



GOVERNMENT OF THE KINGDOM OF TONGA

Prime Minister's Office

Invitation for Bids

Minor Works

IFB NUMBER:	PM023-24/03
DESCRIPTION:	Renovation and Extension of the front entrance to the Fa'onelua Convention Centre
EMPLOYER	Prime Minister's Office
SUBMISSION ADDRESS	Central Procurement Unit of the Ministry of Finance Saint George Government Building, Ground floor Nuku'alofa, Tongatapu/ Kingdom of TONGA Contact Person: Ms. Fai'ana 'Asi E-mail Address: fasi@finance.gov.to
CLOSING TIME & DATE:	26 th March 2024 at 12.00pm



Prime Minister's Office,

Vuna Rd, Nuku'alofa, Tongatapu.

Letter of Invitation for Bids

Bid Ref: PMO23-24/03

1. The Government of Tonga, **Prime Minister's Office** have allocated funds for the performance of Works and the Contracting Entity now invites sealed Bids to provide the following:

"Renovation and Extension of the front entrance to the Fa'onelua Convention Centre."

2. This Bid is open to all eligible Bidders who wish to respond to the Bidding Document. Bidders may only associate with each other either under a joint venture relationship, or under a sub-contractual agreement to complement their respective areas of supply to enhance their capacity to perform the Works and Related Services.

3. A Contractor will be selected under the Competitive Bidding Method, the evaluation procedure for which is described in the Bidding Document, which comprises the following:

Section 1:	Conditions of Bidding
Section 2:	Requirements for the Works
Section 3:	Specifications
Section 4:	Drawings
Section 5:	Bid Response Schedules, including Bid Submission form, Declaration of Eligibility, Qualification Information, Bill of Quantities and/or Schedule of Activities, Bid Security
Section 6:	Contract Agreement
Section 7:	Conditions of Contract
Section 8:	Specific Conditions of Contract
Section 9:	Contractor Forms including Performance Guarantee, Advance Payment Guarantee

4. Bidders must submit a Bid in the format provided for all the components of the Bid; incomplete Bids will lead to disqualification of the Bid.

5. All Bids must be accompanied by a Bid Security of TOP \$1,300.00 in the manner specified in the Bidding Document.

6. The fee for obtaining the Bidding Document is TOP\$30.00 which may be either in the form of cash or a banker's cheque from a bank registered in Tonga.

7. The deadline for submission of Bids will be **12.00pm. on the 26th of March 2024** at the office of **Central Procurement Unit** of Ministry of Finance as mentioned above. Bids will be opened in the presence of Bidders' and/or their representatives who choose to attend at Ministry of Finance Conference Room, ground floor at 2.00pm. on the above-mentioned date.

8. This Letter of Invitation for Bids will also be placed on the Procurement Division's website at www.finance.gov.to from the date of issue and prospective Bidders interested in submitting a Bid should make enquiries at the offices of the Ministry stated below.

Contact Person: Ms Fai'ana 'Asi

Email address: fasi@finance.gov.to

Central Procurement Unit of the Ministry of Finance

Saint George Government Building, Ground floor,

Nuku'alofa,

Tongatapu/ Kingdom of Tonga

SECTION 1. CONDITIONS OF BIDDING

(1.1) The Employer described in the SCC invites Bids for the provision of Works as described in this Invitation for Bids (IFB). The expected date for commencement of the Works is 2024 and they should be completed in 2 months.

(1.2) Bids shall be submitted in sealed envelopes addressed to the Employer to arrive not later than the time and date shown on the cover page of this IFB, and Bids received after this time will not be considered. Bids shall be: in writing, in the English language and all prices shall be expressed in Tonga Pa'anga (TOP). The Employer will open the Bids in the presence of those Bidders' and their representatives who choose to attend on the submission date. The Bid shall remain valid for sixty (60) days and must contain the following documents>

- Bid Submission Form completed and signed
- Priced Schedule of Activities/Bills of Quantity
- Signed Declaration of Eligibility
- Certified copy of a current Tax Clearance Certificate
- Copy of business license
- Provide work schedule
- At least 2 reference letters

(1.3) The Bidder shall also furnish as part of its Bid, in original form, a Bid security. The amount shall be TOP\$1,300.00. The Bid security in any of the following forms:

(a) an unconditional guarantee, issued by a bank; using the Bid Security Form included in Section IV (Bid Forms) The Bid security shall be valid for twenty-eight days (28) beyond the original validity period of the Bid and shall be encashable at a Bank in Tonga

(b) a cashier's or certified check

Any Bid not accompanied by an enforceable and substantially compliant Bid security, shall be rejected by the Employer as nonresponsive.

(1.4) Bidders may seek clarifications of the Bid documents by contacting the Employer no later than 3 days before the closing date for the Bid, whereupon the Employer shall respond in writing to all Bidders no later than 1 day before the closing date for the Bid.

(1.5) To qualify for an award of Contract, Bidders shall meet the following minimum qualifying criteria and must provide documents in the format contained in this document (Qualification Information) which clearly evidence compliance with the following qualification requirements.

- i) Turnover of construction work in the last year of at least the amount of TOP\$235,052.00-20%**
- ii) Completion of at least two projects of a similar nature in the last three years.- 2%**
- iii) proof of 3 years experience of the Foreman that will be working under this contract (Personel Resources)- 30%**

The Contracting Entity shall have the right to verify the information provided above

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Evaluation Methodology

Substantially responsive bids will be evaluated as follows:

Criterion	Weight
Detailed Evaluation Criteria	
Past performance	30%
Financial Standing	20%
Personnel Resources	30%
Price	20%
Total	100%

For the criteria 1 - 5 the Evaluators A...E will assess the Bidders' presentation according to their judgment as follows:

Judgment	Points
Excellent	90 ... 100
very good	80 ... 89
good	60 ... 79
fair	30 ... 59
poor	0 ...29

Please note for technical marking, bidder(s) must attain 75%+ in order to pass for financial marking.

