

**Government of the
Independent State of
Samoa**

BIDDING DOCUMENT

Issued on

October 23rd 2020

**For the
PROCUREMENT OF**

*1. SUPPLY OF ELECTRIC VEHICLES AND CHARGING
STATIONS*

WORKS IFB No:

2. SAM EPC 2020/29

by Open Competitive Bidding

Procuring entity:

*Electric Power Corporation for and on behalf of the Independent
State of Samoa*

Standard Bidding Document

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PART 1 – Bidding Procedures

Section I - Instructions to Bidders

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Section I - Instructions to Bidders

A. General

1. **Scope of Bidding**
 - 1.1 The procuring entity, as specified in the **BDS**, issues this Bidding Document for the procurement of the works as specified in **Section V – Supply’ Requirements**.
 - 1.2 The name and identification number of this Open Competitive Bidding procurement are **specified in the BDS**. The name, identification, and number of lots of are also **provided in the BDS**.
 - 1.3 Throughout this bidding document:
 - (a) **“Contact Entity”** is the procuring entity’s assigned agency or person for conducting the bidding and contract administration processes;
 - (b) **“day”** means calendar day;
 - (c) **“Government”** means the Government of the Independent State of Samoa;
 - (d) the term **“in writing”** means communicated in written form (**e.g. by mail, e-mail, fax, telex**) with proof of receipt;
 - (e) **“procuring entity”** means the Government or delegate or proxy for the Government and the Executor of the Contract;
 - (f) if the context so requires, **“singular”** means **“plural”** and vice versa.
2. **Source of Funds**
 - 2.1 The procuring entity has received public funds toward the cost of the project **named in the BDS** for the execution of this procurement.
 - 2.2 Payment shall be in accordance with the Government’s Treasury Instructions and Payment Policy.
3. **Fraud and Corruption**
 - 3.1 The procuring entity shall require that the Contractor, its contractors and their agents (whether declared or not), personnel, subcontractors, sub-consultants, and service providers under Government-financed contracts, observe the highest standard of ethics during the procurement and execution of such contracts.
 - 3.2 Accordingly, the Government shall clarify the terms where it becomes necessary, but for the purposes of this provision the following are considered unacceptable practices;
 - (a) **“corrupt practice”** means the offering, giving, receiving, or soliciting, directly or indirectly, anything of value to influence improperly the actions of another party;¹

¹ *“Another party” refers to a public official acting in relation to the procurement process or contract execution]. In this context, “public official” includes the Government’s staff and employees of other organizations taking or reviewing procurement decisions.*

- (b) “fraudulent practice” means 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;²
- (c) “collusive practice” means an arrangement between two or more parties³ designed to achieve an improper purpose, including influencing improperly the actions of another party;
- (d) “coercive practice” means 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;⁴ and/or
- (e) “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.

3.3 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 bidder 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.

3.4 The procuring entity will:

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

² “Party” refers to a public official; the terms “benefit” and “obligation” relate to the procurement process or contract execution; and the “act or omission” is intended to influence the procurement process or contract execution.

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

⁴ “Party” refers to a participant in the procurement process or contract execution.

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 remedy the situation or address such practices when they occur;

- (iii) sanction a bidder, 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 bidder 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 bidders 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.

- 3.5 Furthermore, bidders shall be aware of the provision stated in GCC 56.1 of this bidding document with regard to termination for fraudulent and corrupt behaviour.

4. Eligible Bidders

- 4.1 A bidder 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 BDS**, there is no limit on the number of members in a JV.
- 4.2 A bidder shall be deemed to have the nationality of a country if the bidder 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 contractors for any part of the Contract including related services.
- 4.3 An eligible bidder (regardless of its country of registration and including any director, officer, manager or supervisor of the bidder) shall not

within a period of three (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
 - (v) suspended or disbarred by administrative or judicial proceedings from participating in procurements, whether in Samoa or elsewhere; or
- (b) convicted of an offence involving dishonesty, obstruction of justice or a lack of honesty or business integrity; or
- (c) convicted for an offence involving corruption; or
- (d) convicted for engaging in anti-competitive practices, whether or not involving collusion; or
- (e) 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.

4.4 The bidding process is open to all eligible bidders.

4.5 A bidder shall not have a conflict of interest. All bidders found to have conflict of interest shall be disqualified. bidders may be considered to have a conflict of interest with one or more parties in the bidding process if:

- (a) they are or have been associated in the past, with a firm or any of its affiliates (including third parties, controlling partner in common or a leading partner of a joint venture, or a common representative) 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
- (b) they are associated, or have been associated in the past, with a firm or any of its affiliates (including third parties, controlling partner in common or a leading partner of a joint venture, or a common representative) that have been hired (or is proposed to be hired) by the procuring entity as Project Manager for the Contract.

4.6 Bidders shall not submit more than one bid in this bidding process, except for alternative bids permitted under ITB Clause 13. This does not limit the participation of Subcontractors in more than one bid.

4.7 A firm that has been sanctioned by the Government in accordance with

ITB 3 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. The list of debarred firms shall be made available as **specified in the BDS**.

- 4.8 In accordance with the Instructions, the bidder and any named Subcontractors 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 bidder prior to award of contract.
- 4.9 Foreign Government-owned enterprises and public bodies in Samoa shall be eligible only if they can establish that they:
- (a) are legally and financially autonomous;
 - (b) operate under commercial law; and
 - (c) are not a dependent agency of the procuring entity or other department or agency of the Government.
- 4.10 Failure to directly obtain the bidding documents from the procuring entity will result in ineligibility of that bidder from participating in the procurement process.
- 4.11 Bidders shall provide such evidence of their continued eligibility satisfactory to the procuring entity as the procuring entity shall reasonably request.
- 4.12 In case a pre-qualification process is conducted prior to the tendering process, this tendering is open only to pre-qualified Bidders **as confirmed in the BDS**.
- 4.13 Bidders shall be excluded if:
- (a) as a matter of law, the Government prohibits commercial relations with that country, provided that the Government is satisfied that such exclusion does not preclude effective competition for the supply of services as required; or
 - (b) by an act of compliance with a decision of the United Nations Security Council taken under Chapter VII of the Charter of the United Nations, the Government prohibits importation or contracting of general services from that country or payments to a person or entity in that country.

- 5. Eligible Materials, Equipment and Services**
- 5.1 The materials, equipment and services to be supplied under the Contract and financed by the Government may have their origin in any country not that excluded in the list **specified in the BDS** and expenditures under the contract are limited to such materials, equipment and services. At the procuring entity's request, the bidders may be required to provide evidence of the origin of materials, equipment and services.
- 5.2 For purposes of ITB 5.1 above, "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 recognised product is made which differs substantially in its basic characteristics or in purpose or utility from its components.

B. Contents of Bidding Document

- 6. Sections of Bidding Document**
- 6.1 The Bidding Documents consist of Parts 1, 2, and 3, which include all the Sections indicated below, and should be read together with any Addenda issued in accordance with ITB 8.
- PART 1 Bidding Procedures**
 Section I - Instructions to Bidders ("ITB")
 Section II - Bid Data Sheet ("BDS")
 Section III - Evaluation and Qualification Criteria
 Section IV - Bidding Forms
 Section IV (A) - Eligible Countries
- PART 2 Requirements**
 Section V - Supply Requirements
- PART 3 Conditions of Contract and Contract Forms**
 Section VI - General Conditions of Contract ("GCC")
 Section VII – Special Conditions of Contract ("SCC")
 Section VIII - Contract Forms
- 6.2 "Bidding documents" means the SBD developed and prescribed by the Ministry of Finance for use in public procurement proceedings and all amendments made to the document for the purposes of a procuring entity and documents attached or incorporated by reference, that individually or collectively
- (a) invite bids;
 - (b) establish the objects of a bid;
 - (c) specify the conditions of a proposed procurement contract; and

(d) establish the applicable bidding procedures.

6.3 The procuring entity is not responsible for the completeness of the Bidding Documents and their Addenda if they were not obtained directly from the procuring entity and by the process stated by the procuring entity in the Invitation to Bidders.

6.4 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.

7. Clarification of Bidding document, Site Visit, Pre-Bidding Meeting

7.1 A prospective bidder requiring any clarification of the bidding document shall contact the *procuring entity* in writing at the *procuring entity's* address **indicated in the BDS within fourteen (14) working days before closing date and time for submission of Bids** or raise his/her inquiries during the pre-bid meeting. The *procuring entity* shall respond in writing to any request for clarification, provided that such request is received prior to the deadline for submission of bids, no later than the number of days **stated in the BDS** prior to the deadline for submission of bids, within a period **given in the BDS**. The *procuring entity* shall forward copies of its response to all bidders who have acquired the bidding document, including a description of the inquiry but without identifying its source.

7.2 Should the procuring entity deem it necessary to amend the bidding document as a result of a request for clarification, the Bidding Document may be amended in accordance with the procedure under ITB 8.

7.3 The bidder may, at the bidder's own expenses, risk and responsibility, visit and examine the Site of works and its surroundings and obtain for itself, on its own risk and responsibility, all information that may be necessary for preparing the bid and entering into a contract for the works.

7.4 The procuring entity will arrange for the bidder and any of its personnel or agents to gain access to the relevant site(s), provided that the bidder gives the procuring entity adequate notice of a proposed visit of at least fourteen (14) days. Alternatively, the procuring entity may organise a site visit, if **specified in the BDS**, or visits concurrently with a pre-bid meeting, if one is required. Failure of a bidder to attend a site visit will not be a cause for its disqualification.

7.5 No site visits shall be arranged or scheduled after the deadline for the submission of the bids and prior to the award of contract.

- 7.6 The bidder and any of its personnel or agents will be granted permission by the procuring entity to enter upon its premises and lands for the purpose of such visit, but only upon the express condition that the bidder, its personnel, and agents will release and indemnify the procuring entity and its personnel and agents from and against all liability in respect thereof, and will be responsible for death or personal injury, loss of or damage to property, and any other loss, damage, costs, and expenses incurred as a result of the inspection.
- 7.7 The bidder's designated representative may be 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 questions on any matter that may be raised at that stage.
- 7.8 The bidder is requested, as far as possible, to submit any questions in writing, to reach the procuring entity not later than the number of days **as indicated in the BDS** before the pre-bid meeting.
- 7.9 Minutes of the pre-bid meeting includes 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. Any modification to the bidding documents that may become necessary as a result of the pre-bid meeting shall be made by the procuring entity exclusively through the issue of an addendum pursuant to ITB 8 and not through the minutes of the pre-bid meeting.
- 7.10 Non-attendance at the pre-bid meeting will not be a cause for disqualification of a bidder.
- 8. Amendment of Bidding Document**
- 8.1 At any time prior to the deadline for submission of bids, the *procuring entity* may amend the bidding documents by issuing an addendum.
- 8.2 Any addendum issued shall form part of the bidding documents and shall be communicated in writing to all who have obtained the bidding documents from the procuring entity.

- 8.3 To give prospective bidders reasonable time in which to take an addendum into account in preparing their bids, the procuring entity may, at its discretion, extend the deadline for the submission of bids, pursuant to ITB 22.2 of this bidding document.

C. Preparation of Bids

- | | |
|--|---|
| <p>9. Cost of Bidding</p> | <p>9.1 The bidder shall bear all costs associated with the preparation and submission of its bid, and the procuring entity shall not be liable for those costs, regardless of the conduct or outcome of the bid process.</p> |
| <p>10. Language of Bid</p> | <p>10.1 The bid as well as all correspondence and documents relating to the same, shall be written in the English language. Supporting documents and other printed materials that are part of the bid may be in another language provided they are accompanied by an accurate translation of the relevant passages of the bid in the English language, in which case and for the purposes of interpreting the Bidding, the translated version shall take precedent.</p> |
| <p>11. Documents Comprising the Bid</p> | <p>11.1 The bid shall comprise the following:</p> <ul style="list-style-type: none"> (a) the Letter of Bid; (b) the completed Schedules in accordance with ITB 12 and 14; (c) Bid Security or Bid Securing Declaration, in accordance with ITB 19; (d) alternative bids if permissible in accordance with ITB 13; (e) written confirmation authorising the signatory of the bid to commit the bidder, in accordance with ITB 20.2; (f) documentary evidence in accordance with ITB 17 establishing the bidder's qualifications to bid and perform the Contract if awarded; (g) Technical Proposal in accordance with ITB 16; (h) in the case of a bid submitted by a joint venture (JV), the JV agreement, or letter of intent to enter into a JV including a draft agreement, indicating at least the parts of the works to be executed by the respective partners; and (i) any other document required in the BDS. <p>11.2 In addition to the requirements under ITB 11.1, bids submitted by a JV shall include a copy of the Joint Venture Agreement entered into by all partners. Alternatively, a Letter of Intent to execute a Joint Venture Agreement in the event of a successful bid shall be signed by all partners and submitted with the bid, together with a copy of the proposed agreement.</p> |
| <p>12. Letter of Bid and Schedules</p> | <p>12.1 The Letter of Bid, Schedules and all documents listed under ITB 11 shall be prepared using the relevant forms in Section IV - Bidding Forms, if so</p> |

provided. The forms must be completed without any alterations to the text, and no substitutes shall be accepted. All blank spaces shall be filled in with the information requested if information requested is applicable.

13. Alternative Bids

- 13.1 Unless otherwise **indicated in the BDS**, alternative bids shall not be considered.
- 13.2 When alternative times for completion are explicitly invited, a statement to that effect will be **included in the BDS**, as will the method of for the estimated different times for completion.
- 13.3 When **specified in the BDS**, bidders are permitted to submit alternative technical solutions for specified parts of the works. Such parts will be identified in the BDS and described in **Section V - Supply Requirements**. The method for their evaluation will be stipulated in **Section - III - Evaluation and Qualification Criteria**.

14. Bid Prices and Discounts

- 14.1 The prices and discounts quoted by the bidder in the Letter of Bid and in the Schedules shall conform to the requirements specified in this ITB 14.
- 14.2 The bidder shall submit a bid for the whole of the works described in ITB 1.1 by submitting prices for all items of the works, as identified in **Section IV - Bidding Forms – Priced Activity Schedules or Bills of Quantities**. In the case of admeasurement (measure and value) contracts, the bidder shall fill in rates and prices for all items of the works described in the Bill of Quantities. Items against which no rate or price is entered by the bidder will not be paid for by the *procuring entity* when executed and shall be deemed covered by the rates for other items and prices in the Bill of Quantities.
- 14.3 The price to be quoted in the Letter of Bid shall be the total price of the bid including VAGST, and excluding any discounts offered and withholding tax.
- 14.4 Any unconditional discounts and the methodology for their application shall be quoted in the Letter of Bid in accordance with ITB 12.1.
- 14.5 If so indicated in ITB 1.2, bids may be invited for individual contracts or for any combination of contracts (packages). Unless otherwise **indicated in the BDS**, prices quoted shall correspond to 100% of the items specified for each lot and to 100% of the quantities specified for each item of a lot. Bidders wishing to offer any price reduction for the award of more than one (1) Contract shall specify in their bid the price reductions applicable to each package, or alternatively, to individual Contracts within the package. Price reductions or discounts shall be submitted in accordance

with ITB 14.4, provided the bids for all contracts are submitted and opened at the same time.

14.6 Unless otherwise **provided in the BDS** and the GCC, the prices quoted by the bidder shall be fixed. If the prices quoted by the bidder are subject to adjustment during the performance of the Contract in accordance with the provisions of the GCC, the bidder shall furnish the indices and weightings for the price adjustment formulae in the Schedule of Adjustment Data in **Section IV -Bidding Forms** and the procuring entity may require the bidder to justify its proposed indices and weightings. These adjustments shall not be considered in the evaluation of bids.

14.7 All duties, taxes, and other levies payable by the Contractor under the Contract, or for any other cause, as of the date twenty-eight (28) days prior to the deadline for submission of bids, shall be included in the rates and prices and the total bid price submitted by the bidder. Despite that applicable taxes, duties or other levies are not included such are payable by the Contractor and reflected in the Contract as confirmed by the relevant authority prior signing of Contract.

**15. Currencies of
Bid and
Payment**

15.1 The currency(ies) of the bid and the currency(ies) of payments shall be the same. The bidder shall quote in Samoan Tala (SAT\$), the portion of the bid price that corresponds to expenditures incurred in Samoa, unless otherwise **specified in the BDS**.

15.2 The bidder may express the bid price for expenditure outside of Samoa in any freely convertible currency. If the bidder wishes to be paid in a combination of amounts in different currencies, it may quote its price accordingly but shall use no more than three freely convertible international currencies in addition to Samoan Tala (SAT\$).

**16. Documents
Comprising
the Technical
Proposal**

16.1 The bidder shall furnish a Technical Proposal including a statement of the works methods or works program, equipment, personnel, schedule and any other information as stipulated in **Section IV - Bidding Forms** in sufficient detail to demonstrate the adequacy of the bidders' proposal to meet the work requirements and the completion time.

- 17. Documents Establishing the Qualifications of the bidder**
- 17.1 The bidder shall furnish evidence confirming their eligibility under ITB 4. The documentary evidence of the bidder's qualifications to perform the contract if its bid is accepted shall establish to the procuring entity's satisfaction:
- (a) that it has the financial and technical capability necessary to perform the contract, meets the qualification criteria **specified in the BDS**, and has a successful performance history. If a pre-qualification process has been undertaken for the contract(s) for which these bidding documents have been issued, the bidder shall, as part of its bid, update any information submitted with its application for pre-qualification. For the purposes of establishing a bidder's qualifications, and unless otherwise **stated in the BDS**, the experience and/or resources of any Subcontractor will not contribute to the bidder's qualifications and only those of a Joint Venture partner will be considered.
 - (b) that the bidder meets each of the qualification criterion specified in **Section III, Evaluation and Qualification Criteria**.
- 18. Period of Validity of Bids**
- 18.1 Bids shall remain valid for the period **specified in the BDS** after the bid submission deadline date prescribed by the procuring entity. A bid valid for a shorter period shall be rejected by the procuring entity as non-responsive.
- 18.2 In exceptional circumstances, prior to the expiration of the bid validity period, the procuring entity may request bidders to extend the period of validity of their bids. The request and the responses shall be made in writing. If a Bid Security is requested in accordance with ITB 19, 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.
- 19. Bid Security/Bid Securing Declaration**
- 19.1 The bidder shall furnish as part of its bid, a Bid Security or a Bid-Securing Declaration if required, as **specified in the BDS**.
- 19.2 The Bid Security or Bid Securing Declaration shall be in the amount **specified in the BDS** and denominated in Samoan Tala (SAT\$) or the currency of the bid, and shall:
- (a) at the bidder's option, be in the form of either a letter of credit, bank cheque or an unconditional bank guarantee from a banking institution, or a bond issued by a surety;
 - (b) be issued by a reputable institution selected by the bidder. If the institution issuing the bond is located outside Samoa, it shall have a correspondent financial institution located in Samoa to make it enforceable;
 - (c) be substantially in accordance with one of the forms of Bid Security

in **Section IV- Bidding Forms**;

- (d) be payable promptly upon written demand by the procuring entity in case the conditions listed in ITB 19.5 are invoked;
- (e) be submitted in its original form as copies will not be accepted; and
- (f) remain valid for a period of twenty-eight (28) days beyond the validity period of the bids as extended if applicable, in accordance with ITB 18.2.

