



**Government of Samoa**

**ELECTRIC POWER CORPORATION**



**PROCUREMENT OF GOODS AND SERVICES**

**BID DOCUMENTS FOR PROCUREMENT OF**

***"EPC HEAVY DUTY MACHINES"***

**INVITATION FOR BID**

**Invitation For Bid No:** *SAMEPC 33/2017 – PROVISION OF EP CHEAVY DUTY MACHINES.*

**Tender Closes:** 29<sup>th</sup> January 2018

**Procuring Entity:** *ELECTRIC POWER CORPORATION*

## **Preface**

This Bidding Document for the Procurement of Goods and/or Services has been prepared by the Attorney General's Office based on the Government of the Independent State of Samoa National Tenders Board Procurement Manual 2008, the Tenders Board Guidelines for Government Procurement and Contracting: Goods and Works (GWG) 2008 and Treasury Instructions 1975 and 1977.

The legal bases of all activities of the Government of the Independent State of Samoa pertaining to procurement are premised on the Public Finance Management Act 2001.

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This section provides to the Bidders information regarding the eligibility criteria, form, procedure and timing of bidding.

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This section specifies the parameters of the Instructions to Bidders and particularizes and supplements the information requirements included in Section 2- ITB.

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This Section specifies the requirements and criteria(s) to assist the Bidder with their bid submission and which they must also conform with. This section also provides the forms to be used by the bidders for bid submission. Bid Submission will be evaluated in accordance with the specified requirements and criteria set out herein to determine the lowest evaluated bid and the qualifications of the Bidder to perform the contract.

# PART I-INVITATION FOR BID

## **Section 1 - Letter of Invitation**

- A. The General Manager on behalf of the Electric Power Corporation through the Government of the Independent State of Samoa ("the Principal") invites bids from interested licensed car dealers for the **"PROVISION OF EPC HEAVY DUTY MACHINES"**
- B. This Invitation for Bids includes the following Bidding Documents
- (i) Section 1 - Letter of Invitation for Bid
  - (ii) Section 2- Instruction to Bidders
  - (iii) Section 3- Bid Data Sheet
  - (iv) Section 4- Bid Forms & Evaluation Criteria
- C. All bids must observe the Bidding Process and Specification(s), it is also necessary for all Bidders to peruse the Terms and Conditions of the Contract.
- D. For enquiries and the inspection of the bidding documents, bidders should contact the following personnel at the address given below from 9.00am to 5.00pm on normal working days:
- |  |   |
|--|---|
| Fiu Moeona Leo<br><b>Chief Engineer - Savaii</b><br>Electric Power Corporation<br>Apia<br>Samoa<br>Phone: 65581<br>Email: <a href="mailto:leom@epc.ws">leom@epc.ws</a> | George Suisala<br><b>Procurement Supervisor</b><br>Electric Power Corporation<br>Apia<br>SAMOA<br>Phone number:65535<br>Email address:suisalag@epc.ws |
|--|---|
- E. Tender will close on **Monday 29<sup>th</sup> Jan 2018, 10:00am**. All Bids must be deposited in the Tender Box located at the Ministry of Finance, Corporate Services Office, Level 4, Central Bank of Samoa Building, Apia, Samoa no later than **Monday 29<sup>th</sup> Jan 2018, 10:00am**.
- F. All Bids must be delivered in a sealed envelope at the address provided and marked as follow:
- "Tender No. SAM-EPC 33/2017-PROVISION OF EPC HEAVY DUTY MACHINES"**
- The Secretary  
Samoa Tenders Board  
Ministry of Finance  
Level 4 Central Bank of Samoa Building  
Apia  
**SAMOA**
- G. Bids will be opened immediately after the deadline in the presence of bidders' representatives who choose to attend.
- H. Late Bids will not be considered and will be returned unopened.
- I. The lowest bidder is not necessarily going to win.

- J. EPC reserves the right to reject any or all bids.
- K. The Electric Power Corporation shall not be responsible for any costs or expenses incurred by the bidders in connection with the preparation or delivery of bids.



Tologatā Galumalemana Lupematasila Tagaloatele Tile Leifā  
**GENERAL MANAGER**  
**ELECTRIC POWER CORPORATION**

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# Section 2- Instructions to Bidders

## A. General

### 1. Scope of Bid

- 1.1 The Principal, as indicated in the **BDS** issues this Bidding Document for the supply of the Services as specified in Schedule 1 Section 4 (Bid Forms and Evaluation Criteria) of the Bidding Documents. The name of the Bidding Process and Invitation for Bid is provided in the **BDS**.
- 1.2 Throughout this Bidding Document:
  - (a) the term “in writing” means communicated in written form;
  - (b) except where the context requires otherwise, words indicating the singular also include the plural and words indicating the plural also include the singular; and
  - (c) except where the context requires otherwise, words indicating one gender also includes the other;
  - (d) “day” means calendar day
  - (e) “bidder(s)” means the entity submitting bid

### 2. Eligible Bidders

- 2.1 A Bidder shall be a license car dealer or manufacturer subject to ITB 2.2 or any combination of them in the form of a Joint Venture (JV) under an existing agreement. In the case of JV:
  - (a) all partners shall be jointly and severally liable for the execution of the Contract in accordance with the Contract terms, and
  - (b) the JV shall nominate 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 the contract execution.
- 2.2 A Bidder may be considered to be in a conflict of interest with one or more parties in this bidding process if bidder:
  - (a) received or will receive any direct or indirect subsidy from any of the bidders; or
  - (b) participates in more than one bid in this bidding process. Participation by a Bidder in more than one Bid will result in the disqualification of all Bids in which the party submitted and is/are involved in. However, this does not limit the inclusion of the same subcontractor in more than one bid; or
  - (c) or any of its affiliates has been hired (or proposed to be hired) by the Principal in the preparation of this Tender.
- 2.3 Bidders shall provide such evidence of their eligibility satisfactory to the Principal, and as the Principal shall reasonably request.

## B. Contents of Bidding Document

### 3. Sections of

#### 3.1 Bidding Document

The Bidding Document consists of Parts I, II & III which includes all the Sections indicated below, and should be read in conjunction with any Addendum issued in accordance with ITB 5.

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### PART I

**PART II**

Section 2-

Instruction to Bidders

Section 3-

Bid Data Sheet

Section 4-

Bid Forms &amp; Evaluation Criteria

- 3.2 The Principal is not responsible for the completeness of the Bidding Document and their addendum, if they were not obtained directly from the source and by the process stated by the Principal in the Invitation for Bid.
- 3.3 The Bidder is expected to examine all instructions, forms, terms, and specifications in the Bidding Document. Failure to furnish all information or documentation required by the Bidding Document may result in the rejection of the bid.
- 4. Clarification of Bidding Document and Pre-Bid Meeting**
- 4.1 A prospective Bidder requiring any clarification of the Bidding Document shall contact the Principal in writing at the Principal's address indicated in the **BDS** or raise his/her inquiries during the pre-bid meeting if provided for in accordance with ITB 4.2. The Principal will respond in writing to any request for clarification, provided that such request is received prior to the deadline for submission of bids, within a period given in the **BDS**. The Principal shall forward copies of its response to all Bidders who have acquired the Bidding Document in accordance with ITB 3.2, including the description of the inquiry but without identifying its source. Should the Principal deem it necessary to amend the Bidding Document as a result of a request for Clarification, it shall do so following the procedure under ITB 5 and ITB 19.
- 4.2 The Bidders designated representative is invited to attend a pre-bid meeting, if provided for in the **BDS**. The purpose of the meeting will be to clarify issues and to answer question on any matter that may be raised at that stage.
- 4.3 For the purpose of the pre-bid meeting the Bidder is requested, as far as possible, to submit any questions in writing, to reach the Principal not later than the day specified in the **BDS**.
- 4.4 Minutes of the pre-bid meeting, including the text of the questions raised, without identifying the source, and the responses given, together with any responses prepared after the meeting will be transmitted promptly to all Bidders who have acquired the Bidding Document in accordance with ITB 3.2. Any modification to the Bidding Document that may become necessary as a result of the pre-bid meeting shall be made by the Principal exclusively through the pre-bid meeting shall be made by the Principal exclusively through the issue of an addendum pursuant to ITB 5 and not through the minutes of the pre-bid meeting.
- 4.5 Non attendance at the pre-bid meeting will not be a cause for disqualification of a Bidder.
- 5. Amendment of Bidding Document**
- 5.1 At any time prior to the deadline for submission of bids, the Principal may amend the Bidding Document by issuing an addendum.
- 5.2 Any addendum issued shall be part of the Bidding Document and shall be communicated in writing to all who have obtained the Bidding Document from the Principal in accordance with ITB 3.2