For each criterion (1-5) the average of all Evaluator's judgements/points is calculated.

The Points earned for a bidder's price will be calculated as follows:

Price points = 100*(lowest Bid) / (current consideration Bid)

Then the points for criteria 1-5 are multiplied by their weighting factors.

The Total of the so weighted points is the final number of points

The Bidder who obtained the highest number of points will be ranked #1

Example:

Lowest Bid **1000000.00**
 Highest Bid **2000000.00**

		Bidder	"X"					Price:	1,500,000.00	Rank
		Evaluator					Average	Weighted pts		
Criterion	Weight	A	B	C	D	E				
Past performance	20%	100	90	80	70	60	80	16		
Financial Standing	15%	90	75	80	85	70	80	12		
Personnel Resources	15%	60	70	65	75	80	70	10.5		
Plant & Equipment	10%	80	85	75	80	80	80	8		
		Points earned from the price criterion:					50	20		
	100%	Bidder X					Total	66.5		2

		Bidder	"Y"					Price:	1,000,000.00
		Evaluator					Average	Weighted Pts	
Criterion	Weight	A	B	C	D	E			
Past performance	20%	100	90	80	70	60	80	16	

(1.6) Selection of the successful Bidder will be based on assessment of Bids against the information supplied. The Contract will be awarded to the Bidder whose Bid has been determined to be substantially responsive to the Bid documents and who has the lowest evaluated Bid price. The evaluated Bid price will be determined by making any correction for arithmetical errors and appropriate adjustments to reflect discounts or other price modifications offered.

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(1.7) The Bidder shall make due allowance for any fees, duties, royalties, premiums, costs, charges and the like which will be due and payable to any person or authority under the Contract.

(1.8) The Employer requires that Bidders and Contractors observe the highest standard of ethics during the procurement and execution of contracts. In pursuance of this policy, the Employer will reject a proposal for award if it determines that the Bidder recommended for award has engaged in corrupt or fraudulent practices in competing for the Contract in question.

(1.9) Prior to the expiry of the period of bid validity, the contracting entity shall notify the successful bidder of the proposed award, which shall specify the time within which the contract shall be signed, subject to any intervening complaints filed in accordance with the Public Procurement (Amendment) Regulations 2019.

In the case of contracts awarded by way of competitive bidding and in the case of any contract with a value in excess of \$ 20,000, notice shall be given to the other bidders, specifying the name and address of the proposed successful bidder and the price of the contract, but the contract shall not be signed until at least 10 days have passed following the giving of that notice.

(1.10) The Employer reserves the right to accept or reject any Bid, and to cancel the bidding process and reject all Bids, at any time prior to the award of Contract, without thereby incurring any liability to the affected Bidder or Bidders or any obligation to inform the affected Bidder or Bidders of the grounds for the Employer's action.

(1. 11) An unsuccessful Bidder who is not satisfied may request a debriefing. If still dissatisfied with the explanation or information obtained in the debriefing, the Bidder may submit a complaint. The process to handle and resolve a Bidder's complaint is prescribed in the "Complaints and Appeals Procedures" details of which can be found at the MoF Procurement Division's web address www.finance.gov.to.

SECTION 2. REQUIREMENTS FOR THE WORKS

Prime Minister's Office – wishes to renovate and extend the front entrance to the Fa'onelua Convention Centre.

SECTION 3. SPECIFICATIONS

Please note that the Specification is included in the Drawing maps as detail below:

- i. Drawing Title- General Notes
- ii. Drawing Number- 101

SECTION 4. DRAWINGS

Fa'onelua Proposed Canopy Extention	
Schedule of Drawings	
<i>Sheet</i>	<i>Sheet Names</i>
101	Locality Plan
102	Site Plan
103	Foundation Plan
201	Floor Plan
401	Elevations 1 & 2
501	Cross Section & Risk Matrix
601	Limited Services Plan/ Electrical Plan
602	Roof Plan
801	Column n Beam Details
802	Footing Details
803	Roof Details



Prime Minister's Office

Section 5.

Bid Response Schedules

[Bidder to insert name of organisation Bidding]

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EMPLOYER	Prime Minister's Office
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CLOSING TIME & DATE:	26 th March 2024 at 12.00pm (Tongan Time)

BID SUBMISSION FORM

(The completed Bid form and attachments together will comprise the Bidder's offer)

To:

We agree to be bound by the **Conditions of Contract** and **Specific Conditions of Contract** and we hereby offer to perform the Works, in conformity with this Invitation for Bids and in accordance with the Bill of Quantities/Schedule of Works, for the Contract Price of:

	CURRENCY & AMOUNT	TOP
<i>[total Bid Price in words]</i>		<i>[Bid price in figures]</i>

Our Bid shall be valid for sixty (60) days and it shall remain binding upon us and may be accepted at any time before the expiration of that period. If our Bid is accepted, we commit to obtain a performance security in accordance with the Bid Document;

We understand that our Bid, together with your issuance of the Contract and associated documents shall constitute a binding contract between us.

We understand that you are not bound to accept the lowest evaluated Bid or any other Bid that you may receive.

Authorised Signature:		Date	
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Name & Title of Signatory:	Name: Title:
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Duly authorised to sign on behalf of

Company Name of Bidder		Seal or stamp
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Declaration of Eligibility

All Bidders must meet the following criteria, to be eligible to participate in public procurement

Bidders must provide a signed declaration on their company letterhead in the following format. If the Bid is being presented by a joint venture or consortium all members must sign the declaration

Dear Sirs

Re Bid Reference: PMO23-24/03

In accordance with the eligibility requirements of the Public Procurement Regulations 2015 of Tonga and the Bid documents we hereby declare that:-

- (a) We, including any joint venture partners or consortium partners are a legal entity and have the legal capacity to enter into the contract;
- (b) We are not insolvent, in receivership, bankrupt or being wound up, our affairs are not being administered by a court or a judicial officer, our business activities have not been suspended and we not the subject of legal proceedings for any of the foregoing;
- (c) We have fulfilled our obligations to pay taxes and social security contributions in Tonga.
- (d) We have not, and our directors or officers have not, been convicted of any criminal offence related to our/their professional conduct or the making of false statements or misrepresentations as to their qualifications to enter into a contract within a period of five years preceding the commencement of the procurement proceedings; and
- (e) That we do not have a conflict of interest in relation to the procurement requirement.

