

Section 8 - Special Conditions of Contract

The following Special Conditions of Contract (SCC) shall supplement the General Conditions of Contract (GCC). Whenever there is a conflict, the provisions herein shall prevail over those in the GCC. The clause number of the SCC is the corresponding clause number of the GCC.

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1. Definitions

The Employer is: **Electric Power Corporation**

The Project Manager is: **Fonoti Perelini S. Perelini**

The Bank is: **Asian Development Bank**

Country of Origin: **ADB eligible countries. List of eligible countries is in Section 5 of the Bidding Documents**

5. Law and Language

5.1 The Contract shall be interpreted in accordance with the laws of: **Independent State of Samoa**

5.2 The ruling language is: **English**

5.3 The language for communications is: **English**

7. Scope of Facilities

7.3 The Contractor agrees to supply spare parts for a period of years: **one (1)**

The Contractor shall carry sufficient inventories to ensure an ex-stock supply of consumable spares for the Plant. Other spare parts and components shall be supplied as promptly as possible, but at the most within 6 months of placing the order and opening the letter of credit. In addition, in the event of termination of the production of spare parts, advance notification will be made to the Employer of the pending termination, with sufficient time to permit the Employer to procure the needed requirement. Following such termination, the Contractor will furnish to the extent possible and at no cost to the Employer the blueprints, drawings and specifications of the spare parts, if requested.

8. Time for Commencement and Completion

8.1 The Contractor shall commence work on the Facilities within **sixty (60)** days from the Effective Date for determining Time for Completion as specified in the Contract Agreement.

8.2 The Time for Completion of the whole of the Facilities shall be **ten (10) months** from the Effective Date as described in the Contract Agreement.

Time for Completion for parts of the Facilities: **all within ten (10) months from Effective Date.**

11. Contract Price

- 11.2 The Contract Price **is fixed**. Appendix 2 (Price Adjustment) **is not applicable** to the Contract Agreement.

13. Securities

- 13.3.1 The amount of performance security, as a percentage of the Contract Price for the Facility or for the part of the Facility for which a separate Time for Completion is provided, shall be: **10% of total contract price**.
- 13.3.2 The performance security shall be in the form of the **Bank Guarantees** as per form included in Section 9 (Contract Forms).
- 13.3.3 There shall be a 10% retention deducted from all progress payments except advance payment. 50% of Retention is paid to Contractor at issue of Operation Acceptance of generator and remaining 50% paid to Contractor at end of 6 months Defect Liability Period.
- 13.3.4 Advance Payment is 20% of contract price. The amount of Advance Payment Security to be submitted by Contractor is 20% of contract price.

22. Installation

22.2 Labor

22.2.5 Working Hours

- (a) Normal working hours are: 8am to 5pm Monday Friday and Saturday. No work on Sunday unless approved by Project Manager.

22.2.7 Health and Safety

- (d) The Contractor shall throughout the contract (including the Defect Liability Period):
- (i) conduct Information, Education and Consultation Communication (IEC) campaigns, at least every other month, addressed to all the Site staff and labor (including all the Contractor's employees, all Sub-Contractors and Employer's and Project Manager's employees, and all truck drivers and crew making deliveries to Site for construction activities) and to the immediate local communities, concerning the risks, dangers and impact, and appropriate avoidance behavior with respect to of Sexually Transmitted Diseases (STD)—or Sexually Transmitted Infections (STI) in general and HIV/AIDS in particular;
 - (ii) provide male or female condoms for all Site staff and labor as appropriate; and
 - (iii) provide for STI and HIV/AIDS screening, diagnosis, counseling and referral to a dedicated national STI and HIV/AIDS program, (unless otherwise agreed) of all Site staff and labor.

The Contractor shall include in the program to be submitted for the execution of the Facilities under Subclause 18.2 an alleviation program for Site staff and labor and their families in respect of Sexually Transmitted Infections (STI) and Sexually

Transmitted Diseases (STD) including HIV/AIDS. The STI, STD and HIV/AIDS alleviation program shall indicate when, how and at what cost the Contractor plans to satisfy the requirements of this Subclause and the related specification. For each component, the program shall detail the resources to be provided or utilized and any related sub-contracting proposed. The program shall also include provision of a detailed cost estimate with supporting documentation. Payment to the Contractor for the preparation and implementation this program shall not exceed the amount dedicated for this purpose.

22.2.8 Funeral Arrangements

In the event of death of any of the contractor's personnel or accompanying members of their families, the contractor shall be responsible for making the appropriate arrangements for their return or burial, unless otherwise specified in the SCC.

22.2.9 Institution of Professional Engineers of Samoa (IPES)

All professional engineers and technical staff used by Contractor or subcontractors for this Project whether be short or long term are required to be registered under the local Samoan Institution of Professional Engineers (IPES) as required by Law (Professional Engineers Act 1998). Process of registration will take at least one (1) month. There may be a non-refundable application fee to be paid by applicant. Annual subscription is \$300 Samoan Tala. For further information refer to IPES website: www.ipes.ws

25. Commissioning and Operational Acceptance

25.2.2 The Guarantee Test of the Facilities shall be successfully completed within **forty five (45)** days from the date of Completion and issue by EPC of Certificate of Completion and Certificate of Operational Acceptance.

26. Completion Time Guarantee

26.2 Applicable rate for liquidated damages: **half a percent (0.5%) of the original contract.**

Maximum deduction for liquidated damages: **ten percent (10%) of original contract amount.**

26.3 No bonus will be given for earlier Completion of the Facilities or part thereof.

27. Defect Liability

27.10 The critical components covered under the extended defect liability are the generator and all associated equipment, supplied and installed under Contract. Defect Liability period shall be six (6) months from issue of Certificate of Operational Acceptance by the EPC.

30. Limitation of Liability

- 30.1 (b) The multiplier of the Contract Price is: **3**.

45. Disputes and Arbitration

45.1 Disputes shall be resolved by process of mediation.

45.2 Appointment of mediator shall be agreed by EPC and Contractor. A qualified and registered mediator shall be used.

45.5 Rules of procedure for arbitration proceedings:

- (a) Contracts with foreign contractors:

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

The place of arbitration shall be the place Contractor and Employer/EPC agree on.

- (b) Contracts with contractors being nationals of the Employer's country:

Any contract dispute between the EPC and a local registered Contractor shall be referred to mediation process in accordance with the Laws of Samoa.

46. Eligibility

46.1 No nationality restrictions apply, other than any restrictions arising from ITB 4. The Contractor shall be deemed to have the nationality of a country if the Contractor is a citizen or is constituted, incorporated, or registered, and operates in conformity with the provisions of the laws of that country. This criterion shall also apply to the determination of the nationality of proposed subcontractors or suppliers for any part of the Contract including related services.

46.2 The materials, equipment and services to be supplied under the Contract shall have their origin in eligible source countries and all expenditures under the Contract will be limited to such materials, equipment, and services. At the Employer's request, the Contractor may be required to provide evidence of the origin of materials, equipment and services.

46.3 For purposes of SCC 46.2, "origin" means the place where the materials and equipment are mined, grown, produced or manufactured, and from which the services are provided. Materials and equipment are produced when, through manufacturing, processing, or substantial or major assembling of components, a commercially recognized product results that differs substantially in its basic characteristics or in purpose or utility from its components.