19.3 If a Bid Security or a Bid-Securing Declaration is required in accordance with ITB 19.1, any bid not accompanied by a substantially responsive Bid Security or Bid Securing Declaration in accordance with ITB 19.1 shall be rejected by the procuring entity as being non-responsive.

19.4 The Bid Security of unsuccessful bidders shall be returned as promptly as possible upon the successful bidder's furnishing of the Performance Security pursuant to ITB 44.

19.5 The Bid Security may be forfeited:

- (a) if a bidder withdraws or modifies its bid during the period of bid validity in accordance with ITB 19.1, and as provided for in ITB 19.2 if applicable; or
- (b) if a bidder does not accept a correction of errors (arithmetic) in accordance with ITB Clause 30.2; or
- (c) if the successful bidder fails to:
 - (i) sign the Contract in accordance with ITB Clause 43; and
 - (ii) furnish a Performance Security in accordance with ITB Clause 44.

19.6 In the case where a bid securing declaration is forfeited, the bidder will be disqualified for one year from participation in any Government procurement regardless of the source of funding.

19.7 The Bid Security or Bid- Securing Declaration of a JV must be in the name of a legally constituted JV that submits the bid or otherwise in the names of all future partners as named in the letter of intent mentioned in **Section IV - Bidding Forms - Bidder Information Form**.

19.8 If a Bid security is not required in the BDS, and if a bidder withdraws its bid during the period of bid validity specified by the bidder in accordance with ITB 18.1 and ITB 18.2 where applicable, if the bidder fails to sign the Contract, that bid will be disqualified for one year from participation in any Government procurement regardless of the source of funding.

19.9 If a Bid Securing Declaration is required, it must be in the form in **Section IV - Bidding Forms**, and the same shall remain valid for a period of twenty-eight (28) days or beyond the validity period of the bids as

extended if applicable, in accordance with ITB 18.2.

20. Format and Signing of Bid

- 20.1 The bidder shall prepare one original of the documents comprising the bid as described in ITB and clearly mark it "ORIGINAL". If alternative bids are permitted in accordance with ITB 13, the documents shall be clearly marked "ALTERNATIVE". In addition, the bidder shall submit the required amount of copies of that bid, **in accordance with the BDS** and clearly mark them "COPY". In the event of any discrepancy between the Original and the Copies, the Original prevails.
- 20.2 The Original and all Copies of the bid shall be typed or written in indelible ink and shall be signed by the bidder or a person duly authorised to sign on behalf of the bidder.
- 20.3 The written confirmation of authorisation to sign on behalf of the bidder shall be:
- (a) a notarised 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 ITB 4.1, 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.
- 20.4 The name and position held by each person signing the authorisation must be typed or printed below the signature.
- 20.5 Any interlineation, erasures, or overwriting shall be valid only if they are signed or initialled by the authorised person signing the bid.

D. Submission and Opening of Bids

21. Sealing and Marking of Bids

- 21.1 Bidders must always submit their bids by mail or by hand delivery. Bidders submitting bids by mail or by hand delivery, shall enclose the original and each copy of the bid, including alternative bids, if permitted in accordance with ITB 13, in three (3) separate envelopes, sealed and duly marked as "Original", "Copy" and "ALTERNATIVE", respectively. All three (3) envelopes shall then be enclosed in one (1) single envelope. The rest of the procedure shall be in accordance with ITB 21.2 and 21.3. Submission of bids electronically is prohibited.
- 21.2 The inner and outer envelopes shall:

- (a) bear the name and address of the bidder;
- (b) be addressed to the procuring entity in accordance with ITB 22.1;
- (c) bear the specific identification of this bidding process indicated in ITB 1.2 and any additional identification marks as **specified in the BDS**; and
- (d) bear a warning to the effect that the envelope must not be opened before the time and date for bid opening in accordance with ITB 25.1 of this bidding document.

21.3 If all envelopes are not sealed and marked as required, the procuring entity will assume no responsibility for the misplacement or premature opening of any bid. The procuring entity also assumes no responsibility for delay in courier or any other form of delivery.

22. Deadline for Submission of Bids

- 22.1 Bids must be received by the *procuring entity* at the address and no later than the date and time **indicated in the BDS**.
- 22.2 The procuring entity may at its discretion, extend the deadline for the submission of bids by amending the bidding document in accordance with ITB 8, in which case all rights and obligations of the procuring entity and bidders previously subject to the deadline shall thereafter be subject to the deadline as extended.

23. Late Bids

- 23.1 The procuring entity shall not consider any bid that arrives after the deadline for submission of bids, in accordance with ITB 22. Any bid received by the procuring entity after the deadline for submission of bids shall be declared late, rejected and returned unopened to the bidder.

24. Withdrawal, Substitution and Modification of Bids

- 24.1 A bidder may withdraw, substitute, or modify its bid after it has been submitted by sending a written notice, duly signed by the bidder or an authorised representative of the bidder, and shall include a copy of the authorisation (the power of attorney) in accordance with ITB 20.2, (except that withdrawal notices do not require copies). The corresponding substitution or modification of the bid must accompany the respective written notice. All notices must be:
- (a) prepared and submitted in accordance with ITB 20 and ITB 21 (except that withdrawal notices do not require copies), and in addition, the respective envelopes shall be clearly marked **“WITHDRAWAL”**, **“SUBSTITUTION”**, or **“MODIFICATION”**, respectively; and
 - (b) received by the procuring entity prior to the deadline prescribed for submission of bids in accordance with ITB 22.

24.2 Bids requested to be withdrawn in accordance with ITB 24.1 shall be returned unopened to the bidders.

- 24.3 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.

25. Bid Opening

- 25.1 The procuring entity shall conduct the bid opening at the address, date and time **specified in the BDS** in the presence of bidders (or designated representatives of the bidders) who choose to attend, representatives of the procuring entity and Tenders Board.
- 25.2 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. If the withdrawal envelope does not contain a copy of the "power of attorney" confirming the signature as a person duly authorised to sign on behalf of the bidder, the corresponding bid previously submitted will be opened. No bid withdrawal shall be permitted unless the corresponding withdrawal notice contains a valid authorisation to request the withdrawal and is read out at bid opening.
- 25.3 Next, envelopes marked "SUBSTITUTION" shall be opened and read out and exchanged with the corresponding bid being substituted, and the substituted bid previously submitted shall not be opened, but returned to the bidder. No bid substitution shall be permitted unless the corresponding substitution notice contains a valid authorisation by means of a copy of the power of attorney to request the substitution and is read out at bid opening.
- 25.4 Next, 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 authorisation 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.
- 25.5 All other envelopes shall be opened and read out identifying the following:
- (a) the name of the bidder and whether there is a modification; and
 - (b) the bid prices, including any discounts and alternative offers; and
 - (c) the presence of a Bid Security or Bid-Securing Declaration if required; and
 - (d) any other details as the procuring entity 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 23.1.

25.6 The procuring entity shall prepare a record of the bid opening that shall include as a minimum:

- (a) the name of the bidder and whether there is a withdrawal, substitution, or modification;
- (b) the bid price, per lot if applicable, including any discounts, and alternative offers if they were permitted;
- (c) the presence or absence of a Bid Security or Bid-Securing Declaration, if one was required.
- (d) The bidders' representatives who are present shall be requested to sign the attendance record sheet. The omission of a bidder's signature (or signature of bidder's authorised representative) does not invalidate the contents and effect of the record sheet.

25.7 A copy of the record shall be distributed to all bidders who submitted bids on time.

E. Evaluation and Comparison of Bids

26. Confidentiality

26.1 Information relating to the examination, evaluation, comparison, and post-qualification of the bids and recommendation of contract award, shall not be disclosed to the bidders or any other persons not officially concerned with the bid until the Contract award has been formally communicated to the successful bidders.

26.2 Any effort by a bidder to influence the procuring entity in the examination, evaluation, comparison, and post-qualification of the bids or Contract award decisions may result in the rejection of its bid and may be subject to the provisions of the Government's antifraud and corruption policy.

26.3 Despite ITB 26.2, from the time of bid opening to the time of Contract award, if any bidder wishes to contact the procuring entity on any matter related to the bidding process, it should do so in writing.

27. Clarification of Bids

27.1 To assist in the examination, evaluation, and comparison and post-qualification of the bidders, the procuring entity may, at its discretion, request in writing from any bidder for a clarification of its bid. Any clarification submitted by a bidder that is not in response to a request by the procuring entity or if a bidder does not provide clarification as requested by the procuring entity, the bid shall not be considered and rejected. The *procuring entity's* request for clarification and the response shall be in writing. 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 Bid Evaluation Committee in the

evaluation of the bids in accordance with ITB 30. Any variation of price as a result of tax issues must be referred back to the Tenders Board for approval.

27.2 If a bidder does not provide clarifications of its bid by the date and time set as out in the *procuring entity's* request for clarification, its bid may be rejected.

- 28. Definitions of Deviations, Reservations and Omissions**
- 28.1 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 documents.

- 29. Determination of Responsiveness**
- 29.1 The Bid Evaluation Committee's determination of a bidder's responsiveness is to be based on the contents of the bid itself.
- 29.2 A substantially responsive bid is one that meets the requirements of the bidding document without material deviation, reservation, or omission.

- 29.3 A material deviation, reservation, or omission is one that:
- (a) affects in any substantial way the scope, quality, or performance of the works specified in the Contract; or
 - (b) is inconsistent with the bidding document, and substantially limits the procuring entity's rights or the bidder's obligations under the Contract; or
 - (c) if rectified would unfairly affect the competitive position of the other bidders who have submitted substantially responsive bids.

29.4 If a bid is not substantially responsive to the requirements of the bidding documents, it shall be rejected by the Bid Evaluation Committee and may not subsequently be made responsive by correction of the material deviation, reservation, or omission.

- 30. Non-conformities, Errors, and Omissions**
- 30.1 Provided that a bid is substantially responsive, the Bid Evaluation Committee may waive any non-conformities, errors or omissions in the bid that do not constitute a material deviation.
- 30.2 Provided that a bid is substantially responsive, the Bid Evaluation Committee may request that the bidder submit the necessary information or documentation, requested by the procuring entity, within a period of time specified in their request, to rectify minor or non-

material non-conformities, errors or omissions in the bid related to its documentation requirements. The procuring entity's request should only be for the purpose of seeking clarification and not result in disqualification of a bid. Requesting information or documentation on such non-conformities, errors or omissions shall not be related to any aspect of the price of the bid. Failure of the bidder to comply with the request may result in the rejection of its bid.

- 31. Correction of Arithmetical Errors**
- 31.1 Provided that the bid is substantially responsive, the Bid Evaluation Committee shall correct arithmetical errors on the following basis:
- (a) if there is a discrepancy between the unit price and the total price that is obtained by multiplying the unit price and quantity, the unit price shall prevail and the total price shall be corrected, unless in the opinion of the procuring entity there is an obvious misplacement of the decimal point in the unit price, in which case the line item total 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.
- 31.2 The amount stated in the bid shall be adjusted by the Bid Evaluation Committee in accordance with the above procedure for the correction of errors and shall be considered as binding upon the bidder. If the bidder does not accept the correction of errors, its bid may be rejected.
- 32. Conversion to Single Currency**
- 32.1 For evaluation and comparison purposes, the Bid Evaluation Committee shall convert all bid prices expressed in the submitted bids into the amount **specified in the BDS**, using the selling exchange rates established by the source and on the date **specified in the BDS**.
- 33. Domestic Preference**
- 33.1 Domestic preference shall not be a factor in bid evaluation, unless otherwise **specified in the BDS**.
- 33.2 If applicable, the percentage of domestic preference which will be applied is **specified in the BDS and bidders must:**
- (a) be registered within Samoa;
 - (b) have majority ownership by Samoan nationals;
 - (c) not subcontract more than ten percent (10%) of the Contract Price, excluding provisional sums, to foreign contractors or non-resident companies (not including those registered in Samoa).

- 34. Subcontractors** 34.1 Unless otherwise **stated in the BDS**, the procuring entity does not intend to execute any specific elements of the works by Subcontractors selected in advance by the procuring entity.
- 34.2 The subcontractor's qualifications shall not be used by the bidder to qualify for the works unless their specialised parts of the works were previously designated by the procuring entity **in the BDS** as can be met by subcontractors referred to hereafter as 'Specialised Subcontractors', in which case, the qualifications of the Specialised Subcontractors proposed by the bidder may be added to the qualifications.
- 34.3 Bidders may propose subcontracting up to the percentage of total value of contracts or the volume of works as **specified in the BDS**. Subcontractors proposed by the bidder shall be fully qualified for their parts of the works.
- 35. Evaluation of Bids** 35.1 The Bid Evaluation Committee shall examine each eligible bid to determine, its responsiveness.
- 35.2 To evaluate a bid, the Bid Evaluation Committee shall consider the following:
- (a) the Bid Price, excluding Provisional Sums and the provision, if any, for contingencies in the Summary Bill of Quantities for admeasurement (measure and value) contracts or Schedule of Prices for lump sum contracts, but including Day-work items where priced competitively;
 - (b) price adjustment for correction of arithmetic errors in accordance with ITB 31.1;
 - (c) price adjustment due to discounts offered in accordance with ITB 14.3;
 - (d) converting the amount resulting from applying (a) to (c) above if relevant, to a single currency in accordance with ITB 32;
 - (e) adjustment for non-conformities in accordance with ITB 30.2; and
 - (f) the application of all the evaluation factors indicated in Section III - Evaluation and Qualification Criteria.
- 35.3 The estimated effect of the price adjustment provisions of the Conditions of Contract applied over the period of execution of the Contract, shall not be taken into account in bid evaluation.
- 35.4 If the bidding document allows bidders to quote separate prices for different contracts, and to award multiple contracts to a single bidder, the methodology to determine the lowest evaluated price of the contract combinations, including any discounts offered in the Letter of Bidding, is specified in **Section III - Evaluation and Qualification Criteria**.

- 36. Comparison of Bids** 36.1 The Bid Evaluation Committee shall compare all substantially responsive bids to determine the lowest evaluated bid in accordance with ITB 35.
- 37. Abnormally Low Bid** 37.1 An Abnormally Low Bid is one where the bid price, in combination with other elements of the bid, appears so low that it raises material concerns as to the capability of the bidder in regards to the bidder's ability to perform the contract for the offered bid price.
- 37.2 In the event of identification of a potentially Abnormally Low Bid, the procuring entity shall seek written clarifications from the bidder, including detailed price analyses of its bid price in relation to the subject matter of the contract, scope, proposed methodology, schedule, allocation of risks and responsibilities and any other requirements of the bidding document.
- 37.3 After evaluation of the price analyses, in the event that the procuring entity determines that the bidder has failed to demonstrate its capability to perform the bid for the offered bid price, the Bid Evaluation Committee shall reject the Bid.
- 38. Unbalanced or frontloaded bids** 38.1 If the bid that is evaluated as the lowest bid price or most advantageous is, in the Bid Evaluation Committee's opinion, seriously unbalanced or front loaded, the procuring entity may require the bidder to provide written clarifications. Clarifications may include detailed price analyses to demonstrate the consistency of the bid prices with the scope of works, proposed methodology, schedule and any other requirements of the bidding document.
- 38.2 After the evaluation of the information and detailed price analyses presented by the bidder, the Bid Evaluation Committee may as appropriate:
- (a) accept the bid; or
 - (b) require that the total amount of the performance security be increased at the expense of the bidder to a level not exceeding 20 % of the contract Price; or
 - (c) reject the bid.
- 39. Qualification of the Bidder** 39.1 The Bid Evaluation Committee shall determine to its satisfaction whether the bidder that is selected as having submitted the lowest evaluated and substantially responsive bid meets the qualifying criteria specified in **Section III - Evaluation and Qualification Criteria**.
- 39.2 The determination shall be based upon an examination of the documentary evidence of the bidder's qualifications submitted by the

bidder pursuant to ITB 17.1.

39.3 An affirmative determination of qualification shall be a prerequisite for award of the Contract to the bidder. A negative determination shall result in disqualification of the Bidding, in which event the Bid Evaluation Committee shall proceed to the next lowest evaluated bid to make a similar determination of that bidder's qualifications to perform satisfactorily.

40. Procuring entity's Right to Accept Any Bid, and to Reject Any or All Bids

40.1 The procuring entity reserves the right to accept or reject any bid, and to annul the bidding process and reject all bids at any time prior to awarding the contract, without thereby incurring any liability to the bidders:

- (a) at any time prior to the acceptance of the successful bid; or
- (b) after the successful bid is accepted if:
 - (i) the bidder presenting the successful bid is suspended or debarred;
 - (ii) the procurement is cancelled;
 - (iii) the bidder presenting the successful bid is excluded on the grounds of corruption, unfair competition or conflict of interest;
 - (iv) the procurement, the bid or the bidder contravenes or is otherwise not compliant with the provisions of the laws of the Independent State of Samoa.

40.2 In case of annulment of any bids submitted and specifically, bid securities, the respective bidders are immediately notified and given ample time to uplift the bids and bid securities from the procuring entity.

F. Award of Contract

41. Award Criteria

41.1 The procuring entity shall award the Contract to the bidder whose offer has been determined to be substantially responsive to the bidding documents, provided further that the bidder is determined by the evaluation panel to be qualified to perform the Contract to the satisfaction of the procuring entity. The bidder awarded the Contract may also be considered by the procuring entity as the bidder with the lowest evaluated bid.

41.2 At the time the Contract is awarded, the procuring entity reserves the right to increase or decrease the quantity of the works originally required, provided that this does not exceed the percentages **specified in the BDS**, and without any change in the unit prices or other terms and conditions of the bid and bidding document.