- 5.3 To give prospective Bidders reasonable time in which to take an addendum into account in preparing their bids, the Principal may, at its discretion, extend the deadline for the submission of bids, pursuant to ITB 19.2.

## **C. Preparation of Bids**

### **6. Cost of Bidding**

- 6.1 The Bidder shall bear all costs associated with the preparation and submission of its Bid, and the Principal shall in no case be responsible or liable for the costs, regardless of the conduct or outcome of the bidding process.

### **7. Language of Bid**

- 7.1 The Bid, as well as all correspondence and documents relating to the bid exchanged by the Bidder and the Principal, shall be written in the language specified in the **BDS**.

### **8. Documents Comprising the Bid**

- 8.1 The Bid shall comprise the following:
- (a) Bid Offer;
  - (b) completed Schedules, in accordance with ITB 9 and ITB 11, or as stipulated in the **BDS**;
  - (c) Bid Security in accordance with ITB 16;
  - (d) documentary evidence in accordance with ITB 14 establishing the Bidder's qualifications to perform the contract;
  - (e) Technical Proposal in accordance with ITB 13;
  - (f) In the case of a bid submitted by a JV, the JV agreement; and
  - (g) Any other document required in the **BDS**.

### **9. Bid Offer and schedules**

- 9.1 The Bid Offer, Schedules, and all documents listed under ITB 8, shall be prepared using the relevant forms in Section 4 (Bid Forms & Evaluation Criteria), if so provided. The forms must be completed without any alterations to the text, and no substitutes shall be accepted. Unless otherwise required by the information sheets or bid forms all blank spaces shall be filled in with the information requested.

### **10. Alternative Bids**

- 10.1 Unless otherwise indicated in the **BDS**, alternative bids shall not be considered.

### **11. Bid Prices**

- 11.1 The prices quoted by the Bidder in the Bid Offer and in the Schedules shall conform to the requirements specified below.
- 11.2 The Bidder shall submit a bid for the Provision (Supply) of Services described in ITB 1.1 by filling in rates and prices for all items described in the Schedule of Prices and Summary of Costs to be supplied. Items against which no rate or price is entered by the Bidder will not be paid for by the Principal when executed and shall be deemed covered by the rates for other items and prices in the Schedule of Prices and Summary of Costs.
- 11.3 The price to be quoted in the Bid Offer shall be the total price of the Bid.
- 11.4 Any duties, taxes, and other levies payable by the Supplier, will be deemed to be included in the rates and prices and the total bid price submitted by the Bidder.

### **12. Currencies of Bid and Payment**

12.1 The currency (ies) of the bid and payment shall be specified in the **BDS**.

### **13. Documents Comprising the Technical Proposal**

13.1 The Bidder shall furnish a Technical Proposal which includes the documents specified in the **BDS** in sufficient detail to demonstrate the adequacy of the Bidder's proposal to meet the tender requirements & the completion time(s).

### **14. Documents Establishing the Qualifications of the Bidder**

14.1 To establish its qualifications to perform the Contract in accordance with Section 4 (Bid Forms and Evaluation Criteria) the Bidder shall provide the information requested in the corresponding information sheets included in Section 4 (Bid Forms and Evaluation and Criteria).

### **15. Period of Validity of Bids**

15.1 Bids shall remain valid for the period specified in **BDS** from the date on which the Samoa Tenders Board opens the Bids. A bid valid for a shorter period shall be rejected by the Principal as nonresponsive.

15.2 In exceptional circumstances, prior to the expiration of the bid validity period, the Principal may request Bidders to extend the period of validity of their bids. The request and the responses shall be made in writing and must specify the extended time period. If a bid security is requested in accordance with ITB 16, it shall also be extended for a corresponding period. A bidder may refuse the request without forfeiting its bid security. A Bidder granting the request shall not be required or permitted to modify its bid.

15.3 The Bidder shall forfeit the Bid Security in the event that he/ she has withdrawn his/her bid prior to the expiration of the Bid Validity Period.

### **16. Bid Security**

16.1 Unless otherwise specified in the **BDS**, the Bidder shall furnish as part of its bid, in original form a Bid Security as specified in **BDS**.

16.2 The amount for the Bid Security shall be as specified in the **BDS**.

16.3 If a bid security is specified pursuant to ITB 16.1, the bid security shall be, at the Bidder's option, in any of the following forms:

(a) an unconditional Bank guarantee;

(b) a valid certified Bank Cheque;

In the case of a bank guarantee, the bid security shall be submitted either using the Bid Security Form included in Section 4 (Bid Forms & Evaluation Criteria) or another form acceptable to the Principal. The form must include the complete name of the Bidder; the Bid security shall be valid for 1 month beyond the original validity period of the bid or beyond any period of extension if requested under ITB 15.2.

16.4 Any Bid not accompanied by an enforceable bid security if required in accordance with ITB 16.1, shall be rejected by the Principal as non-responsive.

- 16.5 If a bid security is specified pursuant to ITB 16.1, the bid security of the successful Bidder shall be returned as promptly as possible once the successful Bidder has signed the Contract and furnished the required performance security.
- 16.6 The bid security may be forfeited:
- (a) if a Bidder withdraws its bid during the period of bid validity;
  - (b) if the successful Bidder fails to:
    - (i) sign the Contract in accordance with ITB 34; or
    - (ii) furnish a performance security in accordance with ITB 35 & the insurance requirements in accordance with ITB 36.
- 16.7 The Bid Security of a JV shall be in the name of the JV that submits the bid.

#### **17. Format and Signing of Bid**

- 17.1 The Bidder shall prepare one original of the documents comprising the bid as described in ITB 8 and clearly mark it "ORIGINAL". Alternative bids, if permitted in accordance with ITB 10, shall be clearly marked "ALTERNATIVE". In addition, the Bidder shall submit copies of the bid in the number specified in the **BDS**, and clearly mark each of them "COPY". In the event of any discrepancy between the original and the copies, the original shall prevail.
- 17.2 The original and all copies of the bid shall be typed or written in indelible ink and shall be signed by a person duly authorized to sign on for or on behalf of the Bidder. The position of the authorized person (s) signing must be typed or clearly printed below the signature.