Signed

Date.....

QUALIFICATION INFORMATION

The Bidder must complete this schedule and attach any relevant supporting documents

Status of Bidder:

Name of Bidder:	
Place of Registration:	
Principal Place of Business:	
Documentation:	Constitution of Bidder, copy attached
	Registration Document Tax Certificate
Turnover in Last Financial Year	TOP\$235,052

Similar Projects completed in the last 3 years

Year	Name and short description of Works	Value of Works (TOP)	Name of Employer

**BILL OF QUANTITIES AND COST ESTIMATES
(EXTENSION FA'ONELUA CANOPY EXTENSION)**

ITEM	UNIT	QTY	UNIT COST	AMOUNT
LAYOUT/ PROFLING	Lot	1.00		
EXCAVATION	Cu.m.	7.27		
BACKFIL	Cu.m.	4.97		
FOUNDATION FILL	Cu.m.	0.65		
<u>FOOTING F-1</u>				
CEMENT BAGS	Bags	16.00		
SAND (DUST)	Cu.m.	1.94		
CORAL 19,MM	Cu.m.	2.85		
16 Includes 30 MPA concrete, deformed steel G500, tie wires	Pcs	24.00		
TIE WIRES	Kgs	1.66		
Includes 30 MPA concrete, deformed steel G500, tie wires and formworks				
<u>COLUMN C-1</u>				
Includes 30 MPA concrete, deformed steel G500, tie wires and formworks				
CEMENT BAGS	Bags	16.00		
SAND (DUST)	Cu.m.	0.90		
CORAL 19, MM	Cu.m.	1.27		
16 MM x 6M DEF BARS	Pcs	30.00		
10 MM x 6M DEF BARS	Pcs	24.00		
Includes 30 MPA concrete, deformed steel G500, tie wires, formworks & staging				
TIE WIRES	Kgs	2.31		
SCOTSDALE STEEL FRAMING BY JONES INDUSTRIES				
1.2 x 2.4 x 18mm FORM PLY	Pcs	12.00		
Includes Fabrication and installation				
50 x 100 x 6m TIMBER PINE, H3	Pcs	15.33		
COMMON NAIL, CWN 100mm	Kgs	4.00		
COMMON NAIL, CWN 38mm	Kgs	2.00		
<u>TIE BEAMS</u>				
CEMENT BAGS	Bags	10.00		
CL1, 6mm villaboard on 50x50mm ceiling joist,				
SAND (DUST)	Cu.m.	0.56		
CORAL 19,MM	Cu.m.	0.79		
16 MM x 6M DEF BARS	Pcs	10.00		
10 MM x 6M DEF BARS	Pcs	9.00		
TIE WIRES	Kgs	2.00		
16MM DOWEL BARS	Pcs	4.00		
EPOXY 250ML TUBE	Pcs	6.00		
<u>GROUND FLOOR SLAB</u>				
CEMENT BAGS	Bags	96.00		
SAND (DUST)	Cu.m.	6.72		
CORAL 19,MM	Cu.m.	9.51		
WIRE MESH 663	Pcs	12.00		
DAMP PROOF PLASTIC SHEET	Sq.m.	96		
<u>ROOF BEAMS</u>				
CEMENT BAGS	Bags	22.00		
SAND	Cu.m.	1.27		
CORAL 19,MM	Cu.m.	1.80		

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16 MM x 6M DEF BARS	Pcs	23.00		
10 MM x 6M DEF BARS	Pcs	19.00		
TIE WIRES	Kgs	2.26		
1.2 x 2.4 x 19mm FORM PLY	Pcs	7.00		
50 x 100 x 6M RADIATA PINE, H3	Pcs	24.00		
COMMON NAIL, CWN 100MM	Kgs	2.88		
COMMON NAIL, CWN 38MM	Kgs	1.44		
<u>ROOFING</u>				
COLORBOND METAL ROOFING, 0.55MM x 0.9M	M	134.00		
ROOF TEXSCREW, 75MM	Pcs	2010.00		
RIDGE CAP	M	9.00		
END FLASHING	M	14.48		
WALL FLASHING	M	16.00		
FOLDABLE GUTTERING	M	14.48		
SILICONE SEALANT	Pcs	20.00		
CYCLONE METAL STRAP, 25MM X 30M/ROLL	Rolls	4.00		
DURAFOIL SISILATION	Rolls	4.00		
CHICKEN NET 6FTx1 1/2x1 1/2x30M HEX	Rolls	3.00		
<u>CEILING</u>				
<u>CL4, HIGH CEILING, WALLS & LOFT</u>				
1.2x0.20x19MM T&G TIMBER PLANKS	Pcs	492.00		
STEEL SCREWS, 40MM	Kgs	25.00		
<u>PAINTING</u>				
ACRYLLIC LATEX PAINT, WHITE	Liters	26.00		
ACRYLLIC SEMIGLOSS LATEX PAINT, PRE-MIXED	Liters	26.00		
MASONRY PUTTY	Liters	26.00		
SAND PAPER 100	Roll	2.00		
SAND PAPER 200	Roll	2.00		
ROLLER BRUSH, 12"	Pcs	5.00		
PAINT BRUSH 4"	Pcs	5.00		
PAINT THINNER	Liters	32.00		
<u>ELECTRICAL</u>				
4.0 SQ.MM THHN WIRE, SOLID, 2P + E	LM	250.00		
100MM LED DOWNLIGHT	Pcs	25.00		
Ø20 PVC CONDUIT	M	40.00		
Ø20 PVC LONG TEE CONDUIT	Pcs	12.00		
ELECTRICAL TAPE	Rolls	20.00		
2-GANG SWITCH	Pcs	2.00		
1-GANG SWITCH	Pcs	1.00		
2-GANG CONVINIENCE OUTLET W/ SWITCH	Set	2.00		
<u>JONES INDUSTRIES FABRICATION</u>				
TOTAL				
AREA				
COST PER SQUARE METER				

