

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.

Table of Clauses

1.	Definitions	2
5.	Law and Language	2
7.	Scope of Facilities	2
8.	Time for Commencement and Completion	3
11.	Contract Price	3
13.	Securities	3
17.	Representatives	3
22.	Installation	4
25.	Commissioning and Operational Acceptance	5
26.	Completion Time Guarantee	5
27.	Defect Liability	5
30.	Limitation of Liability	6
45.	Disputes and Arbitration	6

1. Definitions

The Employer is: **Electric Power Corporation (EPC), Ministry of Natural Resources and Environment (MNRE), and Samoa Trust Estates Corporation (STEC)**

The Project Manager is:

Fonoti Perelini S. Perelini – Project Management Unit, Electric Power Corporation

Street Address: P.O. Box 2011

Level 5, Tuiatua Tupua Tamasese Efi Building

City: Apia

Country: Samoa

Telephone: (685) 65512, Cell: (685) 7571840

Facsimile number: (685) 22880

Electronic mail address: perelini48@gmail.com

Country of Origin: **As provided in ‘Section 5’ of this bidding document – Eligible Countries (ELC).**

The Facilities are:-

- AFOLAU 750kW BIOMASS Gasification Plant as further detailed in Section 6 Clause 1.2 Turn Key Contractors Scope of Work.

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 7.3 The Contractor agrees to supply spare parts required for the routine operation and maintenance of the Plant for a period of years: **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 six (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 **42** days from the Effective Date for determining Time for Completion as specified in the Contract Agreement.
- 8.2 The Time for Completion of the facility shall be **365** days from the Effective Date as described in the Contract Agreement.

11. Contract Price

- 11.2 The provisions of Appendix 2 (Price Escalation) shall not apply.

13. Securities

- 13.2.1 The amount of advance payment security, as a percentage of the Contract Price for each part of the Facility shall be: 10% of the amount proportionate to the Contract Price of that part.
- 13.2.2 The 10% advance payment security shall be in the form of the **Bank Guarantee** as per form included in Section 6 (Employer's Requirements, Bank Guarantees and Certificates).

If the bank/institution issuing the Bank Guarantee is located outside Samoa, it shall have a correspondent financial institution located in Samoa to make the Bank Guarantee enforceable.

- 13.3.1 The amount of performance security, as a percentage of the Contract Price for each part of the Facility shall be: 10% of the amount proportionate to the Contract Price of that part.
- 13.3.2 The performance security shall be in the form of the **Bank Guarantee** as per form included in Section 6 (Employer's Requirements, Bank Guarantees and Certificates).
- If the bank/institution issuing the Bank Guarantee is located outside Samoa, it shall have a correspondent financial institution located in Samoa to make the Bank Guarantee enforceable.*
- 13.3.3 The performance security for each part of the Facilities shall be reduced by half on the date of the Operational Acceptance of that part.

17. Representatives

- 17.2.7 If the Contractor's authorized representative is not, in the opinion of the Engineer, fluent in the ruling language of the communication defined in Clause 5.2 of the SCC, the

Contractor shall make available on site at all times a competent interpreter to ensure the proper communication of instruction and information. The Employer shall approve or select the interpreter.

18. Work Programme

Add the following after item (b) in Sub-clause 18.3

- (c) monitoring of the obligations in Sub-clauses 22.1.1, 22.2.3 (d), 22.2.7 (d), 22.2.15, 22.2.16 and 46.

21. Procurement

21.1 Materials

The Contractor shall adequately record the condition of roads, agricultural land and other infrastructure prior to the start of transporting materials, goods and equipment, and construction.

