

Section I - Instructions to Bidders

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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 – Works’ 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
- (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;

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.

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.

- (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:

- (a) 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;
- (b) cancel the portion of the funding appropriation allocated to a contract if it determines at any time that representatives of the procuring entity or of a beneficiary of the appropriation were engaged in corrupt, fraudulent, collusive, or coercive practices during the selection process or the execution of that contract, without the procuring entity having taken timely and appropriate action satisfactory to the procuring entity to remedy the situation or address such practices when they occur;
- (c) 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
- (d) 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 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 IVA - Eligible Countries

PART 2 Requirements

Section V - Works 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

- 7.1 A prospective bidder requiring any clarification of the bidding document shall contact the procuring entity in writing at the

**document, Site
Visit, Pre-
Bidding Meeting**

procuring entity's address **indicated in the BDS** within 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

9. Cost of Bidding

- 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.

10. Language of Bid

- 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.

- 11. Documents Comprising the Bid**
- 11.1 The bid shall comprise the following:
- (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**.
- 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.
- 12. Letter of Bid and Schedules**
- 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 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 - Work's 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 front loaded 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 n 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:
- (a) name of each bidder who submitted a bid; and
 - (b) 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.