42. Notification of Award

- 42.1 Prior to the expiration of the bid validity period, the procuring entity shall notify the successful bidder in writing, that its bid has been accepted. At the same time, the procuring entity must also notify all other bidders of the results of the bidding, and shall publish in website of the Ministry of Finance, the results identifying the bid and lot numbers and the following information:
- (i) name of each bidder who submitted a bid; and
 - (ii) name of the winning bidder, and the Price it offered, as well as the duration and summary scope of the contract awarded.
- 42.2 The date of the notification under ITB Sub-Clause 42.1 establishes the commencement of the standstill period **specified in the BDS**. During this time bidders may request, in writing, a debriefing seeking explanations on the ground on which their bids were not selected, or invoke the 'right to complain' in accordance with ITB 45. The request for debriefing may only seek explanations for the grounds on which their bid was not selected.
- 42.3 The procuring entity shall promptly respond in writing to any unsuccessful bidder who requests a debriefing. If the request is made within the standstill period the contract award will be suspended until the debriefing has taken place.
- 42.4 Until a formal Contract is prepared and executed, the notification of award shall not constitute a binding Contract.
- 42.5 Within twenty-eight (28) days of receipt of notification of award, the successful bidder, if international, shall take to successful completion the necessary actions, in liaison with the relevant authorities, to obtain proper registration, licences and membership as required in order to carry out economic or business activities in Samoa.

43. Signing of Contract

- 43.1 After notification, the procuring entity shall send the successful bidder the Contract Agreement with the Conditions of Contract for any comments before the same is reviewed and cleared by AGO.
- 43.2 The successful bidder shall return the signed contract within 28 days from the date of the Letter of Acceptance and shall sign, date, and return to the procuring entity the signed Contract Agreement and performance security pursuant to ITB 44.
- 43.3 On receipt of the signed Contract Agreement and performance security, if required, the procuring entity will immediately notify in writing all unsuccessful bidders, of the final results of the bidding process. This notice will discharge their bid securities pursuant to ITB 19.4.

- 43.4 Once both the bidder and procuring entity have agreed to the Contract Agreement as cleared by AGO, the same shall be finalised and signed.
- 43.5 Following signature of the Contract Agreement, the procuring entity shall publish, in the manner prescribed by the Office, the results, identifying the name of the Contractor, the contract price and the contract number.
- 44. Performance Security**
- 44.1 Within twenty-eight (28) days of the receipt of notification of award from the procuring entity the successful bidder, shall furnish the Performance Security, using for that purpose the Performance Security Form included in **Section VIII - Contract Forms** from an institution acceptable to the procuring entity. The procuring entity shall promptly notify the winning bidder to each unsuccessful bidder and discharge the Bid Securities of the unsuccessful bidders pursuant to ITB 19.4.
- 44.2 If the performance security furnished by the successful bidder is in the form of a bond, it shall be issued by a bonding or insurance company that has been determined by the successful bidder to be acceptable to the procuring entity. A foreign institution providing a bond must have a correspondent financial institution located in the Samoa.
- 44.3 Failure of the successful bidder to submit the above-mentioned Performance Security, comply with local requirements or sign the Contract shall constitute sufficient grounds for the annulment of the award and forfeiture of the Performance Security. In that event the procuring entity may award the Contract to the next lowest evaluated bidder, whose offer is substantially responsive and is determined by the procuring entity to be qualified to perform the Contract satisfactorily.
- 45. Adjudicator**
- 45.1 The procuring entity proposes the person **named in the BDS** to be appointed as Adjudicator under the Contract, at the hourly fee **specified in the BDS**, plus reimbursable expenses. If the bidder disagrees with this proposal, the bidder should so state in their bid. If, in the Letter of Acceptance, the procuring entity does not agree on the appointment of the Adjudicator, the procuring entity will request the Appointing Authority designated in the Special Conditions of Contract (SCC) pursuant to Clause 23.1 of the General Conditions of Contract (GCC), to appoint the Adjudicator.
- 46. Right to complain**
- 46.1 The bidder has a right to complain in accordance with the Procurement Independent Complaints and Review Procedure (Part K.9 of the Treasury Instructions).
- 46.2 An actual bidder 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.

46.3 Such complaint must be made in writing working days after the date of notification of award of contract. Any complaint received after the 10-day period shall not be considered.

46.4 The bidder should submit its complaint in accordance with the procedures to the address **specified in the BDS**.

46.5 If a complainant is dissatisfied with the decision of a procuring entity, the complainant has the right to have the complaint and decision of the procuring entity reviewed by an independent adjudicator. To do so, the complainant must submit an Application for Review in writing, to the Secretariat of the Tenders Board.

46.6 A complaint or an application for review must be made in accordance with (Part K.9 of the Treasury Instructions).

46.7 A complaint referred to the independent adjudicator shall not be entertained and is dismissed unless the independent adjudicator is satisfied:

- (a) that the complainant is an actual bidder who was part of the relevant procurement proceedings in question;
- (b) that the complainant shows that he/she/it/they had suffered or is likely to suffer harm; and
- (c) that the harm was due to a breach of a duty imposed on the procuring entity; and
- (d) that the duty imposed on the relevant procuring entity is provided for under Part K of the Treasury Instructions.

Section II - Bid Data Sheet (BDS)

The following BDS shall be used for the works to be performed and shall complement, supplement, or amend the provisions in the ITB. Whenever there is a conflict, the provisions herein shall prevail over those in the ITB.

ITB Clause Reference	A. General
ITB 1.1	The procuring entity is: Electric Power Corporation for and on behalf of the Government of the Independent State of Samoa.
ITB 1.2	The name of the bid is: Supply of Electric Vehicles and Charging Stations: - TENDER NO. SAM EPC 2020/29 The number, identification and names of the lots comprising this procurement are: 1. Lot 1 Electric Vehicles 2. Lot 2 Charging Stations
ITB 2.1	The name of the Project is: SUPPLY ELECTRIC VEHICLES & CHARGING STATIONS
ITB 4.1	Maximum number of members in the JV shall be: fourteen (14) members
ITB 4.7	The list of debarred firms is the same as those that are excluded by, or are not members of, the World Bank or ADB.
ITB 4.12	A pre-qualification shall not apply.
ITB 5.1	Ineligible countries are: Andorra, Democratic People's Republic of Korea, Liechtenstein, Monaco (World Bank and ADB non-members) and Iraq (UN Security Council) and any other country excluded from the process by the World Bank or ADB. The country of registration must be a member of the World Bank or Asian Development Bank and not under sanction of the UN Security Council.

B. Bidding Documents

ITB 7.1	For clarification purposes only, the procuring entity's address is: Attention: THE GENERAL MANAGER Procuring entity: ELECTRIC POWER CORPORATION Address: LEVEL 5, TATTE BUILDING, SOGI City: APIA Attention: Grayson Hughes, Graduate Engineer, Quality Assurance & Development Country: SAMOA Electronic mail address: hughesg@epc.ws Telephone: +685 65500
ITB 7.1	Requests for clarification should be received by the procuring entity no later than: seven (7) calendar days before the deadline for submission of bids stated at ITB 22.1.

ITB 7.4	A site visit will be organised as part of the pre-bid meeting. [NOT APPLICABLE]
ITB 7.7	A pre-bid meeting shall take place. <i>The pre-bid meeting shall take place at the following date, time and place:</i> <i>Date: Monday 2nd November 2020</i> <i>Time: 1pm</i> <i>Place: EPC Office, Level 5, TATTE Building, Sogi, Apia, Samoa.</i>
ITB 7.8	Any questions must be submitted seven (7) days before the date of the pre-bid meeting.

C. Preparation of Bids

ITT 11.1 (c)	The written confirmation of authorization to sign on behalf of the Bidder shall be: (a) a notarised Power of Attorney authorising and assigning the authority of the signatory to sign the Tender in all its parts must be completed in Form 1. Bid Information Form (under Section IV – Bidding Forms); 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 ITT 4.1, 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.
ITT 11.1 (d)	To establish eligibility to tender, the Bidder shall complete Form 3. Bid Submission Form (under Section IV – Bidding Forms) in all of its details, with the authorized signature declaring that all statements in the Form are TRUE. A fraudulent declaration is an offence punishable under the laws of the Independent State of Sāmoa.
ITT 11.1 (e)	A Declaration of Origin is required in Price Schedule Forms for imported goods in Section VI – Schedule of Requirements. The Procuring entity may request a Certificate of Origin for selected items or all items on award of contract.
ITT 11.1 (f)	Technical Specifications shall be presented in a clearly itemised format identifying major features of material importance as “Specification Required”, against which the Bidder shall provide “Specification Offered”, for each feature indicating in the column headed “Complies?”: “YES” for compliance (substantial responsiveness) or “NO” for non-compliance
ITT 11.1 (g)	Refer to ITT 19.1(a) concerning the Manufacturer’s Authorization and ITT 19.1(b) concerning in-country Agent representation for provision of after sales service and spare parts support to the Purchaser. If it’s Bidder is accepted the Procuring Entity shall demonstrate to the Procuring entity’s satisfaction that the Bidder meets each of the Post Qualification Criteria defined in Section III – Evaluation and Qualification Criteria.
ITB 11.1(i)	The bidder shall submit with its bid the following additional documents as may reasonably be requested by the procuring entity in the bidding documents: (i) current business licence, appropriate category in accordance with the industry the goods and related services relate to and is valid for at least six (6) months;

	<p>(ii) current certificate of incorporation, or deed of partnership or joint venture;</p> <p>(iii) two (2) business references issued within the past six (6) months providing assurances of quality outcomes, business integrity, reliability and financial soundness of the bidder;</p> <p>(iv) current Ministry of Works, Transport and Infrastructure (“MWTI”) builders license (if applicable); and</p> <p>(v) for all engineers submitted as part of the bidder’s team – a current and valid IPES registration or a statement that the proposed engineer will complete registration upon confirmation of award.</p>
ITB 13.1	Alternative bids shall not be permitted.
ITB 13.3	Alternative times for completion are not permitted.
ITB 13.3	Alternative technical solutions shall not be permitted.
ITT 14.3	The total bid price shall include all applicable taxes but exclude any discounts offered.
ITB 14.5	The Incoterms edition is: Incoterms 2018
ITB 14.6	The prices quoted by the bidder shall not be adjustable during the bidder’s performance of the Contract.
ITT 14.6(a)(iii); (b)(ii) and (ii); and (c)(v)	<p>Final Destination (Project Site): Electric Power Corporation Store in Vaitele, Samoa</p> <p>In addition to the CIP and CIF prices specified in ITT 14.6 (b)(i), the price of the Goods manufactured outside the Purchaser’s Country shall be quoted: Delivery Duty Paid (DDP).</p>
ITB 15.1	The Bid Price shall be quoted by the bidder in: <i>Samoan Tala (\$SAT) or three (3) convertible currencies.</i>
ITB 17.1(a)	<p>The bidder shall submit, with its bid, the following documentary evidence to prove that it has the financial and technical and capability to perform the contract.</p> <ul style="list-style-type: none"> - <i>Financial statement for the last three (3) years;</i> - <i>Audit report of Company finances for the last three (3) years;</i> - <i>References of similar works/services in the past three (3) years.</i> - <i>Must provide certified references for at least three (3) qualified civil engineer in the team.</i> <p>The Subcontractor(s) experience and resources will not contribute to the bidder’s qualifications.</p>
ITB 18.1	The bid validity period shall be <i>ninety (90)</i> calendar days after the bid submission date.
ITB 19.1 and 19.8	Bid shall include a Bid Security (issued by bank or surety) included in Section IV - Bidding Forms;
ITB 19.2	The amount of the Bid Security shall be: Forty Thousand USD / <i>\$40,000.00</i> USD
ITB 20.1	In addition to the Original of the bid, the number of Copies is: <i>Three (3) hard copies.</i>

D. Submission and Opening of Bids

ITB 21.2(c)	The inner and outer envelopes shall bear the following additional identification
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	marks: SAM/EPC 2020/29 ELECTRIC VEHICLES AND CHARGING STATIONS
ITB 22.1	For bid submission purposes, bids must be submitted to the following address: Attention: The Secretary, Tenders Board Address: Level 4 Central Bank Building of Samoa, Beach Road City: APIA Country: SAMOA The deadline for the submission of bids is: Date: 24th November 2020 Time: 11:00am
ITB 25.1	The bid opening shall take place at: Ministry of Finance Level 4, Central Bank of Samoa Building, Beach Road APIA, SAMOA Date: 24th November 2020 Time: 11:30am

E. Evaluation and Comparison of Bids

ITB 32.1	Bid prices expressed in different currencies shall be converted in: SAMOAN TALA (SAT\$) The source of exchange rate shall be: The Central Bank of Samoa, which can be found at https://www.cbs.gov.ws/ The date for the exchange rate shall be the date of bid submission deadline.
ITB 33	Domestic preference shall not be a bid evaluation factor. If domestic preference shall be a bid-evaluation factor, the methodology for calculating the margin of preference and the criteria for its application shall be as specified in Section III, Evaluation and Qualification Criteria.
ITB 34.1	At this time the procuring entity does not intend to execute certain specific parts of the works by Subcontractors selected in advance.
ITB 34.2	[Not Applicable]
ITB 34.2	Contractor's proposed subcontracting: Maximum percentage of subcontracting permitted is: 10% of the total contract amount or 10% of the volume of work. Bidders planning to subcontract more than 10% of total volume of work shall specify, in the Letter of Bid, the activity (ies) or parts of the works to be subcontracted along with complete details of the subcontractors and their qualification and experience. NOT APPLICABLE
ITB 41.2	An increase or decrease in the quantity of the works originally required must not exceed: NOT APPLICABLE
ITB 42.2	The number of days for standstill shall be fifteen (15) days.

ITB 45	The Adjudicator proposed by the procuring entity is: <i>one appointed by the Institution of Professional Engineers (“IPES”) Samoa</i> The hourly fee for this proposed Adjudicator shall be: <i>the hourly rate OF SAT\$200.00.</i>
ITB 46.4	Any complaint should be sent to the following address: For the attention of: ELECTRIC POWER CORPORATION Address: Level 5, TATTE Building, Sogi City: APIA Country: SAMOA

Section III - Evaluation and Qualification Criteria

This Section contains all the criteria that the procuring entity shall use to evaluate and qualify the bidders. In accordance with ITB 34 and ITB 36, no other methods, criteria and factors shall be used. The bidder shall provide all the information requested in the forms included in Section IV - Bidding Forms.

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1. Alternative Bids (ITB 13)
2. Domestic Preference (ITB 34)
3. Multiple Contracts (ITB 35.6)
4. Evaluation Criteria (ITB 35.3 (d))
5. Post qualification Requirements (ITB 38.2)

1. Alternative Bids (ITB 13.1) [NOT APPLICABLE]

An alternative if permitted under ITB 13.1, will be evaluated as follows:

“A bidder may submit an alternative bid with or without a bid for the base case. The procuring entity shall consider bids offered for alternatives as specified in the Technical Specifications of **Section V, Schedule of Requirements**. All bids received, for the base case, as well as alternative bids meeting the specified requirements, shall be evaluated on their own merits in accordance with the same procedures, as specified in the ITB 35.”

2. Domestic Preference (ITB 34) [NOT APPLICABLE]

If the **BDS** so specifies, the procuring entity will grant a margin of preference to goods manufactured in Samoa for the purpose of bid comparison, in accordance with the procedures outlined in subsequent paragraphs.

The bid must demonstrate a minimum domestic content of [insert figure] %.

Bids will be classified in one (1) of three (3) groups, as follows:

- (a) Group A: Bids offering goods manufactured in Samoa, for which (i) labour, raw materials, and components from within Samoa for more than thirty percent (30%) of the EXW price; and (ii) the production facility in which they will be manufactured or assembled has been engaged in manufacturing or assembling such goods at least since the date of bid submission.
- (b) Group B: All other bids offering goods manufactured in Samoa.
- (c) Group C: Bids offering goods manufactured outside Samoa that have been already imported or that will be imported.

To facilitate this classification by the procuring entity, the bidder shall complete whichever version of the Price Schedule furnished in the bidding documents is appropriate provided, however, that the completion of an incorrect version of the Price Schedule by the bidder shall not result in rejection of its bid, but merely in the procuring entity's reclassification of the bid into its appropriate bid group.

The procuring entity will first review the bids to confirm the appropriateness of, and to modify as necessary, the bid group classification to which bidders assigned their bids in preparing their Bid Forms and Price Schedules.

All evaluated bids in each group will then be compared to determine the lowest evaluated bid of each group. Such lowest evaluated bids shall be compared with each other and if as a result of this comparison a bid from Group A or Group B is the lowest, it shall be selected for the award.

If, as a result of the preceding comparison, the lowest evaluated bid is from Group C, the lowest evaluated bid from Group C bids will then be further compared with the lowest evaluated bid from Group A, after adding to the evaluated bid price of goods offered in the bid for Group C, for the purpose of further comparison the percentage amount as specified in ITB 34.2. The lowest-evaluated bid determined from this last comparison shall be selected for the award.

3. Multiple Contracts (ITB 35.6)

The procuring entity shall award multiple lots to the bidder that offers the lowest evaluated combination of bids (one contract per bid) and meets the post-qualification criteria in accordance with Section III – Evaluation and Qualification Criteria and ITB 38.2.

The procuring entity shall:

- (a) evaluate only lots or contracts that are substantially responsive to ITB 14.7; and
- (b) take into account:
 - (i) the lowest-evaluated bid for each lot; and
 - (ii) the price reduction per lot and the methodology for its application as offered by the bidder in its bid.

4. Evaluation Criteria (ITB 35.3 (d))

The procuring entity's evaluation of a bid may take into account, in addition to the Bid Price quoted in accordance with ITB 14.6, one or more of the following factors as specified in ITB 35.3(d), using the following criteria and methodologies.

(a) Delivery schedule. (as per Incoterms specified in the BDS 14.6)

The goods specified in the List of goods are required to be delivered within the acceptable time range (after the earliest and before the final date, both dates inclusive) specified in Section V, Delivery Schedule. No credit will be given to deliveries before the earliest date, and bids offering delivery after the final date shall be treated as non -responsive. Within this acceptable period, an adjustment, as specified in the BDS 35.3 (d), will be added, for evaluation purposes only, to the bid price of bids offering deliveries later than the "Earliest Delivery Date" specified in Section VI - Delivery Schedule.

(b) Deviation in payment schedule. [NOT APPLICABLE]

(i) Bidders shall state their bid price for the payment schedule outlined in the SCC. Bids shall be evaluated on the basis of this base price. Bidders are, however, permitted to state an alternative payment schedule and indicate the reduction in bid price they wish to offer for such alternative payment schedule. The procuring entity may consider the alternative payment schedule and the reduced bid price offered by the bidder selected on the basis of the base price for the payment schedule outlined in the SCC.

(c) Cost of major replacement components, mandatory spare parts, and service.

(i) The list of items and quantities of major assemblies, components, and selected spare parts, likely to be required during the initial period of operation specified in the BDS 17.4, is in the List of goods. An adjustment equal to the total cost of these items, at the unit prices quoted in each bid, shall be added to the bid price, for evaluation purposes only.

(d) Availability in Samoa of spare parts and after sales services for equipment offered in the bid.

