (p) “Services” means the work to be performed by the consultant pursuant to this Contract, as described in Appendix A.
- (q) “Sub-consultants” means any person or entity to whom/which the consultant subcontracts any part of the Services.
- (r) “Third Party” means any person or entity other than the Government, the procuring entity, the consultant or a Sub-consultant.
- (s) “In writing” means communicated in any written form with proof of receipt.

## **1.2 Law Governing Contract**

The Contract, its meaning and interpretation, and the relation between the Parties shall be governed by the Applicable Law.

## **1.3 Language**

The Contract is to be executed in the language specified in the SCC, which shall be the binding and prevailing language for all matters relating to the meaning or interpretation of this Contract.

## **1.4 Notices**

### **1.4.1**

Any notice, request or consent required or permitted to be given or made in accordance with this Contract shall be in writing. Any such notice, request or consent shall be deemed to have been given or made when delivered in person to an authorised representative of the Party to whom the communication is addressed, or when sent to such Party at the address specified in the SCC and receipt of such notice is acknowledged.

### **1.4.2**

A Party may change its address for notice by giving the other Party notice in writing of such change to the address specified in the SCC.

## **1.5 Location**

The Services shall be performed at such locations as are specified in Appendix A and, where the location of a particular task is not so specified, at such locations, whether in Samoa or elsewhere, as the procuring entity may approve.

## **1.6 Authority of Member in Charge**

In case the consultant is, or consists of, a joint venture/ consortium/ association of more than one entity, the Members authorise the entity specified in the SCC to act for and on behalf



of the Members in exercising all the consultant's rights and obligations towards the procuring entity under this Contract, including without limitation the receiving of instructions and payments from the procuring entity.

**1.7 Authorised  
Representatives**

Any action required or permitted to be taken, and any document required or permitted to be executed under this Contract by the procuring entity or the consultant may be taken or executed by the officials specified in the SCC.

**1.8 Taxes and Duties**

The consultant, Sub-consultants, and their Personnel shall pay all applicable taxes, duties, fees, and other impositions levied under the Applicable Law as specified in the SCC, the amount of which is deemed to have been included in the Contract Price.

**1.9 Fraud and  
Corruption**

If the procuring entity determines that the consultant and/or its Personnel, sub-contractors, sub-consultants, services providers and suppliers has engaged in corrupt, fraudulent, collusive, coercive, or obstructive practices, in competing for or in executing the Contract, the procuring entity may, after giving 14 days' notice to the consultant, terminate the consultant's employment under the Contract, and the provisions of Clause 2 shall apply as if such expulsion had been made under Sub-Clause 2.6.1(c).

Should any personnel of the consultant be determined to have engaged in corrupt, fraudulent, collusive, coercive, or obstructive practice during the execution of the Contract, that personnel is to be removed in accordance with Sub-Clause 4.2.

**1.9.1 Definitions**

For the purposes of this Sub-Clause, the terms set-forth below are defined as follows:

- (i) "corrupt practice"<sup>1</sup> is the offering, giving, receiving or soliciting, directly or indirectly, of anything of value to influence improperly the actions of another party;
- (ii) "fraudulent practice"<sup>2</sup> is any act or omission, including a misrepresentation, that knowingly or recklessly misleads, or attempts to mislead, a party to obtain a financial or other benefit or to avoid an obligation;

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<sup>1</sup> "Another party" refers to a public official acting in relation to the selection process or contract execution. In this context, "public official" includes Government staff and employees of other organizations taking or reviewing procurement decisions.

<sup>2</sup> A "party" refers to a public official; the terms "benefit" and "obligation" relate to the selection process or contract execution; and the "act or omission" is intended to influence the selection process or contract execution.

- (iii) “collusive practice”<sup>3</sup> is an arrangement between two or more parties designed to achieve an improper purpose, including to influence improperly the actions of another party;
- (iv) “coercive practice”<sup>4</sup> is impairing or harming, or threatening to impair or harm, directly or indirectly, any party or the property of the party to influence improperly the actions of a party;
- (v) “obstructive practice” is
  - (aa) deliberately destroying, falsifying, altering or concealing of evidence material to the investigation or making false statements to investigators in order to materially impede a Government investigation into allegations of a corrupt, fraudulent, coercive or collusive practice; and/or threatening, harassing or intimidating any party to prevent it from disclosing its knowledge of matters relevant to the investigation or from pursuing the investigation; or
  - (bb) acts intended to materially impede the exercise of the Government’s inspection and audit rights provided for under Clause 3.11.

### **1.9.2 Commissions and Fees**

The procuring entity will require the successful consultants to disclose any commissions or fees that may have been paid or are to be paid to agents, representatives, or commission agents with respect to the selection process or execution of the contract. The information disclosed must include at least the name and address of the agent, representative, or commission agent, the amount and currency, and the purpose of the commission or fee.

## **2. Commencement, Completion, Modification and Termination of Contract**

### **2.1 Effectiveness of Contract**

This Contract shall come into force and effect on the date of the procuring entity’s notice to the consultant instructing the consultant to begin carrying out the Services (“Effective Date”). This notice confirms that the effectiveness conditions, if any, listed in the SCC have been met.

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

<sup>4</sup> A “party” refers to a participant in the selection process or contract execution.

- 2.2 Termination of Contract for Failure to Become Effective** If this Contract has not become effective within such time period after the date of the Contract signed by the Parties as specified in the SCC, either Party may, by not less than 21 days' written notice to the other Party, declare this Contract to be null and void, and in the event of such a declaration by either Party, neither Party shall have any claim against the other Party with respect to same.
- 2.3 Commencement of Services** The consultant shall begin carrying out the Services not later than the number of days after the Effective Date specified in the SCC.
- 2.4 Expiration of Contract** Unless terminated earlier in accordance with Clause GCC 2.7, this Contract shall expire at the end of such time period after the Effective Date as specified in the SCC.
- 2.5 Modifications or Variations** Any modification or variation of the terms and conditions of this Contract, including any modification or variation of the scope of the Services, may only be made by written agreement between the Parties. However, each Party shall give due consideration to any proposals for modification or variation made by the other Party.
- 2.6 Force Majeure**
- 2.6.1 Definition**
- (a) For the purposes of this Contract, "Force Majeure" means an event which is beyond the reasonable control of a Party, is not foreseeable, is unavoidable, and which makes a Party's performance of its obligations hereunder impossible or so impractical as reasonably to be considered impossible in the circumstances, and includes, but is not limited to, war, riots, civil disorder, earthquake, fire, explosion, storm, flood or other adverse weather conditions, strikes, lockouts or other industrial action (except where such strikes, lockouts or other industrial action are within the power of the Party invoking Force Majeure to prevent), confiscation or any other action by Government agencies.
  - (b) Force Majeure shall not include (i) any event which is caused by the negligence or intentional action of a Party or such Party's Sub-consultants or agents or employees, nor (ii) any event which a diligent Party could reasonably have been expected both to take into account at the time of the conclusion of this Contract and avoid or overcome in the carrying out of its obligations hereunder.