Form of Bid Security (Bank Guarantee)

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

Beneficiary: _____ [Name and Address of Employer]

Date: _____

BID GUARANTEE No.: _____

We have been informed that _____ [name of the Bidder] (hereinafter called "the Bidder") has submitted to you its Bid dated _____ (hereinafter called "the Bid") for the execution of _____ [name of contract] under Invitation for Bids No. _____ ("the IFB").

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] 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 withdrawn its Bid during the period of Bid validity specified by the Bidder in the Form of Bid; or
- (b) having been notified of the acceptance of its Bid by the Employer during the period of Bid validity, (i) fails or refuses to execute the Contract Form, if required, or (ii) fails or refuses to furnish the performance security, in accordance with the ITB.

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; and (b) if the Bidder is not the successful Bidder, upon the earlier of (i) our receipt of a copy your notification to the Bidder of the name of the successful Bidder; or (ii) twenty-eight days after the expiration 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. 458.

[signature(s)]

Section 6.



Prime Minister's Office.

Contract

Contract No. PM023-24/03

Contract Name: Renovation and Extension of the front entrance to the Fa'onelua Convention Centre.

THIS AGREEMENT made the [insert date] by and between the [insert name of Ministry] (the Employer), situated at [insert details], Kingdom of Tonga on the one part and [insert name and address of Contractor] (the "Contractor") on the other part;

Whereas the Employer has accepted the Bid of the Contractor for the provision of such Works and Services in the sum of:

[insert amount in words]

[insert currency and amount in figures]

1. In consideration of the payments to be made by the Employer to the Contractor as hereinafter mentioned, the Contractor hereby covenants with the Employer to execute and complete such Works and Services in conformity in all respects with the provisions of the Contract.
2. The Employer hereby agrees to pay the Contractor in consideration of the execution and completion of the Works and the remedying of defects therein the Contract Price or other sum as may become payable under the provisions of the Contract at the times and in the manner prescribed by the Contract.
3. This Contract Agreement comes into effect on the date when the Employer and the Contractor sign the Contract Agreement.
4. We agree to submit a Performance Security in the required amount and in the format prescribed within ten (10) days of signing this Contract Agreement.
5. The Site is located at Nukunuku, Tongatapu.
6. The Site Possession Date is: The day of contract signing; the Date of Commencement of the Works is: 5 days from signing of the contract and the Works shall be completed within 2 months.

For the Employer		For the Contractor	
	Signature		Signature
Print Name		Print name	
Designation		Designation	
Date		Date	

Section 7. CONDITIONS OF CONTRACT

9. GENERAL PROVISIONS

The **Employer** is the entity stated in the Contract Agreement, represented by the person named in the SCC.

The **Contractor** is the entity stated in the Contract Agreement, represented by the person named in the SCC.

The Contract Documents listed in the Contract Agreement represent the entire and integrated Contract between the Employer and the Contractor. The Contract is governed by and shall be construed in accordance with the law of Tonga, and the ruling language of the Contract is English.

All prior negotiations, representations and agreements, both oral and written, are superseded by the Contract. All correspondence relating to the Contract between the parties and their representatives, and all documents shall be in English.

Neither the Employer nor the Contractor shall assign, in whole or in part, their obligations under the Contract, except with the prior written consent of the other party

In these Conditions of Contract, unless the context otherwise requires:

“Bill of Quantities” means the priced and completed Bill of Quantities forming part of the Bid;

“Certificate of Compliance” means the Certificate issued by the Ministry of Revenue Services concerning tax compliance;

“Contract” means the signed Contract Agreement, and the documentation specified therein, as entered into between the Employer and the Contractor for the provision of the Works;

“Contract Manager” means the person named in the SCC, who manages the implementation of the Contract on behalf of the Employer

“Contracting Entity” means any Ministry, Department, Division, agency or other unit of the Government or any subdivision thereof, engaging in procurement as well as the Central Procurement Unit

“Contractor” means the person or organisation stated in the Contract Agreement who’s Bid to provide the Works and Services has been accepted by the Employer;

“Contract Price” means the price stated in the Contract Agreement and thereafter as adjusted in accordance with the provisions of the Contract;

“Date for Commencement” means the date specified in the Contract Agreement by which the Contractor will be able to commence the execution of the Works;

“Date for Completion” means the date specified in the Contract Agreement, by which the Works are expected be substantially completed;

“Days” means calendar days, **“Months”** means calendar months;

“Defect” is any part of the Works not completed in accordance with the Contract;

“Drawings” include calculations and other information provided or approved by the Contract Manager for the execution of the Contract;

“in writing” means communicated in written form (e.g. by letter, e-mail or fax);

“Schedule of Activities” means those activities to be carried out by the Contractor in the performance of the Works;

“Site” means the place of performance of the Works specified in the Contract Agreement;

“Site Possession Date” means the date by which the Employer has possession of the site in order to hand it over to the Contractor for them to perform the works;

“Specification” means the Specification of the Works included in the Contract and any modification or addition made or approved by the Contract Manager;

“Subcontractor” means any person or organisation that supplies goods, materials or services to the Contractor;

“Variation” is an instruction given by the Employer or the Contract Manager which varies the Contract;

“Works” means what the Contract requires the Contractor to construct, install and hand over to the Employer.

