

**REQUEST FOR PROPOSAL**  
***(RFP Process open for Nauru bidders only)***

**RFP No: RFP 21-129**

**DATE: 08/07/2021**

**SUBJECT: Construction of concrete bases for water storage tanks and installation of plastic water storage tanks with fittings in Nauru**

You are requested to submit a comprehensive proposal for the above supply and installation of materials as per the scope of works, drawings and specification set out in Annexes III, IV and V.

To enable you to submit a proposal, please find enclosed Annex:

- I:** Instructions to Bidders
- II:** Introduction and Background
- III:** Scope of Works, Prices and Conditions of Contract
- IV:** Drawings and Specifications
- V:** All Attachments
  - Appendix 1: All PDF Drawings
  - Appendix 2: Material List
  - Appendix 3: Schedule of Rates
  - Appendix 4: Monthly Report Template
  - Appendix 5: Technical Evaluation Criteria
- VI:** Proposal Submission Form **VII:** Technical Submission Form
- VIII:** Financial Proposal Submission
- IX:** Schedule of Compliance and Departures
- X:** Due Diligence Questionnaire
- XI:** Declaration of Interest
- XII:** SPC General Conditions of Contract for Works.

This letter is not to be construed in any way as an offer to contract with your firm/institution.

Yours Sincerely



**Akhilesh Prasad**  
**Manager- Procurement, Grant, Risk & Assets**

## ANNEX I

### INSTRUCTIONS TO BIDDERS

#### Construction of concrete bases for water storage tanks and installation of plastic water storage tanks with fittings in Nauru RFP 21-129

#### 1. Submission of Proposals

- 1.1. Your proposal shall comprise the following documents:
  - Annex VI: Proposal submission form
  - Annex VII: Technical Proposal submission form
  - Annex VIII: Financial Proposal submission form
  - Annex IX: Schedule of Compliance and Departures
  - Annex X: Due Diligence Questionnaire
  - Annex XI: Declaration of Interest
- 1.2. Proposals must be received by the Pacific Community (SPC) at the address mentioned below on or before **5<sup>th</sup> August 2021 no later than 4.00 pm Fiji time**. Any proposal received after this date may be rejected. SPC may, at its discretion, extend the deadline for the submission of proposals, by notifying all prospective bidders in writing. The extension of the deadline may accompany a modification of the solicitation documents prepared by SPC at its own initiative or in response to a clarification requested by a prospective bidder.
- 1.3 (a.) A pre-bid meeting has been planned on **19<sup>th</sup> July at 11am Nauru Local Time**. The meeting venue for the pre-bid meeting will be the Office of the Ministry of Climate Change and National Resilience, Yaren, Nauru. Bidders who are interested to attend the pre-bid meeting must register their attendance through the SPC Procurement email (procurement@spc.int) by **15<sup>th</sup> July 2021 no later than 4pm Fiji time**. Bidders from outside Nauru may attend the pre-bid meeting virtually. The link to the Zoom meeting is: <https://spc.zoom.us/j/94138492167?pwd=cTZsaStHYjhldmlhK0NWTktxWkdUZz09>
- 1.3. (b.) All proposals submitted together with all correspondence and related documents shall be in English. If any of the supporting documentation or printed literature is in any other language, a written translation of the document in English should also be provided. In such case, the interpreted document will be used for processing and evaluation purposes.
- 1.4. All prices in the proposals must be presented in EURO's and inclusive of all taxes.

Each email should be clearly labelled and should state the appropriate parts (Part A or Part B) to which the proposal refers. The bidders must submit proposals for both Part A and Part B.

a) The electronic submission procedures shall be:

- i* Send in a first email the technical proposal clearly indicating the RFP number in the email subject and include the Proposal Submission Form (Annex VI), Technical Proposal Submission Form (Annex VII), Schedule of Compliance and Departures (Annex IX), Due Diligence Questionnaire (Annex X) and Declaration of Interest (Annex XI).
- ii* Send in a second email the Financial Proposal Submission Form (Annex VIII). The opening of this second email shall be protected by a password to be provided to SPC Procurement upon request at the time of the financial evaluation.

Proposals should be emailed to [procurement@spc.int](mailto:procurement@spc.int) with the heading “RFP 21-129: Construction of concrete bases for water storage tanks and installation of plastic water storage tanks with fittings in Nauru”

- 1.5. Any proposal received by the SPC after the deadline for submission of proposals, will be rejected.
- 1.6. Bidders must insist on an acknowledgment receipt for proposals delivered to the Request for Proposal Box.
- 1.10 Proposal submission forms with all the relevant documentations must be completed with electronic copies in Word and PDF format.

## 2. Request for proposals timelines and due dates

The timeline and due dates for the tender is provided in Table 1 below.

**Table 1: Tender Timelines and Due Dates**

	Date	Time
Pre-bid meeting	19 <sup>th</sup> July 2021	11.00am (Fiji/Nauru Time)
Deadline for seeking clarification from SPC	22 <sup>nd</sup> July 2021	4.00pm (Fiji/Nauru Time)
Deadline for submission of tenders	5 <sup>th</sup> August 2021	4.00pm (Fiji/Nauru Time)
Tender opening session	TBC	TBC (Fiji/Nauru Time)
Notification of award to the successful bidder	31 <sup>st</sup> August 2021 (tentative)	TBC (Fiji/Nauru Time)
Signing of contract	2nd week of September 2021 (tentative).	TBC (Fiji/Nauru Time)

**All works are to be completed and handed over by 31<sup>st</sup> January 2022.**

### 3. Bidder's responsibilities

- 3.1. The bidder is expected to examine all instructions, forms, terms and specifications in this bidding document. Failure to furnish all information required by the bidding document or to submit a bid substantially responsive to the bidding document in every aspect will be at the bidder's risk and may result in the rejection of the proposal.
- 3.2. The bidder shall bear all costs associated with preparing and submitting a proposal, including costs relating to contract award; SPC will, in no case, be responsible or liable for those costs, regardless of the conduct or outcome of the bidding process.
- 3.3. Bidders must familiarise themselves with local conditions and take these into account in preparing their proposal to obtain information on the assignment, technical requirements, and local conditions.
- 3.4. By submitting a proposal, the bidder accepts in full and without restriction the special and general conditions governing this proposal as the sole basis of this bidding procedure whatever his own conditions of sale may be, which he hereby waives.
- 3.5. Participation in bidding is open and on equal terms to natural persons, companies, firms, public and/or semi-public agencies, cooperative societies, joint ventures, groupings of companies and/or firms and other legal persons governed by public and private law of any country. Bidders must provide evidence of their organisational status.
- 3.6. If the Procurement Committee requests further information, the bidder may be requested to provide additional information relating to their submitted proposal.
- 3.7. The submitted proposal must be for the entirety of the Terms of Reference and not divided into portions, which a potential bidder can provide services for.
  - 3.7.1. Bidders may submit questions and or seek clarifications on any issue relating to this RFP in writing to the following email address [procurement@spc.int](mailto:procurement@spc.int) **only**. Any attempt of communication with SPC, other than through this email address, may result in the disqualification of the bidder concerned. The deadline for submission of clarifications is **22<sup>nd</sup> July 2021**.
  - 3.7.2. Any prospective bidders seeking to arrange individual meetings with SPC during the RFP period may be excluded from the bidding procedure

#### 4. One proposal per bidder

- 4.1. Each bidder shall submit only one proposal, either individually or as a partner in a joint venture. A bidder who submits or participates in more than one bid shall cause all bids with the bidder's participation to be disqualified.

#### 5. Withdrawal of proposals

- 5.1. The bidder may withdraw its proposal after the proposal's submission, provided that written notice of the withdrawal is received by the SPC prior to the deadline prescribed for submission of proposals. The bidder's withdrawal notice shall be sent to the email address [procurement@spc.int](mailto:procurement@spc.int)
- 5.2. No proposal may be modified subsequent to the deadline for submission of proposals.
- 5.3. No proposal may be withdrawn after the deadline for submission of proposals.

#### 6. Validity of proposals

- 6.1. Bidders shall be bound by their bids for a period of 120 days from the deadline for submission of proposals.
- 6.2. The successful bidder will be bound by his tender for a further period of 60 days following receipt of the notification that he has been selected to enable SPC to complete the procurement process and obtain all the necessary approvals so that the contract can be awarded within that period.

#### 7. Modifications to proposals

- 7.1. Any additional information, clarification, correction of errors or modifications of bidding documents will be distributed to all the bidders prior to the deadline for receipt to enable bidders to take appropriate actions.
- 7.2. Bidders will also be informed of the right to modify and make corrections to proposals, provided that any such modifications or corrections are received by SPC in writing prior to the time specified for submission of proposals. The original proposal thus modified or corrected would then be considered as the official bid.

#### 8. Opening and evaluation of proposals

- 8.1. The proposals will be opened in the presence of the Tender Committee after the closing of the tender.
- 8.2. To assist in the examination, evaluation and comparison of proposals, SPC may at its discretion, ask the bidder for clarification of its proposal. The request for clarification and the response shall be in writing and no change in price or substance of the proposal shall be sought, offered or permitted.
- 8.3. The Tender Committee will carry out a preliminary examination of the proposals to determine whether they are complete, whether any computational errors have been made, whether the documents have been properly signed, and whether the proposals are generally in order. Arithmetical errors will be rectified on the following basis:
  - 8.3.1. If there is a discrepancy between the unit price and the total price, the lower price shall prevail and the higher price shall be corrected. If the bidder does not accept the correction of errors, its proposal will be rejected.
  - 8.3.2. If there is a discrepancy between words and figures, the amount in words will prevail.

- 8.4. A two-stage procedure will be utilised in evaluating the proposals, with evaluation of the technical proposal being completed prior to any financial proposal being opened and compared. The competencies which will be evaluated are detailed in the Scope of Works and Technical Specifications and Standards. The table below also reflects the obtainable score specified for each evaluation criterion, which indicates the relative significance or weight of the item in the overall evaluation process.
- 8.5. The technical component, which has a total possible value of 700 points, will be evaluated using the following criteria:

Item	Criteria for Technical Evaluation	Weighting %	Points Obtainable	
			Minimum	Maximum
1	<b>Firm's background and relevant experience</b> of company from previous similar works of supply and installation	20	98	140
2	<b>Methodology</b> including how works will be completed and handed over by 31 <sup>st</sup> January 2022	30	147	210
3	<b>Resources:</b>			
a)	<b>Materials &amp; contractor's equipment</b> - Adequacy of appropriate machinery and equipment	20	98	140
b)	<b>Key personnel</b> - Relevant experience of key personnel such as Contract Manager, Construction Supervisor, Engineers, etc,	30	147	210
<b>Grand Total</b>		<b>100</b>	<b>490</b>	<b>700</b>
Minimum score to qualify to Stage 2 of the evaluation process		70%	490	

Please refer to ANNEX V: Appendix 5: Technical Evaluation Criteria regarding the description of each criterion mentioned above.

- 8.6. The financial proposal will be opened only for bidders that passed the minimum technical score of 490 (70%).
- 8.7. Financial proposals of technically responsive proposals will be reviewed. Arithmetical errors will be rectified on the following basis: If there is a discrepancy between the unit price and the total price, the lower price shall prevail and the higher price shall be corrected. If the bidder does not accept the correction of errors, its proposal will be rejected. If there is a discrepancy between words and figures, the amount in words will prevail.
- 8.8. The financial component of the proposal will be scored on the basis of overall costs for the delivery of the services and financial incentives and benefits provided to SPC. The lowest financial proposal will be awarded maximum 300 points and other financial offers and incentives will be awarded points as per the formula below. The formula used for scoring points for financial values proposed will be:

$$\text{Financial Proposal score} = (\text{Lowest Price} / \text{Price under consideration}) \times 300$$

- 8.9. No payment will be made for items, which have not been priced; such items are deemed to be covered by other items on the financial offer.

- 8.10 Bidders will be deemed to be satisfied, before submitting their proposal, with its correctness and completeness, considering all that is required for the full and proper performance of the contract and to have included all costs in their rates and prices.
- 8.11 Bidders must quote by estimated number of working days against fee per day and overall prices for their tenders on all of the following bases. The fees should be inclusive of all costs related to carrying out the supply and installation works, including any travel and other related costs.
- 8.12 The price for the contract is inclusive of all taxes and is fixed and not subject to revision.

## 9. Award of Contract

- 9.1. The award of the contract will be made for the proposal which is considered to be most responsive to SPC's technical specifications as detailed in the Scope of Works with due consideration to the SPC Procurement Policy which includes the general principle of best value for money, economy and efficiency. SPC is not in any way obliged to select the firm/institution offering the lowest price.
- 9.2. SPC reserves the right to accept or reject any proposal, and to annul the solicitation process and reject all proposals at any time prior to award of contract, without thereby incurring any liability to the affected bidder or any obligation to inform the affected bidder or bidders of the grounds for SPC's action.
- 9.3. SPC reserves the right to enter into negotiation with respect to one or more proposals prior to the award of a contract, split an award/awards and to consider localized award/awards between any proposers in any combination, as it may deem appropriate without prior written acceptance of the proposers.
- 9.4. Within 15 days of receipt of the contract, the successful bidder shall sign and date the contract and return it to SPC.

## 10. Bidder Protest

- 10.1 If a bidder involved in an SPC procurement process considers they were not treated fairly, or that SPC failed to properly follow the requirements of the Procurement Policy, then that bidder may lodge a protest.
- 10.2 To lodge a protest, the bidder must email the allegations to [complaints@spc.int](mailto:complaints@spc.int). The email will need to include:
- the bidder's full contact details;
  - the details of the relevant procurement;
  - the reasons for the protest, including how the alleged behaviour negatively impacted on the bidder's bid;
  - copies of any documents supporting the grounds for protest; and
  - the relief that is sought.
- 10.3 The bidder's protest will be recorded and acknowledged promptly. The bidder may be contacted to provide more information. An officer uninvolved in the original procurement process and with no conflict of interest will be nominated to investigate the protest.
- 10.4 Each protest will be received in good faith and will not impact the bidder's involvement in future bids.

## 11. Privacy Notice

- 11.1 The bidder understands that their proposal and personal information will be stored and used

by SPC in accordance with SPC's *Privacy policy* and *Guidelines for handling personal information of bidders and grant applicants*. Please inform SPC if you would like copies of the policy or guidelines.