- (c) Force Majeure shall not include insufficiency of funds or failure to make any payment required hereunder.

### **2.6.2 No Breach of Contract**

The failure of a Party to fulfil any of its obligations under the contract shall not be considered to be a breach of, or default under, this Contract insofar as such inability arises from an event of Force Majeure, provided that the Party affected by such an event: (a) has taken all reasonable precautions, due care and reasonable alternative measures in order to carry out the terms and conditions of this Contract; and (b) has informed the other Party as soon as possible about the occurrence of such an event.

### **2.6.3 Measures to be Taken**

- (a) A Party affected by an event of Force Majeure shall continue to perform its obligations under the Contract as far as is reasonably practical and shall take all reasonable measures to minimise the consequences of any event of Force Majeure.
- (b) A Party affected by an event of Force Majeure shall notify the other Party of such event as soon as possible, and in any case not later than fourteen (14) days following the occurrence of such event, providing evidence of the nature and cause of such event, and shall similarly give written notice of the restoration of normal conditions as soon as possible.
- (c) Any period within which a Party shall, pursuant to this Contract, complete any action or task, shall be extended for a period equal to the time during which such Party was unable to perform such action as a result of Force Majeure.
- (d) During the period of their inability to perform the Services as a result of an event of Force Majeure, the consultant, upon instructions by the procuring entity, shall either:
  - (i) demobilise, in which case the consultant shall be reimbursed for additional costs they reasonably and necessarily incurred, and, if required by the procuring entity, in reactivating the Services; or
  - (ii) continue with the Services to the extent possible, in which case the consultant shall continue to be paid under the terms of this Contract and be reimbursed for additional costs reasonably and necessarily incurred.
- (e) In the case of disagreement between the Parties as to the existence or extent of Force Majeure, the matter shall be settled according to Clause GCC 8.

**2.6.4 Payments**

During the period of their inability to perform the Services as a result of an event of Force Majeure, the consultant shall be entitled to continue to be paid under the terms of this Contract, as well as to be reimbursed for additional costs reasonably and necessarily incurred by them during such period for the purposes of the Services and in reactivating the Service after the end of such period.

**2.7 Suspension**

During the period of their inability to perform the Services as a result of an event of Force Majeure, the consultant shall be entitled to continue to be paid under the terms of this Contract, as well as to be reimbursed for additional costs reasonably and necessarily incurred by them during such period for the purposes of the Services and in reactivating the Service after the end of such period.

**2.8 Termination****2.8.1 By the procuring entity**

The procuring entity may terminate this Contract in case of the occurrence of any of the events specified in paragraphs (a) to (h) of this Clause GCC 2.8.1. In such an occurrence the procuring entity shall give a not less than thirty (30) days' written notice of termination to the consultant, and sixty (60) days' in the case of an event referred to in (e).

- (a) If the consultant does not remedy a failure in the performance of their obligations under the Contract, within thirty (30) days after being notified or within any further period as the procuring entity may have subsequently approved in writing.
- (b) If the consultant becomes (or, if the consultant consists of more than one entity, if any of its Members becomes) insolvent or bankrupt or enter into any agreements with their creditors for relief of debt or take advantage of any law for the benefit of debtors or go into liquidation or receivership whether compulsory or voluntary.
- (c) If the consultant, in the judgment of the procuring entity has engaged in corrupt or fraudulent practices in competing for or in executing the Contract.
- (d) If, as the result of Force Majeure, the consultant is unable to perform a material portion of the Services for a period of not less than sixty (60) days.
- (e) If the procuring entity, in its sole discretion and for any reason whatsoever, decides to terminate this Contract.

- (f) If the consultant fails to comply with any final decision reached as a result of arbitration proceedings pursuant to Clause GC 8 hereof.
- (g) conviction of the consultant of any offence that is viewed by the procuring entity to be serious.
- (h) if the consultant submits to the procuring entity a false statement which has a material effect on the rights, obligations or interests of the procuring entity.

Upon receipt of a notice of termination or reduction under Clause 2.6.1 the consultant agrees to:

- (i) stop work as specified in the notice;
- (ii) take all available steps to minimise loss resulting from the termination or reduction and to protect Contract Material; and
- (iii) continue work on any part of the Services not affected by the notice.

#### **2.8.2 By the Consultant**

The consultants may terminate this Contract, by not less than thirty (30) days' written notice to the procuring entity, such notice to be given after the occurrence of any of the events specified in paragraphs (a) through (d) of this Clause GCC 2.8.2:

- (a) If the procuring entity fails to pay any money due to the consultant pursuant to this Contract and not subject to dispute pursuant to Clause GCC 8 within forty-five (45) days after receiving written notice from the consultant that such payment is overdue.
- (b) If, as the result of Force Majeure, the consultant is unable to perform a material portion of the Services for a period of not less than sixty (60) days.
- (c) If the procuring entity fails to comply with any final decision reached as a result of arbitration pursuant to Clause GCC 8.
- (d) If the procuring entity is in material breach of its obligations pursuant to this Contract and has not remedied the same within forty-five (45) days (or such longer period as the consultant may have subsequently approved in writing) following the receipt by the procuring entity of the consultant's notice specifying such breach.

**2.8.3 Payment upon Termination**

Upon termination of this Contract pursuant to Clauses GCC 2.8.1 or GCC 2.8.2, the procuring entity shall make the following payments to the consultant:

- (a) payment pursuant to Clause GCC 6 for Services satisfactorily performed prior to the effective date of termination;
- (b) except in the case of termination pursuant to paragraphs (a) through (c), and (g) of Clause GCC 2.8.1, reimbursement of any reasonable cost incidental to the termination of the Contract, including the cost of the return travel of the Personnel and their eligible dependents.

In relation to any payment under Clause 2.8.3, the procuring entity shall not be liable to pay an amount which would, in addition to any amounts paid or due, or becoming due to the consultant under this Contract, together exceed the contract price at clause 6.2.