An adjustment equal to the cost to the procuring entity of establishing the minimum service facilities and parts inventories, as outlined in **BDS 35.3(d)**, if quoted separately, shall be added to the bid price, for evaluation purposes only.

(e) **Projected operating and maintenance costs.**

Operating and maintenance costs. An adjustment to take into account the operating and maintenance costs of the goods will be added to the bid price, for evaluation purposes only, if specified in **BDS 35.3(d)**. The adjustment will be evaluated in accordance with the methodology specified in the **BDS 35.3(d)**.

(f) ***Performance and productivity of the equipment.***

(i) Performance and productivity of the equipment. An adjustment representing the capitalized cost of additional operating costs over the life of the plant will be added to the bid price, for evaluation purposes if specified in the **BDS 35.2(d)**. The adjustment will be evaluated based on the drop in the guaranteed performance or efficiency offered in the bid below the norm of 100, using the methodology specified in **BDS 35.3(d)**.

(g) Specific additional criteria

5. Post-qualification Requirements (ITB 38.2)

After determining the lowest-evaluated bid in accordance with ITB Sub-Clause 36.1, the procuring entity shall carry out the post-qualification of the bidder in accordance with ITB 38, using only the requirements specified. Requirements not included in the text below shall not be used in the evaluation of the bidder's qualifications.

(a) **Financial Capability**

The bidder shall furnish documentary evidence that it meets the following financial requirement(s):

- (i) overall company turnover, last three (3) years;
- (ii) production division turnover, last three (3) years – goods similar to this bid;
- (iii) contracts of similar value & complexity, past three (3) years;
- (iv) audited financial statements past three years, showing positive net worth and sufficient cash flow for current project;
- (v) current inventory – required items;
- (vi) current liquidity;
- (vii) bank & commercial references.

(b) **Experience and Technical Capacity**

The bidder shall furnish documentary evidence to demonstrate that it meets the following experience requirement(s):

- a) years in current principal line of business;
- b) manufacturer authorization;

- c) government & industry associations accreditation;
- d) ISO and other quality certification;
- e) specific manufacturing facilities;
- f) specific technical expertise;
- g) best practice/ state of the art techniques;
- h) product range;
- i) after sales service, warranty & spare parts support;
- j) local support infrastructure & services;
- k) Training for operation & maintenance.

(c) **Usage Requirements**

The bidder shall furnish documentary evidence to demonstrate that the goods it offers meet the following usage requirements:

- (i) key performance levels/ capacities – certifications;
- (ii) operating efficiency;
- (iii) reliability;
- (iv) durability for specified conditions;
- (v) occupational health & safety;
- (vi) current model/ state of the art;
- (vii) user evaluations/ test reports.

Section IV. Bidding Forms

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1. Bidder Information Form

[The bidder shall fill in this Form in accordance with the instructions indicated below. No alterations to its format shall be permitted and no substitutions shall be accepted.]

Date: *[insert date (as day, month and year) of Bid Submission]*

IFB No.: *[insert number of bidding process]*

Page _____ of _____ pages

1. Bidder's Legal Name: <i>[insert bidder's legal name]</i>
2. In case of JV, legal name of each party: <i>[insert legal name of each party in JV]</i>
3. Bidder's actual or intended Country of Registration: <i>[insert actual or intended Country of Registration]</i>
4. Bidder's Year of Registration: <i>[insert bidder's year of registration]</i>
5. Bidder's Legal Address in Country of Registration: <i>[insert bidder's legal address in country of registration]</i>
<p>6. Bidder's Authorised Representative Information:</p> <p>Name: <i>[insert Authorised Representative's name]</i></p> <p>Address: <i>[insert Authorised Representative's Address]</i></p> <p>Telephone/Fax numbers: <i>[insert Authorised Representative's telephone/fax numbers]</i></p> <p>Email Address: <i>[insert Authorised Representative's email address]</i></p>
<p>7. Attached are copies of original documents of: <i>[check (X) the box according to the attached original documents]</i></p> <p><input type="checkbox"/> Articles of Incorporation or Registration of firm named in 1 above, in accordance with ITB 4.1 and 4.2.</p> <p><input type="checkbox"/> In case of JV, letter of intent to form JV or JV agreement, in accordance with ITB 4.1.</p> <p><input type="checkbox"/> In case of a public body from Samoa, documents establishing legal and financial autonomy and compliance with commercial law, in accordance with ITB 4.9 of the bidding documents.</p>

2. Joint Venture Partner Information Form

[The bidder shall fill in this Form in accordance with the instructions indicated below].

Date: *[insert date (as day, month and year) of Bid Submission]*

IFB No.: *[insert number of bidding process]*

Page _____ of _____ pages

1. Bidder's Legal Name: <i>[insert bidder's legal name]</i>
2. JV's Party legal name: <i>[insert JV's Party legal name]</i>
3. JV's Party Country of Registration: <i>[insert JV's Party country of registration]</i>
4. JV's Party Year of Registration: <i>[insert JV's Party year of registration]</i>
5. JV's Party Legal Address in Country of Registration: <i>[insert JV's Party legal address in country of registration]</i>
6. JV's Party Authorized Representative Information Name: <i>[insert name of JV's Party authorised representative]</i> Address: <i>[insert address of JV's Party authorised representative]</i> Telephone/Fax numbers: <i>[insert telephone/fax numbers of JV's Party authorised representative]</i> Email Address: <i>[insert email address of JV's Party authorised representative]</i>
7. Attached are copies of original documents of: <i>[check the box (X) according to the attached original documents]</i> <input type="checkbox"/> Articles of Incorporation or Registration of firm named in 2 above, in accordance with ITB 4.1 and 4.2. <input type="checkbox"/> A letter of intent to form JV or JV agreement, in accordance with ITB 4.1. <input type="checkbox"/> In case of a public body from Samoa, documents establishing legal and financial autonomy and compliance with commercial law, in accordance with ITB 4.9.

3. Bid Submission Form

[The bidder must prepare this Bid Submission Form under its standard letterhead clearly showing the bidder's complete name and address. The bidder shall fill in this Form in accordance with the instructions indicated. No alterations to its format shall be permitted and no substitutions shall be accepted. All italicised text is for use in accomplishing these forms and shall be deleted from the final fully edited version.]

Date: *[insert date (as day, month and year) of Bid Submission]*

IFB No.: *[insert number of bidding process]*

Alternative No.: *[insert identification No if this is a bid for an alternative]*

To: *[insert complete name of procuring entity]*

We, the undersigned, declare that:

- (a) We have examined and have no reservations to the bidding documents, including Addenda No.: *[insert the number and issuing date of each Addenda]* in accordance with ITB 8;
- (b) We offer to supply in conformity with the bidding documents and in accordance with the Delivery Schedules specified in the Schedule of Requirements the following the goods and related services *[insert a brief description of the goods and related services];*
- (c) We 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;
- (d) We 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;
- (e) We attach evidence of our fulfilment of non-price criteria of award set out in Section III, Evaluation and Qualification Criteria;
- (f) The total price of our bid, including VAGST and other applicable local taxes but excluding any discounts offered in item (g) below, is: *[insert the total bid price including VAGST in words and figures, indicating the various amounts and the respective currencies, together with separate totals for the Contract prime cost and VAGST and any other applicable taxes;]*
- (g) The discounts offered and the methodology for their application are:

Discounts. If our bid is accepted, the following discounts shall apply. *[Specify in detail each discount offered and the specific item of the Schedule of Requirements to which it applies or state none.]*

Methodology of Application of the Discounts. The discounts shall be applied using the following method: _____ *[Specify in detail the method that shall be used to apply the discounts or state not applicable.];*

- (h) Our bid shall be valid for the period of time specified in ITB 19.1, from the date fixed for the bid submission deadline in accordance with ITB 23.1, and it shall remain binding upon us and may be accepted at any time before the expiration of that period;
- (i) If price adjustment provisions apply according to the **BDS**, the prices bid shall be adjusted accordingly;
- (j) If our bid is accepted, we commit to obtain a performance security in accordance with ITB 44 and GCC 18 for the due performance of the Contract;
- (k) Our firm, including any subcontractors or suppliers for any part of the Contract do not have any conflict of interest according to ITB 4.5;
- (l) Our firm and any associated firm or joint venture party have not been subject to insolvency or bankruptcy or receivership or liquidation proceedings during the immediate past twelve (12) months;
- (m) Our firm, its affiliates or subsidiaries—including any subcontractors or suppliers for any part of the contract—has not been declared ineligible by the Government of Samoa or the procuring entity under the laws of the Independent State of Samoa ;
- (n) We are not participating, as a bidder or as a subcontractor, in more than one bid in this bidding process in accordance with ITB 4.6 other than for alternative offers permitted under ITB 13 of the bidding documents;
- (o) We are not a government owned entity/ We are a government owned entity but comply with the requirements of ITB 4.9 *[delete non-applicable statement;]*
- (p) The following commissions, gratuities, or fees have been paid or are to be paid with respect to the bidding process or execution of the Contract: *[insert complete name of each Recipient, its full address, the reason for which each commission or gratuity was paid and the amount and currency of each such commission or gratuity]*

Name of Recipient	Address	Reason	Amount
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____

(If none has been paid or is to be paid, indicate "none.")

- (q) Our firm, 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;
- (r) Our firm, 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;

- (s) 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 bidder prior to award of contract;
- (t) We understand that this bid, together with your written acceptance thereof included in your notification of award, shall constitute a binding contract between us, until a formal contract is prepared and executed;
- (u) We understand that you are not bound to accept the lowest evaluated bid or any other bid that you may receive;
- (v) We understand that you are not bound to accept the lowest responsive bid or any other bid that you may receive. We understand that the procuring entity may cancel a procurement at any time prior to the acceptance of the successful bid or after the successful bid is accepted if
 - (i) the bidder presenting the bid is suspended or debarred;
 - (ii) the procurement is cancelled;
 - (iii) the bidder presenting the successful bid is excluded on the grounds of corruption, unfair competition or conflict of interest; or
 - (iv) the procurement, the bid or the bidder contravenes or is otherwise not compliant with the provisions of the laws of the Independent State of Samoa.

Signed: _____ *[insert signature of person whose name and capacity are shown below]*

In the capacity of _____ *[insert legal capacity of person signing the Bid Submission Form]*

Name: _____ *[insert complete name of person signing the Bid Submission Form]*

Duly authorised to sign the bid for and on behalf of: _____ *[insert complete name of bidder]*

Dated on _____ day of _____, _____ *[insert date of signing]*

Price Schedule Forms

NOTE:

For evaluation purposes only, prices should include import customs duties and VAGST and other applicable taxes. Despite that applicable taxes or duties are not included in the prices, such are to be paid as determined by the relevant authority prior finalisation and signing of the Contract.

4. Price Schedule: goods Manufactured Outside Samoa, to be Imported

(Group C bids, goods to be imported)								Date: _____		IFB No: _____	
Currencies in accordance with ITB Sub-Clause 15								Alternative No: _____		Page N° _____ of _____	
1	2	3	4	5	6	7	8	9	10	Total Bid Price per Line item	
Line Item N°	Description of goods	Country of Origin	Delivery Date as defined by Incoterms	Quantity and physical unit	Unit price CIP <i>[insert place of destination]</i> in accordance with ITB 14.6(b)(i)	CIP Price per line item (Col. 5x6)	Price per line item for inland transportation and other services required in Samoa to convey the goods to their final destination specified in BDS	Customs duties & charges	VAGST	(Col. 7+8+9+10)	
<i>[insert number of the item]</i>	<i>[insert name of good]</i>	<i>[insert country of origin of the Good]</i>	<i>[insert quoted Delivery Date]</i>	<i>[insert number of units to be supplied and name of the physical unit]</i>	<i>[insert unit price CIP per unit]</i>	<i>[insert total CIP price per line item]</i>	<i>[insert the corresponding price per line item]</i>	<i>[insert the corresponding price per line item]</i>	<i>[insert the corresponding price per line item]</i>	<i>[insert total price of the line item]</i>	
SUB TOTAL AMOUNT											
VAGST											
TOTAL AMOUNT											

Name of bidder *[insert complete name of bidder]*

Signature of bidder *[signature of person signing the bid]*

5. Price Schedule: goods Manufactured Outside Samoa, already imported

(Group C bids, goods already imported)										Date: _____ IFB No: _____ Alternative No: _____ Page N° _____ of _____	
Currencies in accordance with ITB Sub-Clause 15											
1	2	3	4	5	6	7	8	9	10	11	12
Line Item N°	Description of goods	Country of Origin	Delivery Date as defined by Incoterms	Quantity and physical unit	Unit price including Custom Duties and Import Taxes paid, in accordance with ITB 14.6(c)(i)	Custom Duties and Import Taxes paid per unit in accordance with ITB 14.6(c)(ii), [to be supported by documents]	Unit Price net of custom duties and import taxes, in accordance with ITB 14.6 (c) (iii) (Col. 6 minus Col.7)	Price per line item net of Custom Duties and Import Taxes paid, in accordance with ITB 14.6(c)(i) (Col. 5×8)	Price per line item for inland transportation and other services required in Samoa to convey the goods to their final destination, as specified in BDS in accordance with ITB 14.6 (c)(v)	Sales (VAGST) and other taxes paid or payable per item if Contract is awarded (in accordance with ITB 14.6(c)(iv)	Total Bid Price per line item (Col. 9+10)
[insert number of the item]	[insert name of goods]	[insert country of origin of the Good]	[insert quoted Delivery Date]	[insert of units to be supplied and name physical unit name]	[insert unit price per unit]	[insert custom duties and taxes paid per unit]	[insert unit price net of custom duties and import taxes]	[insert price per line item net of custom duties and import taxes]	[insert price per line item for inland transportation and other services]	[insert sales and other taxes payable per item if Contract is awarded]	[insert total price per line item]
SUB TOTAL AMOUNT											
VAGST AMOUNT											
TOTAL AMOUNT											

Name of bidder [insert complete name of bidder]

Signature of bidder [signature of person signing the bid]

Date [insert date]

6. Price Schedule: goods Manufactured in Samoa

(Group A and B bids)								Date: _____	
								IFB No: _____	
								Alternative No: _____	
Currencies in accordance with ITB Sub-Clause 15								Page N° _____ of _____	
1	2	3	4	5	6	7	8	9	10
Line Item N°	Description of goods	Delivery Date as defined by Incoterms	Quantity and physical unit	Unit price EXW	Total EXW price per line item (Col. 4×5)	Price per line item for inland transportation and other services required in Samoa to convey the goods to their final destination	Cost of local labour, raw materials and components from with origin in Samoa % of Col. 5	Sales (VAGST) and other taxes payable per line item if Contract is awarded (in accordance with ITB 14.6(a)(ii))	Total Price per line item (Col. 6+7)
<i>[insert number of the item]</i>	<i>[insert name of Good]</i>	<i>[insert quoted Delivery Date]</i>	<i>[insert no of units to be supplied and name physical unit name]</i>	<i>[insert EXW unit price]</i>	<i>[insert total EXW price per line item]</i>	<i>[insert the corresponding price per line item]</i>	<i>[Insert cost of local labour, raw material and components from within Samoa as a % of the EXW price per line item]</i>	<i>[insert sales and other taxes payable per line item if Contract is awarded]</i>	<i>[insert total price per item]</i>
SUB TOTAL AMOUNT									
VAGST AMOUNT									
TOTAL AMOUNT									

Name of bidder *[insert complete name of bidder]*

Signature of bidder *[signature of person signing the bid]*

Date *[insert date]*

7. Price and Completion Schedule - related services

Currencies in accordance with ITB Sub-Clause 15						Date: _____ IFB No: _____ Alternative No: _____ Page N° _____ of _____	
1	2	3	4	5	6	7	
Service N°	Description of Services (excludes inland transportation and other services required in Samoa to convey the goods to their final destination)	Country of Origin	Delivery Date at place of Final destination	Quantity and physical unit	Unit price	Total Price per Service (Col. 5*6 or estimate)	
<i>[insert number of the Service]</i>	<i>[insert name of Services]</i>	<i>[insert country of origin of the Services]</i>	<i>[insert delivery date at place of final destination per Service]</i>	<i>[insert number of units to be supplied and name of the physical unit]</i>	<i>[insert unit price per item]</i>	<i>[insert total price per item]</i>	
Sub Total Bid Prices – related services							
Sub Total - VAGST							
Total Bid Price – related services							

Name of bidder *[insert complete name of bidder]*

Signature of bidder *[signature of person signing the bid]*

Date *[insert date]*

8. Bid Security (Bank Guarantee)

[The Bank shall fill in this Bank Guarantee Form in accordance with the instructions indicated.]

[Bank's Name, and Address of Issuing Branch or Office]

Beneficiary: _____ *[Name and Address of procuring entity]*

[Indicate here if this guarantee is for an alternative bid and, if so, identify the details of the alternative bid, if applicable.]

Date: _____

BID GUARANTEE No.: _____

We have been informed that *[name of the bidder]* ("bidder") has submitted to you its bid dated [insert date] ("bid") for the execution of *[name of contract]* under for IFB No.[reference no].

Furthermore, we understand that, according to your conditions, bids must be supported by a bid guarantee.

At the request of the bidder, we *[name of Bank]*, as Guarantor, hereby irrevocably undertake to pay you any sum or sums not exceeding in total an amount of *[amount in figures]* (*[amount in words]*) upon receipt by us of your first demand in writing accompanied by a written statement stating that the bidder is in breach of its obligation(s) under the bid conditions, because the bidder:

- (a) has materially modified or withdrawn its bid during the period of bid validity specified by the bidder in the Bid Submission Form; or
- (b) does not accept a correction of errors; or
- (c) having been notified of the acceptance of its bid by the procuring entity during the period of bid validity, (i) fails or refuses to execute the Contract Form; or (ii) fails or refuses to furnish the performance security, if required, in accordance with the Instructions to bidders.

This guarantee will expire: (a) if the bidder is the successful bidder, upon our receipt of copies of the contract signed by the bidder and the performance security issued to you upon the instruction of the bidder; or (b) if the bidder is not the successful bidder, upon the earlier of (i) our receipt of a copy of your notification to the bidder that the contract with the successful bidder has been executed; or (ii) twenty-eight (28) days after the expiration of the validity of the bidder's bid.

Consequently, any demand for payment under this guarantee must be received by us at the office on or before that date.

This guarantee is subject to the Uniform Rules for Demand Guarantees, ICC Publication No. 758.

[signature(s)]

9. Bid Security (Bid Bond)

[The Surety shall fill in this Bid Bond Form in accordance with the instructions indicated.]

BOND NO. _____

BY THIS BOND *[name of bidder]* as Principal ("Principal"), and *[name, legal title, and address of surety]*, authorised to transact business in *Samoa*, as Surety ("Surety"), are held and firmly bound unto *[name of procuring entity]* as Obligee ("procuring entity") in the sum of *[amount of Bond]*⁵ *[amount in words]*, for the payment of which sum, well and truly to be made, we, the said Principal and Surety, bind ourselves, our successors and assigns, jointly and severally, firmly by these presents.