Clause headings shall not be used in the interpretation of these Conditions.

Words in the singular also include the plural and vice versa when the context so requires.

Words indicating a gender includes either gender.

9. APPLICABLE LAW

This contract shall be subject to the applicable Laws and Regulations of Tonga

9. OBLIGATIONS OF THE EMPLOYER

The Employer shall appoint a Contract Manager, as specified in the **SCC**, for the Works and shall provide written notice to the Contractor of such an appointment. The Employer may from time to time replace the Contract Manager by giving written notice to the Contractor of such replacement

The Employer shall obtain satisfactory possession of the Site for the execution of the Works prior to the issuance of the Contract Agreement. If possession of a part is not given by the date stated in the Contract Agreement the Employer will be deemed to have delayed the start of the relevant activities.

4. OBLIGATIONS OF THE CONTRACTOR

General Obligations

The Works to be performed shall be as specified in the Drawings and Specifications. The Contractor with due diligence and in a good workmanlike manner shall carry out and complete the Works to the reasonable satisfaction of the Contract Manager. The Contractor shall provide all supervision, labour, Materials, Plant and Contractor’s Equipment which may be required.

The Contractor shall check and verify dimensions on Drawings on Site before proceeding with the Works, and shall bring any ambiguities in the Drawings and Specifications to the attention of the Contract Manager for clarification.

The Contractor shall comply with all notices required by statute, statutory instrument, rule, order, regulation, or by-law applicable to the Works and shall pay all fees and charges in connection therewith, save and except those fees required by the Building Act Chapter 301 and Physical Planning Act 1989 and subsequent amendments thereto.

The Contractor shall submit to the Employer for consent the name and particulars of the person authorised to receive instructions on behalf of the Contractor.

The Contractor shall carry out all instructions of the Contract Manager which comply with the applicable laws of Tonga.

The Contractor is responsible for acts and omissions of all employees of the Contractor and other persons performing portions of the Work under contract with the Contractor.

The Contractor shall not subcontract any part of the Works without the written consent of the Employer. If requested, the Employer shall not reasonably withhold such consent.

4.1 Local Contractors and Suppliers

The Contractor shall, except in those cases where the Contractor can reasonably demonstrate to the Employer that it is impractical for commercial, technical or other reasons so to do:

- a) Use labour available within Tonga; and
- b) Use the services located and obtain supplies/materials available within the local market;

4.2 Contractors Personnel

If the Contract Manager asks the Contractor to remove a person who is a member of the Contractor's staff or work force, he shall state the reasons, and the Contractor shall, as soon as reasonably possible, ensure that the person leaves the Site and has no further connection with the work in the Contract.

The Contractor shall provide suitable and safe accommodation for his labourers and arrange proper water supply, conservancy and sanitary arrangements at the site in accordance with relevant rules and to the satisfaction of the Employer.

4.3 Safety, Security and Protections

The Contractor shall throughout the execution and completion of the Works and the remedying of any defects therein:

- a) Have full regard for the safety of all persons entitled to be upon the Site and keep the Site and Works in an orderly manner;
- b) Provide and maintain at the Contractor's own cost all lights, guards, fencing, warning signs and security for the protection of the Works or for the safety on-site; and
- c) Take all reasonable steps to protect the environment on and off the Site and to avoid damage or nuisance to persons or to property of the public or otherwise from pollution, noise or other causes arising or as a consequence of the Contractors methods of operation.

5. PERFORMANCE OF THE WORKS

5.1 Site of the Works, Date for Commencement and Completion

The Site of the Works, Site Possession Date, Date for Commencement and Date for Completion is provided in the Contract Agreement, unless the dates are otherwise agreed with the Contract Manager. However, the Contractor cannot take possession of the Site until the Contractor has provided copies of the relevant Insurance policies to the Contract Manager.

If it becomes apparent that the Works will not be completed within the Time for Completion for reasons beyond the control and without fault of the Contractor, then the Contractor shall so notify the Contract Manager who shall extend the Time for Completion by a period reasonably supported by detailed particulars provided by the Contractor.

Every delay in the completion of the Works that is not caused by the Contractor shall not constitute non-compliance with this agreement by the Contractor.

5.2 Working Hours

The working hours shall be 07:30 Hours to 16:30 Hours with a break of one (1) hour around mid-day for weekdays and 07:30 Hours to 12:00 Hours (noon) on Saturdays. No work shall be carried out outside these working hours unless a written request has been Bided to and approval given in writing by the Contract Manager, whose consent shall not be unreasonably withheld.

5.3 Programme of the Works and Communications

Within 14 days of the signature of the Contract Agreement, the Contractor shall submit to the Employer for approval a programme showing the general method, arrangements, order and timing for all the activities of the Works.

Communications between parties that are referred to in these Conditions shall be effective only when made in writing and only when it has been delivered from one party to the other.

5.4 Contractor's Risks

From the Time of Commencement until the Time of Completion the risks of personal injury, death, and loss of or damage to property (including, without limitation, the Works, materials and equipment) which are not the Employer Risks are Contractor's Risks.

9. INDEMNIFICATION AND INSURANCE REQUIREMENTS

9.6 Indemnification

The Contractor shall keep the Employer and employees or agents of the Employer indemnified against any legal liability, loss, claim, action or proceeding for personal injury to, or death of any person for damage to any property arising from the carrying out of the Works (except loss or damage caused by any negligent act, omission or default of the Employer or employees or agents of the Employer) and from any costs and expenses that may be incurred in connection with any such loss, claim, action or proceeding.

The Contractor shall indemnify the Employer at all times against any compensation paid or any action, claim, demand or expense arising from or incurred by reason of the existence of any patent, design, trademark or copyright or other protected right in respect of any machine, plant, work material or thing, system or method of using, fixing, working or arrangement, used or fixed or supplied by the Contractor in connection with carrying out the Works.