**2.8.4 Termination by Default**

Where a party fails to satisfy any of its obligations under this Contract, the other party may give notice requiring that the failure be remedied within the period set out in the SCC and not remedied within that time, may terminate this Contract immediately.

**2.8.5 Cessation of Rights and Obligations**

Upon termination of this Contract pursuant to Clauses GCC 2.2 or GCC 2.9 hereof, or upon expiration of this Contract pursuant to Clause GCC 2.4 hereof, all rights and obligations of the Parties hereunder shall cease, except (i) such rights and obligations as may have accrued on the date of termination or expiration, (ii) the obligation of confidentiality set forth in Clause GCC 3.3 hereof, (iii) the consultant's obligation to permit inspection, copying and auditing of their accounts and records set forth in Clause GCC 3.6 hereof, and (iv) any right which a Party may have under the Applicable Law.

**2.8.6 Cessation of Services**

Upon termination of this Contract by notice of either Party to the other pursuant to Clauses GCC 2.9.1 or GCC 2.9.2 hereof, the consultant shall, immediately upon dispatch or receipt of such notice, take all necessary steps to bring the Services to a close in a prompt and orderly manner and shall make every reasonable effort to keep expenditures for this purpose to a minimum. With respect to documents prepared by the consultant and equipment and materials furnished by the procuring entity, the consultant shall proceed as provided, respectively, by Clauses GCC 3.9 or GCC 3.10 hereof.

- 2.8.7 Disputes about Events of Termination** If either Party disputes whether an event specified in paragraphs (a) through (f) of Clause GCC 2.9.1 or in Clause GCC 2.9.2 hereof has occurred, such Party may, within forty-five (45) days after receipt of notice of termination from the other Party, refer the matter to Clause GCC 8 hereof, and this Contract shall not be terminated on account of such event except in accordance with the terms of any resulting arbitral award.

### **3. Obligations of the Consultant**

#### **3.1 General**

- 3.1.1 Standard of Performance** The consultant shall perform the Services and carry out their obligations in this Contract with all due diligence, efficiency and economy, in accordance with generally accepted professional standards and practices, and shall observe sound management practices, and employ appropriate technology and safe and effective equipment, machinery, materials and methods. The consultant shall always act, in respect of any matter relating to this Contract or to the Services, as faithful advisers to the procuring entity, and shall at all times support and safeguard the procuring entity's legitimate interests in any dealings with Sub-consultants or third Parties.

- 3.1.2 Law Governing Services** The consultant shall perform the Services in accordance with the Applicable Law and shall take all practicable steps to ensure that any Sub-consultants, as well as the Personnel of the consultant and any Sub-consultants, comply with the Applicable Law. The procuring entity shall notify the consultant in writing of relevant local customs, and the consultant shall, after such notification, respect such customs.

- 3.1.3 Skills Transfer** The consultant, where appropriate, shall use their best endeavours to impart skills and to instruct the procuring entity's employees with whom the consultant has contact in the performance of the services, with a view to increasing and consolidating the skills base within the procuring entity.

- 3.2 Conflict of Interests** The consultant shall hold the procuring entity's interests paramount, without any consideration for future work, and strictly avoid conflict with other assignments or their own corporate interests.

The consultant warrants that, to the best of its knowledge after making diligent inquiry, at the date of commencement of the Consultancy Services that no conflict with the interests of the



procuring entity exists or is likely to arise in the performance of the Consultancy Services.

If, during the performance of the Consultancy Services, a conflict of interest arises, or appears likely to arise, the consultant agrees to:

- (a) notify the procuring entity immediately in writing;
- (b) make full disclosure of all relevant information relating to the conflict or apparent or likely conflict; and
- (c) take such steps as the procuring entity may reasonably require to resolve or otherwise deal with the conflict.

If the consultant does not notify the procuring entity or is unable or unwilling to resolve or deal with the conflict as required under this Clause, the procuring entity may terminate this Contract in accordance with the provisions of this Clause or Clause 2.6.

**3.2.1 Consultants not to Benefit from Commissions, Discounts, etc.**

The payment of the consultant pursuant to Clause GCC 6 shall constitute the consultant's only payment in connection with this Contract or the Services, and the consultant shall not accept for their own benefit any trade commission, discount, or similar payment in connection with activities pursuant to this Contract or to the Services or in the discharge of their obligations under the Contract, and the consultant shall use their best efforts to ensure that the Personnel, any Sub-consultants, and agents of either of them similarly shall not receive any such additional payment.

Furthermore, if the consultant, as part of the Services, has the responsibility of advising the procuring entity on the procurement of goods, works or services, the consultant shall comply with the Government's applicable procurement guidelines, and shall at all times exercise such responsibility in the best interest of the procuring entity. Any discounts or commissions obtained by the consultant in the exercise of such procurement responsibility shall be for the account of the procuring entity.

**3.2.2 Consultant and Affiliates not to Engage in Certain Activities**

The consultant agrees that, during the term of this Contract and after its termination, the consultant and any entity affiliated with the consultant, as well as any Sub-consultants and any entity affiliated with such Sub-consultants, shall be disqualified from providing goods, works or services (other than consulting services) resulting from or directly related to the consultant's Services for the preparation or implementation of the project

- 3.2.3 Prohibition of Conflicting Activities** The consultant shall not engage and shall cause their Personnel as well as their Sub-consultants and their Personnel not to engage, either directly or indirectly, in any business or professional activities which would conflict with the activities assigned to them under this Contract.
- 3.3 Confidentiality** Except with the prior written consent of the procuring entity, the consultant and the Personnel shall not at any time communicate to any person or entity any confidential information acquired in the course of the Services, nor shall the consultant and the Personnel make public the recommendations formulated in the course of, or as a result of, the Services.
- 3.4 Insurance to be Taken Out by the Consultant** The consultant:
- (a) unless there is an existing and valid relevant insurance policy to cover the period of the Services under this Contract, shall take out and maintain, and shall cause any Sub-consultants to take out and maintain, at their (or the Sub-consultants', as the case may be) own cost but on terms and conditions approved by the procuring entity, insurance against the risks, and for the coverage, as shall be specified in the SCC; and
  - (b) at the procuring entity's request, shall provide evidence to the procuring entity showing that such insurance has been taken out within a period to be specified in the SCC, and maintained and that the current premiums have been paid.
- 3.5 Consultant's Actions Requiring Procuring entity's Prior Approval** The consultant shall obtain the procuring entity's prior approval in writing before taking any of the following actions:
- (a) appointing such members of the Personnel not listed by name in Appendix C,
  - (b) subcontracts: the consultant may subcontract work relating to the Services to an extent and with such experts and entities as may be approved in advance by the procuring entity. Notwithstanding such approval, the consultant shall retain full responsibility for the Services. In the event that any Sub-consultants are found by the procuring entity to be incompetent or incapable in discharging assigned duties, the procuring entity may request the consultant to provide a replacement, with qualifications and experience acceptable to the procuring entity, or to resume the performance of the Services itself; and
  - (c) any other action that may be specified in the SCC.