WHEREAS the Principal has submitted a written bid to the procuring entity dated the ____ day of _____, 20__, for the supply of *[name of Contract]* ("bid").

NOW, THEREFORE, THE CONDITION OF THIS OBLIGATION is such that if the Principal:

- (a) materially modifies or withdraws its bid during the period of bid validity specified in the Bid Submission Form; or
- (b) does not accept a correction of errors; or
- (c) having been notified of the acceptance of its bid by the procuring entity during the period of bid validity; (i) fails or refuses to execute the Contract Form; or (ii) fails or refuses to furnish the Performance Security, if required, in accordance with the Instructions to bidders;

then the Surety undertakes to immediately pay to the procuring entity up to the above amount upon receipt of the procuring entity's first written demand, without the procuring entity having to substantiate its demand, provided that in its demand the procuring entity shall state that the demand arises from the occurrence of any of the above events, specifying which event(s) has occurred.

The Surety agrees that its obligation will remain in full force and effect up to and including the date (28) days after the date of expiration of the bid validity as stated in the Invitation to Bid or extended by the procuring entity at any time prior to this date, notice of which extension(s) to the Surety being waived.

IN TESTIMONY WHEREOF, the Principal and the Surety have caused these presents to be executed in their respective names this ____ day of _____ 20__.

Principal: _____ Surety: _____
Corporate Seal (where appropriate)

(Signature)

(Printed name and title)

(Signature)

(Printed name and title)

⁵ The amount of the Bond shall be denominated in SAT\$ or the equivalent amount in a freely convertible currency.

10. Bid-Securing Declaration

[The bidder shall fill in this Form in accordance with the instructions indicated.]

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

Bid No.: *[number of bidding process]*

Alternative No.: *[identification No if this is a bid for an alternative]*

To: *[complete name of procuring entity]*

We, the undersigned, declare that:

We understand that, according to your conditions, bids must be supported by a Bid-Securing Declaration.

We accept that we will automatically be suspended from being eligible for bidding in any contract with the procuring entity for the period of time of *[number of months or years]* starting on *[date]*, if we are in breach of our obligation(s) under the bid conditions, because we:

- (a) have materially modified or withdrawn our bid during the period of bid validity specified in the Bid Submission Form; or
- (b) do not accept a correction of errors;
- (c) having been notified of the acceptance of our bid by the procuring entity during the period of bid validity, (i) fail or refuse to execute the Contract; or (ii) fail or refuse to furnish the Performance Security, if required, in accordance with the ITB.

We understand if the Bid Securing Declaration becomes forfeit we will be disqualified from participating in any Government procurement for one year regardless of the source of funding. We understand this Bid Securing Declaration shall expire if we are not the successful bidder, upon the earlier of (i) our receipt of your notification to us advising the execution of the contract with the successful bidder; or (ii) twenty-eight (28) days after the expiration of our bid.

Signed: *[signature of person whose name and capacity are shown]* In the capacity of *[legal capacity of person signing the Bid Securing Declaration]*

Name: *[complete name of person signing the Bid Securing Declaration]*

Duly authorised to sign the bid for and on behalf of: *[complete name of bidder]*

Dated on _____ day of _____, _____ *[date of signing]*
Corporate Seal (where appropriate)

[Note: In case of a Joint Venture, the Bid Securing Declaration must be in the name of all partners to the Joint Venture that submits the bid.]

11. Manufacturer's Authorisation

[The bidder shall require the Manufacturer to fill in this Form in accordance with the instructions indicated. This letter of authorisation should be on the letterhead of the Manufacturer and should be signed by a person with the proper authority to sign documents that are binding on the Manufacturer. The bidder shall include it in its bid, if so indicated in the BDS.]

Date: *[insert date (as day, month and year) of Bid Submission]*

IFB No.: *[insert number of bidding process]*

Alternative No.: *[insert identification No if this is a bid for an alternative]*

To: *[insert complete name of procuring entity]*

WHEREAS

We *[insert complete name of Manufacturer]*, who are official manufacturers of *[insert type of goods manufactured]*, having factories at *[insert full address of Manufacturer's factories]*, do hereby authorize *[insert complete name of bidder]* to submit a bid the purpose of which is to provide the following goods, manufactured by us *[insert name and or brief description of the goods]*, and to subsequently negotiate and sign the Contract.

We extend our full guarantee and warranty in accordance with Clause 28 of the General Conditions of Contract, with respect to the goods offered by the above firm.

Signed: *[insert signature(s) of authorised representative(s) of the Manufacturer]*

Name: *[insert complete name(s) of authorised representative(s) of the Manufacturer]*

Title: *[insert title]*

Dated on _____ day of _____, _____ *[insert date of signing]*

PART 2 – Supply Requirements

Section V Schedule of Requirements

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1. List of Goods and Delivery Schedule

[The procuring entity shall fill in this table, with the exception of the column “bidder’s Offered Delivery Date” to be filled by the bidder – for large contracts, this Schedule will be better expressed in terms of DELIVERY OF LOTS]

Line Item Or Lot N°	Description of Goods	Quantity	Physical unit	Final (Project Site) Destination as specified in BDS	Delivery (as per Incoterms) Date		
					Earliest Delivery Date after Contract Effective Date	Latest Delivery Date after Contract Effective date	bidder’s offered Delivery date <i>[to be provided by the bidder]</i>
1	Electric Vehicle (SUV)	5	Vehicle	EPC Vaitele Station	4 months from commencement date	6 months from commencement date	
1	Electric Vehicle (Van)	5	Vehicle	EPC Vaitele Station	4 months from commencement date	6 months from commencement date	
2	Charging Station &	10	Station	EPC Vaitele Station	4 months from commencement date	6 months from commencement date	

Name of bidder *[insert complete name of bidder]*

Signature of bidder *[signature of person signing the bid]*

Date *[insert date]*

2. List of Related Services and Completion Schedule

[This table shall be filled in by the procuring entity. The Required Completion Dates should be realistic, and consistent with the required goods Delivery Dates (as per Incoterms), customs clearance & inland transportation times, and site readiness, as applicable]

Service	Description of Related Service	Quantity	Physical Unit	Place where Services shall be performed	Final Completion Date(s) of Services
1	Shipping of electric vehicles to country	1	N/A	From place of origin to Apia Wharf	6 months from commencement date
	Delivery of electric vehicle to Site	1	N/A	From wharf to EPC Vaitele substation	6 months from commencement date
2	Installation of Charging Stations at EPC sites	1	N/A	EPC substations 1. Tanugamanono 2. Fiaga 3. Vaitele	6 months from commencement date

Name of bidder *[insert complete name of bidder]*

Signature of bidder *[signature of person signing the bid]*

Date *[insert date]*

3. Technical Specifications

1. PROCUREMENT ENTITY'S TECHNICAL REQUIREMENTS

Introduction

The Government of Samoa through the National Energy Coordination Committee (NECC) has given authorization to the Electric Power Corporation (EPC) to tender for electric vehicles as part of a pilot project which aims to support the Government's initiative to reduce carbon emission. The Customs Tariff Amendment Act 2020 proposes the waiving of Import Duty and Excise tax on electric vehicles which highlights the commitment of the Government of Samoa to a clean environment and climate change mitigation.

EPC is part of the Energy as well as the Transport sectors and has an important role in the reduction of reliance on fossil fuel. It is already committed to a 100% Renewable Energy generation by the Year 2025 as its contribution to the Energy Sector. Moving to having a full EV fleet is the long term plan to contribute to the Transport Sectors' RE objectives and targets. EPC is the only power utility in Samoa, it generates, buys, distributes and sells electricity to the people. The pilot project will provide the government of Samoa with the appropriate data to make important decisions on the importation of electric vehicles and legislation.

Technical Requirements

This tender is in line with the government's policy of procuring vehicles with basic functions regardless of the brand and model. Proposals with luxury offers will not be considered unless they are part of the requirements and definitions provided in this document. Any electric vehicle that the evaluation panel has material concerns about in relation to its ability to satisfy the requirements may be excluded from further review. The evaluation panel may request clarifications as part of assessing the impact of the materiality of the concern. The winning bidder is not necessarily the lowest one as the evaluation also focuses on meeting the requirements as per the tender document. The tender is split into two lots.

Electric Vehicle

Essential features

- The product must be a fully electric vehicle (not hybrid)
- The vehicles must be right hand drive
- Vehicle must be 4 wheel drive (4WD)
- Power steering
- Auto lock doors
- SRS airbags
- Vehicles must be provided with spare tire
- The vehicles must have cargo barriers and tow bars
 - Tow loading: at least 2000kg
- Minimum vehicle battery capacity of 12 kWh
- Minimum Distance from a full battery charge of 80 km

- The vehicle must be new supplied by either a manufacturer or distributor authorized by the vehicle manufacturer
- Have a warranty of at least 5 years
- Have a battery warranty of at least 8 years
- The vehicle charging configuration must be compatible with EPC Samoa's electrical system
 - 240V single phase
 - 415V three phase
 - 50 Hz
- Each vehicle should be provided with a charger to vehicle charge cable compatible with the following types and that meet relevant NZ or Australian standards
 - Male TYPE 2 Mennekes
 - EU DC CSS Combo TYPE 2 DC plug
- Have an ANCAP 4 Star rating (or better) or certified equivalent for light commercial vehicles
- Have electronic stability control
- Have Anti-Lock Braking system with electronic brake distribution
- Have air conditioning
- Have a stereo complete with blue tooth functionality
- Embedded with a smart system that
 - Provides driving alerts
 - Provides anti-theft features
 - Provides pre-emptive remote diagnostics
 - Provides historical data of any events in the electrical system of the vehicle

Required Features (SUV)

- Capable of mixed use (open road and off road conditions)
- Carry a maximum of five passengers including the driver

Required Features (Van)

- Able to carry a minimum of eight (8) passengers including the driver
- Minimum 3.0 cubic meter cargo volume
- Left side sliding door with glass window

Desired Features

- Rapid Charge capability, 20% to 80% within 60 minutes
- A charging port which can be locked
- Active head rests
- Reverse parking sensors at the front and rear end of the vehicle
- Reversing camera
- Active headlights
- Light tinted windows
- Reversing alarm

- White color
- Manual Transmission

Charging Station

Each vehicle shall come with its own. The station shall have multiple outlets so more than one EV can be charged from it. Details of any precautionary actions to ensure safe operation shall be provided and must also be clearly displayed on the equipment. The station shall have but not restricted to the following features

- Charging equipment shall utilize charging station EV socket outlets or charging stations with tethered cables
- The charging equipment shall be classified according to the output power delivered at each outlet with all outlets operating simultaneously
- Where multiple connectors are associated with a single outlet only one connector shall be active and all others shall be inactive when the outlet is in use
- AC charging equipment output power shall be 240V AC single phase or 415V 3 phase, 50 Hz
- AC charging equipment shall use Mode 3 charging
- Must also have DC charging capability and the equipment shall use Mode 4 charging

Bid No.		3A. Goods Specifications Compliance Schedule		Sheet <i>[no.]</i> of <i>[total]</i>	
LOT NO		1	LOT DESCRIPTION	<i>ELECTRIC VEHICLE (VAN & SUV)</i>	
ITEM NUMBER			ITEM DESCRIPTION	<i>ELECTRIC VEHICLE</i>	
Feature No.	Sub Item	Procuring entity’s specification required		Bidders specification offered	Complies YES or NO?
1	1.1	Fully Electric Vehicle			
	1.2	Minimum battery capacity: 12 kWh			
	1.3	Minimum distance on full charge: 80 km			
2	2.1	Right Hand Drive			
	2.2	Four Wheel Drive			
	2.3	Power Steering			
	2.4	Cargo Barrier			
	2.5	Tow loading: 2000 kg minimum			
	2.6	Have an ANCAP 4 Star rating (or better) or certified equivalent for light commercial vehicles			
3	3.1	New vehicle supplied by either manufacturer or distributor authorized by the vehicle manufacturer			
	3.2	Vehicle warranty minimum: 5 years			
	3.3	Battery warranty minimum: 8 years			
4	4.1	Vehicle charger meet relevant NZ or Australian standards			
	4.1.1	Male TYPE 2 Mennekes			
	4.1.2	EU DC CSS Combo TYPE 2 DC plug			
	4.2	Charging system compatible with EPC Grid			
	4.2.1	240V single phase			
	4.2.2	415V three phase			
	4.2.3	50 Hz			
5	5.1	Have electronic stability control			
	5.2	Have Anti-Lock Braking system with electronic brake distribution			
	5.3	Have air conditioning			
	5.4	Have a stereo complete with blue tooth functionality			
	5.5	Embedded with a smart system that			
	5.6	Provides driving alerts			
	5.7	Provides anti-theft features			
	5.8	Provides pre-emptive remote			

		diagnostics		
	5.9	Provides historical data of any events in the electrical system of the vehicle		

Name of bidder *[insert complete name of bidder]*

Signature of bidder *[signature of person signing the bid]*

Date *[insert date]*

Bid No.		3A. Goods Specifications Compliance Schedule		Sheet <i>[no.]</i> of <i>[total]</i>
LOT NO		2	LOT DESCRIPTION	ELECTRIC VEHICLE (VAN & SUV)
ITEM NUMBER			ITEM DESCRIPTION	ELECTRIC VEHICLE
Feature No.	Sub Item	Procuring entity's specification required	Bidders specification offered	Complies YES or NO?
1	1.1	Charging station EV socket outlets or charging stations with tethered cables		
	1.2	Classified according to the output power delivered at each outlet with all outlets operating simultaneously		
	1.3	Multiple connector capability, with the able to select a single active connection		
	1.4	AC charging equipment output power shall be 240V AC single phase or 415V 3 phase, 50 Hz		
	1.5	AC charging equipment uses Mode 3 charging		
	1.6	DC charging capability using Mode 4 charging		

Name of bidder *[insert complete name of bidder]*

Signature of bidder *[signature of person signing the bid]*

Date *[insert date]*

Bid No.		3B. Related Services Specifications Compliance Schedule		Sheet <i>[no.]</i> of <i>[total]</i>
LOT NO			LOT DESCRIPTION	ENTER LOT GENERAL DESCRIPTION
ITEM NUMBER			ITEM DESCRIPTION	ENTER ITEM DESCRIPTION
Feature No.	Sub Item	PROCURING ENTITY'S SPECIFICATION REQUIRED	BIDDER'S SPECIFICATION OFFERED	Complies YES or NO?
1		Shipping Vehicle to Samoa		

2		Delivery of Vehicle to EPC Vaitele		
3	3.0	Installation of Charging Station at Relevant EPC sites		
	3.1	Fiaga		
	3.2	Vaitele		
	3.3	Tanugamanono		

Name of bidder *[insert complete name of bidder]*

Signature of bidder *[signature of person signing the bid]*

Date *[insert date]*

4. Drawings (Not Applicable)

This bidding document include *[insert “the following” or “no”]* drawings.

[If documents shall be included, insert the following List of Drawings]

List of Drawings		
Drawing No.	Drawing Name	Purpose

5. Inspections and Tests

The following inspections and tests shall be performed: *[insert list of inspections and tests]*

Carefully specify criteria to be used for acceptance- appearance, dimensions, strength grade, destructive and non-destructive tests, functional operation, etc.

PART 3

Conditions of Contract and Contract Forms

Section VI - General Conditions of Contract

These General Conditions of Contract (“GCC”), read together with the Special Conditions of Contract (“SCC”) and other documents listed therein, shall be a complete document expressing fairly the rights and obligations of the Parties.

All references in the GCC to the “SCC” are references to the “SCC Part A – Contract Data”.

The GCC can be used for small admeasurement (measure and value) contracts and lump sum contracts.

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General Conditions of Contract

A. General

1. Definitions

- 1.1 In the Conditions of Contract (“these Conditions”), which include Special Conditions of Contract, Parts A and B, and these General Conditions, the following words and expressions shall have the meanings stated. Words indicating persons or parties include corporations and other legal entities, except where the context requires otherwise. Boldface type is used to identify defined terms.
- (a) The **Accepted Contract Amount** has the same meaning as **Contract Price**.
 - (b) The **Activity Schedule** is a schedule of the activities comprising the construction, installation, testing, and commissioning of the works in a lump sum contract. **It includes a lump sum price for each activity**, which is used for valuations and for assessing the effects of Variations and Compensation Events.
 - (c) The **Adjudicator** is the person appointed jointly by the Principal and the contractor to resolve disputes in the first instance as provided for in clause 23.
 - (d) **Bill of Quantities** means the priced and completed Bill of Quantities forming part of the bid.
 - (e) **Compensation Events** are those defined in clause 41 hereunder.
 - (f) The **Contract** is the Contract between the Principal and the contractor to execute, complete, and maintain the works. It consists of the documents listed in clause 2.3.
 - (g) **Contract Agreement** means the contract agreement signed between the parties.
 - (h) The **Contractor** is the party whose bid to carry out the works has been accepted by the Principal.
 - (i) The **Contractor’s bid** is the completed bid document submitted by the Contractor to the Principal.
 - (j) The **Contract Price** is the Accepted Contract Amount stated in the Letter of Acceptance and thereafter as adjusted in accordance with the terms and conditions of Contract.
 - (k) **Days** are calendar days; months are calendar months and year means 365 days.
 - (l) **Dayworks** are varied work inputs subject to payment on a time basis for the Contractor’s employees and equipment, in addition to payments for associated materials and plant. Amounts payable for Daywork shall not be subject to adjustment for rise and fall in costs despite that the Contract may provide for adjustment in costs. In determining the value of Daywork, the following must be considered:
 - (i) the amount of wages and allowances paid by the Contractor at

- the rates obtaining on the Site at the time as established by the Contractor to the satisfaction of the Engineer or at such other rates as may be approved by the Engineer;
- (ii) the amount paid by the Contractor in accordance with any statute;
 - (iii) the amount of hire charges in respect of constructional plant approved by the Engineer for use on the work in accordance with such hiring rates and conditions as may be agreed between the Engineer and Contractor or, in the absence of agreement, in accordance with such rates and conditions as may be determined by the Engineer;
 - (iv) the amount paid for services, subcontracts and professional fees;
 - (v) the actual cost to the Contractor at the Site of all materials supplied and required for the work;
 - (vi) a charge agreed between the Engineer and Contractor to cover overheads, administrative costs, site supervision, establishment costs, attendance and profit, or in the absence of an agreement, a reasonable charge determined by the Engineer.
- (m) A **Defect** is any part of the Works not completed in accordance with the Contract and identified by the Principal and notified to the Contractor, either before or after end of the Contract.
- (n) The **Defects Liability Certificate** is the certificate issued by the **Engineer** upon correction of defects by the Contractor.
- (o) The **Defects Liability Period** is the period **named in the SCC** 33.1 and calculated from the Completion Date.
- (p) **Drawings** means the drawings of the works, as included in the Contract, and any additional and modified drawings issued by (or on behalf of) the Principal in accordance with the Contract and includes calculations and other information provided or approved by the Engineer for the execution of the Contract.
- (q) The **Engineer** is the person appointed by the Principal and **named in the SCC** (or any other competent person appointed by the Principal and notified to the contractor) who is professionally qualified and registered to assume responsibility for the engineering management, design and implementation of the works (as applicable) in accordance with the Professional Engineers (Registrations) Act 1998) and is responsible for supervising the execution of the works and administering the Contract.
- The Registered Engineer is the professionally qualified engineer appointed by the contractor to assume responsibility for the engineering management, design and implementation of the works (as applicable) in accordance with the Professional Engineers (Registrations) Act 1998.
- (r) **Equipment** is the Contractor's machinery and vehicles brought temporarily to the Site to construct the works.