9.6 Insurances

The Contractor shall provide, in the joint names of the Employer and the Contractor, such insurances as are necessary to cover the liability of the Contractor and subcontractor(s) in respect of (a) personal injuries or deaths and damage to real or personal property arising out of or in the course of the carryout of the Works; (b) all unfixed materials and goods intended for the Works, delivered to, or placed on or adjacent to the Works and intended for the Works, and for an amount not less than the full Contract value and against all risks or physical loss or damage.

Such insurances shall be in the type and amounts specified in the **SCC** and shall cover the period from the Start Date to the end of the Defect's Liability Period. The Contractor shall not cancel, cause to be cancelled, or alter the terms and conditions of any insurance policy covering this Contract without the express permission of the Employer.

9.6 Amounts and Evidence of Cover

Such indemnification and insurances shall be in the type and amounts specified in the **SCC**, shall cover the period from the Start Date to the end of the Defect's Liability Period., and shall be effected within fourteen (14) days of the date of the LOA, and in the terms approved by the Employer.

Prior to commencement of the Works, the Contractor, and any subcontractor, shall produce such evidence as the Contract Manager may reasonably require that the indemnification and insurances referred to in this Clause have been taken out and are in force for the duration of the Contract.

If the Contractor does not provide any of the policies and certificates required, the Employer may effect the insurance which the Contractor should have provided and recover the premiums the Employer has paid from payments otherwise due to the Contractor or, if no payment is due, the payment of the premiums shall be a debt due.

9. MATERIALS AND WORKMANSHIP

7.1 Conforming to Contract

All materials used in the Works and the standard of workmanship shall conform to the provisions of the Contract. In the absence of such provisions that material or standard of workmanship shall be of a kind that is suitable for its purpose and is consistent with the nature and character of the Works. Any material not otherwise specified shall be new and, where applicable, material and workmanship shall be in accordance with the relevant Tongan Standards and Building Codes. If the Contract Manager is of the opinion that any material or the work, whether fixed or not, is unsatisfactory he may direct its replacement, removal, or correction at the Contractor's expense.

7.2 Proprietary Items

Unless specifically stated to the contrary, it is not intended to give any preference to the manufacturer or brand mentioned wherever a proprietary item is specified. If the Contractor proposes to use a substitute proprietary item, he must provide full details of the item proposed to the Contract Manager for approval and the Contract Manager shall decide whether or not the proposed substitute may be used.

7.3 Storage of Material

The Contractor's materials and plant shall only be stored in the location approved by the Contract Manager. If no storage facilities are available, it shall be the responsibility of the Contractor to provide storage facilities.

7.4 Access to Works and Materials

The Contract Manager or any other person authorised by him, shall have free and uninterrupted access at all times to the Works and during working hours to any workshop of premises not on the site of the Works where materials may be in preparation or stored for the purpose of the Contract.

The Contractor if so required by the Contract Manager shall give the Contract Manager all particulars as to the mode and place of manufacture of any of the materials proposed to be used in connection with the Contract and shall facilitate inspection of the materials.

7.5 Defects and Tests

The Contract Manager 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 Contract Manager may instruct the Contractor to search for a Defect and to uncover and test any work that the Contract Manager considers may have a Defect.

If the Contract Manager 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 cost of testing will be compensated.

The Contract Manager shall give notice to the Contractor of any Defects before the end of the Defects Liability Period, which begins at the Date of Practical Completion, and is defined in the Contract Data. The Defects Liability Period shall be extended for as long as Defects remain to be corrected.

Every time notice of a Defect is given, the Contractor shall correct the notified Defect within the length of time specified by the Contract Manager's notice. If the Contractor has not corrected a Defect within the time specified in the Contract Manager's notice, the Contract Manager will assess the cost of having the Defect corrected, and the Contractor will pay this amount.

9. VARIATION ORDERS

The Contract Manager may prepare a Variation Order making changes to the Works, specifications, timing and/or cost of the Contract and submit it, with a brief justification for the variation, for approval to issue a Variation Order.

The Contractor may submit a written proposal to the Contract Manager requesting a variation in the Works. The proposal shall include a reasonable estimate of the time and/or cost of the variation, as well as a brief justification for the variation. If the Contract Manager agrees to the proposal he shall submit it for approval to issue a Variation Order.

After receiving approval, the Contract Manager shall the issue the Variation Order to the Contractor within three (3) days. By signing and returning a copy of the Variation Order the Contractor agrees to the terms and conditions of the Variation Order.

The Contractor shall, in writing and within seven (7) days of receiving the Variation Order, notify the Contract Manager of any disagreement with the Variation Order.

9. TERMS OF PAYMENT AND CERTIFICATES

All payments due under the Contract to the Contractor shall be paid by the Employer within 30 days from presentation of invoice and other necessary documentation.

9.1 Advance Payment

If specified in the **SCC**, the Employer will make an advance payment to the Contractor in the percentage stated in the **SCC** against submission of an unconditional Bank Guarantee in the prescribed format.

The advance payment shall be repaid by deducting equal or proportionate amounts from payments otherwise due to the Contractor, to be recovered during the period of the Contract.

9.2 Payment Retention

In order to take into account any list of outstanding Works at the time of taking over of the Works, and the obligation of the Contractor to comply to the proper execution of the Works, a Payment Retention of ten (10) percent shall be deducted from the payments due to the Contractor with respect to each interim payment and on the certification of the final payment of the Contract. The Payment Retention may be replaced by a Bank Guarantee, upon request by the Contractor

9.3 Completion

The Contractor may notify the Employer when he considers that the Works are complete.

9.4 Taking-Over

The Employer shall notify the Contractor when he considers that the Contractor has completed the Works stating the date accordingly. Alternatively, the Employer may notify the Contractor that the Works, although not fully complete, are ready for taking over, stating the date accordingly.