**3.6 Reporting Obligations**

- (a) The consultant shall submit to the procuring entity the reports and documents specified in Appendix B, in the form, in the numbers and within the time periods set forth in the said Appendix.
- (b) Final reports shall be delivered in CD ROM in addition to the hard copies specified in said Appendix.

**3.7 Documents Prepared by the consultant to be the Property of the procuring entity**

- (a) All plans, drawings, specifications, designs, reports, other documents and software submitted by the consultant under this Contract shall become and remain the property of the procuring entity, and the consultant shall, not later than upon termination or expiration of this Contract, deliver all such documents to the procuring entity, together with a detailed inventory thereof.
- (b) The consultant may retain a copy of such documents and software.
- (c) This Contract does not affect intellectual property rights in Existing Contract Material but the consultant grants, and will ensure that relevant third parties grant, to the procuring entity a paid up non-exclusive, non-transferable licence:
  - (i) to use, reproduce and adapt for its own use; and
  - (ii) to perform any other act with respect to copyright; and
  - (ii) to manufacture, sell, hire or otherwise exploit a product or process or to provide a service or to license a third party to do any of those things in respect of, the Existing Contract Material but only as part of the Contract Material (and any further development of that material). The consultant warrants that the Contract Material, excluding existing contract material, will not infringe any Intellectual Property rights including those of any third party.
- (d) If license agreements are necessary or appropriate between the consultant and third parties for purposes of development of any such computer programs, the consultant shall obtain the procuring entity's prior written approval to such agreements, and the procuring entity shall be entitled at its discretion to require recovering the expenses related to the development of the program(s) concerned.

- (e) This Clause 3.7 shall survive termination or expiration of the Contract and any future use of any documents or software prepared or used by the consultant under this Contract requires prior written approval of the procuring entity or as specified in the SCC.

### **3.8 New Contract Material**

Intellectual Property in all New Contract Material vests or will vest in the procuring entity in accordance with this Contract and the requirements set out in Appendix A. The consultant agrees to be liable should there be a time lapse between commencement of the services and the date of the Contract to ensure that Material produced in that period is not pre-existing Material, in respect of which the Intellectual Property does not vest in the procuring entity. Intellectual property rights in records supplied to the consultant by the procuring entity for reproduction or guidance remains vested in the procuring entity.

Title to and intellectual property rights in all New Contract Material, including each and every stage of design and production of it, will upon its creation be transferred to the procuring entity without need for further assurance. Otherwise, the consultant agrees to bring into existence, sign, execute or otherwise deal with any document, which may be necessary or desirable to give effect to Clause 3.8.

This Contract does not affect intellectual property rights in Existing Contract Material but the consultant grants, and will ensure that relevant third parties grant, to the procuring entity a paid up non-exclusive, non-transferable license:

- (a) to use, reproduce and adapt for its own use;
- (b) to perform any other act with respect to copyright; and
- (c) to manufacture, sell, hire or otherwise exploit a product or process or to provide a service or to license a third party to do any of those things in respect of the Existing Contract Material but only as part of the Contract Material (and any further development of that material). The consultant warrants that the Contract Material, excluding Existing Contract Material, will not infringe any Intellectual Property rights including those of any third party.

Any Deliverable, studies, reports or other material, prepared by the consultant for the procuring entity under this Contract shall remain the property of the procuring entity. The consultant may retain a copy of such Material. Any disclosure or use of the

Contract Material for purposes outside of this Contract is subject to approval from the procuring entity.

Upon the expiration or earlier termination of this Contract, the consultant will deliver to the procuring entity all records, Contract Material and all copies of it, and if necessary, transfer or have transferred any intellectual property rights to the procuring entity.

This Clause 3.8 shall survive termination or expiration of this Contract.

**3.9 Equipment,  
Vehicles and  
Materials  
Furnished by the  
procuring entity**

Subject to availability of resources, a vehicle may be made available for use by the consultant for purpose of the Contract or the consultant may choose to purchase a vehicle using his or her personal funds. In the case of the latter, the vehicle shall be the property of the consultant. Any vehicle, equipment or materials made available to the consultant by the procuring entity or purchased by the consultant wholly or partly with funds provided by the procuring entity under the Contract, shall be the property of the procuring entity and shall be marked and registered accordingly. Upon termination or expiration of this Contract, the consultant shall make available to the procuring entity an inventory of such equipment, vehicles and materials and shall dispose of such equipment and materials in accordance with the procuring entity's instructions. Unless otherwise instructed by the procuring entity in writing, the consultant shall, at the procuring entity's expense, insure any such equipment, vehicles and materials ("items") made available by the procuring entity or purchased by the consultant using funds provided by the procuring entity under the Contract, and the insurance amount must be equal to the full replacement value of those items.

**3.10 Equipment and  
Materials  
Provided by the  
consultants and  
Personnel**

Equipment or materials brought into Samoa by the consultant or the Personnel and used either for the Project or personal use shall remain the property of the consultant or the Personnel concerned, as applicable.

**3.11 Accounting,  
Inspection and  
Auditing**

**3.11.1**

The consultant shall keep, and shall cause its Sub-consultants to keep, accurate and systematic accounts and records in respect of the Contract, in accordance with internationally accepted accounting principles and in such form and detail as will clearly identify relevant time changes and costs.

**3.11.2**

The consultant shall permit, and shall cause its Sub-consultants to permit, the Government and/or persons appointed by the Government to inspect its accounts and records relating to the performance of the Contract and the submission of the Proposal to provide the Services, and to have such accounts and records audited by auditors appointed by the Government if requested by the Government. The consultant's attention is drawn to Clause 1.9.1 which provides, inter alia, that acts intended to materially impede the exercise of the Government's inspection and audit rights provided for under Clause 3.11 constitute a prohibited practice subject to contract termination (as well as to a determination of ineligibility pursuant to the Government's prevailing sanctions procedures.).