#### **D. Submission and Opening of Bids**

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

- 18.1 Bidders may always submit their bids by hand. When so specified in the **BDS**, bidders shall have the option of submitting their bids via mail and electronically. Procedures for submission, sealing and marking are as follows:
- (a) Bidders submitting bids shall enclose the original and each copy of the Bid, including alternative bids, if permitted in accordance with ITB 10, in separate sealed envelopes, duly marking the envelopes as "ORIGINAL", "ALTERNATIVE" and "COPY". These envelopes containing the original and the copies shall then be enclosed in one single envelope. The rest of the procedure shall be in accordance with ITB 19 and ITB 20.
  - (b) Electronic Bids shall not be permitted.
- 18.2 The inner and outer envelopes shall:
- (a) bear the name and address of the Bidder;
  - (b) be addressed as provided in **BDS 19.1**;
  - (c) bear a warning not to open before the time and date for bid opening.
- 18.3 If all envelopes are not sealed and marked as required, the Principal will assume no responsibility for the misplacement or premature opening of the bid.

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

- 19.1 Bids must be received & must be in the Tender Box at the location set out in the **BDS** no later than the date and time indicated in the **BDS**.
- 19.2 The Principal may, at its discretion, extend the deadline for the submission of bids by amending the Bidding Document in accordance with ITB 5, in which case all rights and

obligations of the Principal and Bidders previously subject to the deadline shall thereafter be subject to the deadline as extended.

## **20. Late Bids**

20.1 The Principal shall not consider any bid that arrives after the deadline for submission of bids, in accordance with ITB 19. Any bid received by the Principal after the deadline for submission of bids shall be declared late, rejected, and returned unopened to the Bidder.

## **21. Withdrawal, Substitution, and modification of Bids**

21.1 A Bidder may withdraw, substitute, or modify its bid after it has been submitted by sending a written notice, duly signed by an authorized representative, and shall include a copy of the authorization in accordance with ITB 17.2 (except that the withdrawal notices do not require copies). The corresponding substitution or modification of the bid must accompany the respective written notice. All Substitutions, Modifications and Withdrawals must be:

- (a) prepared and submitted in accordance with ITB 17 and ITB 18 (except that withdrawal notices do not require copies), and in addition, the respective envelopes shall be clearly marked "WITHDRAWAL," "SUBSTITUTION," "MODIFICATION;" and
- (b) received by the Principal prior to the deadline prescribed for submission of bids, in accordance with ITB 19.

21.2 Bids requested to be withdrawn in accordance with ITB 21.1 shall be returned unopened to the Bidder.

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

## **22. Bid Opening**

22.1 The bids shall be opened in public at the address, date and time specified in the **BDS** in the presence of Bidders designated representative and anyone who choose to attend.

22.2 First, envelopes marked "WITHDRAWAL" shall be opened and read out and the envelope with the corresponding bid shall not be opened, but returned to the Bidder. No bid withdrawal shall be permitted unless the corresponding withdrawal notice contains a valid authorization to request the withdrawal and is read out at bid opening. Next, envelopes marked "SUBSTITUTION" shall be opened and read out and exchanged with the corresponding bid being substituted, and the substituted bid shall not be opened, but returned to the Bidder. No bid substitution shall be permitted unless the corresponding substitution notice contains a valid authorization to request the substitution and is read out at bid opening. Envelopes marked "MODIFICATION" shall be opened and read out with the corresponding bid. No bid modification shall be permitted unless the corresponding modification notice contains a valid authorization to request the modification and is read out at bid opening. Only envelopes that are opened and read out at bid opening shall be considered further.

22.3 All other envelopes shall be opened one at a time, reading out: the name of the Bidder; the Bid Price(s), bid security and any other details as the Principal may consider appropriate. Only discounts and alternative offers read out at bid opening shall be considered for evaluation. No bid shall be rejected at bid opening except for late bids, in accordance with ITB 20.

22.4 There will be a record of bid opening that shall include, as a minimum: the name of the Bidder and whether there is a withdrawal, substitution, or modification; the Bid Price, presence or absence of a bid security. The Bidders' representatives who are present shall be requested to sign the record. The omission of a Bidder's signature on the record shall not invalidate the contents and effect of the record.

22.5 The bids shall be delivered to the Principal to continue to hold the bids in safe storage for prompt evaluation and.

## **E. Evaluation of Bids**

### **23 Bid Evaluation Committee**

23.1 A Bid Evaluation Committee will be formed by the Principal to conduct the evaluation of bids and to prepare the evaluation report.

23.2 The Bid Evaluation Committee shall be composed of an odd number, not less than three, inclusive of Government personnel as specified in the **BDS** and/or private experts, headed by a Chair selected by the members.

23.3 Regardless of institutional affiliation, each member shall exercise objective and independent judgment, and decide all matters in the public interest.

23.4 All Bid Evaluation Committee members and other persons involved in assessing or deciding on the award of a contract must declare any interest in any company or close family relationship to the principals of any company which has made a bid and shall be excluded from the evaluation and decision making process on that particular tender and shall not have access to any documents or information relating to that particular tender.

23.5 Private sector experts shall, as a condition of their participation, sign appropriate forms declaring that they have no interests of the types described in ITB 23.4; accepting the application of Government personnel ethics standards in the performance of their duties; and undertaking not to use any information relating to or resulting from the bid evaluation for any non-Governmental purpose nor to disclose it outside of the Government.

23.6 The Evaluation Committee will use the criteria and methodologies listed below:

- (a) the bid price;
- (b) Schedule of Prices and Break Down/Summary of Costs;
- (c) application of all evaluation factors indicated in Section 4 (Bid Forms and Evaluation Criteria)

### **24. Confidentiality**

24.1 Information relating to the examination, evaluation, comparison, and post qualification of bids and recommendation of contract awards shall not be disclosed to Bidders or any other persons not officially concerned with such process until Tender's Board has confirmed award of Contract.

24.2 Any attempt by a Bidder to influence the Principal or persons involved in the evaluation of bids or Contract award decisions may result in the rejection of that particular bidders bid.

24.3 Notwithstanding ITB 24.2, from the time of bid opening to the time of Contract award, if any Bidder wishes to contact the Principal on any matter particularly in relation to clarifications related to the bidding process, it may do so in writing.

### **25. Clarifications of Bids**

25.1 To assist in the examination, evaluation and comparison of the bids, and qualification of the Bidders, the Tender's Board will or the Evaluation Committee may ask any Bidder for clarification of its bid. Any clarification submitted by a Bidder that is not in accordance with the abovementioned request shall not be considered.

25.2 The request for clarification and the response from the bidder shall be in writing.

25.3 No change in the prices or substance of the bid shall be sought, offered or permitted, except to confirm the correction of arithmetic errors discovered by the Principal in the evaluation of the bids, in accordance with ITB 26.1.

25.4 If a Bidder does not provide clarifications of its bid by the date and time set in the Principal's request for clarification, its bid may be rejected.

## **26. Alteration of Bids after Bid Opening**

26.1 No Bidder shall be permitted to alter its bid after the Bids have been opened, but obvious arithmetic or mathematical, computational mistakes, manifest clerical errors and clarifications not changing the substance of the bid may be accepted.

## **27. Deviations, Reservations and Omissions**

27.1 During the evaluation of bids, the following definitions apply:

- (a) "Deviation" is a departure from the requirements specified in the Bidding Document;
- (b) "Reservation" is the setting of limiting conditions or withholding from complete acceptance of the requirements specified in the Bidding Document; and
- (c) "Omission" is the failure to submit part or all of the information or documentation required in the Bidding Document.

## **28. Determination of Responsiveness**

28.1 The Principal's determination of a bid's responsiveness is to be based on the contents of the bid itself, as defined in ITB 8.