11.2 If successful, the bidder understands that SPC will publish the name of the bidder.



## ANNEX II

### INTRODUCTION & BACKGROUND

#### Construction of concrete bases for water storage tanks and installation of plastic water storage tanks with fittings in Nauru

#### RFP 21-129

### PART A: BACKGROUND

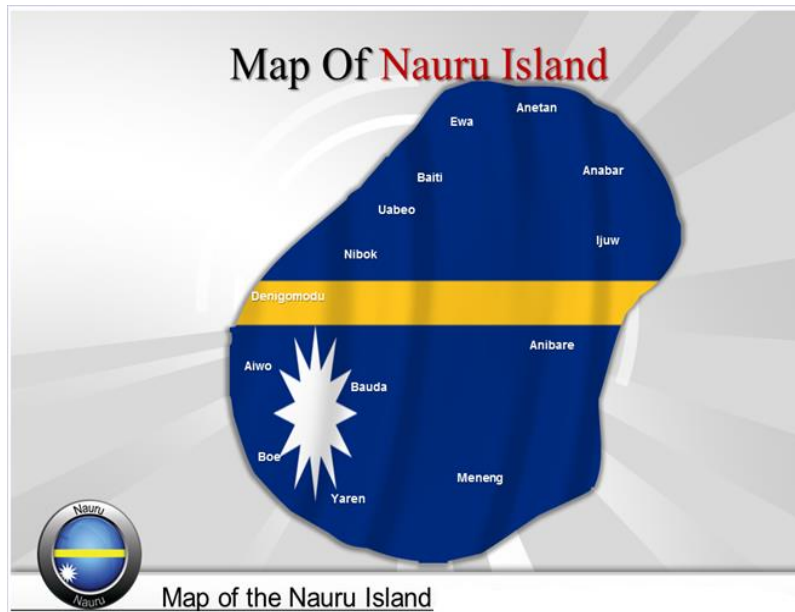
#### GENERAL OVERVIEW

The Global Climate Change Alliance Plus – Scaling up Pacific Adaptation (GCCA+ SUPA) Project is about scaling up climate change adaptation measures in specific sectors supported by knowledge management and capacity building. The 4.5-year project (2019–2023) is funded with EUR 14.89 million from the European Union (EU) and implemented by the Pacific Community (SPC) in partnership with the Secretariat of the Pacific Regional Environment Programme (SPREP) and The University of the South Pacific (USP) in collaboration with the governments and peoples of Cook Islands, Federated States of Micronesia (FSM), Fiji, Kiribati, Republic of the Marshall Islands (RMI), Nauru, Niue, Palau, Tonga and Tuvalu.

Nauru like many island countries is experiencing acute impacts of climate change such as sea level rise, rising temperatures and prolonged drought periods among others. These impacts exacerbate the vulnerability of local communities' health and water security. The Government of the Republic of Nauru has selected the water sector as their focus for Output 3 of the GCCA+ SUPA project. The overall objective of the project is to reduce vulnerability in the water sector for Nauru's communities. The specific objective is to contribute to increased water storage for vulnerable households in Nauru.

Households in Nauru purchase their desalinated water for drinking and domestic purposes through tanker delivery. Desalinated water accounts for 70-80% of water needs in Nauru. The remainder is supplied through rainwater harvesting, bottled water and groundwater sources. The project will build on water security efforts by the Government of the Republic of Nauru and will target up to 60 households that do not have a water storage of 5,000 litres or more.

The project will provide water storage measures for desalinated water only. Training will be provided to contractors prior to installation. Training on maintenance and basic maintenance tools will be provided to recipient households. The project will also support awareness campaigns on the regular maintenance of water storage measures and the importance of using potable water.



## ANNEX III

### SCOPE OF WORKS, PRICES AND PREPARATION OF BIDS

#### Construction of concrete bases for water storage tanks and installation of plastic water storage tanks with fittings in Nauru

RFP 21-129

#### A. INTRODUCTION

The work encompassed in this RFP is described in the description of work below. The full contract detailed drawings are contained in Annex V, Appendix 1. The Contractor shall supply all necessary materials and perform the work to conform with the contract drawings and specifications and do all related work necessary to complete the project. The Contractor shall furnish all the necessary tools, equipment, labour, materials, and other services required to perform and complete, in a professional manner, the work of constructing the project herein specified.

#### B: SCOPE OF WORKS

##### 1.1 Description of work

The work is fully described in the Schedule of Rates under section C, 1.4 below. The work to be performed shall consist of furnishing all necessary labour, materials, tools, equipment and services in connection with the construction of the proposed works in Nauru. The work shall be performed in strict accordance with the Schedule of Rates below and the construction drawings attached hereto.

All works to be completed as part of this RFP will be awarded to one bidder, **and all works covering the contract is to be completed and handed over by 31<sup>st</sup> January 2022.**

**THE SUPPLY OF THE NEW PLASTIC WATER TANKS IS NOT PART OF THE SCOPE OF WORK FOR THIS TENDER.**

The proposed work under this bid package consists of (i) transportation of 32 x 10,200 litre new plastic water storage tanks from the main wharf or barge ramp in Nauru to the selected households, (ii) construction of concrete bases for these tanks, and (iii) installation of these new plastic water tanks with taps as shown in the attached drawings. **The new plastic water storage tanks will be provided by SPC and delivered to either the Nauru main wharf or the barge ramp.**

##### 1.2 Household recipients

The finalised list of the recipient households will be provided to the successful bidder by SPC on award of the contract.

#### C: PRICES

##### 1.1 Basis of Tender

There will be one contract for this supply and installation works. The bidder shall provide details of its tender price by completing the Financial Proposal Submission Form.

The tender price shall be the bidder's comprehensive offer of the contract price, in consideration of the bidder meeting all obligations, conditions and liabilities under the Contract Agreement and other documents referenced therein, inclusive of the cost of supplying all labour, materials, plant and

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supervision required to carry out the Contract Works, overheads and profit, subject only to such measurement, evaluation and adjustment as is provided for in the Contract.

### 1.2 Units and Pricing

When the price for an item is left blank, the figure 0 (zero) shall be inferred and the cost of the item shall be deemed to be covered elsewhere in the Schedule of Rates.

Abbreviations used in the Schedule of Rates are as per the following table.

Abbreviation	Description
h	Hour
mm	Millimetre
m	Meter
m <sup>2</sup>	Square meter
m <sup>3</sup>	Cubic metre (solid measure)
ea	Each
Kg	Kilogram
dia.	Diameter

### 1.3 Currency of Payment

All prices shall be in Australian dollars and be inclusive of all taxes.

### 1.4 Schedule of Rates

Tabulated below is the Schedule of Rates for all the supply and installation works required.

Item No.	Approximate Quantity	Unit	SCHEDULE OF RATES	Materials	Labour	Plant/Equipment	Total Price in EURO (VIP)
<b>CONSTRUCTION OF CONCRETE BASES FOR 32 - 1x10,200L PLASTIC TANKS EACH, AND INSTALLATION OF THE PLASTIC TANKS &amp; FITTINGS</b>							
A1.0	1	LS	<b>Preliminary and General</b> A1.1 Mobilisation and de-mobilisation. Including but not limited to transporting of materials from main port or barge ramp in Nauru to all work sites				
A2.0	32 concrete bases for 1x10,200L tanks	LS	<b>Supply of materials and construction of tank concrete bases for 32 - 1x 10,200L tanks (refer to the attached drawings for base specifications)</b> A2.1 Excavation for tank base/foundation A2.2 Installation of formworks A2.3 Laying of mesh wire A2.4 Pouring of concrete				
A3.0	32 - 10,200L tanks	LS	<b>Transportation/distribution and placement of 32 - 10,200L plastic tanks on their concrete bases</b> A3.1 Transportation and distribution of all tanks to their respective sites. A3.2 Place the plastic tanks in position on the concrete bases. Ensuring the 3 outlets per tank are facing the right directions				
A4.0	32	LS	<b>Supply of materials and construction of the water supply points for all 32 tanks, and installation of tank fittings and taps / faucets. Refer to the attached drawings for the construction and installation specifications</b> A4.1 Excavation of the wall footing (WF1 AND WF2) A4.2 Laying of footing horizontal reinforcements and starter bars A4.3 Position the 90mm faucet pipes in place, as per drawings A4.4 Pour concrete on the wall footing, and fill the faucet 90mm pipes up to same level as shown in the drawings A4.5 Installation of formworks for the 100mm thick and 150mm thick walls A4.6 Pouring of concrete for the wall A4.7 Place and compact the 20-40mm size river gravel at the base of the water supply area as shown in the drawing section details A4.8 Installation of all 32-20mm pipes/faucets A4.9 Installation of all 32-50mm washout outlets, one washout outlet per tank A4.10 Installation of all 32-90mm overflow outlets, one overflow per tank				
<b>TOTAL TENDER PRICE (EURO)</b>							

## 1.5 Material list

Refer to **Annex VIII: Financial Proposal Submission Form; and Annex V: All Attachments - Appendix2: Material List** for excel copy.

## 1.6 Preamble to schedule of quantities and prices

Unless stated otherwise in the tender documents, this is a milestone-based LUMP SUM CONTRACT for the Contractor to fulfil all of its obligations under the contract. Quantities given in the Schedule of Prices are to:

- ❖ Indicate the general description and nature of any item.
- ❖ Assist the bidder in pricing.
- ❖ Assist in evaluating tenders.
- ❖ Evaluate the amount of work done for the purpose of determining the value of progress payments.
- ❖ Provide a basis for determination of the value of variations (reductions/additions) in accordance with the Conditions of Contract, and as modified elsewhere in the tender documents.

The bidder shall take full responsibility for verifying quantities shown in this schedule. In reference to the Conditions of Contract (specifically, but not necessarily limited to Variations), all prices given in the Schedule of Prices are deemed to be:

- ❖ Inclusive of On-Site Profits and Overheads.
- ❖ Inclusive of Off-Site Overheads and Profits.
- ❖ Inclusive of rate per working day.

The bidder is deemed to have allowed in its submission (price, methodology, program, etc) for all supply and installation works indicated in the Schedule of Rates Main Summary (refer to Section D below), and to also include all excavation, stone pitching, concreting, backfilling, grading and gravelling works that would be required to successfully complete the works.

As per the specifications, all earthworks required for trenching for pipework, open channels are deemed to be included in the rates for those particular items, even though surplus material from these works is to be spread, placed and compacted in accordance with other specific requirements of the specifications, such as earthworks and landscaping.

Items that are grouped under the sub-heading "SUPPLY" shall only be considered for payment once they are installed, tested and commissioned to the requirements of the contract documents. Hence, unless explicitly stated elsewhere in the contract, there will be no payment for offsite work or fabrication, or materials delivered to the site.

Where a complete description of a particular item is not given, it shall be deemed to include all sub-items necessary for its function. For example, "pipe" shall include all joints, bends, end caps, rubber rings, solvent, lubricant, warning tape, marking stakes, etc. to provide a fully functional pipeline system.

All items are measured net, as fixed in final position, in accordance with the drawings and no allowance has been made for waste, over break, rolling margins, bulking, consolidation, loss due to settlement, tolerances, joint overlap and the like. Rates and prices quoted shall include full allowances for all such items, as well as temporary works, management, supervision, transport, etc, where not specifically itemised elsewhere.

The bidder shall furnish an amount for each item in the Schedule of Rates. The amounts for the items shall be added to obtain the total tender price. Where no amount is entered against an item, the

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value of such item is deemed to be included elsewhere in the Schedule of Prices.

The tender shall include for all supplies, shop drawings, fabrication, transportation, erection, all finishes, completion in all respects and tidy-up.

The tender shall include provision of all material, plant, equipment, labour and supervision including all incidental items not specifically shown on the drawings or included in the Schedule of Prices but necessarily required for the satisfactory execution of the work, and all establishment costs.

All duties, taxes and other levies payable by the contractor under the contract, or for any other cause, as of the date 28 days prior to the deadline for submission of tenders, shall be included in the rates and prices and the total tender price submitted by the bidder, and the evaluation and comparison of tenders by the Principal shall be made accordingly.

The rates and prices quoted by the bidder shall be fixed for the duration of the contract and shall not be subject to adjustment on any account.

#### **D. PREPARATION OF BIDS**

##### **1.1 Contract for this RFP**

The contract for this installation works includes the following schedule of rates main summary:

<b>SCHEDULE OF RATES MAIN SUMMARY</b>		
<b>ITEM NO.</b>	<b>DESCRIPTION</b>	<b>AMOUNT IN EURO (VIP)</b>
A1.0	Preliminary and General - Mobilisation / Demobilisation	
A2.0	Supply of materials and construction of 32 - 1x10,200L plastic tank concrete bases	
A3.0	Transportation and installation of all 32-10,200L plastic tanks	
A4.0	Supply of materials and construction of water supply points for all the 32 tanks	
<b>TOTAL TENDER PRICE (EURO)</b>		

##### **1.2 Priority of Documents/Formal Instruments of Documents**

The documents forming the contract are to be taken as mutually explanatory of one another. For the purpose of interpretation, the priority of the documents shall be in accordance with the following sequence:

- (a) The Contract Agreement (including the General Conditions)
- (b) The request for proposal (including all annexes), and the technical and financial submission from bidder

**If any ambiguity or discrepancy is found in the documents, the SPC shall issue the necessary clarification or instruction.**

##### **1.3 Liquidated Damages**

The contract should be within the period specified and agreed to in the project schedule

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(Annex XV, Article 36.1). After 30 days of delay, SPC reserves the right to cancel the contract.

#### 1.4 Time for Commencement and Practical Completion

The total project duration, from signing of the contract to completion of the works as per scope of works, is expected to be 5 months as shown on the following schedule.

All works must be completed by **31<sup>st</sup> January 2022**.

**An indicative construction schedule is provided below.**

Construction Schedule		
Item no.	Activities	Duration (days)
A1.0	Preliminary and General - Mobilisation / Demobilisation	10 working days after signing of Contract
A2.0	Supply of materials and construction of plastic tank concrete bases	50 working days
A3.0	Transportation/distribution and placement of all 32-10,200L plastic tanks	30 working days
A4.0	Supply of materials and construction of the water supply points, and installation of all tank fittings and taps/faucets	30 working days
<p>1. Total construction works duration is 5 months and the defects liability period is 5 months.</p> <p>2. Construction works will be carried out from Monday to Thursday 8am to 4.30pm and Friday 8am to 4.00pm excluding weekends and public holidays.</p> <p>3. The work schedule does not take into account adverse weather conditions or any other unforeseen events such as natural disasters, strikes and pandemics that can delay progress of project construction works.</p> <p>4. The 32-10,200L plastic tanks will be provided by SPC and delivered to either the Nauru main wharf or the barge ramp.</p>		



## ANNEX IV

### DRAWINGS AND SPECIFICATIONS

Construction of concrete bases for water storage tanks and installation of plastic water storage tanks with fittings in Nauru

RFP 21-129

#### **E: DRAWINGS**

The drawings are available as a separate attachment (refer **Annex V: All Attachments, Appendix 1: All PDF Drawings**) on the SPC website. The schedule of drawings is included with an Index conscripted as a guide for easy reference.

INDEX SHEET		
Sheet No	Drawing Title	Issued
A00	Title Page	2/05/2021
<b>2. HOUSEHOLD RECIPIENT FOR 1x10,200L TANK</b>		
S01	1x10,200L Tank - Concrete Base Detail Plan & Sectional Details	2/05/2021
S02	1x10,200L Tank - Concrete Base Foundation Plan	2/05/2021
<b>3. HOUSEHOLD RECIPIENT FOR 2x10,200L TANKS</b>		
S03	2x10,200L Tanks - Concrete Base Detail Plan & Sectional Details	2/05/2021
S04	2x10,200L Tanks - Concrete Base Foundation Plan	2/05/2021

#### **F: SPECIFICATION**

##### **Specification for the material, equipment, and workmanship**

###### GENERAL

The Contractor shall furnish all materials and equipment required to complete the work. Materials and equipment shall be new, except as may be provided elsewhere in these specifications, and of a quality equal to that specified or approved. Machinery, equipment, material, and articles installed or used without required approval shall be at the risk of subsequent rejection. All work shall be performed in a skilful and workmanlike manner and shall be subject to the review of the project manager or his/her designated officer. All work shall be carried out in accordance with generally accepted health and safety principles.