**4. Consultant's Personnel****4.1 Description of Personnel**

The consultant shall employ and provide such qualified and experienced Personnel and Sub-consultants as are required to carry out the Services. The titles, agreed job descriptions, minimum qualifications, and estimated periods of engagement in the carrying out of the Services of the consultant's Key Personnel are described in Appendix C. The Key Personnel and Sub-consultants listed by title as well as by name in Appendix C are approved by the procuring entity.

The consultant shall, in all dealings with its labour and labour of its subcontractors (if any) connected to the Contract, pay due regard to all relevant labour laws applicable to the consultant's personnel (and sub-consultants personnel) including laws relating to their health, safety and welfare. The consultant shall also pay due regard to official public holidays and locally recognised days of rest in Samoa. If and when the consultant considers it necessary to carry out services during these days so as to meet Due Dates and requests the procuring entity's consent, the procuring entity shall not unreasonably withhold such consent.

**4.2 Removal and/or Replacement of Personnel**

- (a) Except as the procuring entity may otherwise agree, no changes shall be made in the Key Personnel. If, for any reason beyond the reasonable control of the consultant, such as retirement, death, medical incapacity, among others, it becomes necessary to replace any of the Key Personnel, the consultant shall immediately provide as a replacement a person of equivalent or better qualifications and the replacement is to be approved by the procuring entity (through the same process and paid the same rate as

agreed for the original candidate). In respect of other Personnel which the Consultant proposes to use in the carrying out of the Services, the Consultant shall submit to the Client for review and approval a copy of their Curricula Vitae (CVs). If the Client does not object in writing (stating the reasons for the objection) within twenty-one (21) days from the date of receipt of such CVs, such Personnel shall be deemed to have been approved by the Client.

- (b) If the procuring entity finds that any of the Personnel have
  - (i) committed serious misconduct or have been charged with having committed a criminal action, or
  - (ii) have reasonable cause to be dissatisfied with the performance of any of the Personnel, then the consultant shall, at the procuring entity's written request specifying the grounds thereof, provide as a replacement a person with qualifications and experience acceptable to the procuring entity.
- (c) The consultant shall have no claim for additional costs arising out of or incidental to any removal and/or replacement of Personnel.

## **5. Obligations of the Procuring Entity**

### **5.1 Assistance and Exemptions**

The procuring entity shall endeavour to use its best efforts to ensure that the Government assists in expediting the process for matters as specified in the SCC.

### **5.2 Change in the Applicable Law Related to Taxes and Duties**

If, after the date of this Contract, there is any change in the Applicable Law with respect to taxes and duties which increases or decreases the cost incurred by the consultant in performing the Services, the remuneration and reimbursable expenses otherwise payable to the consultant under this Contract shall be increased or decreased accordingly by agreement between the Parties, and corresponding adjustments shall be made to the amounts referred to in Clauses GCC 6.2 (a) or (b), as the case may be.

### **5.3 Services and Facilities**

- (a) The procuring entity shall make available free of charge to the consultant the Services and Facilities listed under Appendix F at the times and in the manner specified in said Appendix F.
- (b) In case that such services, facilities and property shall not be made available to the consultant as and when specified in Appendix F, the Parties shall agree on (i) any time extension that it may be appropriate to grant to the consultant for the

performance of the Services, (ii) the manner in which the consultant shall procure any such services, facilities and property from other sources, and (iii) the additional payments, if any, to be made to the consultant as a result thereof pursuant to Clause GCC 6.3 hereinafter.

## **6. Payments to the Consultant**

- 6.1 Lump-Sum Payment** The total payment due to the consultant shall not exceed the Contract Price which is an all inclusive fixed lump-sum covering all costs required to carry out the Services described in Appendix A. Except as provided in Clause 5.2, the Contract Price may only be increased above the amounts stated in Clause 6.2 if the Parties have agreed to additional payments in accordance with Clause 2.4.
- 6.2 Contract Price** (a) The price payable in foreign currency/currencies is set forth in the SCC.  
(b) The price payable in local currency is set forth in the SCC.
- 6.3 Payment for Additional Services** For the purpose of determining the remuneration due for additional services as may be agreed under Clause 2.4, a breakdown of the lump-sum price is provided in Appendices D and E. Unless the SCC provides for the price adjustment of the remuneration rates, the remuneration shall be fixed for the duration of the Contract. Any rates specified for Experts not yet appointed shall be provisional and shall be subject to revision, with the written approval of the procuring entity, once the applicable remuneration rates and allowances are known.
- 6.4 Terms and Conditions of Payment** Payments will be made to the account of the consultant and according to the payment schedule stated in the SCC. Unless otherwise stated in the SCC, the first payment shall be made against the provision by the consultant of an advance payment guarantee for the same amount and shall be valid for the period stated in the SCC. Such guarantee shall be in the form set forth in Appendix G, or in such other form, as the procuring entity shall have approved in writing. Any other payment shall be made after the conditions listed in the SCC for such payment have been met, and the consultant has submitted an invoice to the procuring entity specifying the amount due.
- 6.5 Interest on Delayed Payments** If the procuring entity has delayed payments beyond fifteen (15) days after the due date stated in the Clause SCC 6.4, interest shall be paid to the consultant for each day of delay at the rate stated in the SCC.



## **7. Good Faith**

### **7.1 Good Faith**

The Parties undertake to act in good faith with respect to each other's rights under this Contract and to adopt all reasonable measures to ensure the realisation of the objectives of this Contract.

## **8. Settlement of Disputes**

### **8.1 Amicable Settlement**

If either Party objects to any action or inaction of the other Party, the objecting Party may file a written Notice of Dispute to the other Party providing in detail the basis of the dispute. The Party receiving the Notice of Dispute will consider it and respond in writing within 14 days after receipt. If that Party fails to respond within 14 days, or the dispute cannot be amicably settled within 14 days following the response of that Party, Clause GCC 8.2 shall apply.

### **8.2 Dispute Resolution**

Any dispute between the Parties as to matters arising pursuant to this Contract that cannot be settled amicably within thirty (30) days after receipt by one Party of the other Party's request for such amicable settlement may be submitted by either Party for settlement in accordance with the provisions specified in the SCC.