28.2 A substantially responsive bid is one that meets the requirements of the Bidding Document without material deviation, reservation, or omission. A material deviation, reservation, or omission is one that,

- (a) if accepted, would:
  - (i) affect in any substantial way the scope, quality, or performance of the Provision of Goods and/or Services specified in the Contract; or
  - (ii) limit in any substantial way, inconsistent with the Bidding Document the Principal's rights or the Bidder's obligations under the proposed Contract; or
- (b) if rectified, would unfairly affect the competitive position of other Bidders presenting substantially responsive bids.

28.3 The technical aspects of the bid submitted in accordance with ITB 13, Technical Proposal and ITB 14, Qualifications of Bidder in particular, to confirm that all requirements of Section 4 (Bid Forms & Evaluation Criteria) have been met without any material deviation, reservation or omission.

28.4 If a bid is not substantially responsive to the requirements of the Bidding Document, it shall be rejected by the Principal and may not subsequently be made responsive by correction of the material deviation, reservation, or omission.

## **29. Correction of Arithmetical Errors**

- 29.1 Provided that the bid is substantially responsive, the Principal shall correct arithmetical errors correct arithmetical errors on the following basis:
- (a) only for unit price contracts, if there is a discrepancy between the unit price and the total price that is obtained by multiplying the unit price and quantity, the unit price shall prevail and the total price shall be corrected, unless the opinion of the Principal there is an obvious misplacement of the decimal point in the unit price, in which case the total price as quoted shall govern and the unit price shall be corrected;
  - (b) if there is an error in a total corresponding to the addition or subtraction of subtotals, the subtotals shall prevail and the total shall be corrected; and
  - (c) if there is a discrepancy between words and figures, the amount in words shall prevail, unless the amount expressed in words is related to an arithmetic error, in which case the amount in figures shall prevail subject to (a) and (b) above.
- 29.2 If the Bidder that submitted the lowest evaluated bid does not accept the correction of errors, its bid shall be disqualified and its bid security may be forfeited.

### **30. Principal's Right to Accept Any Bid, and To Reject Any or All Bids**

- 30.1 The Principal reserves the right to accept or reject anybid, and to annul the bidding process and reject all bids at any time prior to contract award, without thereby incurring any liability to Bidders. In case of annulment, all bids submitted and specifically, bid securities, shall be promptly returned to the Bidders.

### **31. Bid Evaluation Report**

- 31.1 The Bid Evaluation Report by the Evaluation Committee with recommendation for award of contract shall be submitted to the EPC Board of Directors or the Tenders Board for its approval or recommendation to Cabinet where appropriate, in accordance with the provisions of the B4 Schedule of Authorities.
- 31.2 Each member of the Bid Evaluation Committee shall sign the Report, attesting to the accuracy of its contents. In the event that there are dissenting views, they must be indicated in the Report.

### **F. Award of Contract**

32. Bidders must submit their insurance policies purport to govern the insurance for each of the item in Schedule 1

## Section 3- Bid Data Sheet (BDS)

This section specifies the parameters of the Instructions to Bidders and particularizes and supplements the information or requirements in Section 2 (ITB).

### A. Introduction

ITB 1.1	The Principal is: the <b>Electric Power Corporation</b>
ITB 1.1	The Name of the Bidding Process is: <b>Open Competitive Bidding (Public Tendering)</b>
ITB 1.1	The Name of the Invitation for Bid is: <b>“SAMEPC33/2017: PROVISION OF EPC HEAVY DUTY MACHINES.”</b>

### B. Contents of Bidding Document

ITB 4.1	For <b>clarification purposes</b> only, the Principal’s address is:  Attention: Fiu Moeona Leo.  Address: <b>Electric Power Corporation</b>  Telephone: <b>65581</b>  Facsimile number:  Requests for clarification should be received by the Principal no later than <b>Mon 22<sup>nd</sup> Jan 2018</b> .
ITB4.3	All queries and requests for clarifications should be put into writing and delivered to the Principals <a href="mailto:leom@epc.ws">leom@epc.ws</a> by <b>Mon 22<sup>nd</sup> Jan 2018</b> .

### C. Preparation of Bids

ITB 7.1	The Language of the Bid is: <b>English</b>
ITB 8.1 (b)	In accordance with ITB 9 and ITB 11, the following schedules shall be submitted with the bid, including Schedule :  <ul style="list-style-type: none"> <li>• <b>Schedule 1 – Schedule of Supply;</b></li> <li>• <b>Schedule 2 – Schedule of Payment</b></li> </ul>
ITB 8.1(h)	<ul style="list-style-type: none"> <li>• <b>Valid Business License;</b></li> <li>• <b>Company Incorporation Certificate</b></li> </ul>
ITB 10.1	Alternative Bids <b>shall not</b> be permitted.
ITB 12.1	Any convertible currency into Samoan Tala.



<b>ITB 15.1</b>	The Bid Validity Period shall be <b>90 days from the date on which the Electric Power Corporation opens the Bids.</b>
<b>ITB 16.1</b>	Bids shall include a bid security in the form of a Bank guarantee or a valid certified Bank Cheque from a reputable Bank.
<b>ITB 16.2</b>	Bid Security amount: SAT\$10,000.00
<b>ITB 17.1</b>	In addition to the <b>original</b> of the bid, the number of copies is: <b>4</b>

#### **D. Submission and Opening of Bids**

<b>ITB 18.1</b>	Bidders <b>must submit</b> their <b>bids by hand delivered</b> to location as in ITB19.1.
<b>ITB 19.1</b>	<p>For bid submission purposes only, bids must be addressed as follow:</p> <p><b>“BID NO. SAMEPC 33/2017- PROVISION OF EPC HEAVY DUTY MACHINES.”</b></p> <p>The Secretary  Samoa Tenders Board  Ministry of Finance  Level 4 Central Bank of Samoa Building  Apia  <b>SAMOA</b></p> <p>The deadline for bid submission is:</p> <p>Date: <b>Monday 29<sup>th</sup> Nov 2018 (local date)</b></p> <p>Time: <b>10:00am (local time)</b></p>
<b>ITB 22.1</b>	<p>The bid opening shall take place at the address below immediately after bid closing at:</p> <p>Date: <b>Monday 29 Nov 2018</b></p> <p>Time: <b>11:00am</b></p> <p><b>Ministry of Finance</b></p> <p><b>Central Bank of Samoa Building</b></p> <p><b>Apia</b></p> <p><b>SAMOA</b></p>

#### **E. Evaluation of Bids**

<b>ITB 23.1</b>	<p>The Bid Evaluation Committee shall be composed of representatives from:</p> <ul style="list-style-type: none"> <li>• <b>Electric Power Corporation;</b></li> </ul>
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	<ul style="list-style-type: none"> <li>• <b>Ministry of Finance; and</b></li> <li>• <b>Attorney General's Office.</b></li> </ul>
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**F. Award of Contract**

<b>ITB 33.1</b>	<b>Ten (10) days</b> after the receipt of notification of award from the Principal. The Successful Bidder must provide all policies prior to the Commencement Date.
<b>ITB 36.1</b>	The Bidder shall furnish the Principal with evidence of insurance cover of the categories set out in Schedule 1.