Whenever, under this Contract, it is provided that the Contractor shall furnish materials, or equipment, or shall do work for which no detailed specifications are provided, the materials or equipment, shall be of high quality and workmanship, and shall be subject to the approval of the project manager or his/her designated officer.

###### REVIEW OF MATERIALS

Prior to delivery of any materials to be used in the work the Contractor shall advise the project manager or his/her designated officer as to the source from which the materials are to be obtained, shall furnish such samples and test results as may be required by the specifications without cost to the SPC, and shall be reviewed by the project manager or his/her designated officer to conform with the Contract requirements. Notification of the intended source and furnishing of samples shall be provided sufficiently in advance of use of the material to allow inspection of the source. The approval of any source of supply by the project manager or his/her designated officer shall not imply that all material from the source will be accepted. Should material from an acceptable source fail to maintain a quality meeting the requirements of the specifications, use of the material from that

SPC Headquarters: Noumea, New Caledonia. Regional offices: Suva, Fiji, and Pohnpei, Federated States of Micronesia.  
Country office: Honiara, Solomon Islands.

For contact details – Website: [www.spc.int](http://www.spc.int) Email: [spc@spc.int](mailto:spc@spc.int)

source shall be discontinued and the Contractor shall furnish acceptable material from other sources. Regardless of the source, the Contractor must furnish a letter stating that all materials delivered to the site conform to the specifications. Any material which fails to meet the requirements of the specifications will be rejected and only materials meeting all requirements will be allowed to be incorporated into the work. The cost of all testing and certification will be borne by the Contractor.

#### STORAGE OF MATERIAL AND EQUIPMENT

Materials and equipment to be incorporated into the work shall be stored by the Contractor in such a manner as to assure the preservation of their quality and fitness for the work at no additional cost to the SPC. Stored materials shall be located so as to facilitate inspection. The Contractor shall be responsible for all materials and equipment until they have been finally inspected, tested, and accepted in accordance with the requirements of these specifications. Contractor shall make all provisions for properly storing and protecting all material (including the 32 new plastic water tanks) and equipment against theft, injury or damage from any cause.

#### MATERIALS AND EQUIPMENT SPECIFIED BY NAME

Whenever any material, or equipment, is specified by patent or proprietary name, or by the name of the manufacturer, such specification shall be considered as used for the purpose of describing the material or equipment desired and shall be considered as if followed by the words "or equivalent", whether or not such words appear. The Contractor may offer material, or equipment, with equivalent or better qualities and performance in substitution for those specified which he considers would be in the SPC's interest to accept. No offers for substitution will be acknowledged or considered from suppliers, distributors, manufacturers, or subcontractors. Any such offer by the Contractor shall be made at least four (4) weeks in advance of the time at which he wishes to order the material, or equipment, for use in the work, and the Contractor shall include with his offer sufficient data which, together with any other data the project manager or his/her designated officer may require, will enable the project manager or his/her designated officer to determine the suitability of the material, or equipment. When the substitute material, or equipment, necessitates changes to, or coordination with, any other portion of the work, the data submitted shall include drawings and details showing all such changes, and the Contractor shall perform these changes at no additional cost to the SPC as part of any acceptance of substitute material, or equipment. The use of any material, or equipment, so offered will be permitted only after written approval of the offer by the project manager or his/her designated officer. Such acceptance by the project manager or his/her designated officer shall not relieve the Contractor from full responsibility for the efficiency, adequacy, quality, and performance of the substitute material, or equipment; in the same manner and degree as the material and equipment specified by name.

The time specified for completion of the work under the Contract shall not be affected by any circumstances whatsoever developing from the provisions of this section.

#### ACCEPTANCE OF MATERIALS AND EQUIPMENT

Unless stated otherwise in the contract shall, within forty-five (45) calendar days of the Notice to Proceed, provide manufacturer's complete descriptive information for the types of material, equipment and systems listed in the contract. He shall provide shop drawings, literature, and samples (when requested) showing items proposed for use, size, dimensions, capacity, special features, elementary control diagrams, equipment schedules, rough-in dimensions, as required by the project manager or his/her designated officer, for review purposes and for installation. The Contractor shall allow the project manager or his/her designated officer not less than fourteen (14) calendar days for the review of such information, unless stated otherwise in the contract. The Contractor shall check submittals for number of copies, adequate identification, correctness and compliance with contract drawings and specifications, note all exceptions, certify its correctness, and initial copies. No material, or equipment shall be purchased, or fabricated, especially for the Contract

until the required shop and working drawings have been submitted as herein-before provided and reviewed for conformance to the Contract requirements. All such materials and equipment and the work involved in their installation, or incorporation, into the work, shall then be as shown in and represented by said drawings. Acceptance of submittal information by the project manager or his/her designated officer shall not relieve the Contractor of responsibility for deviations from contract drawings and specifications, unless written acceptance from the project manager or his/her designated officer for specific deviations is received by the Contractor. Acceptance of submittal information shall not relieve the Contractor from responsibility for errors and omissions in shop drawings, or literature.

The Contractor shall agree that submittal materials processed by the project manager or his/her designated officer are not change orders and that the purpose of submittals is to demonstrate to the project manager or his/her designated officer that the Contractor understands the design concept.

#### SPC-FURNISHED MATERIAL

The Contractor shall furnish all materials required to complete the work, except those specified to be furnished by the SPC.

If materials are furnished by the SPC, they will be delivered or made available to the Contractor at the points specified in the contract.

The cost of handling and placing all materials after they are delivered to the Contractor shall be considered as included in the contract price for the item in connection with which they are used. The Contractor will be held responsible for all material delivered to him.

#### CERTIFICATION OF COMPLIANCE

The project manager or his/her designated officer may permit use prior to sampling and testing of certain materials or assemblies accompanied by Certificates of Compliance stating that such materials or assemblies fully comply with the requirements of the contract; when requested by the project manager or his/her designated officer, substantiating test data shall be furnished with the Certificate of Compliance. The certificate shall be signed by a person having legal authority to bind the manufacturer. In addition, each lot of such materials or assemblies delivered to the work site must be accompanied by a materials certificate in which the lot is clearly identified. Approved materials or assemblies may be sampled and tested at any time and if found not to be in conformity with contract requirements will be subject to rejection whether in place or not.

#### QUALITY CONTROL REQUIREMENTS

The Contractor shall inspect and test all work under the contract and maintain records of the inspections and tests. Approvals, except for those approvals required for field installations, field applications, and field tests, shall be obtained before delivery of materials and equipment to the project site. Surveillance of the inspection system will be performed by the project manager or his/her designated officer.

#### FIELD INSPECTIONS AND TESTS BY CONTRACTOR

The Contractor shall furnish all equipment, instruments, qualified personnel, and facilities necessary to inspect all work and perform all tests required by the contract. All inspections and tests performed, and test reports each day shall be included in the Daily Reports kept by the Contractor. The Contractor will provide monthly progress reports to the project manager or his/her designated officer.

#### FIELD INSPECTIONS AND TESTS BY SPC

If deemed necessary by the project manager or his/her designated officer, field inspections and tests

will be made in accordance with "Inspection and Acceptance".

#### APPROVAL OF TESTING LABORATORIES

All laboratory work under this contract shall be performed by a laboratory approved by SPC whether laboratory is employed by the Contractor or is owned and operated by the Contractor. The basis of approval includes the following:

#### REPEATED TESTS AND INSPECTIONS

The Contractor shall repeat tests and inspections after each correction made to non-conforming materials and workmanship until said materials and workmanship conforms to the contract requirements. The retesting and re-inspections shall be performed at no additional cost to SPC.

Each system must be packaged for transportation to prevent any transportation related damage.

The Contractor will be responsible for settling any transportation related damage claims and will be responsible for replacing damaged systems in a timely manner.

The Contractor shall be responsible to provide transportation of materials, including the new plastic water tanks, from the main wharf/barge ramp to the construction site. **The new plastic water storage tanks will be provided by SPC and delivered to either the Nauru main wharf or the barge ramp.**

The Contractor shall be responsible for the storage and care of all the materials, including the new plastic water tanks, required for the works. This includes all materials listed in **ANNEX V: Appendix 2 – Material List**.

#### Evaluation Criteria

- Refer to **ANNEX V: Appendix 5 – Technical Evaluation Criteria**



## ANNEX V

### ALL ATTACHMENTS

#### Construction of concrete bases for water storage tanks and installation of plastic water storage tanks with fittings in Nauru

RFP 21-129

Find below the list of all attachments.

- 1) Appendix 1: Nauru PDF Drawings
- 2) Appendix 2: Material List
- 3) Appendix 3: Schedule of Rates
- 4) Appendix 4: Monthly Report Template
- 5) Appendix 5: Technical Evaluation Criteria

**ANNEX VI  
PROPOSAL SUBMISSION FORM**

**Request for Proposal (RFP) no: 21-129  
Construction of concrete bases for water storage tanks and installation of plastic water  
storage tanks with fittings in Nauru**

**RFP 21-129 – Construction of concrete bases for water storage tanks and installation of  
plastic water storage tanks with fittings in Nauru**

Pacific Community (SPC)  
Procurement Unit  
Private Mail Bag Suva–  
FIJI  
Email: [procurement@spc.int](mailto:procurement@spc.int)

Dear Procurement,

Having examined the Solicitation Documents, the receipt of which is hereby duly acknowledged, we the undersigned, offer to supply and install as per requirements and all other items described or mentioned or reasonably to be inferred from the Scope of Works provided for the sum as ascertained in accordance with the Price Component attached herewith and made part of this proposal.

We acknowledge that:

- SPC may exercise any of its rights set out in the Request for Proposal documents, at any time;
- The statements, opinions, projections, forecasts or other information contained in the Request for Proposal documents may change.
- The Request for Proposal documents are a summary only of SPC's requirements and is not intended to be a comprehensive description of them.
- Neither the lodgement of the Request for Proposal documents nor the acceptance of any tender nor any agreement made subsequent to the Request for Proposal documents will imply any representation from or on behalf of SPC that there has been no material change since the date of the Request for Proposal documents, or since the date as at which any information contained in the Request for Proposal documents is stated to be applicable.
- Except as required by law and only to the extent so required, neither SPC, nor its respective officers, employees, advisers or agents will in any way be liable to any person or body for any loss, damage, cost or expense of any nature arising in any way out of or in connection with any representations, opinions, projections, forecasts or other statements, actual or implied, contained in or omitted from the Request for Proposal documents.

We undertake, if our proposal is accepted, to commence and complete delivery and installation of all items in this contract by **31<sup>st</sup> January 2022**.



We understand that you are not bound to accept any proposal you may receive and that a binding contract would result only after final negotiations are concluded on the basis of the Technical and Price Components proposed.

Date this \_\_\_\_\_ day of \_\_\_\_\_, 2021

**Firm/Institution:**

\_\_\_\_\_

**Name of Representative:**

\_\_\_\_\_

**Position of Representative:**

\_\_\_\_\_

**Signature of Witness:**

\_\_\_\_\_

**Address of Witness:**

\_\_\_\_\_

**Signature of Representative:**

\_\_\_\_\_



**ANNEX VII  
TECHNICAL PROPOSAL SUBMISSION FORM**

**Request for Proposal (RFP) no: 21-129  
Construction of concrete bases for water storage tanks and installation of plastic  
water storage tanks with fittings in Nauru**

**Checklist of documents to be submitted with the Technical Proposal Submission Form**

**PART A: RELEVANT EXPERIENCE**

- Part A1: Firm/institutional background (complete the table provided)
- Part A2: Work experience
  - Complete the three tables provided

**PART B: METHODOLOGY (*maximum 3 pages*) to include the following:**

- Project management strategy
- Risks / mitigation measures
- Technical quality assurance mechanism
- Sustainability measures
- Implementation timelines

**PART C: RESOURCES**

- Part C1: Materials and contractor's equipment
  - Complete table provided
- Part C2a – Key personnel
  - Complete tables provided and provide CV for each key personnel



**PART A: RELEVANT EXPERIENCE**

**A1: Firm/Institution Background**

<b>Registered Name:</b>	
<b>Year Established:</b>	
<b>Physical Address:</b>	
<b>Postal Address:</b>	
<b>Telephone Contact:</b>	
<b>Fax Number:</b>	
<b>Email:</b>	
<b>Contact Person:</b>	
<b>Position of Contact Person:</b>	
<b>Number of Employees:</b>	
<b>Submit five (5) years Financial Records</b>	

**A2: Work Experience**

Using the format below, bidders shall provide details of three projects that demonstrate their experience with projects of similar size and scope as this RFP.

The projects cited must have been completed or substantially completed within the last 5 years and be of a similar nature to this RFP.



<b>Bidder's Experience</b>			
<u>Relevant Experience - Project One</u>			
Project Title:		Previous Client Name:	
Project Location:		Project Dates:	<i>[Start Date and Contract Duration]</i>
Contract Value:		Bidder's Role:	<i>[e.g. Main Contractor, Subcontractor, Joint Venture]</i>
Project Description:			
Previous client contact name and phone number:			
Names of key delivery team members and roles:			
Names and roles of bidder's subcontractors:			



<b>Bidder's Experience</b>			
<u>Relevant Experience - Project Two</u>			
Project Title:		Previous Client Name:	
Project Location:		Project Dates:	[Start Date and Contract Duration]
Contract Value:		Bidder's Role:	[e.g. Main Contractor, Subcontractor, Joint Venture]
Project Description:			
Previous client contact name and phone number:			
Names of key delivery team members and roles:			
Names and roles of bidder's subcontractors:			



<b>Bidder's Experience</b>			
<u>Relevant Experience - Project Three</u>			
Project Title:		Previous Client Name:	
Project Location:		Project Dates:	<i>[Start Date and Contract Duration]</i>
Contract Value:		Bidder's Role:	<i>[e.g. Main Contractor, Subcontractor, Joint Venture]</i>
Project Description:			
Previous client contact name and phone number:			
Names of key delivery team members and roles:			
Names and roles of bidder's subcontractors:			

## **PART B: METHODOLOGY**

**(3 pages maximum)**

The bidder is expected to demonstrate their understanding of the project and the SPC's needs, and the means and methods by which the desired results can be achieved in a practicable and efficient manner.

This section should demonstrate the bidder's responsiveness to the specification and scope of work by identifying the specific components proposed, addressing the requirements, as specified, point by point; providing a detailed description of the essential performance characteristics proposed; and demonstrating how the proposed bid meets or exceeds the specifications.

1. **Project management strategy:** Describe the overall management approach and strategies toward planning and implementing the project. Include an organization chart for the management of the project describing the relationship of key positions and designations.
2. **Risks / mitigation measures:** Describe the potential risks for the implementation of this project that may impact achievement and timely completion of expected results as well as their quality. Describe measures that will be put in place to mitigate these risks.