## **9. Miscellaneous Provisions**

### **9.1 Waiver**

If a party does not exercise (or delays in exercising) any of its rights, that failure or delay does not operate as waiver of those rights. A single or partial exercise by a party of any of its rights does not prevent the further exercise of any right.

### **9.2 Indemnity**

The consultant agrees to indemnify the procuring entity from and against any:

- (a) liability incurred, or any negligent act or omission, by the consultant in the performance of the Consultancy Services;
- (b) loss of or damage to property of the procuring entity caused by the consultant, his officers, employees, agents or subcontractors;
- (c) loss or expense incurred by the procuring entity in dealing with any claim against it including legal costs and expenses resulting from any act or omission by the consultant, his officers, employees, agents or subcontractors in connection with this Contract;

- (e) any breach by the consultant of his obligations under this Contract, including any loss or damage attributable to any such breach; and
- (f) any use or disclosure by the consultant, his officers, employees, agents or subcontractors of Confidential Information held by him or them or controlled by him or them in connection with this Contract

The consultant's liability to indemnify the procuring entity under Clause 9.2 will be reduced proportionately to the extent that any negligent act or omission of the procuring entity contributed to the relevant liability, loss or damage.

The obligations under Clause 9.2 shall survive the expiration or termination of this Contract.

### **9.3 Assignment and Novation**

The consultant shall not assign its obligations, and agrees not to assign its rights, under this contract without, in either case, prior written approval from the procuring entity.

The consultant agrees not to consult with any other person for the purposes of entering into an agreement that would or could require novation of the contract without first consulting the procuring entity.

### **9.4 Security and Access**

The consultant, when using the procuring entity's premises or facilities, shall comply with all rules, policies, directions and procedures including those relating to security and to workplace health and safety in effect at the premises or in regard to the facilities notified to the consultant by the procuring entity.

### **9.5 Evidence and Precedence**

The Contract:

- (a) constitutes the entire agreement between the Parties in this matter; and
- (b) supersedes all prior representations, agreements, statements and understandings, whether verbal or in writing.

No agent or representative of either Party has authority to make, and the Parties shall not be bound by or be liable for, any statement, representation, promise or agreement not set forth herein.

### **9.6 Negation of Employment, Partnership and Agency**

The relationship of the consultant to the procuring entity is that of independent contractor and nothing contained in this Contract shall be construed as creating any other relationship. The consultant agrees not to represent, and endeavors to ensure that consultant's officers, employees, agents and subcontractors do not

represent themselves, as being an officer, employee, partner or agent of the procuring entity, or as otherwise able to bind or represent the procuring entity.

The consultant is not by virtue of this Contract an officer, employee, partner or agent of the procuring entity, nor does the consultant have any power or authority to bind or represent the procuring entity.

### III. SPECIAL CONDITIONS OF CONTRACT

*[Clauses in editable sections are optional; all notes should be deleted in final text]*

Number of GC Clause	Amendments of, and Supplements to, Clauses in the General Conditions of Contract
<b>1.1(a)</b>	The Applicable Law shall be the laws of the Independent State of Samoa
<b>1.2</b>	The governing law shall be the laws of the Independent State of Samoa
<b>1.3</b>	The language is: English
<b>1.4.1 and 1.4.2</b>	<p>The addresses of the Parties for communication of a notice, request or consent are:</p> <p>Procuring entity: <i>[enter procuring entity name]</i></p> <p>Attention: <i>[enter name of contact person]</i></p> <p>Facsimile: <i>[enter number]</i></p> <p>Electronic Mail: <i>[enter email]</i></p> <p>Consultant: <i>[enter name]</i></p> <p>Attention: <i>[enter name of contact person]</i></p> <p>Facsimile: <i>[enter number]</i></p> <p>Electronic Mail: <i>[enter email]</i></p>
<b>1.6</b>	<p>The Lead Member is <i>[insert name of member]</i></p> <p><i>[Note: If the consultant consists of a joint venture/ consortium/ association of more than one entity, the name of the entity whose address is specified in Clause SCC 1.6 should be inserted here. If the consultant consists only of one entity, this Clause SCC 1.8 should be deleted from the SCC]</i></p>
<b>1.7</b>	<p>The Authorised Representatives are:</p> <p>For the Procuring entity: <i>[enter name]</i></p> <p>For the consultant: <i>[enter name]</i></p>
<b>1.8</b>	<i>[Note: The Government may reimburse payments for duties and indirect taxes levied by the Samoa, it leaves it to the procuring entity to decide whether the consultant (i) should be exempted from any such levies, or (ii) should be reimbursed by the procuring entity for any such levies they might have to pay (or that the procuring entity would pay such levies on behalf of the consultant and the Personnel).</i>

Number of GC Clause	Amendments of, and Supplements to, Clauses in the General Conditions of Contract
	<p><i>The consultant must be informed in Clause Reference 13.1 of the Data Sheet about which alternative the procuring entity wishes to apply.</i></p> <p><i>If applicable select from the following or insert 'Not applicable'.</i></p> <p>The consultant is exempt from all applicable taxes, duties, fees and other impositions in accordance with Applicable Law and as confirmed by the Ministry for Revenue.</p> <p>The procuring entity shall reimburse all applicable taxes, duties, fees and other impositions in accordance with Applicable Law and as confirmed by the Ministry for Revenue.</p>
2.1	<p>The effective Date is <i>enter date</i></p> <p><b>Note:</b> <i>The Effective Date may be specified by reference to conditions of effectiveness of the Contract, such as approval of the Contract by the Government, etc. If the Contract shall come into effect on the date it is signed, this Clause SCC 2.1 should be deleted from the SCC.</i></p>
2.2	The time period for contract becoming effective shall be <i>insert time period</i> .
2.3	The date of commencement of Services is <i>insert date</i>
2.4	The Contract expires on <i>insert time period after the Effective Date, e.g.: twelve months</i>
2.8.4	The period for when a failure by the Consultant is remedied is: <i>insert time period</i>
3.4	<p>The risks and coverage shall be as follows:</p> <ul style="list-style-type: none"> <li>(a) Third Party motor vehicle liability insurance in respect of motor vehicles operated in Samoa by the consultant or its Personnel or any Sub-consultants or their Personnel, with a minimum coverage of <i>insert amount and currency</i>;</li> <li>(b) Third Party liability insurance, with a minimum coverage of <i>insert amount and currency</i>;</li> <li>(c) professional liability insurance, with a minimum coverage of <i>insert amount and currency</i>;</li> <li>(d) employer's liability and workers' compensation insurance in respect of the Personnel of the consultant and of any Sub-consultants, in accordance with the relevant provisions of the Applicable Law, as well as, with respect to such Personnel, any such life, health, accident, travel or other insurance as may be appropriate; and</li> </ul>