- (s) **Force Majeure** means an exceptional event or circumstance which is beyond a Party's control; which such Party could not reasonably have provided against before entering into the Contract; which, having arisen, such Party could not reasonably have avoided or overcome; and, which is not substantially attributable to the other Party.
- (t) **In writing** or **written** means hand-written, type-written, printed or electronically made and resulting in a permanent record;
- (u) **The Initial Contract Price** is the Contract Price listed in the Principal's Letter of Acceptance.
- (v) **The Intended Completion Date** is the date on which it is intended that the contractor shall complete the works. The Intended Completion Date is **specified in the SCC**. The Intended Completion Date may be revised only by the Engineer by issuing an extension of time or an acceleration order.
- (w) **Latent condition** refer to:
 - (aa) physical conditions on the Site or its surroundings, including artificial things but excluding weather conditions at the Site, which differ materially from the physical conditions which should reasonably have been anticipated by the Contractor at the time of the Contractor's bid if the Contractor had:
 - (A) examined all information made available in writing by the Principal to the Contractor for the purpose of bidding; and
 - (B) examined all information relevant to the risks, contingencies and other circumstances having an effect on the tender and obtainable by the making of reasonable enquiries; and
 - (C) inspected the Site and its surroundings; and
 - (bb) any other conditions which the Contract specifies to be latent conditions
- (x) **Letter of Acceptance** means the formal acceptance by the Principal of the bid and denotes the formation of the Contract at the date of acceptance.
- (y) **Materials** are all supplies, including consumables used by the Contractor for incorporation in the works.
- (z) **Party** means the Principal or the Contractor, as the context requires.
 - (aa) **Plant** is any integral part of the works that shall have a mechanical, electrical, chemical, or biological function.
 - (bb) The **Principal** is the party who contracts the contractor to carry out the works, **as specified in the SCC**.
 - (cc) **SCC** means the Special Conditions of Contract
 - (dd) **The Site** is the area defined as such **in the SCC**.

- (ee) **Site Investigation Reports** are those that were included in the Bidding Documents and are factual and interpretative reports about the surface and subsurface conditions at the Site.
- (ff) **Specification** means the specification of the works included in the Contract and any modification or addition made or approved by the Engineer.
- (gg) The **Start Date** is **given in the SCC**. It is the latest date when the contractor shall commence execution of the works. It does not necessarily coincide with any of the Site Possession Dates.
- (hh) A **Subcontractor** is a person or corporate body who has a Contract with the Contractor to carry out a part of the works in the Contract which includes Work on the Site.
- (ii) **Temporary works** are works designed, constructed, installed, and removed by the contractor that are needed for construction or installation of the Works and the remedying of any defects.
- (jj) A **Variation** is an instruction given by the Engineer at the direction of, or with the Principal's approval which varies the works and may also be a result of a Compensation Event or latent conditions.
- (kk) The **Works** are what the Contract requires the contractor to construct, install, and turn over to the Principal **as defined in the SCC**.

2. Interpretation

- 2.1 In interpreting these GCC, words indicating one gender include all genders. Words indicating the singular also include the plural and words indicating the plural also include the singular. Headings have no significance. Words have their normal meaning under the language of the Contract unless specifically defined. The Engineer shall provide instructions clarifying queries about these GCC.
- 2.2 If sectional completion is **specified in the SCC**, references in the GCC to the works, the Completion Date, and the Intended Completion Date apply to any Section of the works (other than references to the Completion Date and Intended Completion Date for the whole of the works).
- 2.3 The documents forming the Contract shall be interpreted in the following order of priority:
 - (a) Contract Agreement,
 - (b) Letter of Acceptance,
 - (c) Special Conditions of Contract ("GCC"),
 - (d) General Conditions of Contract ("SCC"),
 - (e) Contractor's Bid,

- (f) Specifications,
 - (g) Drawings,
 - (h) Bill of Quantities,⁶ and
 - (i) any other document **listed in the SCC** as forming part of the Contract.

- 3. Language and Law**
 - 3.1 The language of the Contract is English and the law governing the Contract are the laws of the Independent State of Samoa.

- 4. Engineer's Decisions**
 - 4.1 Except where otherwise specifically stated, the Engineer shall in consultation with the Principal decide contractual matters between the Principal and the contractor in the role of representing the Principal and to ensure that, the works is carried out and completed in accordance with the Contract.

- 5. Delegation**
 - 5.1 Otherwise **specified in the SCC**, the Engineer may delegate any of his/her duties and responsibilities to other people, except to the Adjudicator after notifying the contractor, and may revoke any delegation after notifying the contractor.

- 6. Communications**
 - 6.1 Communications between parties that are referred to in the Conditions shall be effective only when in writing. A notice shall be effective only when it is delivered.

- 7. Subcontracting**
 - 7.1 The contractor may subcontract with the approval of the Engineer in writing up to a maximum of 20% of the Contract Price. The contractor may not assign the Contract without the approval of the Engineer in writing. Subcontracting shall not alter the contractor's obligations.
 - 7.2 The contractor shall be responsible for the acts, defaults and neglects of any approved sub-contractors.

- 8. Other Contractors**
 - 8.1 The Contractor shall cooperate and share the Site with other contractors, public authorities, utilities, and the Principal between the dates given in the Schedule of Other Contractors, as **referred to in the SCC**. The Contractor shall also provide facilities and services for them as described in the Schedule. The Principal may modify the Schedule of Other Contractors and shall notify the contractor of any such modification.

- 9. Personnel and Equipment**
 - 9.1 The contractor shall employ the key personnel and use the equipment identified in its bid, to carry out the works or other personnel and equipment approved by the Engineer. The Engineer shall approve any

⁶ In lump sum contracts, delete "Bill of Quantities" and replace with "Activity Schedule".

proposed replacement of key personnel and equipment only if their relevant qualifications or characteristics are substantially equal to or better than those listed in the bid and at no additional cost to the Principal.

9.2 The contractor shall appoint an Engineer for the duration of the works. The registered Engineer shall be a fully qualified corporate member of the Institute of Professional Engineers Samoa (IPES) or be in possession of an alternative professional qualification recognised by IPES as qualifying for corporate membership of IPES and who shall register as a member of IPES within twenty-eight (28) days of the Commencement Date.

9.3 If the Engineer asks the contractor to remove a person who is a member of the contractor's staff or work force, stating the reasons, the contractor shall ensure that the person leaves the Site within seven (7) days and has no further connection with the work in the Contract.

10. Principal's and Contractor's risks

10.1 The Principal carries the risks which this Contract states are Principal's risks, and the contractor carries the risks which this Contract states are contractor's risks.

11. Principal's risks

11.1 From the Start Date until the Defects Liability Certificate has been issued or until all defects have been rectified to the satisfaction of the Principal (whichever period is longer), the following are the Principal's risks:

- (a) The risk of personal injury, death, or loss of or damage to property (excluding the works, Plant, Materials, and Equipment), which are due to –
 - (i) use or occupation of the Site by the works or for the purpose of the works, which is the unavoidable result of the works; or
 - (ii) negligence, breach of statutory duty, or interference with any legal right by the Principal or by any person employed by or contracted to him except the contractor.
- (b) The risk of damage to the works, Plant, Materials, and Equipment to the extent that it is due to a fault of the Principal or in the Principal's design, or due to war or radioactive contamination directly affecting where the works are to be executed.
- (c) The risk of the Principal pursuant to sub-clause (a) above does not extend to include losses of that nature brought about by the contractor's employees or subcontractors.

11.2 From the Completion Date until the Defects Liability Certificate has

been issued, the risk of loss of or damage to the works, Plant, Materials and Equipment is the Principal's risk except loss or damage due to:

- (a) a Defect which existed on the Completion Date,
- (b) an event occurring before the Completion Date, which was not itself a Principal's risk, or
- (c) the activities of the contractor on the Site after the Completion Date.

12. Contractor's risks and warranties

12.1 From the Starting Date until the Defects Liability Certificate has been issued, the risks of personal injury, death, and loss of or damage to property (including, without limitation, the works, Plant, Materials, and Equipment) which are not Principal's risks are contractor's risks.

12.2 The Contractor warrants to do the following and in the event of anything to the contrary, the Principal shall have the right to take appropriate actions against the Contractor:

- (a) to provide goods and materials of a merchantable quality and of appropriate, reasonably fit for their intended purpose, and suitability of materials;
- (b) compliance with legal requirements;
- (c) to ensure quality workmanship;
- (d) adherence to plans; and
- (e) to ensure that the intended structure for which the works are carried out, is suitability for occupation upon completion of the works; and
- (f) to carry out the works in question in a proper and workmanlike manner; and
- (g) where services are provided, that the services concerned be provided with reasonable care and skill.

13. Insurance

13.1 The contractor shall provide, in the joint names of the Principal and the contractor, insurance cover from the Start Date to the end of the Defects Liability Period or an open insurance cover to extend after the Defects Liability Period until all defects have been rectified to the satisfaction of the Principal (whichever period is longer), in the amounts and deductibles **stated in the SCC** for the following events which are due to the contractor's risks:

- (a) loss of or damage to the works, Plant, and Materials;
- (b) loss of or damage to Equipment;
- (c) loss of or damage to property (except the works, Plant, Materials, and Equipment) in connection with the Contract; and
- (d) personal injury or death.

13.2 Policies and certificates for insurance shall be delivered by the

contractor to the Principal for the Principal's approval before the Start Date or within 30 days from the date of signing of the Contract. All such insurance shall provide for compensation to be payable in the types and proportions of currencies required to rectify the loss or damage incurred.

13.3 Alterations to the terms of an insurance policy shall not be made without the approval of the Engineer in consultation with the Principal.

13.4 Both parties shall comply with any conditions of the insurance policies.

14. Site Data

14.1 The contractor shall be deemed to have examined any Site Data **referred to in the SCC**, supplemented by any information available to the contractor.

15. Contractor to construct the Works

15.1 The contractor shall construct and install the works in accordance with the Specifications and Drawings which forms part of this Contract.

15.2 The contractor shall, in consideration for the Contract Price, execute and complete the works with due care, skill and diligence and in a sound, proper and workman like manner in accordance with the terms and conditions of this Contract and in conformity with all directions and requirements of the Engineer.

15.3 In performing the works, the contractor shall use high quality materials which are suitable for the works. If the Engineer is of the opinion that any materials or work are unsatisfactory and do not comply with the quality requirements of this Contract, the Engineer may direct the contractor, at no extra cost to the Principal, to remove the materials, demolish or reconstruct the works, replace or correct the material or works as the case may be.

15.4 The contractor shall be responsible for the connection of all water, drainage, sewerage, and electricity services necessary for the completion of the Works and shall apply for all the relevant permits and pay all associated fees and charges that are levied by the appropriate authorities from the Contract Price.

16. The Works to Be Completed by the Intended Completion Date

16.1 The contractor may commence execution of the works on the Start Date and shall carry out the works in accordance with the Program submitted by the contractor, as updated with the approval of the Engineer, and complete them by the Intended Completion Date.

- 17. Approval by the Engineer**
- 17.1 The contractor shall submit Specifications and Drawings showing the proposed Temporary works to the Engineer for his approval.
- 17.2 The contractor shall be responsible for design of Temporary works.
- 17.3 The Engineer's approval shall not alter the contractor's responsibility for design of the Temporary works.
- 17.4 The contractor shall obtain approval of third parties to the design of the Temporary works, where required.
- 17.5 All Drawings prepared by the contractor for the execution of the temporary or permanent works, are subject to prior approval by the Engineer before this use.
- 18. Safety**
- 18.1 The contractor shall be responsible for the safety of all activities on the Site. The contractor shall implement sound and appropriate safety measures to protect members of the public and other third parties from any harm whatsoever and in accordance with all relevant occupational health and safety legislation applicable to the Site and for the purposes of such legislation the contractor shall be deemed to be in control of the Site at all times for the duration of the Contract.
- 18.2 The contractor shall ensure that the Site of the works is well secured and protected at all times from any unauthorised entry or any other harm or damage during both working and non-working hours for the duration of the works. The contractor shall pay for any damages or losses whatsoever resulting from any failure to properly secure the Site.
- 19. Discoveries**
- 19.1 Anything of historical or other interest or of significant value unexpectedly discovered on the Site shall be the property of the Principal. The contractor shall notify the Engineer of such discoveries and carry out the Engineer's instructions for dealing with them.
- 20. Possession of the Site**
- 20.1 The Principal shall give possession of all parts of the Site to the contractor. If possession of a part is not given by the date **stated in the SCC**, the Principal shall be deemed to have delayed the start of the relevant activities, and this shall be a Compensation Event.
- 21. Access to the Site**
- 21.1 The contractor shall allow the Engineer and any person authorized by the Engineer access to the Site and to any place where work in connection with the Contract is being carried out or is intended to be

- carried out.
- 22. Instructions, Inspections and Audits**
- 22.1 The contractor shall carry out all instructions of the Engineer which comply with the applicable laws where the Site is located.
- 22.2 The contractor shall permit, and shall cause its Subcontractors and sub consultants to permit the Principal and/or persons appointed by the Principal to inspect the Site and/or the accounts and records of the contractor and its sub-contractors relating to the performance of the Contract and the submission of the bid, and to have such accounts and records audited by auditors appointed by the Principal if requested by the Principal.
- 22.3 The contractor's and its Subcontractors' and sub consultants' attention is drawn to GCC 57.1 which provides, inter alia, that acts intended to materially impede the exercise of the Principal's inspection and audit rights provided for under GCC 22.2 constitute a prohibited practice subject to contract termination (as well as to a determination of ineligibility pursuant to the Principal's prevailing sanctions procedures).
- 23. Appointment of the Adjudicator**
- 23.1 The Adjudicator shall be appointed jointly by the Principal and the contractor, at the time of the Principal's issuance of the Letter of Acceptance. If, in the Letter of Acceptance, the Principal does not agree on the appointment of the Adjudicator, the Principal will request the Appointing Authority **designated in the SCC**, to appoint the Adjudicator within fourteen (14) days of receipt of such request.
- 23.2 Should the Adjudicator resign or die, or should the Principal and the contractor agree that the Adjudicator is not functioning in accordance with the provisions of the Contract, a new Adjudicator shall be jointly appointed by the Principal and the contractor. In case of disagreement between the Principal and the contractor, within thirty (30) days, the Adjudicator shall be designated by the Appointing Authority **designated in the SCC** at the request of either party, within fourteen (14) days of receipt of such request.
- 24. Procedure for Disputes**
- 24.1 If the contractor believes that a decision taken by the Engineer was either outside the authority given to the Engineer by the Contract or that the decision was wrongly taken, the contractor shall notify the Principal and thereafter first enter into good faith negotiations to resolve the dispute in a fair and equitable manner without the need for adjudication or arbitration. If the good faith negotiations do not result in an acceptable resolution contractor within 14 days of the contractor notifying the Principal of a disagreement with the Engineer's decision, the decision shall immediately be referred to the

Adjudicator within fourteen (14) days of the notification of the Engineer's decision.

- 24.2 The Adjudicator shall give a decision in writing within twenty-eight (28) days of receipt of a notification of a dispute.
- 24.3 The Adjudicator shall be paid by the hour at the **rate specified in the SCC**, together with reimbursable expenses of the types **specified in the SCC**, and the cost shall be divided equally between the Principal and the contractor, whatever decision is reached by the Adjudicator. Either party may refer a decision of the Adjudicator to an Arbitrator within twenty-eight (28) days of the Adjudicator's written decision. If neither party refers the dispute to arbitration within the above twenty-eight (28) days, the Adjudicator's decision shall be final and binding.
- 24.4 The arbitration shall be conducted in accordance with the arbitration procedures published by the institution named and, in the place, **specified in the SCC**.

B. Time Control

25. Program

- 25.1 Within the time **stated in the SCC**, after the date of the Letter of Acceptance, the contractor shall submit to the Engineer for approval a Program showing the general methods, arrangements, order, and timing for all the activities in the works. In the case of a lump sum contract, the activities in the Program shall be consistent with those in the Activity Schedule.
- 25.2 An update of the Program shall be a program showing the actual progress achieved on each activity and the effect of the progress achieved on the timing of the remaining work, including any changes to the sequence of the activities.
- 25.3 The contractor shall submit to the Engineer for approval an updated Program at intervals no longer than the period **stated in the SCC**. If the contractor does not submit an updated Program within this period, the Engineer may withhold the amount **stated in the SCC** from the next payment certificate and continue to withhold this amount until the next payment after the date on which the overdue Program has been submitted. In the case of a lump sum contract, the contractor shall provide an updated Activity Schedule within fourteen (14) days of being instructed to by the Engineer.

25.4 The Engineer's approval of the Program shall not alter the contractor's obligations. The contractor may revise the Program and submit it to the Engineer again at any time. A revised Program shall show the effect of Variations and Compensation Events.

**26. Extension of the
Intended
Completion Date**

26.1 The Engineer shall extend the Intended Completion Date if:

- (a) a Compensation Event occurs; or
- (b) a Variation is issued which makes it impossible for Completion to be achieved by the Intended Completion Date without the contractor taking steps to accelerate the remaining work, which would cause the contractor to incur additional cost; or
- (c) any other event occurring on or before the Intended Completion Date which is beyond the reasonable control of the Contractor including but not limited to industrial conditions or inclement weather; or
- (d) any of the following events whether occurring before, on or after the Intended Completion Date:
 - (i) delays caused by the Principal, Engineer or Principal's employees, consultants, contractors or other agents;
 - (ii) actual quantities of work being greater than the quantities in the Bill of Quantities;
 - (iii) latent conditions;
 - (iv) repudiation or abandonment by a nominated subcontractor;
 - (v) changes in the law;
 - (vi) delays by a public or statutory authority not caused by the Contractor;
 - (vii) any breach of the Contract by the Principal; or
 - (viii) any other cause which is expressly stated in the Contract to be a cause for extension of time to ensure completion of the works.