Risk	Mitigation

3. **Technical quality assurance mechanisms:** The bid shall also include details of the bidder's internal technical and quality assurance review mechanisms, all the appropriate quality certificates, export licenses and other documents attesting to the superiority of the quality of the goods and technologies to be supplied.
4. **Sustainability measures:** Demonstrate how you plan to integrate environmental sustainability measures in the execution of the contract.
5. **Implementation timelines:** The bidder shall submit a Gantt Chart or Project Schedule specifying the completion date of 31<sup>st</sup> January 2022 for this contract and indicating the detailed sequence of activities that will be undertaken and their corresponding timing.



**PART C: RESOURCES**

**Part C1 - Materials and contractor's and sub contractors' equipment**

Using the format below, bidders shall submit details of materials and the availability, age/condition of contractor's equipment that will be used in the execution of the works. Bidders must demonstrate that they own or have the ability to hire the specific plant listed below.

Part C.1 Materials and Contractor's Equipment (to be used on this contract)	Tick One			
	Already owned	Will be purchased	Will be hired	Age/condition
1. Contractor's equipment [list]				
Trucks				
Excavator				
Cement mixer				
Power tools				
Generator				
2. The contractor should detail the source of all the materials for the sand and aggregates for the base of the tanks and aggregates for the water supply points and the process they will use to procure and have it supplied to the site				

### **Part C2a – Key personnel**

Using the table below, for each key role listed, bidders shall describe their proposed team members **(one page per role)**. **The CVs for key personnel must also be provided.**

It is acceptable for roles requiring partial commitment to be undertaken by the same person, provided they have the appropriate skills.

List of key roles and requirement for this contract:

- Contract Manager/Contractor's Representative
- Site-based Construction Supervisor/Construction Manager

<b>Part C.2: Key personnel</b> [expand space below, to a maximum 1 page per role]			
<b><u>Role 1: Contract Manager/Contractor's Representative</u></b>			
Name:		Current commitments:	
Fluency in English		Commitment to proposed contract	
Spoken:		% of time:	
Written		Total hours/days:	
:			
Relevant experience and skills brought to this project:			
Relevant qualifications and training for this project:			



<p>Referee contacts for the person's most recent project:</p>	<p>Previous client referee name and position:</p> <p>.....Company:</p> <p>.....Contact details (phone):</p> <p>.....</p> <p>Email: .....</p>
---------------------------------------------------------------	----------------------------------------------------------------------------------------------------------------------------------------------

<b>Key personnel</b> <i>[expand space below, to a maximum 1 page per role]</i>			
<b><u>Role 2: Site-based Construction Supervisor/Construction Manager</u></b>			
Name:		Current commitments:	
Fluency in English		Commitment to proposed contract	
Spoken:		% of time:	
Written		Total hours/days:	
:			
<p>Relevant experience and skills brought to this project:</p>    <p>Relevant qualifications and training for this project:</p>			





<p>Referee contacts for the person's most recent project:</p>	<p>Previous client referee name and position:</p> <p>.....Company:</p> <p>.....Contact details (phone):</p> <p>.....</p> <p>Email: .....</p>
---------------------------------------------------------------	----------------------------------------------------------------------------------------------------------------------------------------------

**ANNEX VIII**  
**FINANCIAL PROPOSAL SUBMISSION FORM**  
**Request for Proposal (RFP) no.: 21-129**  
**Construction of concrete bases for water storage tanks and installation of plastic water storage tanks with fittings in Nauru**

A) **Cost Proposal** – The following material list is provided only as a guide for the cost proposal and is a non-exhaustive list. The bidder shall ensure that all items and quantities are sufficient to complete the scope of works.

All prices must be quoted in EURO's and inclusive of all taxes, duties and freight cost (if any).

**1. Material List**

ITEM	MATERIAL DESCRIPTIONS	CONCRETE BASE MATERIALS FOR 32 - 1x10,200L TANKS	SPARES	TOTAL	UNIT
	<b>Base of Tanks and Standpipe Materials</b>				
1	PVC Pipe 90mm dia.	5	3	8	Length
2	BRC Mesh wire 665 in 6.00m x 2.4m sheet	13	1	14	Sheet
3	Plywood 2.4mx1.2mx12mm thick (For Form Work)	128	7	135	Sheet
4	Treated Timber 4x2, 6m Length (For Form Work)	96	7	103	Length
5	Treated Timber 2x2, 6m Length (For Form Work)	96	7	103	Length
6	Galvanised Nail 2 Inch	90		90	Kg
7	Galvanised Nail 4 Inch	90		90	Kg
8	Tie Wire (Galvanised Wire) 1.6mm, 25kg Coil	0	3	3	Roll
9	12mm Reinforcement bars in 6m lengths	110	7	117	Length
10	Cement in 40kg bags	314	7	321	Bags
11	Fine Sand as required for concrete mixing		25706	25706	Kg
12	20mm Aggregates for concrete mixing		38560	38560	Kg

## 2. Schedule of rates

Bidders must state the cost for each of the different line items from item A1.0 to item A4.0 as shown in the table below.

Item No.	Approximate Quantity	Unit	SCHEDULE OF RATES	Materials	Labour	Plant/Equipment	Total Price in EURO (VIP)
<b>CONSTRUCTION OF CONCRETE BASES FOR 32 - 1x10,200L PLASTIC TANKS EACH, AND INSTALLATION OF THE PLASTIC TANKS &amp; FITTINGS</b>							
A1.0	1	LS	<b>Preliminary and General</b> A1.1 Mobilisation and de-mobilisation. Including but not limited to transporting of materials from main port of Nauru to all work sites				
A2.0	32 concrete bases for 1x10,200L tanks	LS	<b>Supply of materials and construction of tank concrete bases for 32 - 1x 10,200L tanks (refer to the attached drawings for base specifications)</b> A2.1 Excavation for tank base/foundation A2.2 Installation of formworks A2.3 Laying of mesh wire A2.4 Pouring of concrete				
A3.0	32 - 10,200L tanks	LS	<b>Transportation/distribution and placement of 32 - 10,200L plastic tanks on their concrete bases</b> A3.1 Transportation and distribution of all tanks to their respective sites. A3.2 Place the plastic tanks in position on the concrete bases. Ensuring the 3 outlets per tank are facing the right directions				
A4.0	32	LS	<b>Supply of materials and construction of the water supply points for all tanks, and installation of tank fittings and taps / faucets. Refer to the attached drawings for the construction and installation specifications</b> A4.1 Excavation of the wall footing (WF1 AND WF2) A4.2 Laying of footing horizontal reinforcements and starter bars A4.3 Position the 90mm faucet pipes in place, as per drawings A4.4 Pour concrete on the wall footing, and fill the faucet 90mm pipes up to same level as shown in the drawings A4.5 Installation of formworks for the 100mm thick and 150mm thick walls A4.6 Pouring of concrete for the wall A4.7 Place and compact the 20-40mm size river gravel at the base of the water supply area as shown in the drawing section details A4.8 Installation of 32-20mm pipes/faucets A4.9 Installation of 32-50mm washout outlets, one washout outlet per tank A4.10 Installation of 32-90mm overflow outlets, one overflow per tank				

**TOTAL TENDER PRICE (EURO)**

**Schedule of rates main summary**

SCHEDULE OF RATES MAIN SUMMARY		
ITEM NO.	DESCRIPTION	AMOUNT IN EURO (VIP)
A1.0	Preliminary and General - Mobilisation / Demobilisation	
A2.0	Supply of materials and construction of 32 – 1x10,200L plastic tank concrete bases	
A3.0	Transportation and installation of all 32-10,200L plastic tanks	
A4.0	Supply of materials and construction of water supply points for all the 32 tanks	
<b>TOTAL TENDER PRICE (EURO)</b>		

## B) Payment Schedule

Payment shall be based on the total measured quantity of each measurable item in the Schedule of Prices completed in accordance with the contract specification and agreed schedule of payments with the successful contractor. The payments shall be based on the following milestones:

No.	Milestones/Outputs	% Payment
1	Signing of contract	20
2	Completion of the construction of concrete bases for 10 new plastic tanks with written confirmation from the Department of Climate Change and National Resilience, and submission of all supporting documents e.g. photos.	20
3	Completion of the construction of concrete bases for 10 new plastic tanks with written confirmation from the Department of Climate Change and National Resilience, and submission of all supporting documents e.g. photos.	20
4	Completion of the (1) construction of concrete bases for 12 new plastic tanks; (2) placement of all 32 tanks on the completed bases; and (3) supply points on all 32 tanks with written confirmation from Department of Climate Change and National Resilience, and submission of all supporting documents e.g. photos.	30
5	Retention to be paid 6 months after issue of practical completion certificate	10
<b>Total Contract Sum</b>		<b>100</b>

## C) Validity of Quotation

The validity of quotations shall be stated as 120 days from the deadline for submission.



**ANNEX IX**  
**SCHEDULE OF COMPLIANCE AND DEPARTURES**  
**Request for Proposal (RFP) no.: 21-129**  
**Construction of concrete bases for water storage tanks and installation of plastic water storage tanks with fittings in Nauru**

**Schedule of Compliance and Departures**

**(1 page maximum)**

Using the format below, bidders shall provide details of any non-compliances and departures from the requirements of the Request for Proposal. SPC reserves the right to reject any proposal that contains non-compliances and departures which it deems unacceptable and which the bidder refuses to remove or amend when asked to do so. Even departures acceptable to the SPC may result in adjustment to the price for the purposes of comparison of proposals.

<b>Schedule of Compliance and Departures</b>		
<b>Clause reference in RFP</b>	<b>Detailed description of the departure or non-compliance</b>	<b>Perceived benefit to SPC (if any)</b>

We, the bidder, confirm that our proposal is fully compliant with the requirements of the Request for Proposal, except in the respects scheduled above.

\_\_\_\_\_  
Name, Signature

\_\_\_\_\_  
Date

Title \_\_\_\_\_



**ANNEX X**  
**DUE DILIGENCE QUESTIONNAIRE**  
Request for Proposal (RFP) no.: 21-129  
**Construction of concrete bases for water storage tanks and installation of plastic water storage tanks with fittings in Nauru**

Please complete the following questionnaire and provide supporting documents where applicable.

**For individuals operating a business in their personal capacity**

1. Please provide copies of any two of the following documents to verify identity and proof of address:
  - a. Passport
  - b. Driver’s license
  - c. Voter card or other government-issued identity card
  - d. Bank statement with the individual’s name displayed
  
2. Have you ever been convicted for criminal offences relating to money laundering or terrorism financing? Yes No

If you answered ‘yes’, please provide further details.

3. Have you ever been the subject of any investigation, indictment, conviction or civil enforcement action related to financing terrorists? Yes No

If you answered ‘yes’, please provide further details.

**For companies and other legal entities**

1. Please provide the following documents to verify identity and proof of address:
  - a. Evidence of Power of Attorney/Board Resolution granted to the officers to transact business on its behalf; and
  - b. Any of the following documents:
    - Certificate of Incorporation
    - Memorandum and Articles of Association
    - Telephone bill in the name of the company
    - Bank statement with the entity’s name displayed
  
2. Does your entity have foreign branches and/or subsidiaries? Yes No
  
3. If you answered ‘yes’ to the previous question, please confirm the areas of your entity covered by responses to this questionnaire

Head Office & domestic branches	<input type="checkbox"/> Yes	<input type="checkbox"/> No <input type="checkbox"/> N/A
Domestic subsidiaries	<input type="checkbox"/> Yes	<input type="checkbox"/> No <input type="checkbox"/> N/A
Overseas branches	<input type="checkbox"/> Yes	<input type="checkbox"/> No <input type="checkbox"/> N/A
Overseas subsidiaries	<input type="checkbox"/> Yes	<input type="checkbox"/> No <input type="checkbox"/> N/A



4. Is your entity regulated by a national authority?  Yes  No  
If you answered 'yes' please specify the name of the national authority.



5. Does your entity have a written policy, controls and procedures reasonably designed to prevent and detect money laundering or terrorist financing activities? Yes No  
If you answered 'yes', please send SPC your policy in English.

6. Does your entity have an officer responsible for an anti-money laundering and counter-terrorism financing policy? Yes No

If yes, please state that officer's contact details:

.....

7. Does your entity provide financial services to customers determined to be high risk including but not limited to:

- |                                  |                              |                             |
|----------------------------------|------------------------------|-----------------------------|
| - Foreign Financial Institutions | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| - Casinos                        | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| - Cash Intensive Businesses      | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| - Foreign Government Entities    | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| - Non-Resident Individuals       | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| - Money Service Businesses       | <input type="checkbox"/> Yes | <input type="checkbox"/> No |

8. If you answered 'yes' to any of the boxes in question 7, does your entity's policies and procedures specifically outline how to mitigate the potential risks associated with these higher risk customer types? If yes, how?

9. Has your entity ever been the subject of any investigations or had any regulatory or criminal enforcement actions resulting from violations of laws and regulations relating to either money laundering or terrorism financing? Yes No  
If you answered 'yes' please provide details.

10. Has the director or CEO of your entity ever been the subject of any investigations or had any regulatory or criminal enforcement actions resulting from violations of laws and regulations relating to either money laundering or terrorism financing? Yes No  
If you answered 'yes' please provide details.

I declare that none of the funds received or to be received by me or my organisation are used or will be used for money laundering or terrorism financing.

I declare that the particulars given herein above are true, correct and complete to the best of my knowledge, and the documents submitted in support of this form are genuine and obtained legally from the respective issuing authority.

Dated this.....day of..... [month and year] at.....

Signature .....



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du Pacifique

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Name.....



**ANNEX XI**  
**DECLARATION OF INTEREST**  
Request for Proposal (RFP) no.: 21-129  
**Construction of concrete bases for water storage tanks and installation of plastic water storage tanks with fittings in Nauru**

1. I confirm that I, my family members, and the organisation or company that I am involved with are independent from SPC. To the best of my knowledge, there are no facts or circumstances, past or present, or that could arise in the foreseeable future, which might call into question my independence.
  
2. If it becomes apparent during the procurement process that I may be perceived to have a conflict of interest, I will immediately declare that conflict and will cease to participate in the procurement process, unless or until it is determined that I may continue.

OR

I declare that there is a potential conflict of interest in the submission of my bid. [Please provide an explanation with your bid.]