# Section 4- Bid Forms & Evaluation Criteria

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## Table of Criteria

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### 1. Bid Offer

#### 1.1 Signed form of Bid with Bid Price

*[Bid Offer must be signed by an authorised personnel and must note Bidders Bid Price]*

#### 1.2 Schedule of Supply

*[Bidders are restricted to bid for all items as given in this Schedule of Supply. This Schedule shall be marked and attached to the Final Contract as SCHEDULE 1: Schedule of Supply]*

#### 1.5 Schedule of Payment

*[Summary of Costs shall provide the breakdown in accordance to the payment methods of the contract. This Schedule shall be marked and attached to the Final Contract as SCHEDULE 2: Summary of Costs]*

### 2. QUALIFICATION

#### 2.1 Eligibility

##### 2.1.1 Valid Business License

*[Bidders must submit a valid business licenses demonstrating a valid business activity for the performance of the Contract and must be a license car dealer]*

##### 2.1.2 Joint Ventures (JV) are required to supply a letter of existing agreement of JV

*[Bidders bidding as a Joint Venture must submit documents verifying Joint Venture]*

**1.1**

**BID OFFER**

**TO:** The General Manager  
Electric Power Corporation  
Level 5 TATTE Building  
Sogi  
Apia  
**SAMOA**

**SAMEPC- 33/2017 – PROVISION OF EPC HEAVY DUTY MACHINES.**

**OFFER:**

I/WE offer to execute the Contract ***FOR THE PROVISION OF EPC HEAVY DUTY MACHINES*** in accordance with the Conditions of Contract accompanying this Bid for the Contract Price as follows:

I/We understand that you are not bound to accept the lowest or any Bid you receive.

I/WE am/are not participating as Bidders in more than one Bid in this bidding process.

I/WE agree to abide by this Bid for a Bid Validity Period of three (3) months or ninety (90) days from the date it is opened by the Electric Power Corporation, and agree that it remains binding on us and may be accepted at any time before the Bid Validity Period expires.

I/WE agree that if our Bid is found to be non-compliant after the award of the bid and before the signing of the contract, our bid can be terminated immediately at no cost to EPC or in the alternative, at the discretion of the Principal, I/WE shall made the necessary adjustment to the price to fully comply with the Bid Requirements.

Unless and until a formal Contract is prepared and executed, this Bid, together with the written acceptance thereof, will not in any way form or constitute a binding contract between the Corporation and I/US.

I/WE further understand that all costs of and incidental to the preparation and lodgement of this Bid by me/us shall be borne by me/us and that I/WE am/are not entitled under any circumstances to recover any of these costs from the Corporation.

Bidder's name(s): .....

Bidder's Address: .....

Telephone: .....

Fax: .....

Email: .....

Authorised signature(s): .....

Date: .....

Seal Stamp:

BIDDER'S LETTERHEAD

**SCHEDULE 1: SCHEDULE OF SUPPLY**

**Table 1 - BIDDER NEEDS TO PROVIDE QUOTE FOR ALL ITEMS:**

<b>SCHEDULE OF SUPPLY</b>					
<b>ITEM No.</b>	<b>VEHICLE TYPE</b>	<b>SPECS</b>	<b>QTY</b>	<b>CURR</b>	<b>PRICE CIF - BRAND NEW MACHINE</b>
1	Excavator with Rock Breaker	Refer below	2		
2	Flat deck Crane Truck	Refer below	1		
	<b>TOTAL PRICE</b>				

**SPECIFICATIONS**

**1. Rubber Wheeled Excavator – Rock Breaker.**

**Make:**

Caterpillar or Hyundai or Doosan or Hitachi or Kamatsu

**Model:**

55W type

**Weight**

Operating weight - between 6 to 7 tons or 5552 kg or near

**Performance**

Arm (stick) length used for dimensions and forces is 5' 3" or 1.52m or near

Max dig depth is 11' 6" or 3.35m or near

Reach @ ground level is 19' 7" or 5.79m or near

Max depth of vertical wall is 9' 9" or 2.74m or near

Dump height is 14' 3" or 4.27m or near

Bucket digging force is 6,390 lbs or 2900kg or near - Blade only

Arm (stick) force is 8,490 lbs or 3851kg or near - Blade only

**Lifting**

Lift over end, 20' radius @ ground is

Lift over side, 20' radius @ ground is

**Bucket**

Bucket width, min - max is 31.5 to 67cm or near

Bucket capacity, SAE heaped min - max of 0.07 to 0.18 m<sup>3</sup> or near

**Drive**

Drive wheels                    4WD

Max travel speed is 27kmh or near

**Hydraulics**

Total flow of main pumps, implement and swing is 159.37 L/min or near

Max normal relief valve pressure is 21.58 MPa or near

**Dimensions**

Transport length is 6.1m

Transport height is 2.74m

Transport width is 1.83m

Tailswing radius is 1.52m

Tyre size is 12 - 16.5 double fit.

Typical Excavator we are looking for.



## Hammer Specification (to be used in the above excavator)

### Description/Model - Prefer model is DW20G.

1. Operating weight (including mount cap and rod)
  - Box 1,777 kg
  - Open 1,751 kg
  - Side 1,700 kg
  
2. Length (incl rod)
  - Box 2,327 kg
  - Open 2,327 kg
  - Side 2,200 kg
  
3. Optimum oil flow 130 - 150 L/min
  
4. Setting Pressure (base machine) 180 - 210 bar (kg/m3)
  
5. Operating Pressure 160 - 180 bar (kg/m3), or 2,276 - 2,560 psi
  
6. Rod diameter 135 mm
  
7. Impact rate 400 - 500 bpm
  
8. Hose diameter 1 inch
  
9. Base machine weight 0.7 - 0.9 m3, or 18 - 26 ton, or 39,700 - 57,300 lb



10. Impact Energy class

4,200 joules

Note - The above specifications are subject to change without prior notice of quality improvement.

## **2. Flat deck Crane Truck**

- For installing HV/LV poles
- For installing transformers
- Delivering of HV/LV poles

Engine: 7.7lt or nearest, 260hp, 608nm

Transmission: 6sp main + 2sp transfer

R/axle: 9,200kg rated

T/Gear: NA

GVM: 13,000kg

GCM: 21,000kg

Tare: 9,500kg

Payload: 3,500kg

Air condition: Yes

Radio: Yes

Additional Features:

- Max lift of around 7,000kg @ 1.8mt
- Outreaches to 10.2mt to lift 1,250kg
- Steel chequer plate deck
- Has 6 internal load anchors plus a full length rope rail
- Side tool boxes of appropriate sizes

Typical size crane truck we are looking for. Crane to mounted between cab and tray.





**Also bidders are allowed to provide any supporting services that they can provide after purchasing the vehicles such as (i) warranty, (ii) service and maintenance and (ii) trade in when due for replacement, (iii) guaranty supply of genuine spare parts, (iv) etc.**

**EPC Engineer(s) will assess and inspect trucks of winning bid on site before shipment to Samoa.**

## SCHEDULE 2: SCHEDULE OF PAYMENT

TERMS OF PAYMENT
PAYMENT WILL ONLY BE PROCESSED UPON RECEIPT OF ALL HEAVY MACHINES AND IN GOOD CONDITIONS AT EPC VAITELE PREMISES.

### **2.1.1 Valid Business License and a Company Incorporation Certificate**

*[Bidders must submit a valid business license and a current Company Incorporating Certificate demonstrating a valid business activity for the performance of the Contract and must be a license car dealer]*

### **2.1.3 Join Ventures (JV)**

*[Bidder must provide Joint Venture Agreement and/or documents verifying the Joint Venture].*

### 3.2.2

### Contract Forms

**[EPC Letter head]**

#### Letter of Acceptance

**[date]**

To: **[name and address of the Supplier]**

This is to notify you that your Bid dated **[insert date]** for execution of the **SAM-EPC-33/2017 - Supply of EPC HEAVY DUTY MACHINES** for the Contract Price of **[amount in numbers and words]**, in accordance with your bid is hereby accepted by the Principal.

I hereby attach a copy of the final contract for your perusal; you will be duly informed of the place, date and time for execution of the contract.