Number of GC Clause	Amendments of, and Supplements to, Clauses in the General Conditions of Contract
	<p>(e) insurance against loss of or damage to (i) equipment purchased in whole or in part with funds provided under this Contract, (ii) the consultant's property used in the performance of the Services, and (iii) any documents prepared by the consultant in the performance of the Services.  </p> <p>The insurance policy must be in place by <i>insert practical period for consultant to have insurance in place, e.g. either before or after signing</i>.</p> <p><i>Note: Delete what is not applicable</i></p>
3.5(c)	<p>Other actions to be taken by the consultant that requires the procuring entity's written approval are: <i>insert actions</i></p> <p><i>Note: if there are no other actions, delete this clause SCC 3.5 (c)</i></p>
3.7(b)	<p><i>Note: If there is to be no restriction on the future use of these documents by either Party, this Clause SCC 3.7 should be deleted. If the Parties wish to restrict such use, any of the following options, or any other option agreed to by the Parties, may be used.</i></p> <p>The consultant shall not use these documents and software for purposes unrelated to this Contract without the prior written approval of the procuring entity.</p> <p>The procuring entity shall not use these documents and software for purposes unrelated to this Contract without the prior written approval of the consultant.</p> <p>Neither Party shall use these documents and software for purposes unrelated to this Contract without the prior written approval of the other Party.</p>
5.1	<p><i>Note: List here any assistance or exemptions that the procuring entity may provide under Clause 5.1. If there is no such assistance or exemptions, state "not applicable."</i></p>
6.2(a)	<p>The amount in foreign currency or currencies is <i>insert amount</i></p>
6.2(b)	<p>The amount in local currency is <i>insert amount</i></p>
6.3	<p>Price adjustment on the remuneration applies. The contingency amount of <i>insert amount</i> does not form the total contract price, but rather, it is identified as the amount to be paid in accordance with GCC 6.3.</p> <p>Payments for remuneration made in local currencies shall be adjusted as follows:</p> <p>Remuneration paid in local currency pursuant to the rates set forth in <b>Appendix D</b> shall be adjusted every 12 months (and, for the first time, with</p>

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	<p>effect for the remuneration earned in the 13<sup>th</sup> calendar month after the date of the Contract by applying the following formula:</p> $R_l = R_{l_0} \times \frac{I_l}{I_{l_0}}$ <p>where</p> <p><math>R_l</math> is the adjusted remuneration;</p> <p><math>R_{l_0}</math> is the remuneration payable on the basis of the remuneration rates (<b>Appendix D</b>) in local currency;</p> <p><math>I_l</math> is the official index for salaries in Samoa for the first month for which the adjustment is to have effect; and</p> <p><math>I_{l_0}</math> is the official index for salaries in Samoa for the month of the date of the Contract.</p> <p>Name of index: Consumer Price Index</p> <p>Source institution: Samoa Bureau of Statistics</p>
6.4	<p>The accounts are:</p> <p>for foreign currency or currencies: <i>[insert account]</i></p> <p>for local currency: <i>[insert account]</i></p> <p><b>Payments shall be made according to the following schedule:</b></p> <p><i>[Note: (a) the following instalments are indicative only; (b) if the payment of foreign currency and of local currency does not follow the same schedule, add a separate schedule for payment in local currency; (c) “commencement date” may be replaced with “date of effectiveness;” and (d) if applicable, detail further the nature of the report evidencing performance, as may be required, e.g., submission of study or specific phase of study, survey, drawings, draft bidding documents, etc., as listed in Appendix B, Reporting Requirements. In the example provided, the bank guarantee for the repayment is released when the payments have reached 50 percent of the lump- sum price, because it is assumed that at that point, the advance has been entirely set off against the performance of services.</i></p> <p>(a) Twenty (20) percent of the Contract Price shall be paid on the commencement date against the submission of a demand guarantee for the same.</p>

Number of GC Clause	Amendments of, and Supplements to, Clauses in the General Conditions of Contract
	<p>(b) Ten (10) percent of the lump-sum amount shall be paid upon submission of the inception report.</p> <p>(c) Twenty-five (25) percent of the lump-sum amount shall be paid upon submission of the interim report.</p> <p>(d) Twenty-five (25) percent of the lump-sum amount shall be paid upon submission of the draft final report.</p> <p>(e) Twenty (20) percent of the lump-sum amount shall be paid upon approval of the final report.</p> <p>(f) The demand guarantee shall be released when the total payments reach fifty (50) percent of the lump-sum amount.</p> <p><i>Note: This sample clause should be specifically drafted for each contract.</i></p>
<b>6.5</b>	The interest rate on delayed payments to be paid by the procuring entity to the consultant is <i>insert rate</i>
<b>8.2</b>	<p>Disputes shall be settled by arbitration in accordance with the following provisions:</p> <ol style="list-style-type: none"> <li>1. <u>Selection of Arbitrators.</u> Each dispute submitted by a Party to arbitration shall be heard by a sole arbitrator or an arbitration panel composed of three arbitrators, in accordance with the following provisions: <ol style="list-style-type: none"> <li>(a) Where the Parties agree that the dispute concerns a technical matter, they may agree to appoint a sole arbitrator or, failing agreement on the identity of such sole arbitrator within thirty (30) days after receipt by the other Party of the proposal of a name for such an appointment by the Party who initiated the proceedings, either Party may apply to <i>name an appropriate international professional body, e.g., the Federation Internationale des Ingenieurs-Conseil (FIDIC) of Lausanne, Switzerland</i> for a list of not fewer than five nominees and, on receipt of such list, the Parties shall alternately strike names therefrom, and the last remaining nominee on the list shall be the sole arbitrator for the matter in dispute. If the last remaining nominee has not been determined in this manner within sixty (60) days of the date of the list, <i>insert the name of the same professional body as above</i> shall appoint, upon the request of either Party and from such list or otherwise, a sole arbitrator for the matter in dispute.</li> <li>(b) Where the Parties do not agree that the dispute concerns a technical matter, the procuring entity and the consultant shall each appoint one arbitrator, and these two arbitrators shall jointly appoint a third</li> </ol> </li> </ol>