\_\_\_\_\_  
Name, Signature

\_\_\_\_\_  
Date

Title \_\_\_\_\_

## ANNEX XII SPC GENERAL CONDITIONS OF WORKS

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## Article 1

### Definitions

**1.1.** The following definitions apply to these general conditions and to the contract:

*contract*: the signed agreement entered into by the parties for the execution of the works including all attachments thereto and all documents incorporated therein,

*contractor*: “Contractor” refers to the successful bidder who has signed a formal contract with the SPC for the works

*contracting authority*: refers to SPC as a legal entity governed by international public law which concludes the contract with the contractor,

*Project Manager*: refers to person(s) appointed by the SPC to manage and monitor the performance of the Contractor to ensure compliance with the contract during the implementation stages of the contract to completion

*works*: the temporary and permanent works to be carried out under the contract,

*plant*: machinery, apparatus, components and all items to be provided under the contract for incorporation in the works,

*equipment*: appliances and other machinery, and where applicable under the law and / or practice of the State of a contracting authority, the temporary structures on the site required for carrying out the works but excluding plant or other items required to form part, of the permanent works,

*bill of quantities*: the document containing an itemized breakdown of the works to be carried out in a unit price contract, indicating a quantity for each item and the corresponding unit price,

*price schedule*: the completed schedule of prices, including the breakdown of the overall price, submitted by the contractor with his tender, modified as necessary and forming a part of the unit price contract,

*breakdown of the overall price*: the itemized list of rates and prices showing the build-up of the price in a lump sum contract, but not forming part of the contract,

*contract price*: the sum stated in the contract representing the initial estimate payable for the execution of the works or such other sum as ascertained by the final statement of account as due to the contractor under the contract,

*provisional sum*: a sum included in the contract and so designated for the execution of work or the supply of goods, materials, plant or services, or for contingencies, which sum may be used in whole or in part, or not at all, as instructed by the project manager,

*drawings*: drawings provided by the contracting authority and/or the project manager, and/or drawings provided by the contractor and approved by the project manager, for the carrying out of the works,

*site*: the places provided by the contracting authority where the works are to be carried out, and other places, stated in the contract as forming part of the site,

*maintenance period*: the period stated in the contract immediately following the date of provisional acceptance; during which the contractor is required to complete the works and to remedy defects or faults as instructed by the project manager,

*final acceptance certificate*: certificate(s) issued by the project manager to the contractor at the end of the maintenance period stating that the contractor has completed his obligations to construct, complete and maintain the works concerned,

*day*: calendar day

*time limits*: those periods in the contract which shall begin to run from the day following the act or event which serves as the starting point for those periods. Should the last day of the period fall upon a non-working day, the period shall expire at the end of the first working day following the last day of the period,

*writing*: any handwritten, typewritten or printed communication, including telex, cable and facsimile transmission,

*communications*: certificates, notices, orders and instructions issued under the contract,

*administrative order*: any instruction or order issued by the project manager to the contractor in writing regarding the execution of the works,

*currency of payment*: the currency specified in annex II which is **EURO**,

*foreign currency*: any permissible currency which is not the currency of payment, and which is indicated in the contract,

*general damages*: the sum, 'not stated beforehand in the contract, which is awarded by an arbitration tribunal, or agreed between the parties, as compensation payable to an injured party for a breach of the contract by the other party,

*liquidated damages*: the sum stated in the contract as compensation payable by the contractor to the contracting authority for failure to 'complete the works or part thereof within the periods under the contract, or as payable by either party to the other for any other specific breach identified in the contract,

*special conditions*: the special conditions issued by the contracting authority as part of the request for proposal, as amended where necessary, and incorporated into the contract, consisting of:

the Request for proposal and the he bidder's technical and financial submissions;

b) the contract between the parties, including special contractual clauses;

c) technical and financial specifications; and

d) any other matter related to the contract.

**1.2.** Where the context so permits words importing the singular shall be deemed to include the plural and *vice versa* and words importing the masculine shall be deemed to include the feminine and *vice versa*.

**1.3.** Words importing persons or parties shall include firms and companies and any organisations having legal capacity.

## **Article 2**

### **Law and language of the contract**

**2.1.** The law governing the contract shall be the general principles of international law.

**2.2.** In all matters which are not covered by these general conditions, the law of the contract shall apply.

**2.3.** The language of the contract and of all communications between the contractor, contracting authority and project manager shall be as stated in the special conditions.

## **Article 3**

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## Order of precedence of contract documents

Unless otherwise stipulated in the contract, the order of precedence of the contract documents shall be as stated in the special conditions.

### *Article 4*

#### **Notices and written communication**

- 4.1.** Unless otherwise specified in the special conditions, communications between the contracting authority or the project manager on one hand, and the contractor on the other hand, shall be sent by post, cable, telex, facsimile transmission, or personal delivery, to the appropriate addresses designated by those parties for that purpose.
- 4.2.** If the sender requires evidence of receipt, he shall state such requirement in his communication and shall demand such evidence of receipt whenever there is a deadline for the receipt of the communication. In any event, the sender shall take all the necessary measures to ensure receipt of his communication.
- 4.3.** Wherever in the contract provision is made for the giving or issue of any notice, consent, approval, certificate or decision, unless otherwise specified such notice, consent, approval, certificate or decision shall be in writing and the words 'notify', 'certify', 'approve' or 'decide' shall be construed accordingly. Any such consent, approval, certificate or decision shall not unreasonably be withheld or delayed.

### *Article 5*

#### **Project Manager**

- 5.1.** The project manager shall carry out the duties specified in the contract. Except as expressly stated in the contract, the project manager shall not have authority to relieve the contractor of any of his obligations under the contract.
- 5.2.** Instructions and/or orders issued by the project manager shall be by way of administrative orders. Such orders shall be dated, numbered and entered by the project manager in a register, and copies thereof delivered by hand, where appropriate, to the contractor's representative.

### *Article 6*

#### **Assignment**

- 6.1.** An assignment shall be valid only if it is a written agreement by which the contractor transfers his contract or part thereof to a third party.
- 6.2.** The contractor shall not, without the prior written consent of the contracting authority, assign the contract or any part thereof, or any benefit or interest  
Thereunder, except in the following cases:
- (a) a charge, in favour of the contractor's bankers of any monies due or to become due under the contract; or
  - (b) assignment to the contractor's insurers of the contractor's right to obtain relief against any other person liable in cases where the insurers have discharged the contractor's loss or liability.
- 6.3.** For the purpose of Article 6 (2) the approval of an assignment by the contracting authority shall not relieve the contractor of his obligations for the part of the contract already performed or the part not assigned.
- 6.4.** If the 'contractor has 'assigned his contract without authorization, the contracting authority may, without giving formal notice thereof, apply as of right the sanctions for breach of contract provided for in Articles 63 and 64.

**6.5.** Assignees must satisfy the eligibility criteria applicable for the award of the contract.

### **Article 7** **Sub-contracting**

**7.1.** A sub-contract shall be valid only if it is a written agreement by which the contractor entrusts performance of a part of his contract to a third party.

**7.2.** The contractor shall not sub-contract without the prior written authorization of the contracting authority. The work to be sub-contracted and the identity of the sub-contractors shall be notified to the contracting authority. The contracting authority shall with due regard to the provisions of Article 4'3) within 30 days of receipt of the notification, notify the contractor of his decision, stating reasons should he withhold such authorization.

**7.3.** In the selection of sub-contractors, preference shall be given by the contractor to natural persons, companies or firms of the State in which the works are located capable of performing the work required on similar terms.

**7.4.** Sub-contractors must satisfy the eligibility criteria applicable for the award of the contract.

**7.5.** Subject to Article 52, the contracting authority shall have no contractual relations with the sub-contractors.

**7.6.** The contractor shall be responsible for the acts, defaults and negligence of his sub-contractors and their agents or employees, as if they were the acts, defaults or negligence of the contractor, his agents or employees. The approval by the contracting authority of the sub-contracting of any part of the contract or of the sub-contractor to perform any part of the works shall not relieve the contractor of any of his obligations under the contract.

**7.7.** If a sub-contractor has undertaken any continuing obligation extending for a period exceeding that of the maintenance period under the contract towards the contractor in respect of the work executed or the goods, materials, plant or services supplied by the sub-contractor, the contractor shall, at any time after the expiration of the maintenance period, transfer immediately to the contracting authority, at the contracting authority's request and cost, the benefit of such obligation for the unexpired duration thereof. .

**7.8.** If the contractor enters into a sub-contract without approval, the contracting authority may apply, as of right without giving formal notice thereof, the sanctions for breach of contract provided for in Articles 63 and 64.

## **OBLIGATIONS OF THE CONTRACTING AUTHORITY**

### **Article 8** **Supply of documents**

**8.1.** Within 30 days of the establishment of the performance guarantee provided for in Article 15, the project manager shall provide to the contractor, free of charge, a copy of the drawings prepared for the performance of the contract as well as two copies of the specifications and other contract documents. The contractor may purchase additional copies of these drawings, specifications and other documents, insofar as they are available. Upon the issue of the maintenance certificate, or upon final acceptance, the contractor shall return to the project manager all drawings, specifications and other contract documents.

**8.2.** Unless it is necessary for the purposes of the contract, the drawings, specifications, and other documents provided by the contracting authority shall not be used or communicated to a third party by the contractor without the prior consent of the project manager.

**8.3.** The project manager shall have authority to issue to the contractor administrative orders  
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incorporating such supplementary documents and instructions as shall be necessary for the proper and adequate execution of the works and the remedying of any defects therein.

### **Article 9**

#### **Access to site**

- 9.1.** The contracting authority shall, in due time and in conformity with the progress of the works, place the site and access thereto at the disposal of the contractor in accordance with the programme of performance referred to in these general conditions. The contractor shall afford all reasonable opportunities to other persons concerned for carrying out their work as set out in the special conditions or as required by administrative orders.
- 9.2.** Any land procured for the contractor by the contracting authority shall not be used by the contractor for purposes other than the performance of the contract.
- 9.3.** The contractor shall preserve any premises placed at his disposal in a good state while he is in occupation and shall, if so required by the contracting authority or the project manager, restore them to their original state on completion of the contract, taking into account normal wear and tear.
- 9.4.** The contractor shall not be entitled to any payment for improvements resulting from work carried out on his own initiative.

### **Article 10**

#### **Assistance with local regulations**

- 10.1.** The contractor may request the assistance of the contracting authority in obtaining copies of laws, regulations and information on local customs, orders or by-laws of the country where the works are located, which may affect the contractor in the performance of his obligations under the contract. The contracting authority may provide the assistance requested to the contractor at the contractor's cost.
- 10.2.** Subject to the provisions of the laws and regulations on foreign labour of the State in which the works are to be carried out, the contracting authority shall make all efforts necessary to facilitate the procurement by the contractor of all required visas and permits, including work and residence permits, for the personnel whose services the contractor and the contracting authority consider necessary as well as residence permits for their families.

### **Article 11**

#### **Delayed payments to the contractor's staff**

Where there is a delay in the payment to the contractor's employees of wages and salaries owing and of the allowances and contributions laid down by the law of the State in which the works are located, the contracting authority may give notice to the contractor that within 15 days of the notice he intends to pay such wages, salaries, allowances and contributions direct. Should the contractor contest that such payments are due, he shall make representations to the contracting authority with reasons, within the 15-day period. If the contracting authority, having considered such representations, is of the opinion that payment of the wages and salaries should be made, it may pay such wages, salaries, allowances and contributions out of amounts due to the contractor. Failing this, he may obtain a contribution under any of the guarantees provided for in these general conditions. Any action taken by the contracting authority under this Article, shall not relieve the contractor of his obligations to his employees, except to the extent that any obligation may be satisfied by this action. The contracting authority shall not assume any responsibility towards the contractor's employees by this action.

### **OBLIGATIONS OF THE CONTRACTOR**

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## **Article 12 General Obligations**

**12.1.** The contractor shall, with due care and diligence, and in accordance with the provisions of the contract, design the works to the extent stated in the contract, and execute, complete and remedy any defects in the works. The contractor shall provide all superintendence, personnel, materials, plant, equipment and all other items, whether of a temporary or permanent nature required in and for such design, execution, completion and remedying of any defects, insofar as specified in, or can be reasonably inferred from, the contract.

**12.2.** The contractor shall take full responsibility for the adequacy, stability and safety of all operations and methods of construction under the contract.

**12.3.** The contractor shall comply with administrative orders given by the project manager. Where the contractor considers that the requirements of an administrative order go beyond the authority of the project manager or of the scope of the contract he shall, on pain of being time-barred, give notice, with reasons, to the project manager within 30 days after receipt thereof. Execution of the administrative order shall not be suspended because of this notice.

**12.4.** The contractor shall respect and abide by all laws and regulations in force in the State in which the works are located and shall ensure that his personnel, their dependents and his local employees also respect and abide by all such laws and regulations. The contractor shall indemnify the contracting authority against any claims and proceedings arising from any infringement by the contractor, his employees and their dependents of such laws and regulations.

**12.5.** If the contractor or any of his sub-subcontractors, agents or servants offers to give or agrees to offer or to give or gives to any person, any bribe, gift, gratuity or commission as an inducement or reward for doing or forbearing to do any act in relation to the contract or any other contract with the contracting authority; or for showing favour or disfavour to any person in relation to the contract or any other contract with the contracting authority, then the contracting authority may, without prejudice to any accrued rights of the contractor under the contract, terminate the contract in which case the provisions of Articles 63 and 64 hereof shall apply.

**12.6.** The contractor shall treat all documents and information received in connection with the contract as private and confidential, and shall not, save insofar as may be necessary for the purposes of the execution thereof, publish or disclose any particulars of the contract without the prior consent in writing of the contracting authority or the project manager after consultation with the contracting authority. If any disagreement arises to the necessity for any publication or disclosure for the purpose of the contract, the decision of the contracting authority shall be final.

**12.7.** If the contractor is a joint venture or consortium of two or more persons, all such persons shall be jointly and severally bound to fulfill the terms of the contract according to the law of the State in which the works are located and shall, at the request of the contracting authority, designate one of such persons to act as leader with authority to bind the joint venture or consortium. The composition or the constitution of the joint venture or consortium shall not be altered without the prior consent of the contracting authority.

## **Article 13 Superintendence of the Works**

**13.1.** The contractor shall himself superintend the works or shall appoint a representative to do so. Such appointment shall be submitted to the project manager for approval. The approval may at any time be withdrawn. Should the project manager refuse to approve, or withdraw approval of the appointment, he shall set out the grounds on which his decision is based, and the contractor shall submit an alternative appointment without delay.

**13.2.** If the project manager withdraws his approval of the contractor's representative, the contractor shall, as soon as is practicable, after receiving notice of such withdrawal, remove the representative from the works and replace him with another representative approved by the project manager.

**13.3.** The contractor's representative shall have full authority to make any decision necessary for the execution of the works, to receive and carry out administrative orders and to countersign the work register referred to in Article 39 or attachment, where appropriate. In any event, the contractor shall be responsible for ensuring that the works are carried out satisfactorily including ensuring that the specifications and administrative orders are adhered to by his employees and by his sub-contractors and their employees.

#### **Article 14** **Staff**

**14.1.** The persons employed by the contractor must be sufficient in number and permit the optimum use of the human resources of the State in which the works are located. Such employees must have the skills and experience necessary to ensure due progress and satisfactory execution of the works. The contractor shall immediately replace all employees indicated by the project manager as likely to jeopardize the satisfactory execution of the works.

**14.2.** The rates of remuneration and the general working conditions, as laid down by the law of the State in which the works are located, shall apply as a minimum to employees on the site.

#### **Article 15** **Performance guarantee**

**15.1.** The contractor shall, within 30 days of receipt of the notification of the award of contract, furnish to the contracting authority a guarantee for the full and proper performance of the contract. The amount of the guarantee shall be as specified in the special conditions and shall not exceed 10 % of the amount of the contract price including any amount stipulated in the contract, save where the special conditions provide otherwise. However, it may in no case exceed 20 % of such price.

**15.2.** The performance guarantee shall be held against payment to the contracting authority for any loss resulting from the contractor's failure to fully and properly perform his obligations under the contract.