.....  
TologatāGalumalemanaLupematasilaTagaloateleTile Leī'a  
**GENERAL MANAGER**  
**ELECTRIC POWER CORPORATION**

## **Section 5- Contract Conditions**

### **Section 5- Contract Conditions for Direct Purchase of Good and/or Services**

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**CONTRACT FOR THE SUPPLY  
AND OF GOODS AND RELATED SERVICES**

Between:

**THE ELECTRIC POWER CORPORATION  
("the Client")**

And:

**[Insert name of the Supplier]  
("the Supplier")**

**[Insert month and year]**

**CONTRACT FOR SUPPLY OF [INSERT THE NAME OF THE GOODS AND SERVICES]**

**THIS CONTRACT** is made on the .....day of.....2014

**BETWEEN:** **THE GOVERNMENT OF THE INDEPENDENT STATE OF SAMOA** acting by and through the **CHARIMAN OF THE BOARD OF DIRECTORS** of the **ELECTRIC POWER CORPORATION** (“the Client”);

**AND:** **[INSERT THE NAME OF SUPPLIER]** a duly registered company having its main office at **[INSERT ADDRESS FOR REGISTERED OFFICE]** (“the Supplier”).

**WHEREAS**

- A. the Client is desirous to enter into a contract for the provision of the Goods and Services as specified within this Contract.
- B. the Client as a result of a Public Tender has selected and agreed to appoint the Supplier to supply the Goods and carry out the Services as described in this Contract.
- C. the Supplier has agreed to supply the Goods and carry out the Services subject to the terms of this Contract and such specifications, directions and instructions from the Client through its agent, the Client’s Representative, who shall be responsible for supervising the execution of the Services.

**NOW THIS DEED WITNESSETH:**

**1. INTERPRETATION**

- 1.1 The "Contract" comprises this Agreement and any amendments to it specifically agreed to in writing by the Client and the Supplier. Any previous correspondence or verbal agreements shall be subject to and are superseded by the terms of the Contract.
- 1.2 In the Contract, unless the context otherwise requires:
  - (a) ‘**Commencement Date**’ means the commencement date of the Services in accordance with sub-clause 2.2;
  - (b) ‘**Completion Date**’ means the date at which all Services required to be performed under this Contract are completed in accordance with
  - (c) ‘**Contract Date**’ means the execution date of this Contract;
  - (d) ‘**Contract Price**’ means the agreed price set out at clause 9, for completing the Services in accordance with this Contract;
  - (e) “**day**” means calendar day;
  - (f) “**delegate**” means the person for the time being holding, occupying or performing the duties of, the office of the Supplier which is empowered to perform any function or to exercise any power of the Delegate under the Contract, the name of which office and the current occupant of which is set out in Annexure (**insert**).
  - (g) "**intellectual property**" includes all copyright rights, all rights in relation to inventions (including patent rights), registered and unregistered trademarks, registered designs,

confidential information (including trade secrets and know how) and circuit layouts, and all other rights resulting from intellectual activity in the industrial, scientific, literary or artistic fields;

(h) ‘**Goods**’ means the Goods specified in the Schedule of the Contract ;

(i) ‘**month**’ means a calendar month;

(j) ‘**parties**’ means the Client and the Supplier;

(k) ‘**premises**’ means the Client’s main Office situated as specified in the Schedule of the Contract;

(l) ‘**Client’s Representative**’ is specified in the Schedule of the Contract or anyone acting in his or her stead. The Client’s Representative will be responsible for the coordination of activities under this Contract for receiving and approving the Goods and dealing with any other works associated with this Contract.

(m) ‘**Services**’ means the Services specified in the Schedule of the Contract;

(n) ‘**Support personnel**’ means the personnel to be supplied by the Supplier under the terms of this contract in order to supply the Goods and services in accordance with the terms of this contract;

(o) ‘**Writing**’ means any representation of words, figures or symbols capable of being rendered in a visible form;

1.3 In the Contract, unless the context otherwise requires: words importing one gender include any other gender; words importing the singular include the plural and vice versa; reference to a person includes a body politic, a body corporate and a natural person; and headings are for guidance only and shall not affect the interpretation of the clauses to which they refer.

1.4 Where there is any inconsistency between the terms and conditions and the Annexures attached to this Contract, the Schedule of the Contract Shall prevail.

## **2. CONTRACT PERIOD**

2.1 This Contract shall be for a term specified in the Schedule of the Contract.

2.2 The Commencement and Completion date for this Contract shall be as specified in the Schedule of the Contract.

## **3. SALES AND PURCHASE OF GOODS**

3.1 The Supplier agrees to sell , and the Client agrees to purchase the Goods in accordance with the terms and conditions of this Contract;

3.2 The Supplier undertakes that at the time of the passing of property in the Goods:

(a) The Supplier has the absolute right to sell the Goods; and

(b) The Goods are free from any charge or encumbrance in favor of a third party not declared or known to the Client at the time of the passing of ownership.

*The quality of the Goods*

3.3 The Supplier guarantees that the Goods as:

- i) free from defect;
- ii) must be of merchantable quality; and
- iii) must be fit for its purpose.

**4. SCHEDULE OF SUPPLY OF GOODS AND SERVICES**

- 4.1 The Supplier shall supply the Goods in accordance with the standards and quality required by the Client.
- 4.2 The Supplier shall provide standard packing of the Goods as required, to prevent from damage or deterioration during transit to their final destination, as indicated in this Contract.
- 4.3 The Supplier shall perform its obligations under this Contract with all skills, care and diligence and in an efficient and professional manner in accordance with the terms and conditions of this Contract.
- 4.4 The Supplier shall comply with the time frame(s) for the supply of the goods as set out in Annexure 2 of this Contract.
- 4.5 The Supplier shall liaise with the Client's Representative in relation to the supply of the Goods and the Supplier must comply with any reasonable requests made by the Representative in relation to the supply of the Goods.
- 4.6 Upon delivery to the final destination and acceptance by the Client, the Supplier shall provide the documents specified in the Schedule of this Contract:

**5. INSTALLATION AND MAINTENANCE MANUALS**

- 5.1 With respect to all devices supplied by the Supplier to the Client, the Supplier shall provide the Client with one (1) copy of installation and maintenance manuals upon delivery of the Good to the Client.

**6. INSPECTION, REJECTION AND ACCEPTANCE**

*The Goods*

- 6.1 The Client may, prior to the supply of the Goods by the Supplier to the Client and with reasonable notice to the Supplier, inspect any and all Goods that are to be supplied by the Supplier.
- 6.2 The Client's representative shall have the power to reject any and all Goods to be supplied by the Supplier where the Client's representative inspect the Goods or any of its associated materials or equipment if these are found not to be in accordance with the Contract. After delivery the Client may reject the Goods or any of its associated materials or equipment for any non-conformity with the Contract.

- 6.4 The Client shall not be liable to pay for rejection of the Goods or its associated materials or equipment or for any damages or costs arising from inspection or rejection unless the damage or costs caused by the Client's action/s or omission to act to safeguard the Good.

*The Services*

- 6.5 The Supplier shall be deemed to have satisfied himself/herself before tendering as to the correctness and sufficiency of his tender for the Services and the Contract Price.
- 6.6 The Client may inspect the performance and outcome of the Services at any time and for that purpose the Supplier shall, at reasonable times during work hours, give the Client's Representative access to the Premises where the Services are being performed. If the Services do not meet their purpose or are not in accordance with the Contract, the Principal may by notice in writing require the Supplier to make good any defects arising from poor workmanship at no additional cost to the Client.
- 6.7 The Supplier is obligated to remedy any defects when requested by the Principal for the duration of the term of Contract (Commencement Date to the Completion Date), and for a further time after the Completion Date specified in the Schedule of the Contract.
- 6.8 Where the Supplier fails to remedy a defect in the performance of the Services, complete the Services, or make good any defects arising from poor workmanship, within fourteen (14) days after notification by the Client under this clause, the Client may perform or have performed the necessary work and recover the cost from the Supplier without prejudice to any other rights or remedies the Client may have.