The Employer shall take over the Works upon the issue of the Taking-Over Certificate. The Contractor shall promptly complete any outstanding work and, subject to remedying any defects, clear the Site.

9.5 Final Account

Within twenty eight (28) days of the Completion Date or the or the remedying of notified defects or completion of outstanding works, whichever is later, the Contractor shall submit a final account to the Employer together with any documentation reasonably required to enable the Employer to ascertain the final contract value.

Within 28 days after the submission of this final account, the Employer shall pay to the Contractor any amount due. If the Employer disagrees with any part of the Contractor's final account, he shall specify his reasons for disagreement when making payment.

9.6 Delayed payment

The Contractor shall be entitled to interest at the current Rate of the Bank of Tonga for each day the Employer fails to pay beyond the prescribed payment period.

9.7 Taxes

At the time of signing the Contract Agreement both Tongan and foreign Contractors registered for business in Tonga are to supply a current Certificate of Compliance (COC) to the Employer.

9. LIQUIDATED DAMAGES

The Contractor shall pay liquidated damages to the Employer at the rate specified in the **SCC** per day of the contract value for each day or part of a day that the actual completion date is later than the Date for Completion as specified in the **SCC**. The Employer may deduct liquidated damages from payments due to the Contractor. Payment of liquidated damages shall not affect the Contractor's liabilities. Once the Liquidated Damages reaches a sum greater than 10% of the Contract value then the Employer may terminate the contract as detailed in sub-clause 12.1

9. PERFORMANCE SECURITY

Within fourteen (14) days of the receipt of notification of award from the Employer, the successful Bidder shall furnish the performance security in accordance with the conditions of contract, using for that purpose the Performance Security Form included in Section IX (Contract Forms), or another form

acceptable to the Employer. Failure of the successful Bidder to submit the above-mentioned Performance Security or to sign the Contract Agreement shall constitute sufficient grounds for the annulment of the award and forfeiture of the Bid security.

12. TERMINATION AND SUSPENSION

The Contract may be terminated or suspended in the following case:

12.1 Termination for Default

The Employer may, without prejudice to any other remedy for breach of Contract and written notice default sent to the Contractor, terminate the Contract in whole or in part if the Contractor:

- a) abandons the works, refuses or fails to comply with a valid instruction of the Employer or fails to proceed expeditiously and without delay; or
- b) persistently or repeatedly refuses or fails to supply sufficient properly skilled workers or proper materials; or
- c) persistently disregards laws, ordinance, or rules, regulations or orders, of a public authority having jurisdiction; or
- d) otherwise is guilty of substantial breach of a provision of the Contract; or
- e) defaults or a procedure for liquidation is initiated; or
- f) in the judgment of the Employer has engaged in corrupt, fraudulent, coercive or obstructive practices in competing for or in executing the Contract. For the purposes of this provision, the terms set forth below shall apply:
 - (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;
 - (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;
 - (iii) "collusive" practice" is an arrangement between two or more parties 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;
 - (v) "obstructive practice" is deliberately destroying, falsifying, altering or concealing of evidence material to the investigation or making false statements to investigators in order to materially impede an 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;

12.2 Termination for Insolvency

The Employer may at any time terminate the Contract by giving notice to the Contractor if the Contractor becomes bankrupt or otherwise insolvent. In such event, termination will be without compensation to the Contractor, provided that such termination will not prejudice or affect any right of action or remedy that has accrued or will accrue thereafter to the Employer.

12.3 Termination for Convenience

The Employer may, without cause, by written notice order the Contractor to terminate his engagement under the Contract. Upon such termination, the Contractor shall be compensated for the Work performed up to the point of termination, including a reasonable profit on the uncompleted work. The Contractor shall promptly make every reasonable effort to procure cancellation upon terms acceptable to the Employer of all outstanding subcontracts.

12.4 By the Contractor

If the Employer fails to pay in accordance with the Contract, or is, despite a written complaint, in breach of the Contract, the Contractor may give notice referring to this Clause and stating the default. If the default is not remedied within 7 days after the Employer's receipt of this notice, the Contractor may suspend the execution of all or parts of the Works.

If the default is not remedied within 28 days after the Employer's receipt of the Contractor's notice, the Contractor may by a second notice given within a further 21 days, terminate the Contract. The Contractor shall then demobilize from the Site.

12.5 Payment upon Termination

After termination, the Contractor shall be entitled to payment of the unpaid balance of the value of the Works executed and of the Materials and Plant reasonably delivered to the Site, adjusted by the following:

- a) any sums to which the Contractor is entitled under the Contract,
- b) any sums to which the Employer is entitled,
- c) if the Employer has terminated due to default by the Contractor or insolvency the Employer shall be entitled to a sum equivalent to 20% of the value of those parts of the Works not executed at the date of the termination,
- d) if the Contractor has terminated due to default by the Employer or insolvency, the Contractor shall be entitled to the Cost of his suspension and demobilization together with a sum equivalent to 10% of the value of those parts of the Works not executed at the date of termination.

The net balance due shall be paid or repaid within 28 days of the notice of termination.

12.6 Suspension of Funding

In the event that funding is suspended, from which part of the payments to the Contractor are being made, is suspended, the Employer is obliged to notify the Contractor of such suspension within seven (7) days of having received such advice of the suspension of funding.

If the Contractor has not received sums due within the twenty eight (28) days for payment, the Contractor may issue a fourteen (14) day termination notice to the Employer. If the Contract is terminated, any cost shall be determined in accordance with the provisions of the Contract.

13. FORCE MAJEURE

The Contractor shall not be liable for liquidated damages, or termination for default if and to the extent that it's delay in performance or other failure to perform its obligations under the Contract is the result of an event of Force Majeure.