**15.3.** The performance guarantee shall be in the format given in the special conditions and may be provided in the form of a bank guarantee, a banker's draft, a certified cheque, a bond provided by an insurance and/or bonding company, an irrevocable letter of credit or a cash deposit made with the contracting authority. If the performance guarantee is to be provided in the form of a bank guarantee, a banker's draft, a certified cheque or a bond, it shall be issued by a bank or bonding and/or insurance company approved by the contracting authority in accordance with the eligibility criteria applicable for the award of the contract.

**15.4.** Unless stated otherwise in the special conditions, the performance guarantee shall be denominated in the types and proportions of currencies in which the original contract is payable.

**15.5.** No payments shall be made in favour of the contractor prior to the provision of the guarantee. The guarantee shall continue to remain valid until the contract has been fully and properly performed.

**15.6.** During the performance of the contract, if the natural or legal person providing the guarantee is not able to abide by his commitments, the guarantee shall cease to be valid. The contracting authority shall give formal notice to the contractor to provide a new guarantee on the same terms as the previous one. Should the contractor fail to provide a new guarantee, the contracting

authority may terminate the contract.

**15.7.** The contracting authority shall demand payment from the guarantor of all sums for which the guarantor is liable under the guarantee due to the contractor's default under the contract, in accordance with the terms of the guarantee and up to the value thereof. The guarantor shall, without delay, pay those sums upon demand from the contracting authority and may not raise any objection for any reason whatsoever. Prior to making any claim under the performance guarantee, the contracting authority shall notify the contractor stating the "nature of the default in respect of which the claim is to be made.

**15.8.** Unless the contract provides otherwise the performance guarantee shall be released within 30 days of the issue of the signed final statement of account referred to in Article 51.

## **Article 16 Insurance**

**16.1.** The contractor shall insure in the joint names of the contracting authority and himself against loss or damage for which he is liable under the contract. Such insurance shall, unless the special conditions provide otherwise, cover:

(a) the works, together with materials and plant for incorporation therein, to the full replacement cost against all loss or damage from whatever cause arising other than from *force majeure* or risks attributable under the contract to the contracting authority;

(b) an additional sum of 15% of such replacement cost, or as may be specified in the special conditions, to cover any additional costs of and incidental to the rectification of loss or damage including professional fees and the cost of demolishing and removing any part of the works and of removing debris of whatever nature;

(c) the contractor's equipment and other things brought onto the site by the contractor, for a sum sufficient to provide their replacement at the site.

**16.2.** The contractor may substitute the insurance provided for in Article 16.1 by a global policy of insurance which covers, *inter alia*, the elements of Article 16 (1) (a), (b) and (c). In such case, the contractor shall notify the insurer of the contracting authority's interest.

**16.3.** The contractor shall take out insurance covering his liability with regard to industrial accidents and civil liabilities to any person employed by him on the works, to the contracting authority and any employee of that authority, arising from the execution of the works. Such liability shall be unlimited in the case of personal injuries.

**16.4.** The contractor shall take out insurance covering liability with regard to risks and civil liability resulting from an act or omission attributed to him, to his legal successors or agents. Such insurance shall be for at least the amount stated in the special conditions. Furthermore, he shall ensure that all his sub-contractors have taken out a similar insurance.

**16.5.** All the insurance referred to in this Article shall be taken out within 30 days of the notification of the award of the contract and shall be subject to approval by the contracting authority. Such insurance shall take effect from the commencement of the works and remain in force until final acceptance of the works. The contractor shall produce to the contracting authority the insurance policy and shall furnish proof of regular payment of premiums without delay whenever he is required to do so by the contracting authority or the project manager.

**16.6.** Notwithstanding the obligations of the contractor to insure in accordance with Article 16, the contractor shall be solely liable and shall indemnify the contracting authority and the project manager against any claims by third parties for damage to property or personal injuries arising from the execution of the works by the contractor, his sub-contractors and employees in connection with the works.

### *Article 17*

#### **Performance programme**

**17.1.** The contractor shall draw up, and submit for the approval of the project manager, a programme of performance of the contract, in accordance with the special conditions. The programme shall contain at least the following:

- (a) the order in which the contractor proposes to carry out the works;
- (b) the time limits within which submission and approval of the drawings are required;
- (c) a general description of the methods which the contractor proposes to adopt for carrying out the works; and
- (d) such further details and information as the project manager may reasonably require.

**17.2.** The approval of the programme by the project manager shall not relieve the contractor from any of his obligations under the contract.

**17.3.** No material alteration to the programme shall be made without the approval of the project manager. If, however, the progress of the works does not conform to the programme, the project manager may instruct the contractor to revise the programme and submit the revised programme to him for approval.

### *Article 18*

#### **Detailed breakdown of prices**

**18.1.** Where appropriate and within a period of not more than 20 days following the project manager's reasoned request, the contractor shall provide a detailed breakdown of his rates and prices, where such breakdown is required for any purpose under the contract.

**18.2.** After the notification of award, the contractor shall, within the time limit stated in the special conditions, provide to the project manager for his information only, a detailed cash flow estimate, in quarterly periods, of all payments which may be due to the contractor under the contract. The contractor shall subsequently supply revised cash flow estimates at quarterly intervals, if so required by the project manager. The communication shall not impose any liability whatsoever on the contracting authority or the project manager.

### *Article 19*

#### **Contractor's drawings**

**19.1.** The contractor shall submit to the project manager for approval:

- (a) such drawings, documents, samples and/or models as may be specified in the contract within the time limits laid down therein or in the programme of performance;
- (b) such drawings as the project manager may reasonably require for the performance of the contract.

**19.2.** If the project manager fails to notify his decision of approval referred to in Article 19 (1) within the time limits referred to in the contract or the approved programme of performance, such drawings, documents, samples or models shall be deemed to be approved at the end of the time limits specified. If no time limit is specified, they shall be deemed to be approved 30 days after receipt.

**19.3.** Approved drawings, documents, samples and models shall be signed or otherwise identified by the project manager and shall not be departed from except as otherwise instructed by the project manager. Any contractor's drawings, documents, samples or models which the project manager fails to approve, shall be forthwith modified to meet the requirements of the project manager and resubmitted by the contractor for approval.

**19.4.** The contractor shall supply additional copies of approved drawings in the form and SPC Headquarters: Noumea, New Caledonia. Regional offices: Suva, Fiji, and Pohnpei, Federated States of Micronesia.  
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number stated in the contract or in subsequent administrative orders.

**19.5.** The approval of the drawings, documents, samples or models by the project manager shall not relieve the contractor from any of his obligations under the contract.

**19.6.** The project manager shall have the right at all reasonable times to inspect all contract drawings, documents, samples or models at the contractor's premises.

**19.7.** Before provisional acceptance of the works, the contractor shall supply operation and maintenance manuals together with drawings, which shall be in such detail as will enable the contracting authority to operate, maintain, adjust and repair all parts of the works.' Unless otherwise stated in the special conditions, the manuals and drawings shall be in the language of the contract and in such forms and numbers as stated in the contract. The works shall not be considered to be completed for the purpose of provisional acceptance until such manuals and drawings have been supplied to the contracting authority.

### **Article 20** **Sufficiency of tender prices**

**20.1.** The contractor shall be deemed to have inspected and examined the site and its surroundings and to have satisfied himself before submitting his tender, as to the nature of the ground and sub-soil, and to have taken' into account the form and nature of the site, the extent. and nature of the work and materials necessary for the completion of the works, the means of communication with and access to the site, the accommodation he may require and in general to have obtained for himself all necessary information as to risks, contingencies and all other circumstances influencing or affecting his tender.

**20.2.** The contractor shall be deemed to have satisfied himself before submitting his tender as to the correctness and sufficiency of the tender and of the rates and prices stated in the bill of quantities or price schedule which shall, except in so far as it is otherwise provided in the contract, cover all his obligations under the contract.

**20.3.** Since the contractor is deemed to have determined his prices on the basis of his own calculations, operations and estimates, he shall carry out without additional charge any work which is the subject of any item whatsoever in his tender for which he neither indicates a unit price nor a firm sum.

### **Article 21** **Exceptional risks**

**21.1.** If during the execution of the works the contractor encounters artificial obstructions or physical conditions which could not reasonably have been foreseen by an experienced contractor, and if the contractor is of the opinion that additional costs will be incurred and/or an extension of the period of performance of the contract will be necessary as a result of this, he shall give notice to the project manager in accordance with Articles 35 and/or 55. The contractor shall specify in such notice the artificial obstructions and/ or physical 'conditions, giving details of the anticipated effects thereof, the measures he is taking or intends to take and the extent of the anticipated delay in or interference with the execution of the works.

**21.2.** Following receipt of the notice, the project manager may *inter alia*:

(a) require the contractor to provide an estimate of the cost of the measures he is taking or intends to take;

(b) approve measures referred to in Article 21.2 (a) with or without modification;



(c) give written instructions as to how the artificial obstructions or physical conditions are to be dealt with;

(d) order a variation, a suspension, or termination of the contract.

**21.3.** To the extent that the project manager shall decide that the whole or part of the said artificial obstructions or physical conditions could not reasonably have been foreseen by an experienced contractor, the project manager shall:

(a) take into account any delay suffered by the contractor as a result of such obstructions or conditions in determining any extension of the period of performance to which the contractor is entitled under Article 35; and /or

(b) in case of artificial obstructions or physical conditions other than weather conditions; determine additional payments due to the contractor in accordance with Article 55.

**21.4.** Weather conditions shall not entitle the contractor to claims under Article 55.

**21.5.** If the project manager decides that the artificial obstructions or physical conditions could, in whole or in part, have been reasonably foreseen by an experienced contractor, he shall so inform the contractor as soon as practicable.

## **Article 22** **Security of sites**

**22.1.** The contractor shall have the right to forbid access to the site to any person not involved in the performance of the contract, with the exception of persons authorized by the project manager.

**22.2.** The contractor shall ensure the security of sites during the whole period of execution and shall be responsible for taking the necessary steps, in the interests of his employees, agents of the contracting authority and third parties, to prevent any loss or accident which may result from carrying out the works.

**22.3.** The contractor shall take all essential steps, on his own responsibility and at his expense, to ensure that existing structures and installations are protected, preserved and maintained. He shall be responsible for providing and maintaining at his expense all lighting, protection, fencing and security equipment which proves necessary for the proper performance of the works or which may reasonably be required by the project manager.

**22.4.** If, during the performance of the contract, urgent measures are necessary to obviate any risk of accident or damage or to ensure security following any accident or damage, the project manager shall give formal notice to the contractor to do what is necessary. If the contractor is unwilling or unable to undertake the necessary measures, the project manager may carry out the work at the expense of the contractor to the extent that the contractor is liable.

## **Article 23** **Safeguarding adjacent properties**

**23.1.** On his own responsibility and at his expense, the contractor shall take all the precautions required by good construction practice and by the prevailing circumstances to safeguard adjacent properties and avoid causing any abnormal disturbance therein.

**23.2.** The contractor shall indemnify the contracting authority against the financial consequences of all claims by neighbouring landowners or residents to the extent that the contractor is liable and to the extent that the damage to adjacent properties is not the result of a hazard created through the design or method of construction imposed by the contracting authority or the project manager upon the contractor.

## **Article 24** **Interference with traffic**

**24.1.** The contractor shall ensure that the works and installations do not cause damage to, or obstruct traffic on, communication links such as roads, railways, waterways and aerodromes, save as permitted under the special conditions. He shall, in particular, take account of weight restrictions when selecting routes and vehicles.

**24.2.** Any special measures which the contractor considers necessary or which are specified in the special conditions or which are required by the contracting authority in order to protect or strengthen sections of roads, tracks or bridges, shall be at the expense of the contractor, whether or not they are carried out by the contractor. The contractor shall inform the project manager of any special measures he intends to take before carrying them out. The repair of any damage caused to roads, tracks or bridges by the transport of materials, plant or equipment shall be at the expense of the contractor.

### *Article 25* **Cables and conduits**

**25.1.** Where, in the course of carrying out the works, the contractor encounters bench-marks indicating the course of underground cables, conduits and installations, he shall keep such benchmarks in position or replace them; should execution of the works have necessitated their temporary removal. Such related operations require the authorization of the project manager.

**25.2.** The contractor shall be responsible for the preservation, removal and replacement, as the case may be, of the cables, conduits and installations specified by the contracting authority in the contract and for the cost thereof.

**25.3.** Where the presence of cables, conduits and installations has not been specified in the contract but is revealed by bench-marks and references, the contractor shall be under a general duty of care and similar obligations regarding preservation, removal and replacement to those set out above. In this case, the contracting authority shall compensate him for expenditure, to the extent that such work is necessary for the execution of the contract.

**25.4.** However, the obligations to remove and replace cables, conduits and installations and the expenditure resulting therefrom shall not be the responsibility of the contractor if the contracting authority decides to accept that responsibility. The same shall apply where this obligation and the expenditure resulting therefrom devolve upon another specialist administration or an agent

**25.5.** When any work on the site is likely to cause disturbances in or damage to a public utility service, the contractor shall immediately inform the project manager in writing, giving a reasonable period of notice so that suitable measures can be taken in time to allow work to continue normally.

### *Article 26* **Setting-out**

**26.1.** The contractor shall be responsible for:

- (a) the accurate setting-out of the works in relation to original marks, lines and levels of reference given by the project manager;
- (b) the correctness, of the position, levels, dimensions and alignment of all parts of the works; and
- (c) the provision of all necessary instruments, appliances and labour in connection with the foregoing responsibilities.

**26.2.** If, at any time during the execution of the works, any error appears in the position, levels, dimensions or alignment of any part of the works, the contractor, shall, if the project manager

so requires, at the contractor's cost, rectify such error to the satisfaction of the project manager, unless such error is based on incorrect data supplied by the project manager, in which case the contracting authority shall be responsible for the cost of rectification.

**26.3.** The checking of any setting-out or of any line or level by the project manager shall not in any way relieve the contractor of his responsibility for the accuracy thereof and the contractor shall carefully protect and preserve all bench-marks, sight-rails, pegs and other items used in setting-out the works.

### *Article 27*

#### **Demolished materials**

**27.1.** Where the contract includes demolition work, materials and articles obtained therefrom shall, unless the special conditions and/or the law of the State in which the works are located otherwise provide and subject to the provisions of Article 28, be the property of the contractor.

**27.2.** Should the special conditions reserve to the contracting authority the right of ownership of materials or all or part of the articles obtained from the demolition work, the contractor shall take all the necessary precautions to ensure that these are preserved. He shall be liable for any destruction of, or damage to, such materials or articles caused by him or his agents.

**27.3.** Irrespective of the use to which the contracting authority intends to put the materials or articles, in respect of which he reserves the right of ownership, all costs incurred in transporting and storing them and all warehouse charges at the place indicated by the project manager shall be borne by the contractor for any carriage not exceeding 100 meters.

**27.4.** Save where the special conditions provide otherwise, the contractor shall, at his expense, progressively remove rubble and other demolition materials, rubbish and debris from the site.