**7. PASSING OF PROPERTY**

- 7.1 Property in, and risk of loss, or damage to the Goods shall pass to the Client:
- (a) Upon completion of assembling the Goods and to the satisfaction of the Client; and
  - (b) Upon presentation of an acknowledgement in writing of receipt of the Goods by the Client to the Supplier,
- thereby passing the property in, and risk of loss or damage of the Goods to the Client.

**8. WARRANTY**

- 8.1 The warranty periods for each of the Goods, its associated materials and equipment shall be effective from the date in which the Goods are supplied and delivered.
- 8.2 If the Client gives notice of any defect or omission discovered in the Goods during the warranty periods, the Supplier must correct that defect or omission without delay and at no cost to the Client.
- 8.3 The Supplier must meet all costs of, and incidental to the discharge of its warranty obligations, including but not limited to any packing, freight, and disassembly and reassembly costs.
- 8.4 Goods supplied should be covered by manufacturer's warranty for **at least 12 months** from the date of delivery to the Client.
- 8.5 Any defects will be corrected by the Supplier without any cost to the Client within the time specified in the schedule of the Contract from the date of notice by Client.



8.6 This clause shall survive expiration or termination of this contract.

## 9. **CONTRACT PRICE AND PAYMENTS**

### *Contract Price*

9.1 The total price for this Contract is an amount not exceeding **the amount specified in the schedule of the Contract** and any relevant taxes (“the Contract Price”).

9.2 The total Contract price covers the supply and delivery of the Goods to the timeframe(s) set out at Annexure 2 of this Contract.

### *Payment Instalment*

9.3 The Client shall pay to the Supplier a percentage of the Contract Price in an amount specified in the Schedule of the Contract after signing of the contract, against review and acceptance of international freight and full cover insurance from Manufacturers yard to port of Apia, review and acceptance of Warranty Terms and Conditions,.

9.4 The Client shall pay to the Supplier a percentage of the Contract Price in an amount specified in the Schedule of the Contract after final testing at a place specified in the Schedule of the Contract and handover of the Approved Warranty Documents, Manuals, Consumables and all other tooling necessary and;

(i) upon satisfaction of the Client’s Representative that the activities have been completed and the outputs produced within the time frames as stated in the contract; and

(ii) the Client receives from the Supplier a correctly rendered invoice.

9.5 A correctly rendered invoice shall:

(a) specify the Goods requested by the Client, supplied and delivered by the Supplier; and

(b) Approved and certified as correct by the Client.

9.6 Payment of the Contract Price shall be paid into the Nominated Bank Account of the Supplier no later than thirty (30) days of submitting an invoice in accordance with clause 9.5.

9.7 The Supplier’s Nominated Bank Account is that specified in the Schedule of the Contract:

9.8 The Supplier acknowledges that the Services must be wholly completed in accordance with the Contract before the Supplier becomes entitled to payments under this Contract.

9.9 Without derogating from any other right the Client may have, the Client may be entitled to defer payment the last payment amount of the Contract Price as stated in clause 9.4 above or any part thereof until the Supplier has completed the Services to the satisfaction of the Client.

9.10 The instalment payments in percentage under clause 9.4 to the Supplier shall not be taken as evidence against or as an admission by the Client of acceptance of the Goods but shall be taken to be payment on account only.

## **10. ASSIGNMENT**

10.1 The Supplier must not, without the consent in writing of the Client, assign its rights under the Contract.

## **11. SUBCONTRACTING**

11.1 The Supplier must not, without the consent in writing of the Client, subcontract the whole or any part of the performance of the Contract.

11.2 The Supplier will be liable to the Client for the acts and omissions of any sub Supplier as if they were the acts and omissions of the Supplier.

## **12. APPLICABLE LAW**

12.1 The Contract will be governed by, and construed in accordance with, the law in force as specified in the Schedule of the Contract.

12.2 The Supplier shall comply with any Act of Parliament, regulation, ordinance, local law, and by-law or of any authority that has jurisdiction over the Premises or the performance by the Supplier of Services under this Contract.

## **13. TERMINATION**

### ***Termination by the Client***

13.1 Without prejudice to its rights at common law, the Client may at any time and without having to provide any reasons, give the Supplier five (5) days written notice to terminate this Contract.

13.2 The Client may terminate this Contract where the Supplier:

- (a) Commits an act of insolvency or comes under any form of insolvency administration, or suffers any execution against its assets; or
- (b) Fails to proceed at a rate of progress so as to ensure the due and proper completion of the Contract; or
- (c) Fails to take action to remedy a breach of any other obligation under the Contract within seven (7) days of being notified by the Client requiring the Supplier to remedy/rectify the breach; or
- (d) Assigns its rights otherwise than in accordance with the requirements of the Contract.

13.3 Where, before termination of the Contract under sub-clause 13.1, the Client has made any payment in advance on account of the contract price to the Supplier, the total amount of that payment shall be repaid by the Supplier to the Client on termination and, if not repaid shall be recoverable by the Client from the Supplier as a debt or deductible by the Client from any outstanding payments to the Supplier.

### ***Termination by the Supplier***

- 13.4 The Supplier may terminate this Contract, by not less than seven (7) calendar days' written notice to the Client, in case of the occurrence of any of the events specified in paragraphs (a) and (b) of this Clause.
- (a) If the Client fails to pay any money due to the Supplier pursuant to this Contract and not subject to dispute, within seven (7) calendar days after receiving written notice from the Contractor that such payment is overdue;
  - (b) If the Client is in material breach of its obligations pursuant to this Contract and has not remedied the same within seven (7) days (or such longer period as the Supplier may have subsequently agreed in writing) following the receipt by the Client of the Supplier's notice specifying such breach.

#### **14. LIQUIDATED DAMAGES**

- 14.1 If a party to the Contract (in this clause referred to as "the defaulting party") defaults in their performance of the Contract, the other party (in this clause referred to as "the non-defaulting party") shall be entitled to claim point five per cent (0.05%) of the total contract value for each week of the default period.
- 14.2 The non-defaulting party shall only be entitled to claim up to a total of ten per cent (10%) of the total contract value for a default by the defaulting party pursuant to clause 14.1
- 14.3 Where the default consists in the delay of the Goods due to reasons beyond the control of either of the parties, then the damages in clause 14.1 cannot be claimed.

#### **15 INDEMNITY**

- 15.1 Subject to the provisions of the Contract, the Supplier must at all times indemnify the Client, its officers, employees and agents (in this clause referred to as "those indemnified") from and against any loss (including legal costs and expenses on a solicitor/own client basis), or liability, reasonably incurred or suffered by any of those indemnified arising from any claim, suit, demand, action or proceeding by any person against any of those indemnified where such loss or liability was caused by any wilful, unlawful or negligent act or omission of the Supplier, its officers, employees, agents or sub-contractors in connections with this Contract.
- 15.2 The rights of the principal to be indemnified under this Clause is in addition to and not exclusive of, any other right, power or remedy provided by law.