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	<p>arbitrator, who shall chair the arbitration panel. If the arbitrators named by the Parties do not succeed in appointing a third arbitrator within thirty (30) days after the latter of the two arbitrators named by the Parties has been appointed, the third arbitrator shall, at the request of either Party, be appointed by <i>[name an appropriate international appointing authority, e.g., the Secretary General of the Permanent Court of Arbitration, The Hague; the Secretary General of the International Centre for Settlement of Investment Disputes, Washington, D.C.; the International Chamber of Commerce, Paris; etc.]</i></p> <p>(c) If, in a dispute subject to Clause SCC 8.2 1.(b), one Party fails to appoint its arbitrator within thirty (30) days after the other Party has appointed its arbitrator, the Party which has named an arbitrator may apply to the <i>[name the same appointing authority as in Clause SCC 8.2 1.(b)]</i> to appoint a sole arbitrator for the matter in dispute, and the arbitrator appointed pursuant to such application shall be the sole arbitrator for that dispute.</p> <p>2. <u>Rules of Procedure.</u> Except as stated herein, arbitration proceedings shall be conducted in accordance with the rules of procedure for arbitration of the United Nations Commission on International Trade Law (UNCITRAL) as in force on the date of this Contract.</p> <p>3. <u>Substitute Arbitrators.</u> If for any reason an arbitrator is unable to perform his function, a substitute shall be appointed in the same manner as the original arbitrator.</p> <p>4. <u>Nationality and Qualifications of Arbitrators.</u> The sole arbitrator or the third arbitrator appointed pursuant to paragraphs (a) through (c) of Clause SCC 8.2 1 hereof shall be an internationally recognised legal or technical expert with extensive experience in relation to the matter in dispute and shall not be a national of the consultant's home country <i>[Note: If the consultant consists of more than one entity, add: or of the home country of any of their Members or Parties]</i> or of Samoa. For the purposes of this Clause, "home country" means any of:</p> <p>(a) the country of incorporation of the consultant <i>[Note: If the consultant consists of more than one entity, add: or of any of their Members or Parties]</i>; or</p> <p>(b) the country in which the consultant's <i>[or any of their Members' or Parties']</i> principal place of business is located; or</p> <p>(c) the country of nationality of a majority of the consultant's <i>[or of any Members' or Parties']</i> shareholders; or</p>

Number of GC Clause	Amendments of, and Supplements to, Clauses in the General Conditions of Contract
	<p>(d) the country of nationality of the Sub-consultants concerned, where the dispute involves a subcontract.</p> <p>5. Miscellaneous. In any arbitration proceeding hereunder:</p> <p>(a) proceedings shall, unless otherwise agreed by the Parties, be held in <i>[select a country which is neither Samoa nor the consultant's country]</i>;</p> <p>(b) the <i>[type of language]</i> language shall be the official language for all purposes; and</p> <p>(c) the decision of the sole arbitrator or of a majority of the arbitrators (or of the third arbitrator if there is no such majority) shall be final and binding and shall be enforceable in any court of competent jurisdiction, and the Parties hereby waive any objections to or claims of immunity in respect of such enforcement.</p>

## IV. APPENDICES

### Appendix A – Description of Services

*Note: Give detailed descriptions of the Services to be provided, dates for completion of various tasks, place of performance for different tasks, specific tasks to be approved by procuring entity, etc.*

### Appendix B – Reporting Requirements

*Note: List format, frequency, and contents of reports; persons to receive them; dates of submission; etc.*

### Appendix C – Key Personnel and Sub-consultants

*Note: List under:*

- C-1 – Titles (and names, if already available), detailed job descriptions and minimum qualifications of Key Foreign Personnel to be assigned to work in Samoa and estimated staff-months for each
- C-2 – Same as C-1 for Key Foreign Personnel to be assigned to work outside Samoa
- C-3 – List of approved Sub-consultants (if already available); same information with respect to their Personnel as in C-1 or C-2
- C-4 – Same information as C-1 for Key local or Personnel

### Appendix D – Breakdown of Contract Price in Foreign Currency

*Note: List here the elements of cost used to arrive at the breakdown of the lump-sum price-foreign currency portion:*

1. Monthly rates for Personnel (Key Personnel and other Personnel).
2. Reimbursable expenses

*The appendix will exclusively be used for determining remuneration for additional expenses*

### Appendix E: Breakdown of Contract Price in Local Currency

*Note: List here the elements of cost used to arrive at the breakdown of the lump-sum price - local currency portion:*

1. Monthly rates for Personnel (Key Personnel and other Personnel).
2. Reimbursable expenditures.

*This appendix will exclusively be used for determining remuneration for additional services. This should also reflect correctly application of applicable taxes to the Contract, and any contingency amount.*

## **Appendix F: Services and Facilities Provided by the Procuring Entity**

*Note: List here the services and facilities to be made available to the consultant by the procuring entity.*

## **Appendix G: Form of Advance Payment Guarantee**

*Note: See Clause GCC 6.4 and Clause SCC 6.4.*

## Bank Guarantee for Advance Payment

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

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

RFP Contract No. and title: *insert number and title of bidding process*

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

**Beneficiary:** *insert legal name and address of Principal*

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

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

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

At the request of the services provider, we as guarantor hereby irrevocably undertake to pay you any sum or sums not exceeding in total an amount of *insert amount(s)<sup>5</sup> in figures and words* upon receipt by us of your first demand in writing declaring that the services provider is in breach of its obligation under the Contract because the services provider used the advance payment for purposes other than toward delivery of the general services.

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

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

This Guarantee shall remain valid and in full effect from the date of the advance payment received by the services provider under the Contract until *insert date<sup>6</sup>*.

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<sup>5</sup> The bank shall insert the amount(s) specified in the SCC and denominated, as specified in the SCC, either in the currency(ies) of the Contract or a freely convertible currency acceptable to the procuring entity.

<sup>6</sup> Insert the Delivery date stipulated in the Contract Delivery Schedule. The procuring entity should note that in the event of an extension of the time to perform the Contract, the procuring entity would need to request an extension of this Guarantee from the bank. Such request must be in writing and must be made prior to the expiration date established in the Guarantee. In preparing this Guarantee, the procuring entity might consider adding the following text to the Form, at the end of the penultimate paragraph: "We agree to a one-time extension of this Guarantee for a period not to exceed *insert* (6)

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

.....  
**Authorised Signatures for Bank and services provider**

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*months] [one (1) year], in response to the procuring entity's written request for such extension, such request to be presented to us before the expiry of the Guarantee."*