### *Article 28*

#### **Discoveries**

**28.1.** Discoveries of any interest whatsoever made during excavation or demolition work shall be brought immediately to the attention of the project manager. The project manager shall decide how such discoveries are to be dealt with, taking due account of the law of the State in which the works are carried out.

**28.2.** The contracting authority reserves the right of ownership of materials found during the excavation and demolition work carried out on land belonging to him, subject to compensating the contractor for any special efforts.

**28.3.** Artifacts, antiquities and natural, numismatic, or other objects which of scientific interest, and also rare objects or objects made of precious metals found during excavation or demolition work shall be the property of the contracting authority.

**28.4.** In the event of disagreements, the contracting authority shall have sole authority to decide as to the qualifications set out in Articles 28.1 and 28.3.

### *Article 29*

#### **Temporary works**

**29.1.** The contractor shall carry out at his expense all the temporary works to enable the works to be carried out. He shall submit to the project manager the drawings for temporary works which he intends to use, such as cofferdams, scaffolding, trusses and shuttering. He shall take into account any observations made to him by the project manager while assuming responsibility for these drawings.

**29.2.** Where the design of particular temporary works is specified in the special conditions to

be the responsibility of the contracting authority, the project manager shall provide the contractor with all drawings necessary in reasonable time to enable the contractor to undertake the temporary works in accordance with his programme. In such cases, the contracting authority shall be solely responsible for the safety and adequacy of the design. However, the contractor shall be responsible for the proper construction.

### **Article 30**

#### **Soil Studies**

Subject to the special conditions and to the technical specifications, the contractor shall make available to the project manager, the personnel and equipment necessary for carrying out any soil survey which the project manager considers reasonably necessary. The contractor shall be compensated for the actual cost of the manpower and equipment used or made available in such work, if not already provided for in the contract.

### **Article 31**

#### **Overlapping contracts**

**31.1.** The contractor shall, in accordance with the requirements of the project manager, afford all reasonable opportunities for carrying out their work to any other contractors employed by the contracting authority and their workmen, to the workmen of the contracting authority and of any other public authorities who may be employed on or near the site in the execution of any work not included in the contract, or of any contract which the contracting authority may enter into in connection with, or ancillary to, the works.

**31.2.** If, however, the contractor, on the written request of the project manager, makes available to any such contractor, or public authority, or to the contracting authority, any roads or ways for the maintenance of which that contractor is responsible, or permits the use by any such other persons of the contractor's temporary works, scaffolding or other equipment on the site, or provides any other service of whatsoever nature, which was not provided for in the contract, the contracting authority shall pay to the contractor in respect of such use or service, such sums and/ or grant such extension of time, as shall, in the opinion of the project manager, be reasonable.

**31.3.** The contractor shall not by reason of Article 31 be relieved of any of his obligations under the contract nor shall he be entitled to any claims other than those provided for in Article 31.2.

### **Article 32**

#### **Patents and licenses**

Save where otherwise provided in the special conditions, the contractor shall indemnify the contracting authority and the project manager against any claim resulting from the use as specified in the contract of patents, licenses, drawings, designs, models, or brand or trademarks, except where such infringement results from compliance with the design or specification provided by the contracting authority and / or the project manager.

## **COMMENCEMENT AND DELAYS**

### **Article 33**

#### **Commencement orders**

**33.1.** The contracting authority shall fix the date on which performance of the contract is to commence, and advise the contractor either in the notification of award of contract or by administrative order issued by the project manager.

**33.2.** The date for commencing performance shall be not later than 180 days following notification of award of contract unless agreed otherwise by the parties.

#### **Article 34** **Period of performance**

The period of performance shall commence on the date fixed in accordance with Article 33.1 and shall be as stated in the contract, without prejudice to extensions of the period which may be granted under Article 35.

#### **Article 35** **Extension of period of performance**

**35.1.** The contractor may request an extension to the period of performance if he is or will be delayed in Completing the contract by any of the following causes:

- (a) exceptional weather conditions in the State which the works are carried out;
- (b) artificial obstructions or physical conditions which could not reasonably have been foreseen by an experienced contractor; .
- (c) administrative orders affecting the date of completion other than those arising from the contractor's default;
- (d) failure of the contracting authority to fulfill his obligations under the contract;
- (e) any suspension of the works which is not due to the contractor's default;
- (f) *force majeure*;
- (g) any other causes referred to in these general conditions which are not due to the contractor's default.

**35.2.** The contractor shall, within 30 days of becoming aware that delay may occur, notify the project manager of his intention to make a request for extension of the period of performance to which he may consider himself entitled, and shall, as soon thereafter as is reasonable in the circumstances, deliver to the project manager full and detailed particulars of the request, in order that such request may be investigated at the time.

**35.3.** The project manager shall, by written notice to the contractor after due consultation with the contracting authority and, where appropriate, the contractor, grant such extension of the period of performance as may be justified, either prospectively or retrospectively, or inform the contractor that he is not entitled to an extension.

#### **Article 36** **Delays in performance**

**36.1.** If the contractor fails to complete the works within the time period(s) specified in the contract, the contracting authority shall, without formal notice and without prejudice to his other remedies under the contract be entitled to liquidated damages for every day or part thereof which shall elapse between the end of the period specified for performance or extended period of performance under Article 35 and the actual date of completion, at the rate and up to the maximum amount specified in the special conditions. If the works have been the subject of partial acceptance in accordance with Article 59, the liquidated damages specified in the special conditions may be reduced in the proportion which the value of the accepted part bears to the value of the whole of the works.

**36.2.** If the contracting authority has become entitled to the maximum claim under Article 36 (1) he may, after giving notice to the contractor:

- (a) seize the performance guarantee; and / or

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- (b) terminate the contract; and
- (c) enter into a contract with a third party at the contractor's cost for the provision of the balance of the works.

### **Article 37** **Variations**

**37.1.** The project manager shall have power to order any variation to any part of the works necessary for the proper completion and/or functioning of the works. Such variations may include additions, omissions, substitutions, changes in quality, quantity, form, character, kind, position, dimension, level or line and changes in the specified sequence, method or timing of execution of the works. No order for a variation shall have the effect of invalidating the contract, but the financial effect, if any, of all such variations shall be valued in accordance with Articles 37 (5) and 37 (7).

**37.2.** No variation shall be made except by administrative order, provided that:

(a) if for any reason, the project manager shall find it necessary to give an order orally, he shall as soon as possible thereafter confirm the order by an administrative order;

(b) if the contractor shall confirm in writing an oral order given for the purpose of Article 37 (2) (a) and the confirmation shall not be contradicted in writing forthwith by the project manager, an administrative order, shall, unless the special conditions stipulate otherwise, be deemed to have been issued for the variation;

(c) an administrative order for variation shall not be required for increase or decrease in the quantity of any work where such increase or decrease is the result of the quantity exceeding or being less than that stated in the bill of quantities or price schedule.

**37.3.** Save as provided by Article 37 (2) prior to any administrative order for variation, the project manager shall notify the contractor of the nature and form of such variation. As soon as possible, after receiving such notice, the contractor shall submit to the project manager a proposal containing:

(a) a description of the tasks, if any, to be performed or the measures to be taken and a programme for execution; and

(b) any necessary modifications to the programme of performance or to any of the contractor's obligations under the contract; and

(c) any adjustment to the contract price in accordance with the rules as set out in Article 37.

**37.4.** Following the receipt of the contractor's submission referred to in Article 37 (3), the project manager shall, after due consultation with the contracting authority and, where appropriate, the contractor, decide as soon as possible whether or not the variation shall be carried out. If the project manager decides that the variation shall be carried out he shall issue the administrative order stating that the variation shall be carried out at the prices and under the conditions given in the contractor's submission referred to in Article 37 (3) or as modified by the project manager in accordance with Article 37 (5).

**37.5.** The prices for all variations ordered by the project manager in accordance with Article 37 (2) and 37 (4) shall be ascertained by the project manager in accordance with the following principles:

(a) where work is of similar character and executed under similar conditions to work priced in the bill of quantities or price schedule it shall be valued at such rates and prices contained therein;

(b) where work is not of a similar character or is not executed under similar conditions, the rates and

prices in the contract shall be used as the basis for valuation so far as is reasonable, failing which, as fair valuation shall be made by the project manager;

(c) if the nature or amount of any variation relative to the nature or amount of the whole of the contract or to any part thereof shall be such that in the opinion of the project manager any rate or price contained in the contract for any item of work is by reason of such variation rendered unreasonable, then the project manager shall fix such rate or price as in the circumstances he shall think reasonable and proper;

(d) where a variation is necessitated by default or breach of contract by the contractor, any additional cost attributable to such variation shall be borne by the contractor.

**37.6.** On receipt of the administrative order requesting the variation, the contractor shall proceed to carry out the variation and be bound by these general conditions in so doing as if such variation were, stated in the contract. The works shall not be delayed pending the granting of any extension of time for completion or adjustment to the contract price. Where the order for a variation precedes the adjustment to the contract price, the contractor shall keep records of the costs of undertaking the variation and of time expended thereon. Such records shall be open to inspection by the project manager at all reasonable times.

**37.7.** Where on provisional acceptance, an increase or reduction in the total value of the works resulting from an administrative order, or from some other circumstance which is not caused by the contractor's default, exceeds 15% of the contract price, the project manager shall, after consultation with the contracting authority and the contractor determine any additions to or reduction from the contract price as a consequence of the application of Article 37 (5). The sum so determined shall be based on the amount by which the increase or decrease in value of the works exceeds 15%. The sum shall be notified by the project manager to the contracting authority and the contractor and the contract price adjusted accordingly.

### **Article 38** **Suspension**

**38.1.** The contractor shall, on the order of the project manager, suspend the progress of the works or any part thereof for such time or times and in such manner as the project manager may consider necessary.

**38.2.** During the period of suspension, the contractor shall take such protective measures as may be necessary to safeguard the works, plant, equipment and site against any deterioration, loss or damage. Additional expenses incurred in connection with such protective measures shall be added to the contract price, unless such suspension is:

(a) otherwise provided for in the contract; or

(b) necessary by reason of some default of the contractor; or

(c) necessary by reason of normal climate conditions on site; or

(d) necessary for the safety or the proper execution of the works or any part thereof insofar as such necessity does not arise from any act or default by the project manager or the contracting authority or from any of the exceptional risks referred to in Article 21.

**38.3.** The contractor shall not be entitled to such additions to the contract price unless he notifies the project manager, within 30 days after receipt of the order to suspend the works, of his intention to make a claim for them.

**38.4.** The project manager, after consultation with the contracting authority and the contractor, shall determine such extra payment and/ or extension of the period of performance to be made to the contractor in respect of such claim as shall, in the opinion of the project manager, be fair and reasonable.

## MATERIALS AND WORKMANSHIP

### *Article 39* Work register

**39.1.** If the period of suspension exceeds 30 days and the suspension is not due to the contractor's default, the contractor may, by notice to the project manager, request permission to proceed within 30 days or terminate the contract.

**39.2.** A work register shall, unless otherwise provided by the special conditions, be kept on the site by the project manager, who shall enter in it at least the following information:

(a) the weather conditions, interruptions of work owing to inclement weather, hours of work, number and type of workmen employed on the site, materials supplied, equipment in use, equipment not in working order, tests carried out *in situ*, samples dispatched, unforeseen circumstances, as well as orders given to the contractor;

(b) detailed statements of all the quantitative and qualitative elements of the work done and the supplies delivered and used, capable of being checked on the site and relevant in calculating payments to be made to the contractor.

**39.3.** The statements shall form an integral part of the work register but may, where appropriate, be recorded in separate documents. The technical rules for drawing up the statements shall be as set out in, the special conditions.

**39.4.** The contractor shall ensure that statements are drawn up, in good time and in accordance with the special conditions, in respect of work, services and supplies which cannot be measured or verified subsequently; failing this, he shall accept the decisions of the project manager-unless, at his own expense, he provides evidence to the contrary.

**39.5.** Entries made in the work register as work progresses shall be signed by the project manager and countersigned by the contractor or his representative. If the contractor objects, he shall communicate his views to the project manager within 15 days following the date on which the entry or the statements objected to are recorded. Should he fail to countersign or to submit his views within the period allowed, the contractor shall be deemed to agree with the notes shown in the register. The contractor may examine the work register at any time and may without removing the document, make or receive a copy of entries which he considers necessary for his own information.

**39.6.** The contractor shall, on request, provide the project manager with the information needed to keep the work register in good order.

### *Article 40* Quality of Works and Materials

**40.1.** The works, components and materials shall conform to the specifications, drawings, surveys, models, samples, patterns and other requirements in the contract which shall be held at the disposal of the contracting authority or the project manager for the purposes of identification throughout the period of performance.

**40.2.** Any preliminary technical acceptance stipulated in the special conditions shall be the subject of a request sent by the contractor to the project manager. The request shall indicate the reference to the contract, the lot number and the place where such acceptance is to take place, as appropriate. The components and materials specified in the request must be certified by the project manager as meeting the requirements for such acceptance prior to their incorporation in the works.

**40.3.** Even if materials or items to be incorporated in the works or in the manufacture of components have been technically accepted in this way, they may still be rejected and must be replaced immediately by the contractor if a further examination reveals defects or faults. The contractor may be given the opportunity to repair and make good materials and items which have been rejected, but such materials and items will be accepted for incorporation in the works only if



they have been repaired and made good to the satisfaction of the project manager.

### **Article 41** **Inspection and testing**

**41.1.** The contractor shall ensure that the components and materials are delivered to the site in time to allow the project manager to proceed, with acceptance of the components and materials. The contractor is deemed to have fully appreciated the difficulties which he might encounter in this respect, and he shall not be permitted to advance any grounds for delay in fulfilling his obligations.

**41.2.** The project manager shall be entitled, either by himself or his agent, to inspect, examine, measure and test the components, materials, and workmanship, and check the progress of preparation, fabrication or manufacture of anything being prepared, fabricated or manufactured for delivery under the contract in order to establish whether the components, materials and workmanship are of the requisite quality and quantity. This shall take place at the place of manufacture, fabrication, preparation or on the site or at such other places as may be specified in the contract.

**41.3.** For the purposes of such tests and inspections, the contractor shall:

(a) provide to the project manager, temporarily and free of charge, such assistance, test samples, parts, machines, equipment, tools or materials and labour as are normally required for inspection and testing;

(b) agree, with the project manager, on the time and place for tests;

(c) provide access for the project manager at all reasonable times to the place where the tests are to be carried out.

**41.4.** If the project manager is not present on the date agreed for tests, the contractor may, unless otherwise instructed by the project manager, proceed with the tests, which shall be deemed to have been made in the project manager's presence. The contractor shall forthwith forward duly certified copies of the test results to the project manager, who shall, if he has not attended the test, be bound by the test results.

**41.5.** When components and materials have passed the tests referred to in Article 41, the project manager shall notify the contractor or endorse the procedure's certificate to that effect.

**41.6.** If the project manager and the contractor disagree on the test results, each shall give a statement of his views to the other within 15 days after such disagreement arises. The project manager or the contractor may require such tests to be repeated on the same terms and conditions or, if either party so requests, by an expert to be selected by common consent. All test reports shall be submitted to the project manager- who shall communicate the results of these tests without delay to the contractor. The results of the retesting shall be conclusive. The cost of the retesting shall be borne by the party whose views are proved wrong by the retesting.