#### **16. WAIVER**

- 16.1 A waiver by a party in respect of any breach of a provision of the Contract shall not be taken to be a waiver in respect of any continuing or subsequent breach of that provision, or breach of any other provision. Failure by a party to enforce a provision of the Contract shall not be construed as a waiver of the provision or a waiver of any breach of the provision.

#### **17. NOTICE AND CONTRACT VARIATION**

- 17.1 Notice under the Contract may be served in respect of the Client upon addressed to the Assistant Chief Executive Officer- Water Resource Division of the Client at:

[Insert details]

and in respect of the Supplier, the Managing Director Fiti Leung Wai and served on the Suppliers registered office at

[Insert details]

- 17.2 Any notice, request or other communication is to be delivered by hand or sent by pre-paid post or transmitted electronically, and if it is sent or transmitted electronically a copy is to be sent to the addressee by pre-paid post.
- 17.3 A notice, request or other communication shall deem to be received:
- (a) if delivered by hand, upon delivery;
  - (b) if sent by pre-paid post, upon the expiration of 2 working days after the date on which it was sent; and
  - (c) if transmitted electronically, upon receipt by the sender of an acknowledgment that the communication has been properly transmitted to the recipient.

## **18. PERFORMANCE SECURITY**

- 18.1 The Contractor shall upon execution of the Contract deliver to the Client a Performance Security in a form approved by the Client to ensure performance of the Contractor's obligations and performance under this Contract. The Performance Security shall be ten percent (10%) of the total Contract Price

## **19. DISPUTE RESOLUTION**

- 19.1 Any dispute arising out of or in relation to the Contract shall, if not resolved by negotiation between the parties, be referred to a single Arbitrator, if the parties agree upon one, or failing agreement as to a single Arbitrator, an Arbitrator appointed under the hand of the President for the time being of the Law Society of Samoa. Any Arbitration shall be conducted in accordance with the Arbitration Act 1976 (Samoa) and the Arbitrator's decision shall be final.

## **20. VARIATION**

- 20.1 No modification, variation or waiver of the Contract shall be binding unless it is writing and signed by both parties.

## **21. FORCE MAJEURE**

- 21.1 "Force Majeure" refers to any event, including, but not limited to, wars, strikes, epidemics, civil disturbances, natural disasters, freight embargoes, or inclement weather, that is unforeseeable and beyond the reasonable control of either Party, the occurrence and effect of which is unavoidable and insurmountable.
- 21.2 Should the supplier, due to an occurrence of Force Majeure, fail to perform this Contract in full or in part, they shall, in light of the effect of Force Majeure, be exempted from all or some of its responsibilities hereunder.

- 21.3 If a Force-Majeure situation arises, the Supplier shall promptly notify the purchaser in writing of such condition and the cause thereof. Unless otherwise directed by the Client in writing, the Supplier shall continue to perform its obligations under the Contract as far as is reasonably practical, and shall seek all reasonable alternative means for performance not prevented by Force-Majeure event.
- 21.4 If the performance of the Contract is substantially prevented, hindered or delayed for a single period of more than thirty (30) days or an aggregate period of more than sixty (60) days on account of one or more events of Force Majeure during the currency of the Contract, the parties will attempt to develop a mutually satisfactory solution, failing which either party may terminate the Contract by giving notice to the other.

**22. ENTIRE CONTRACT**

- 22.1 The Contract replaces and supersedes all representation, negotiations and agreements pertaining to the Good and the Services. The entire contract shall consist of:
- (a) Contract; and
  - (b) Annexures 1, 2.

**23. AUTHORITY TO SIGN THE CONTRACT**

- 23.1 Both parties jointly warrant that the person signing on behalf of the Client and the person signing on behalf of the Supplier have the requisite authority to do so.

**24. COUNTERPARTS CLAUSE**

- 24.1 The parties may execute this Contract in multiple counterparts, each of which constitutes an original, and all of which, collectively, constitute only one agreement. The signatures of all of the parties need not appear on the same counterpart, and delivery of an executed counterpart signature page by facsimile is as effective as executing and delivering this Agreement in the presence of the other parties to this Agreement. This Agreement is effective upon delivery of one executed counterpart from each party to the other parties. This clause shall not apply if counterparts not required.

**25. SUPPLIERS ACKNOWLEDGEMENT**

- 25.1 The Supplier acknowledges that before entering into this Contract, the Supplier was given a copy of the Contract and is aware of right to seek independent legal advice on its terms if the supplier so desires, and given reasonable opportunity to take such advice.
- 25.2 The Supplier also warrants that the representative who will be executing this Contract on Behalf of the Supplier has all the proper authority to execute this Contract.
- 25.3 The Supplier now signs this Contract in agreement to all terms and conditions set out herein.

**IN WITNESS WHEREOF** this Contract has been executed the day and year first above written.

**SIGNED** by ..... , the )  
..... for and on behalf of ) .....  
..... )

In the presence of:-

.....  
**(Name)**

.....  
**(Designation)**

**SIGNED** by..... )  
the ..... for and on behalf of the ) .....  
Supplier )

In the presence of:

.....  
**(Name)**

.....  
**(Designation)**

***Special Conditions of Contract***

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

<u>INTERPRETATION</u>	
<b><u>Clause 1.1 (h)</u></b>	[please insert definition of Goods]
<b><u>Clause 1.1 (k)</u></b>	[please insert the location of the Client's main Office]
<b><u>Clause 1.1 (l)</u></b>	[please insert the Clients Representative]
<b><u>Clause 1.1 (m)</u></b>	[please insert the services associated with the goods]
<u>CONTRACT PERIOD</u>	
<b><u>Clause 2 (2.1)</u></b>	[please insert the term of the contract]
<b><u>Clause 2 (2.2)</u></b>	The Commencement Date for this Contract shall be [inset] (“the Commencement Date”); and shall be completed by [insert] (“the Completion Date”) or such other time and date agreed to in writing by parties.
<u>SCHEDULE OF SUPPLY OF GOODS AND SERVICES</u>	
<b><u>Clause 4.6</u></b>	<ul style="list-style-type: none"> <li>(i) Copies of the Supplier's invoice showing goods' description, quantity, unit price, and total amount;</li> <li>(ii) Copies of the packing list identifying contents of each package;</li> <li>(iii) Manufacturer's or supplier's warranty certificate;</li> <li>(iv) Certificate of origin; and</li> <li>(v) Certificate of quality.</li> </ul>
<u>INSPECTION, REJECTION AND ACCEPTANCE</u>	
<b><u>Clause 6.7</u></b>	The Supplier is obligated to remedy any defects when requested by the Principal for the duration of the term of Contract (Commencement Date to the Completion Date), and for a further twelve (12) months after the Completion Date
<u>WARRANTY</u>	
<b><u>Clause 8.5</u></b>	[inset number of days] or 30 days
<u>CONTRACT PRICE AND PAYMENTS</u>	
<u>Clause 9.1</u>	The Contract Price is [insert the amount] inclusive/exclusive of VAGST.
<u>Clause 9.3</u>	The Client shall pay [insert percentage of Contract Price] i.e. 70%

<u>Clause 9.4</u>	The Client shall pay [insert the percentage of Contract Price] i.e. 30% after final testing at [insert place of final testing]
<u>Clause 9.7</u>	The Supplier's Nominated Bank Account is:  Account Name: [insert] Account Number: [insert] Name of Bank: [insert] Address of Bank: [insert]
<u>APPLICABLE LAW</u>	
<u>Clause 12.1</u>	The law in force shall be the law of the Independent State of Samoa

### **ANNEXURE 1**

The detail description of the Goods is as follows:

**[Insert]**

### **ANNEXURE 2**

The Service shall be executed in accordance with the Programme below:

[insert]