26.2 The Engineer shall decide whether and by how much to extend the Intended Completion Date within twenty-one (21) days of the contractor asking the Engineer for a decision upon the effect of a Compensation Event or Variation and submitting full supporting information. If the contractor has failed to give early warning of a delay or has failed to cooperate in dealing with a delay, the delay by this failure shall not be considered in assessing the new Intended Completion Date.

26.3 Where more than one event causes concurrent delays and the cause of at least one of those events is not a cause referred to in clause 26.1, then to the extent that the delays are concurrent, the Contract shall not be entitled to an extension of time.

27. Acceleration

27.1 When the Principal wants the contractor to finish before the Intended

Completion Date, the Engineer shall obtain priced proposals for achieving the necessary acceleration from the contractor. If the Principal accepts these proposals, the Intended Completion Date shall be adjusted accordingly and confirmed in writing by both the Principal and the contractor.

27.2 If the contractor's priced proposals for an acceleration are accepted by the Principal, they are incorporated into the Contract Price and treated as a Variation.

**28. Delays Ordered
by the Engineer**

28.1 The Engineer may instruct the contractor to delay the start or progress of any activity within the works at the direction of the Principal.

**29. Management
Meetings**

29.1 Either the Engineer or the contractor may require the other to attend a management meeting. The business of a management meeting shall be to review the plans for remaining work and to deal with matters raised in accordance with the early warning procedure.

29.2 The Engineer shall record the business of management meetings and provide copies of the record to those attending the meeting and to the Principal. The responsibility of the parties for actions to be taken shall be decided by the Engineer either at the management meeting or after the management meeting and stated in writing to all who attended the meeting.

30. Early Warning

30.1 The contractor shall warn the Engineer at the earliest opportunity of specific likely future events or circumstances that may adversely affect the quality of the work, increase the Contract Price, or delay the execution of the works. The Engineer may require the contractor to provide an estimate of the expected effect of the future event or circumstance on the Contract Price and Completion Date. The estimate shall be provided by the contractor as soon as reasonably possible.

30.2 The contractor shall cooperate with the Engineer in making and considering proposals for how the effect of such an event or circumstance can be avoided or reduced by anyone involved in the work and in carrying out any resulting instruction of the Engineer.

C. Quality Control

**31. Identifying
Defects**

31.1 The Engineer shall check the contractor's work and notify the contractor of any Defects that are found. Such checking shall not

affect the contractor's responsibilities. The Engineer may instruct the contractor to search for a Defect and to uncover and test any work that the Engineer considers may have a Defect. Notification of defects may either be before or after end of the Contract and such defects must be rectified within the Defects Liability Period or until such time that the Principal is satisfied with rectification completed (whichever is the longer period).

32. Tests

32.1 If the Engineer instructs the contractor to carry out a test not specified in the Specification to check whether any work has a Defect and the test shows that it does, the contractor shall pay for the test and any samples. If there is no Defect, the test shall be a Compensation Event.

33. Correction of Defects

33.1 The Engineer shall give notice to the contractor of any Defects before the end of the Defects Liability Period, which begins at Completion, and is **defined in the SCC**. The Defects Liability Period shall be extended for as long as Defects remain to be corrected and to the satisfaction of the Principal.

33.2 Every time notice of a Defect is given, the contractor shall correct the notified Defect within the length of time specified by the Engineer's notice.

33.3 If any work needing rectification during the Defects Liability Period is not commenced or completed by the date required by the Principal, the Principal shall require the rectification to be carried out at the Contractor's expense, but without prejudice to any other rights that the Principal may have against the Contractor with respect to such omission or defect and the cost of the work of rectification incurred by the Principal shall be a debt due from the Contractor.

33.4 If it is necessary for the Contractor to carry out work of rectification, the Contractor shall do so at times and in a manner which causes as little inconvenience to the occupants or users of the works as is reasonably possible.

34. Uncorrected Defects

34.1 If the contractor has not corrected a Defect within the time specified in the Engineer's notice, the Engineer shall assess the cost of having the Defect corrected, and the contractor shall pay this amount.

D. Cost Control**35. Bill of Quantities**

35.1 In the case of an admeasurement contract (measure and value), the Bill

or Activity Schedule	of Quantities shall contain priced items for the works to be performed by the contractor.
	35.2 The Bill of Quantities is used to calculate the Contract Price. The contractor will be paid for the quantity of the work accomplished at the rate in the Bill of Quantities for each item.
	35.3 In the case of a lump sum contract, the Activity Schedule shall contain the priced activities for the works to be performed by the contractor. The Activity Schedule is used to monitor and control the performance of activities on which basis the contractor will be paid. If payment for Materials on Site shall be made separately, the contractor shall show delivery of Materials to the Site separately on the Activity Schedule.
36. Changes in the Contract Price	<p>36.1 In the case of an admeasurement (measure and value) contract:</p> <ul style="list-style-type: none"> (a) If the final quantity of the work done differs from the quantity in the Bill of Quantities for the particular item by more than twenty-five percent (25%), provided the change exceeds one percent (1%) percent of the Initial Contract Price, the Engineer shall adjust the rate to allow for the change. (b) The Engineer shall not adjust rates from changes in quantities if thereby the Initial Contract Price is exceeded by more than fifteen percent (15%), except with the prior approval of the Principal. (c) If requested by the Engineer, the contractor shall provide the Engineer with a detailed cost breakdown of any rate in the Bill of Quantities. <p>36.2 In the case of a lump sum contract, the Activity Schedule shall be amended by the contractor to accommodate changes of Program or method of working made at the contractor's own discretion. Prices in the Activity Schedule shall not be altered when the contractor makes such changes to the Activity Schedule.</p>
37. Variations	<p>37.1 No variation of this Contract is binding unless it is agreed to in writing between the Parties.</p> <p>37.2 All Variations shall be included in updated Programs and in the case of a lump sum contract, also in the Activity Schedule produced by the contractor and shall form part of this Contract.</p> <p>37.3 The contractor shall provide the Engineer with a quotation for carrying out the Variation when requested to do so by the Engineer. The Engineer shall assess the quotation, which shall be given within seven (7) days of the request or within any longer period stated by the Engineer and before the Variation is ordered.</p>

- 37.4 If the contractor's quotation is unreasonable, the Engineer may order the Variation and make a change to the Contract Price, which shall be based on the Engineer's own forecast of the effects of the Variation on the contractor's costs.
- 37.5 If the Engineer decides that the urgency of varying the work would prevent a quotation being given and considered without delaying the work, no quotation shall be given and the Variation shall be treated as a Compensation Event.
- 37.6 The contractor shall not be entitled to additional payment for costs that could have been avoided by giving early warning.
- 37.7 In the case of an admeasurement (measure and value) contract, if the work in the Variation corresponds to an item description in the Bill of Quantities and if, in the opinion of the Engineer, the quantity of work above the limit stated in GCC 38.1 or the timing of its execution do not cause the cost per unit of quantity to change, the rate in the Bill of Quantities shall be used to calculate the value of the Variation. If the cost per unit of quantity changes, or if the nature or timing of the work in the Variation does not correspond with items in the Bill of Quantities, the quotation by the contractor shall be in the form of new rates for the relevant items of work.
- 37.8 The Engineer or Principal is not obliged to approve a variation for the convenience of the Contractor.

38. Cash Flow Forecasts

- 38.1 When the Program, or, in the case of a lump sum contract, the Activity Schedule, is updated, the contractor shall provide the Engineer with an updated cash flow forecast. The cash flow forecast shall include different currencies, as defined in the Contract, converted as necessary using the Contract exchange rates.

39. Payment Certificates

- 39.1 The contractor shall submit to the Engineer monthly statements of the estimated value of the work executed less the cumulative amount certified previously.
- 39.2 The Engineer shall check the contractor's monthly statement and certify the amount to be paid to the contractor.
- 39.3 The value of work executed shall be determined by the Engineer.
- 39.4 The value of work executed shall comprise:
- (a) In the case of an admeasurement (measure and value) contract, the value of the quantities of work in the Bill of Quantities that have been completed; or

- (b) In the case of a lump sum contract, the value of work executed shall comprise the value of completed activities in the Activity Schedule.

39.5 The value of work executed shall include the valuation of Variations and Compensation Events (where applicable).

39.6 The Engineer may exclude any item certified in a previous certificate or reduce the proportion of any item previously certified in any certificate in the light of later information.

39.7 The payment of monies by the Principal in accordance with a Progress Payment shall not be taken as evidence against or as an admission by the Principal that any work specified in such progress certificate has been constructed or carried out in accordance with this Contract as to the value thereof, but will be taken to be payment on account only.

40. Payments

40.1 Payments shall be adjusted for deductions for advance payments and retention. The Principal shall pay the contractor the amounts certified by the Engineer within twenty-eight (28) days of the date of each certificate.

40.2 If an amount certified is increased in a later certificate or as a result of an award by the Adjudicator or an Arbitrator, the contractor shall be paid interest upon the delayed payment as set out in this clause. Interest shall be calculated from the date upon which the increased amount would have been certified in the absence of dispute.

40.3 Unless otherwise stated, all payments and deductions shall be paid or charged in the proportions of currencies comprising the Contract Price.

40.4 Items of the works for which no rate or price has been entered in shall not be paid for by the Principal and shall be deemed covered by other rates and prices in the Contract.

41. Compensation Events

41.1 The following shall be Compensation Events:

- (a) The Principal does not give access to a part of the Site by the Site Possession Date pursuant to GCC 20.1.
- (b) The Principal modifies the Schedule of Other Contractors in a way that affects the work of the contractor under the Contract.
- (c) The Engineer orders a delay or does not issue Drawings, Specifications, or instructions required for execution of the works on time (in which case, the Engineer shall bear the costs of such).
- (d) The Engineer instructs the contractor to uncover or to carry out additional tests upon work, which is then found to have no Defects.
- (e) The Engineer unreasonably (and without the Principal's knowledge)

does not approve a subcontract to be let (in which case, the Engineer shall bear the costs of such).

- (f) Ground conditions are substantially more adverse than could reasonably have been assumed before issuance of the Letter of Acceptance from the information issued to bidders (including the Site Investigation Reports), from information available publicly and from a visual inspection of the Site.
- (g) The Engineer gives an instruction for dealing with an unforeseen condition caused by the Principal or additional work required for safety or other reasons.
- (h) Other contractors, public authorities, utilities, or the Principal does not work within the dates and other constraints stated in the Contract, and they cause delay or extra cost to the contractor.
- (i) The advance payment is delayed.
- (j) The effects on the contractor of any of the Principal's risks.
- (k) The Engineer unreasonably delays issuing a Certificate of Completion (in which case, the Engineer shall bear the costs of such).
- (l) Other Compensation Events as may be described in the Contract or determined by the Engineer shall apply.

41.2 If a Compensation Event would cause additional cost or would prevent the work being completed before the Intended Completion Date, the Contract Price shall be increased and/or the Intended Completion Date shall be extended. The Engineer shall, in consultation with the Principal decide whether and by how much the Contract Price shall be increased and whether and by how much the Intended Completion Date shall be extended. The Engineer must seek endorsement of the Principal before any variation to the Contract Price or extension to Intended Completion Date is effected.

41.3 As soon as information demonstrating the effect of each Compensation Event upon the contractor's forecast cost has been provided by the contractor, it shall be assessed by the Engineer, and the Contract Price shall be adjusted accordingly. If the contractor's forecast is deemed unreasonable, the Engineer shall adjust the Contract Price based on the Engineer's own forecast. The Engineer shall assume that the contractor shall react competently and promptly to the event.

41.4 The contractor shall not be entitled to compensation to the extent that the Principal's interests are adversely affected by the contractor not having given early warning or not having cooperated with the Engineer.

42. Tax, duties and other charges

42.1 The Engineer shall adjust the Contract Price if applicable taxes, duties, and other levies are changed between the date twenty-eight (28) days before the submission of bids for the Contract and the date of the last

Completion certificate, as confirmed by the relevant authority. The adjustment shall be the change in the amount of tax payable by the contractor, provided such changes are not already reflected in the Contract Price or are a result of GCC 44.

43. Currencies

43.1 Where payments are made in currencies other than Samoan Tala ST\$, the exchange rates used for calculating the amounts to be paid shall be the exchange rates stated in the contractor's bid.

44. Price Adjustment

44.1 Prices shall be adjusted for fluctuations in the cost of inputs only if **provided for in the SCC**. If so provided, the amounts certified in each payment certificate, before deducting for Advance Payment, shall be adjusted by applying the respective price adjustment factor to the payment amounts due in each currency. A separate formula of the type indicated below applies to each Contract currency:

$$P_c = A_c + B_c \text{Imc}/\text{loc}$$

where:

P_c is the adjustment factor for the portion of the Contract Price payable in a specific currency "c."

A_c and B_c are coefficients⁷ **specified in the SCC**, representing the nonadjustable and adjustable portions, respectively, of the Contract Price payable in that specific currency "c;" and

Imc is the index prevailing at the end of the month being invoiced and loc is the index prevailing twenty-eight (28) days before Bidding opening for inputs payable; both in the specific currency "c."

44.2 If the value of the index is changed after it has been used in a calculation, the calculation shall be corrected and an adjustment made in the next payment certificate. The index value shall be deemed to take account of all changes in cost due to fluctuations in costs.

45. Retention

45.1 The Principal shall retain from each payment due to the contractor the proportion of the Contract Price **stated in the SCC** until Completion of the whole of the works.

45.2 Upon the issue of a Certificate of Completion of the works by the Engineer, in accordance with GCC 51.1, the total amount retained shall be repaid to the contractor when the Defects Liability Period has passed and the Engineer has certified that all Defects notified by the Engineer to the contractor before the end of this period have been corrected. The contractor may substitute retention money with an "on demand" bank

⁷ The sum of the two coefficients A_c and B_c should be 1 (one) in the formula for each currency. Normally, both coefficients shall be the same in the formulae for all currencies, since coefficient A_c , for the nonadjustable portion of the payments, is a very approximate figure (usually 0.15) to take account of fixed cost elements or other nonadjustable components. The sum of the adjustments for each currency are added to the Contract Price.

guarantee.

- 45.3 If the Principal requires, a retention bond may be used instead of a cash retention, and in which case, the Contractor shall pay to the Principal a retention bond in the value of ten percent (10%) of the Contract Price in the form of a bank guarantee and the same must be valid for the duration of the Contract including the Defects Liability Period. In the case of a retention bond, the money that would have been held or retained is paid out and the retention bond is provided to secure that amount.
- 45.4 A retention ensures that the Contractor adequately and faithfully completes the performance of the works required under the Contract, and acts as a safeguard against defects in case the Contractor fails to correct a defect. Half of the retention is released on certification of Completion of the works, and the remaining half is released upon certification of rectifying any defects.

46. Liquidated Damages

- 46.1 The contractor shall pay liquidated damages to the Principal at the rate per day **stated in the SCC** for each day that the Completion Date is later than the Intended Completion Date. The total amount of liquidated damages shall not exceed the amount **defined in the SCC**. The procuring Principal may deduct liquidated damages from payments due to the contractor. Payment of liquidated damages shall not affect the contractor's liabilities.
- 46.2 If the Intended Completion Date is extended after liquidated damages have been paid, the Engineer shall correct any overpayment of liquidated damages by the contractor by adjusting the next payment certificate. The contractor shall be paid interest on the overpayment, calculated from the date of payment to the date of repayment, at the rates specified in GCC 40.1.

47. Bonus

- 47.1 The contractor shall not be paid a Bonus where the Completion is earlier than the Intended Completion Date. When this happens, the Engineer shall certify that the works are complete, although they may not be due to be complete.

48. Advance Payment

- 48.1 The Principal shall make advance payment to the contractor of the amounts **stated in the SCC** by the date **stated in the SCC**, against provision by the contractor of an Unconditional Bank Guarantee in a form and by a bank acceptable to the Principal in amounts and currencies equal to the advance payment. The Guarantee shall remain effective until the advance payment has been repaid, but the amount of the Guarantee shall be progressively reduced by the amounts repaid by the contractor. Interest shall not be charged on the advance payment.

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

48.3 The advance payment shall be repaid by deducting proportionate amounts from payments otherwise due to the contractor, following the schedule of completed percentages of the works on a payment basis. No account shall be taken of the advance payment or its repayment in assessing valuations of work done, Variations, price adjustments, Compensation Events, Bonuses, or Liquidated Damages.

49. Securities

49.1 The Performance Security shall be provided to the Principal no later than the date specified in the Letter of Acceptance and shall be issued in an amount **specified in the SCC**, by a bank or surety acceptable to the Principal, and denominated in the types and proportions of the currencies in which the Contract Price is payable. The Performance Security shall be valid until a date twenty-eight (28) days from the date of issue of the Certificate of Completion in the case of a Bank Guarantee, and until one (1) year from the date of issue of the Completion Certificate in the case of a Performance Bond.

49.2 A Performance Security guarantees quality and satisfactory completion of the works and in accordance with the specifications in the Contract, and is released only upon successful completion of the Defects Liability Period.

50. Dayworks

50.1 If applicable, the Dayworks rates in the contractor's Bidding shall be used only when the Engineer has given written instructions in advance for additional work to be paid for in that way.

50.2 All work to be paid for as Dayworks shall be recorded by the contractor on forms approved by the Engineer. Each completed form shall be verified and signed by the Engineer within two (2) days of the work being done.

50.3 The contractor shall be paid for Dayworks subject to obtaining signed Dayworks forms.

51. Cost of Repairs

51.1 Loss or damage to the works or Materials to be incorporated in the works between the Start Date and the end of the Defects Correction periods shall be remedied by the contractor at the contractor's cost if the loss or damage arises from the contractor's acts or omissions.