For purposes of this Clause, "Force Majeure" means an event or situation beyond the control of the Contractor that is not foreseeable, is unavoidable, and its origin is not due to negligence or lack of care on the part of the Contractor. Such events may include, but not be limited to, acts of the Employer in its sovereign capacity, wars or revolutions, fires, floods, epidemics, quarantine restrictions, and freight embargo.

14. SETTLEMENT OF DISPUTES

Disputes that cannot be settled amicably between the parties to this contract shall be referred to arbitration in accordance with the laws of Tonga.

Section 8 SPECIFIC CONDITIONS OF CONTRACT

Clause Ref.	Heading	Description
1	Employer	The Employer is: the Prime Minister's Office Represented by: Mr. Paula Ma'u Chief Executive Officer Prime Minister's Office
1	Contractor	The Contractor is: Represented by:
3	Contract Manager	The Contract Manager is:
6.2	Insurances	The Insurance cover details are: The Contractor shall provide to the Employer, the policy evidencing Contractors All Risks insurance. The Contract Manager must confirm his satisfaction with the extent and the values before the Contractor is given possession of the site Contract Insurances shall be in the joint names of the Employer and the Contractor.
9.1	Advance Payment	The Advance Payment shall be 20% of the total amount release upon signing contract.
10	Liquidated Damages	The rate for liquidated damages shall be 5%
	Defect Liability Period	2 months
	Payment	Payment terms and condition shall be as follow: <ol style="list-style-type: none"> 1. 20% advance upon signing contract. 2. 40% upon completion of boundary fence 3. 27% upon issue of practical completion of the work 4. 3% release upon completion of defect liability period.
	Retention	5% every claim, 2% release upon Practical Completion and 3% released upon completion of Defect Liability Period.

Section 9

Performance Guarantee

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

Beneficiary: *[Name and Address of Employer]*

Date:.....

Performance Guarantee No.:

We have been informed that *[name of the Contractor]*. (hereinafter called "the Contractor") has entered into Contract No. *[reference number of the Contract]*. datedwith you, for the execution of *[name of contract and brief description of Works]*. (hereinafter called "the Contract").

Furthermore, we understand that, according to the conditions of the Contract, a performance guarantee is required.

At the request of the Contractor, we *[name of the Bank]*. hereby irrevocably undertake to pay you any sum or sums not exceeding in total an amount of *[name of the currency and amount in figures]* ¹. (. *[amount in words]*.) such sum being payable in the types and proportions of currencies in which the Contract Price is payable, upon receipt by us of your first demand in writing accompanied by a written statement stating that the Contractor is in breach of its obligation(s) under the Contract, without your needing to prove or to show grounds for your demand or the sum specified therein.

This guarantee shall expire, no later than the Day of , ², 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. 458, except that subparagraph (ii) of Sub-article 20(a) is hereby excluded.

.....
[Seal of Bank and Signature(s)]

Note -

All italicized text is for guidance on how to prepare this demand guarantee and shall be deleted from the final document.

¹ *The Guarantor shall insert an amount representing the percentage of the Contract Price specified in the Contract and denominated either in the currency(ies) of the Contract or a freely convertible currency acceptable to the Employer.*

i) ² *Insert the date twenty-eight days after the expected completion date. The Employer should note that in the event of an extension of the time for completion of the Contract, the Employer would need to request an extension of this guarantee from the Guarantor. Such request must be in writing and must be made prior to the expiration date established in the guarantee. In preparing this guarantee, the Employer might consider adding the following text to the form, at the end of the penultimate paragraph: "The Guarantor agrees to a one-time extension of this guarantee for a period not to exceed [six months][one year], in response to the Employer's written request for such extension, such request to be presented to the Guarantor before the expiry of the guarantee."*

Form of Advance Payment Security (Bank Guarantee) *[to be provided on headed notepaper of the bank issuing the guarantee]*

To:

Beneficiary: GOVERNMENT OF TONGA

Date: [insert date]

ADVANCE PAYMENT GUARANTEE No.: [insert Guarantee Number]

We have been informed that (name of the Contractor) (“the Contractor”) has entered into Contract No (reference number of the Contract) dated (insert date) with you, for the execution of (name of contract and brief description of Works) (“the Contract”).

Furthermore, we understand that, according to the Conditions of the Contract, an advance payment in the sum of (name of currency and amount in figures and amount in words)¹ is to be made against an advance payment guarantee.

At the request of the Contractor, we (name of the Bank) hereby irrevocably undertake to pay you any sum or sums not exceeding in total an amount of (name of the currency and amount in figures and amount in words)² upon receipt by us of your first demand in writing accompanied by a written statement stating that the Contractor is in breach of its obligation under the Contract because the Contractor used the advance payment for purposes other than the costs of mobilization in respect of the Works.

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 number (Contractor’s account number) at (name and address of the Bank).

The maximum amount of this guarantee shall be progressively reduced by the amount of the advance payment repaid by the Contractor as indicated 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 eighty (80) percent of the Contract Price has been certified for payment, or on the ___ day of _____², 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 is subject to the Uniform Rules for Demand Guarantees, ICC Publication No. 458.

[Seal of Bank and Signature(s)]

Note -

All text in [] is for guidance on how to prepare this demand guarantee and shall be deleted from the final document.

1 The Guarantor shall insert an amount representing the amount of the advance payment.

2 Insert the expected expiration date of the Time for Completion. The Beneficiary should note that in the event of an extension of the time for completion of the Contract, the Beneficiary would need to request an extension of this guarantee from the Guarantor. Such request must be in writing and must be made prior to the expiration date established in the guarantee. In preparing this guarantee, the Beneficiary might consider adding the following text to the form, at the end of the penultimate paragraph: “The Guarantor agrees to a one-time extension of this guarantee for a period not to exceed (six months)(one year), in response to the Beneficiary’s written request for such extension, such request to be presented to the Guarantor before the expiry of the guarantee”