22. Installation

22.1.1 Bench Mark

- (c) The Contractor shall comply with (i) the measures and requirements set forth in the resettlement plan attached hereto as Section 6 Part 4 Supplementary Information, to the extent it concerns impacts on affected people during construction; and (ii) any corrective or preventive actions set out in safeguards monitoring reports that the Employer will prepare from time to time to monitor implementation of the resettlement plan. The Contractor shall allocate a budget for compliance with these measures, requirements and actions

22.2 Labor

- (e) "Child" means a child below the statutory minimum age specified under applicable national, provincial or local law.
- d) The Contractor shall comply with all applicable labor laws and core labor standards on (i) prohibition of child labor as defined in national legislation for construction and maintenance activities, (ii) equal pay for equal work for equal value regardless of gender, ethnicity or caste, and (iii) elimination of forced labor.
- e) The Contractor shall not make employment decisions based on personal characteristics unrelated to job requirements. The Contractor shall base employment relationship upon equal opportunity and fair treatment and shall not discriminate with respect to aspects of the Employment relationship, including recruitment and hiring, compensation (including wages and benefits), working conditions and terms of employment or retirement and discipline.

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 Sub-Clause 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 Sub-Clause 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 preparation and implementation this program shall not exceed the Provisional Sum dedicated for this purpose.

24. Completion of the Facilities

- 24.9 Upon the completion of construction, the Contractor shall fully reinstate pathways, other local infrastructure, and agricultural land to at least their pre-project condition as recorded by the Contractor in consonance with its obligation in Clause 21.1.

25. Commissioning and Operational Acceptance

- 25.2.2 The Guarantee Test of each part the Facilities shall be successfully completed within fourteen days from the date of Completion of that part.

26. Completion Time Guarantee

- 26.2 Applicable rate for liquidated damages: **0.1%** of the amount proportionate to the Contract Price of that part of the Facilities for each day delay in Completion of that part.

Maximum deduction for liquidated damages: **10% of Contract Price**

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

27. Defect Liability Period

- 27.10 Defects Liability period is 365 days after issue of certificate of substantial completion of all facilities and issue of certificate of operation acceptance.

28. Functional Guarantees

28.3 The applicable rate for failing to meet the guaranteed power outputs at the connections to the EPC system shall be **US\$10,000 for each one kW** or part thereof shortfall.

Maximum deduction for failure to meet the guaranteed power outputs: **10%** of Contract Price.

No bonus will be given for power outputs in excess of the guaranteed levels.

30. Limitation of Liability

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

35. Unforeseen Conditions

35.4 In addition to notice of any Unforeseeable physical conditions, the Contractor shall provide the Engineer with a written notice of any unanticipated environmental or resettlement risks or impacts that arise during construction, implementation or operation of the Plant or Permanent Works, which were not considered in the Initial Environmental Examination ("IEE"), the environmental management plan ("EMP") or the resettlement plan attached hereto as Section 6 Part 4 Supplementary Information.

45. Disputes and Arbitration

Delete section 45 and Appendix A from the General Conditions of Contract and replace with the following:-

45.1 The DB shall be appointed within **28 days** after the Effective Date.

The DB shall be **comprised of three members**

List of potential DB members is: **None**

45.2 Appointment (if not agreed) to be made by: **the Institute of Professional Engineers, Samoa**

45.5 Rules of procedure for arbitration proceedings:

(b) **Arbitration shall be conducted in accordance with the Laws of the Independent State of Samoa.**

The place of arbitration shall be Apia.

46. Environmental

Add the following Clause:

- 41.1 The Contractor shall comply with all applicable national, provincial, and local environmental laws and regulations.
- 41.2 The Contractor shall (a) establish an operational system for managing environmental impacts, (b) carry out all of the monitoring and mitigation measures set forth in the [Initial Environmental Examination ("IEE")] or [Environmental Management Plan ("EMP")] and (c) allocate the budget required to ensure that such measures are carried out. The Contractor shall submit semi-annual reports on the carrying out of such measures to the Employer.
- 41.3 More particularly, the Contractor shall comply with (i) the measures and requirements set forth in the initial environmental examination and the environmental management plan attached hereto as Section 6 Part 4 Supplementary Information; and (ii) any corrective or preventative action set out in safeguards monitoring reports that the Employer will prepare semi-annually to monitor implementation of the initial environmental examination and the environmental management plan.
- 41.4 The Contractor shall allocate a budget for compliance with these measures, requirements and actions."