E. Finishing the Contract

- 52. Completion** 52.1 The contractor shall request the Engineer to issue a Certificate of Completion of the Works, and the Engineer shall do so upon deciding that the whole of the works is completed.
- 53. Taking Over** 53.1 The Principal shall take over the Site and the works within seven (7) days of the Engineer's issuing a certificate of Completion.
- 54. Final Account** 54.1 The contractor shall supply the Engineer with a detailed account of the total amount that the contractor considers payable under the Contract before the end of the Defects Liability Period or before completion of rectification of defects to satisfaction of Principal.
- 54.2 The Engineer shall issue a Defects Liability Certificate and certify any final payment that is due to the contractor within fifty-six (56) days of receiving the contractor's account (if it is correct and complete) provided that the Engineer has approved that all defects identified before and after end of Contract have been rectified and that the Principal is satisfied with such rectification. If it is not, the Engineer shall issue within fifty-six (56) days a schedule that states the scope of the corrections or additions that are necessary. If the Final Account is still unsatisfactory after it has been resubmitted, the Engineer shall decide on the amount payable to the contractor and issue a payment certificate.
- 55. Operating and Maintenance Manuals** 55.1 If "as built" Drawings and/or operating and maintenance manuals are required, the contractor shall supply them by the dates **stated in the SCC**.
- 55.2 If the contractor does not supply the Drawings and/or manuals by the dates **stated in the SCC** pursuant to GCC 55.1, or they do not receive the Engineer's approval, the Engineer shall withhold the amount **stated in the SCC** from payments due to the contractor.
- 56. Termination** 56.1 The Principal or the contractor may terminate the Contract if the other party causes a fundamental breach of the Contract.
- 56.2 Fundamental breaches of Contract shall include, but shall not be limited to, the following:
- (a) the contractor stops work for twenty-eight (28) days when no stoppage of work is shown on the current Program and the stoppage has not been authorized by the Engineer;

- (b) the Engineer instructs the contractor to delay the progress of the works, and the instruction is not withdrawn within twenty-eight (28) days;
- (c) the Principal or the contractor is declared bankrupt or goes into liquidation other than for a reconstruction or amalgamation;
- (d) a payment certified by the Engineer is not paid by the Principal to the contractor within eighty-four (84) days of the date of the Engineer's certificate;
- (e) the Engineer gives Notice that failure to correct a particular Defect is a fundamental breach of Contract and the contractor fails to correct it within a reasonable period of time determined by the Engineer;
- (f) the contractor does not maintain a Security, which is required;
- (g) the contractor has delayed the completion of the works by the number of days for which the maximum amount of liquidated damages can be paid, as **defined in the SCC**; or
- (h) if the contractor, in the judgment of the Principal, has engaged in corrupt or fraudulent practices in competing for or in executing the Contract, pursuant to GCC 57.1.

56.3 When either party to the Contract gives notice of a breach of Contract to the Engineer for a cause other than those listed under GCC 56.2 above, the Engineer shall decide whether the breach is fundamental or not.

56.4 Despite the above, the Principal may terminate the Contract for convenience.

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

57. Fraud and Corruption

57.1 If the Principal determines that the contractor and/or any of its personnel, or its agents, or its Subcontractors, services providers, contractors and/or their employees has engaged in corrupt, fraudulent, collusive, coercive or obstructive practices, in competing for or in executing the Contract, then the Principal may, after giving fourteen (14) days' notice to the contractor, terminate the Contract and expel the contractor from the Site, and the provisions of GCC 56 shall apply as if such expulsion had been made under GCC 56.5 [Termination by the Principal].

57.2 Should any employee of the contractor be determined to have engaged in corrupt, fraudulent, collusive, coercive, or obstructive practice during the execution of the works, then that employee shall be removed in accordance with GCC 9.

57.3 For the purposes of this paragraph:

- (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;⁸
- (ii) “fraudulent practice” 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;⁹
- (iii) “collusive practice” is an arrangement between two or more parties¹⁰ designed to achieve an improper purpose, including to influence improperly the actions of another party;
- (iv) “coercive practice” 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;¹¹
- (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 Sub-Clause 22.2.

58. Payment upon Termination 58.1 If the Contract is terminated because of a fundamental breach of Contract by the contractor, the Engineer shall issue a certificate for the value of the work done and Materials ordered less advance payments received up to the date of the issue of the certificate and less the percentage to apply to the value of the work not completed, as **indicated in the SCC**. Additional Liquidated Damages shall not apply. If the total amount due to the Principal exceeds any payment due to the contractor, the difference shall be a debt payable to the Principal.

58.2 If the Contract is terminated for the Principal’s convenience or because

⁸ “Another party” refers to a public official acting in relation to the procurement process or contract execution].

⁹ “Party” refers to a public official; the terms “benefit” and “obligation” relate to the procurement process or contract execution; and the “act or omission” is intended to influence the procurement process or contract execution.

¹⁰ “Parties” refers to participants in the procurement process (including public officials) attempting to establish bid prices at artificial, non competitive levels.

¹¹ “Party” refers to a participant in the procurement process or contract execution.

of a fundamental breach of Contract by the Principal, the Engineer shall issue a certificate for the value of the work done, Materials ordered, the reasonable cost of removal of Equipment, repatriation of the contractor's personnel employed solely on the works, and the contractor's costs of protecting and securing the works, and less advance payments received up to the date of the certificate.

59. Property

59.1 All Materials on the Site, Plant, Equipment, Temporary works, and works shall be deemed to be the property of the Principal if the Contract is terminated because of the contractor's default.

60. Release from Performance

60.1 If the Contract is frustrated by the outbreak of war or by any other event entirely outside the control of either the Principal or the contractor, the Engineer shall certify that the Contract has been frustrated. The contractor shall make the Site safe and stop work as quickly as possible after receiving this certificate and shall be paid for all work carried out before receiving it and for any work carried out afterwards to which a commitment was made.

61. Suspension of funding

61.1 In the event that the Government suspends the funding to the Principal, from which part of the payments to the contractor are being made:

- (a) The Principal is obligated to notify the contractor of such suspension within seven (7) days of having received the Government's suspension notice.
- (b) If the Contractor has not received sums due it within the twenty-eight (28) days for payment provided for in GCC 40.1, the contractor may immediately issue a fourteen (14)-days' termination notice.

62. Assignment

62.1 The Contractor shall not assign its obligations and agreed not to its rights under this contract without in either case, prior written approval from the Principal.

- 63. Confidentiality**
- 63.1 The Contractor's and the Principal's personnel shall disclose all such confidential and other information as may be reasonably required in order to verify compliance with the Contract and allow its proper implementation. Each of them shall treat the details of the Contract as private and confidential, except to the extent necessary to carry out their respective obligations under the Contract or to comply with applicable laws.
- 63.2 Each of them shall not publish or disclose any particulars of the works prepared by the other party without the previous agreement of the other party. However, the Contractor shall be permitted to disclose any publicly available information or information otherwise required to establish his qualifications to complete for other projects.
- 63.3 Confidential information means that:
- (a) is by its nature confidential;
 - (b) is designated by the Principal as confidential; or
 - (c) the contractor knows or ought to know is confidential.
- 64. Indemnity**
- 66.1 The Contractor shall keep the Principal fully and effectively indemnified against all losses, damages or injuries, including but not limited to, legal fees and expenses suffered by the Principal, where such loss, damage or injury is the result of a wrongful action, negligence or breach of this Contract by the contractor or its agent, servants or representatives, including the use or violation of any copyright work or trademark or literary property or patented invention, article or appliance.
- 65. Contractor's Acknowledgement**
- 65.1 The Contractor acknowledges that before entering into this Contract, the Contractor was given a copy of the Contract and was advised of the right to seek independent advice on its terms and was given reasonable opportunity to take such advice.
- 65.2 The Contractor now signs this Contract in agreement to all the terms and conditions set out herein.
- 66. Counterparts**
- 66.1 The Parties may execute this Contract in multiple counterparts, each of which constitute an original and all of which collectively, constitute only one agreement. The signatures 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 Contract in the presence of the other Party to this Contract. This Contract is effective upon delivery of one executed counterpart from each party to the other party.
- 66.2 This Clause shall not apply if counterpart signing is not required.

Section VII - Special Conditions of Contract

A. General			
GCC 1.1 (q)	The Engineer is: <i>Fui Tupai Mau Simanu</i> Email: simanum@epc.ws Mob: +685		
GCC 1.1 (v)	The Intended Completion Date for the whole of the supply and works shall be <i>six (6) months</i> from the Start Date.		
GCC 1.1 (bb)	The Principal is:		
	Principal	ELECTRIC POWER CORPORATION	
	Address	LEVEL 5, TATTE BUILDING	SAMOA
	Authorised Representative	GENERAL MANAGER	
GCC 1.1 (dd)	The Site is located at: <i>EPC's Vaitele Distribution Depot</i>		
GCC 1.1 (gg)	The Start Date shall be the date both parties sign the Contract as well as the receiving by EPC of the Performance bond and advance payment security.		
GCC 1.1 (kk)	The works consist of: <i>SUPPLY ELECTRIC VEHICLES AND CHARGING STATIONS</i>		
GCC 2.2	Sectional Completions are: "NOT APPLICABLE"		
GCC 2.3(i)	The following documents also form part of the Contract: <ul style="list-style-type: none">• <i>Standard Bidding Document;</i>• <i>Bid document of successful bidder;</i>• <i>Performance Security under Clause 49.1;</i>• <i>Advance Payment Security; and</i>• <i>Evidence of Insurance under Clause 13.2</i>		
GCC 5.1	The Engineer will not delegate any of his duties and responsibilities unless approved by the General Manager of the Principal.		
GCC 8.1	Schedule of other contractors:		
GCC 13.1	The minimum insurance amounts and deductibles shall be: <ul style="list-style-type: none">(a) for loss or damage to the works, Plant and Materials: 125% of the Contract Price with a maximum deductible of SAT\$100,000;(b) For loss or damage to Equipment: <i>SAT\$500,000 with a maximum deductible of nil;</i>(c) for loss or damage to property (except the works, Plant, Materials, and Equipment) in connection with Contract: <i>SAT\$250,000 with a maximum deductible of SAT\$50,000; and</i>(d) for personal injury or death:<ul style="list-style-type: none">(i) of the contractor's employees: <i>SAT\$1,000,000 with a maximum deductible of nil;</i>(ii) of other people: <i>SAT\$1,000,000 with a maximum deductible of nil.</i>		

GCC 14.1	Site Data are:
GCC 20.1	The Site Possession Date(s) shall be: Specify fourteen (14) days relative to the Start date
GCC 23.1 & GCC 23.2	Appointing Authority for the Adjudicator: Institute of Professional Engineers, Samoa.
GCC 24.3	Hourly rate and types of reimbursable expenses to be paid to the Adjudicator: SAT\$200.00/hr
GCC 24.4	All disputes arising in connection with the Contract shall be settled under the <i>Arbitration Act 1976</i> of Samoa (Act) by one or more arbitrators appointed in accordance with the said Act. The place of arbitration shall be: Apia, Samoa.
B. Time Control	
GCC 25.1	The contractor shall submit for approval a Program for the works within twenty-eight (28) days from the date of the Letter of Acceptance.
GCC 25.3	The period between Program updates is thirty (30) days The amount to be withheld for late submission of an updated Program is: SAT\$1,000.00
C. Quality Control	
GCC 33.1	The Defects Liability Period is: Twelve (12) months from the date Vehicles are delivered to the Site.
D. Cost Control	
GCC 44.1	The contract is not subject to price adjustment in accordance with GCC Clause 44.
GCC 45.1	The proportion of payments retained is: ten percent (10%) is deducted from each progress payment except for advance payment and retained as the Retention Amount to be released at the end of the Defect Liability Period of 12 Months.
GCC 46.1	The liquidated damages for the whole of the Works is: zero-point one percent (0.1%) per day. The maximum amount of liquidated damages for the whole of the works is ten percent (10%) of the Contract Price.
GCC 48.1	An Advance Payment will apply; The Advance Payments shall be: ten percent (10%) of the Contract Price and shall be paid to the contractor no later than one (1) month from receipt of the Unconditional Advance Payment Bank Guarantee as per Clause 48.1; The bid amount should be inclusive of all applicable taxes.
GCC 49.1	A Performance Security shall apply in the amount of ten percent (10%) of the Contract Price and in the form of an unconditional on demand Bank Guarantee. This will be presented to the Principal within seven (7) days from the Principal's Letter of Acceptance.
E. Finishing the Contract	
GCC 55.1	The date by which operating and maintenance manuals are required is: Intended Completion Date [NOT APPLICABLE]

GCC 55.2	The amount to be withheld for failing to produce “as built” drawings and/or operating and maintenance manuals by the date required in Clause 55.1 is two percent (2%) of the Contract Price. [NOT APPLICABLE]
GCC 56.2 (g)	A fundamental breach applies . If applicable the maximum number of days is: one hundred (100) working days (consistent with period for liquidated damages)
GCC 58.1	The percentage to apply to the value of the work not completed, representing the Principal’s additional cost for completing the works, is one hundred and twenty five percent (125%) .

Section VIII - Contract Forms

This Section contains forms which, once completed, will form part of the Contract. The forms for Performance Security and Advance Payment Security, when required, shall only be completed by the successful bidder after contract award.

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Letter of Acceptance

[on letterhead paper of the Principal]

..... *[date]*

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

Subject: *[Notification of Award Contract No.]*

This is to notify you that your bid dated *[insert date]* for execution of the *[insert name of the contract and identification number, as given in the BDS]* for the Contract Price of the equivalent of *[insert amount in numbers and words and name of currency]*, as corrected and modified in accordance with the Instructions to Bidders is hereby accepted by *[insert name of Principal]*.

You are requested to furnish the Performance Security within **28 days** in accordance with the Conditions of Contract, using for that purpose the Performance Security Form included in **Section VIII - Contract Forms** of the bidding documents.

[Choose one of the following statements:]

We accept that _____ *[insert the name of Adjudicator proposed by the bidder]* be appointed as the Adjudicator.

[or]

We do not accept that _____ *[insert the name of the Adjudicator proposed by the bidder]* be appointed as the Adjudicator, and by sending a copy of this Letter of Acceptance to the President of the Institute of Professional Engineers Samoa the Appointing Authority, we are hereby requesting such Authority to appoint the Adjudicator in accordance with ITB 42.1 and GCC 23.1.

Authorized Signature:

Name and Title of Signatory:

Name of Agency:

Attachment: Contract Agreement

Contract Agreement

DATED: _____(day)_____(month)_____(year).

PARTIES: THE GOVERNMENT OF THE INDEPENDENT STATE OF SAMOA acting by and through the [INSERT MINISTER RESPONSIBLE], HONOURABLE [INSERT MINISTER'S NAME], ("Principal");

AND: [INSERT NAME OF CONTRACTOR] a duly incorporated company under the *Companies Act 2001* of the Independent State of Samoa, and holding a Business License with the business name [INSERT NAME], whose place of business is at [INSERT ADDRESS] ("Contractor").

(together referred to as the "Parties")

WHEREAS:

- A. THE** Principal is desirous for the Contractor to execute *[name of the Contract]* ("Works");
- B. THE** Principal has accepted a bid by the Contractor for the execution and completion of the Works in accordance with the terms and conditions set out in this Contract; and
- C. THE** Contractor agrees to carry out the works at the agreed price as set out in this Contract and in accordance with terms and conditions of this Contract.

NOW THEREFORE the Principal and the Contractor (collectively "the Parties") agree as follows:

- 1. In this Contract, words and expressions shall have the same meanings as are respectively assigned to them in the Contract documents referred to, and they shall be deemed to form and be read and construed as part of this Contract.
- 2. In consideration of the payments to be made by the Principal to the contractor as hereinafter mentioned, the contractor covenants with the Principal to execute and complete the works and remedy any defects therein in conformity in all respects with the provisions of the Contract.
- 3. The Principal covenants to pay the contractor in the amount not exceeding [INSERT CONTRACT PRICE IN WORDS] (INSERT CONTRACT PRICE IN FIGURES) inclusive of VAGST and other taxes in consideration of the execution and completion of the works in full compliance and in accordance with the terms and conditions of this Contract including but not limited to the remedying defects.
- 4. The documents forming the Contract shall comprise the following and be interpreted in the following order of priority.
 - (a) Contract Agreement;
 - (b) the Letter of Acceptance;
 - (c) Special Conditions of Contract ("SCC");

- (d) General Conditions of Contract ("GCC");
- (e) contractor's bid;
- (f) Specifications;
- (g) Drawings;
- (h) Bill of Quantities; and
- (i) any other documents listed in the SCC to form part 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 the **HONOURABLE [INSERT MINISTER'S NAME]**)
MINISTER RESPONSIBLE FOR THE [INSERT MINISTRY])
for and on behalf of the **GOVERNMENT OF THE INDEPENDENT)**
STATE OF SAMOA (*"the Principal"*))

In the presence of:

.....
(Witness Name & Signature)

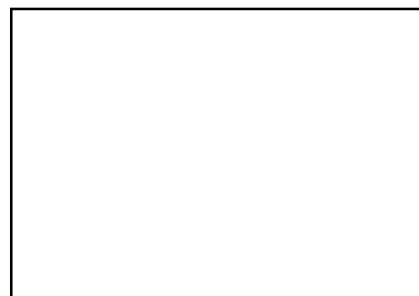
.....
(Witness Designation)

AFFIXED HERETO is the **COMMON SEAL** of)
[INSERT CONTRACTOR])

In the presence of:

.....
(Director Name and Signature)

.....
(Director/Company Secretary Name and Signature)



Performance Security

[The bank, as requested by the successful bidder, shall fill in this form in accordance with the instructions indicated]

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

IFB No. and title: *[insert no. and title of bidding process]*

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

Beneficiary: *[insert complete name of Principal]*

PERFORMANCE GUARANTEE No.: *[insert Performance Guarantee number]*

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

Furthermore, we understand that, according to the conditions of the Contract, a Performance Guarantee is required.

At the request of the contractor, we as guarantor, hereby irrevocably undertake to pay you any sum(s) not exceeding *[insert amount(s)]¹² in figures and words* upon receipt by us of your first demand in writing declaring the contractor to be in default under the Contract, without cavil or argument, or your needing to prove or to show grounds or reasons for your demand or the sum specified therein.

This Guarantee shall expire no later than the *[insert number]* day of *[insert month]* *[insert year]*,¹³ and any demand for payment under it must be received by us at this office on or before that date.

This guarantee is subject to the Uniform Rules for Demand Guarantees, ICC Publication No. 758, except that subparagraph (ii) of Sub-article 20(a) is excluded.

.....

Authorised Signatures for Bank and contractor

¹² 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.

¹³ Dates established in accordance with Clause 49.1 of the General Conditions of Contract ("GCC"), taking into account any warranty obligations of the Contractor under Clause 16.2 of the GCC intended to be secured by a partial Performance Guarantee. 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 [six (6) 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."

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)]*

IFB 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 contractor]* ("contractor") has entered into Contract No. *[insert number]* dated *[insert date of Agreement]* with you, for the supply of *[insert types of works to be executed]* ("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 contractor, we as guarantor hereby irrevocably undertake to pay you any sum or sums not exceeding in total an amount of *[insert amount(s)¹⁴ in figures and words]* upon receipt by us of your first demand in writing declaring that the contractor is in breach of its obligation under the Contract because the contractor used the advance payment for purposes other than toward delivery of the goods.

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 contractor 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 contractor 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 Contract Price, 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 contractor under the Contract until *[insert date]¹⁵*.

¹⁴ 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.

¹⁵ 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 [six (6)

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

.....
Authorised Signatures for Bank and contractor

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."