**41.7.** In the performance of his duties, the project manager and all persons authorized by him shall disclose only to those persons who are entitled to know of it information which he has obtained by reason of his inspection and testing of the methods of manufacture and operation of the undertaking.

### **Article 42** **Rejection**

**42.1.** Components and materials which are not of the specified quality shall be rejected. A special mark may be applied to the rejected components or materials. This shall not be such as to alter them or affect their commercial value. Rejected components and materials shall be removed by the contractor from the site within a period which the project manager shall specify, failing which they shall be removed by the project manager as of right at the expense and risk of the contractor. Any work incorporating rejected components or materials shall be rejected.

**42.2.** The project manager shall, during the progress of the works and before the works are taken over, have the power to order or decide:

(a) the removal from the site, within such time limits as may be specified in the order, *or* any components or materials which, in the opinion of the project manager, are not in accordance with the contract;

(b) the substitution of proper and suitable components or materials; or

(c) the demolition and proper re-execution, or satisfactory repair, notwithstanding any previous test thereof or interim payment therefore, of any work which, in respect of components, materials, workmanship or design by the contractor for which he is responsible, is not, in the opinion of the project manager, in accordance with the contract.

**42.3.** The project manager shall, as soon as reasonably practicable, give to the contractor notice in writing of his decision specifying particulars of the alleged defects.

**42.4.** The contractor shall with all speed and at his expense make good the defects so specified. If the contractor does not comply with such order, the contracting authority shall be entitled to employ other persons to carry out the same and all expenses consequent thereon or incidental thereto may be deducted by the contracting authority from any monies due or which may become due to the contractor.

**42.5.** The provisions of Article 42 shall not affect the right of the contracting authority to claim under Articles 36 and 63.

### *Article 43*

#### **Property in plant and materials**

**43.1.** All equipment, temporary works, plant and materials provided by the contractor shall, when brought on the site, be deemed to be exclusively intended for the execution of the works and the contractor shall not remove the same or any part thereof, except for the purpose of moving it from one part of the site to another, without the consent of the project manager. Such consent shall, however, not be required for vehicles engaged in transporting any staff, labour, equipment, temporary works, plant or materials to or from the site.

**43.2.** The special conditions may provide that all equipment, temporary works, plant and materials on site owned by the contractor or by any company in which the contractor has a controlling interest shall, for the duration of the execution of the works, be:

(b) made subject to a lien in favour of the contracting authority; or

(c) made subject to any other arrangement regarding priority interest or security.

**43.3.** In the event of termination of the contract in accordance with Article 63 due to the contractor's breach of contract, the contracting authority shall be entitled to use the equipment, temporary works, plant and materials on site in order to complete the works.

**43.4.** Any agreement for the hire by the contractor of equipment, temporary works, plant and materials brought onto the site, shall contain a provision that can request in writing made by the contracting authority within 7 days after the date on which the termination under Article 64 becomes effective, and on the contracting authority undertaking to pay all hire charges in respect thereof from such date, SPC thereof will hire such equipment, temporary works, plant or materials to the contracting authority on the same terms as they were hired by the contractor, save that the contracting authority shall be entitled to permit the use thereof by any other contractor employed by him for completing the works under the provisions of Article 64 (3).

**43.5.** Upon termination of the contract before completion of the works, the contractor shall deliver to the contracting authority any plant, temporary works, equipment or materials the property in which has vested in the contracting authority or been made subject to a lien by virtue of Article 43

(2). If he fails to do so, the contracting authority may take such appropriate action as it deems fit in SPC Headquarters: Noumea, New Caledonia. Regional offices: Suva, Fiji, and Pohnpei, Federated States of Micronesia.

Country office: Honiara, Solomon Islands.

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order to obtain possession of such plant, temporary works, equipment and materials and recover the cost of so doing from the contractor.

## PAYMENTS

### *Article 44*

#### **General Provisions**

**44.1.** Payments shall be made in EURO Dollars except as otherwise stipulated in the contract.

**44.2.** The administrative or technical conditions to which the payment of advances, interim and/or final payments made in accordance with Articles 45 to 56 are subject, shall be as stated in the special conditions.

### *Article 45*

#### **Advances**

**45.1.** The contract shall state the amount of the advances, according to the payment schedule agreed between the parties.

**45.2.** No advance shall be granted until:

(a) the conclusion of the contract;

(b) provision to the contracting authority by the procedure of the performance guarantee in accordance with Article 15; and by

(c) provision to the contracting authority by the contractor of a separate directly liable guarantee for the full amount of the advance by the institutions referred to in Article 15 (3), which shall remain effective until the advance has been completely repaid by the contractor out of interim payments under the contract.

**45.3.** The contractor shall use the advance exclusively for operations connected with the execution of the works. Should the contractor misuse any portion of the advance, it shall become due and repayable immediately and no further advance payments will be made to him.

**45.4.** Should the advance guarantee cease to be valid and the contractor fail to re-validate it, either a deduction equal to the amount of the advance may be made by the contracting authority from future payments due to the contractor under the contract, or the contracting authority may apply the provisions of Article 15 (6).

**45.5.** If the contract is terminated for any reason whatsoever, the guarantees securing the advances may be invoked forthwith in order to repay the balance of the advances still owed by the contractor, and the guarantor shall not delay payment or raise objection for any reason whatever.

**45.6.** The advance guarantee provided for in Article 46 shall be released as and when advances are repaid.

**45.7.** Further conditions and procedures for granting and repaying advances shall be as laid down in the special conditions.

### *Article 46*

#### **Retention sum**

**46.1.** The sum which shall be retained from interim payments by way of guarantee to meet the contractor's obligations during the maintenance period, and the detailed rules governing that guarantee, shall be stipulated in the contract, provided that it shall, in no case, exceed 10 % of the contract price.

**46.2.** Subject to the approval of the contracting authority, the contractor may, if he so wishes, substitute, not later than the date fixed for the commencement of the works, these retention sums by a retention guarantee issued in accordance with Article 15 (3).

**46.3.** The sum retained or the retention guarantee shall be released within 90 days of the date of final acceptance of the works.

#### *Article 47* **Revision of prices**

**47.1.** Unless otherwise stipulated in the special Conditions, and except as provided in Article 48 (4) the contract shall be at fixed prices which shall not be revised,

**47.2.** Prices contained in the contractor's tender shall be deemed:

(a) to have been arrived at on the basis of the conditions in force 30 days prior to the latest date fixed for submission of tenders; or in the case of direct agreement contracts, on the date of the contract;

(b) to have taken account of the legislation and the relevant tax arrangements applicable at the reference date fixed in Article 47 (3) (a).

**47.3.** In the event: of changes to, or introduction of, any national or State statute, ordinance, decree or other law, or any regulation or by-law of any local or other public authority, after the date stated in Article 47 (3) which causes a change in the contractual relationship between the parties to the contract, the contracting authority and the contractor shall consult on how best to proceed further under the contract, and may as a result of such consultation decide:

(a) to modify the contract; or

(b) on payment of compensation for the resulting imbalance by one party to the other; or

(c) to terminate the contract by mutual agreement.

**47.4.** In the event of a delay in the execution of the works for which the contractor is responsible, or at the end of the period of performance revised as necessary in accordance with the contract, there shall be no further revision of prices within the 30 days before provisional acceptance, except for the application of new price indexation, if this is to the benefit of the contracting authority.

#### *Article 48* **Measurement**

**498.1.** The following methods shall apply to the valuation of works contracts:

(a) For lump-sum contracts, the amount due under the contract shall be determined on the basis of the breakdown of the overall contract price, or on the basis of a breakdown expressed as a percentage of the contract price corresponding to completed stages of the works. Where items are accompanied by quantities, these shall be firm quantities for which the contractor has submitted his all-in price, and shall be paid for irrespective of the quantities of work actually carried out.

(b) For unit price contracts:

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(i) the amount due under the contract shall be calculated by applying the unit rates to the quantities actually executed for the respective items, in accordance with the contract;

(ii) the quantities set out in the bill of quantities shall be the estimated quantities of the works, which shall not be taken as the actual and correct quantities of the works to be executed by the contractor in fulfillment of his obligations under the contract;

(iii) the project manager shall determine by measurement the actual quantities of the works executed by the contractor, and these shall be paid for in accordance with Article 49. Unless otherwise provided in the special conditions no additions shall be made to the items in the bill of quantities except as a result of a variation in accordance with Article 37 or other provision of the contract entitling the contractor to additional payments;

(iv) the project manager shall, when he requires any parts of the works to be measured, give reasonable notice to the contractor to attend, or to send a qualified agent to represent him. The contractor or his agent shall assist in making such measurements and shall furnish all particulars required by the project manager. Should the contractor not attend or omit to send such agent, the measurement made by the project manager or approved by him shall be binding on the contractor;

(v) the works shall be measured net, notwithstanding any general or local custom, except where otherwise provided for in the contract.

(c) For cost-plus contracts, the amount due under the contract shall be determined on the basis of actual costs with an agreed addition for overheads and profit. The special conditions shall stipulate the information which the contractor is required to submit to the project manager for the purpose of Article 48 (1) (c) and the manner in which it should be submitted.

**48.2.** Where an item in the contract is indicated as 'provisional' the provisional sum set aside for it shall not be taken into account in calculating the percentages referred to in Article 37.

#### *Article 49*

#### **Interim payments**

**49.1.** Unless otherwise specified in the special conditions, the contractor shall submit an application for interim payment to the project manager at the end of each period referred to in Article 49(7) in a form approved by the project manager. The application shall include the following items, as applicable:

(a) the estimated contract value of the permanent works executed up to the end of the period in question;

(b) an amount reflecting any revision of prices pursuant to Article 47;

(c) an amount to be withheld as retention sum under Article 46;

(d) any credit and/ or debit for the period in question in respect of plant and materials on site intended for, but not yet incorporated in, the permanent works in the amount and under the conditions set out in Article 49 (2);

(e) an amount to be deducted on account of the advance repayment under the provisions of Article 45; and

(f) any other sum to which the contractor may be entitled under the contract.

**49.2.** The contractor shall be entitled to such sums as the project manager may consider proper in respect of plant and materials intended for, but not yet incorporated in, the permanent works provided that:

(a) the plant and materials conform with the specifications for the permanent works and are set out in batches in a way that they may be recognised by the project manager;

(b) such plant and materials have been delivered to the site, and are properly stored and protected against loss or damage or deterioration to the satisfaction of the project manager;

(c) the contractor's record of requirements, orders, receipts and use of plant and materials under the contract are kept in a form approved by the project manager and such records are available for inspection by the project manager;

(d) the contractor submits with his statement, the estimated value of the plant and materials on site together with such documents as may be required by the project manager for the purpose of valuation of the plant and materials and providing evidence of ownership and payment therefore; and

(e) where the special conditions so provide, ownership of the plant and materials referred to in Article 43 shall be deemed to be vested in the contracting authority.

**49.3.** Approval by the project manager of any interim payment certified by him in respect of plant and materials pursuant to Article 49 shall be without prejudice to the exercise of any power of the project manager under the contract to reject any plant or materials which are not in accordance with the provisions of the contract.

**49.4.** The contractor shall be responsible for any loss or damage to, and for the cost of storing and handling of, such plant and materials on site and shall effect such additional insurance as may be necessary to cover the risk of such loss or damage from any cause. .

**49.5.** Within 30 days of receipt of the said application for interim payment, it shall be approved or amended in such manner that, in the project manager's opinion, the application reflects the amount due to the contractor in accordance with the contract. In cases where there is a difference of opinion as to the value of an item, the project manager's view shall prevail. On determination of the amount due to the contractor, the project manager shall issue to the contracting authority and the contractor an interim payment certificate for the amount due to the contractor and shall inform the contractor of the works for which payment is being made.

**49.6.** The project manager may, by an interim payment certificate, make any corrections or modifications to any previous certificate issued by him and shall have power to modify the valuation in or withhold the issue of, any interim payment certificate if the works or any part thereof are not being carried out to his satisfaction.

**50.7.** Unless the special conditions provide otherwise, the frequency shall be one interim payment per month.

## **Article 50**

### **Final statement of accounts**

**50.1.** Not later than 180 days after the issue of the final acceptance certificate referred to in Article 58, the contractor shall submit to the project manager a draft final statement of account with supporting documents showing in detail the value of the work done in accordance with the contract, together with all further sums which the contractor considers to be due to him under the contract in order to enable the project manager to prepare the final statement of account. The special conditions may, however, in accordance with Article 50 (6) state that the draft final statement of account and further proceedings related thereto, be dealt with before the issue of the provisional acceptance certificate.

**50.2.** Within 180 days after receipt of the draft final statement of account and of all information reasonably required for its verification, the project manager shall prepare the final statement of account, which determines: .

(a) the amount which in his opinion is finally due under the contract; and

(b) after establishing the amounts previously paid by the contracting authority and all sums to which the contracting authority is entitled under the contract, the balance, if any, due from the contracting authority to the contractor, or from the contractor to the contracting authority, as the case may be.

**50.3.** The project manager shall issue to the contracting authority and to the contractor, the final statement of account showing the final amount to which the contractor is entitled under the contract. The contracting authority and the contractor shall sign the final statement of account as an acknowledgement of the full and final value of the work performed under the contract and shall

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promptly submit a signed copy to the project manager. However, the final statement of account shall not include amounts in dispute which are the subject of negotiations, conciliation, arbitration or litigation.

**50.4.** The final statement of account signed by the contractor shall constitute a written discharge of the contracting authority confirming that the total in the final statement of account represents full and final settlement of all monies due to the contractor under the contract, other than those amounts which are the subject of amicable settlement, arbitration or litigation. However, such discharge shall become effective only after any payment due in accordance with the final statement of account has been made and the performance guarantee referred to in Article 15 has been returned to the contractor.

**50.5.** The contracting authority shall not be liable to the contractor for any matter or thing whatsoever arising out of, or in accordance with, the contract or execution of the works, unless the contractor shall have included a claim in respect thereof in his draft final statement of account.

### *Article 51*

#### **Delayed payments**

**51.1.** Payment to the contractor of the amounts due under each of the interim payment certificates and the final statement of account issued by the project manager shall be made by the contracting authority within 180 days of such certificate or statement being delivered to the contracting authority. If the period laid down for payment has been exceeded, the contractor shall qualify for interest calculated pro rata on the basis of the number of days delay at the rate specified in the special conditions, subject to a maximum period, also specified therein. The contractor shall be entitled to such payment without prejudice to any other right or remedy under the contract. In the case of the final statement of account, the interest for the delayed payment shall be calculated on a daily basis at the rate specified in the special conditions.

**51.2.** Any default in payment of more than 120 days from the expiry of the period laid down in Article 52 (1) shall entitle the contractor either not to perform the contract or to terminate it.

### *Article 52*

#### **Claims for additional reimbursement**

**52.1.** If under the contract there are circumstances which the contractor considers entitle him to additional payment, the contractor shall:

(a) if he intends to make any claim for additional payment, give to the project manager notice of his intention or make such claim within 15 days after the said circumstances become known to the contractor, stating the reason for his claim; and

(b) as soon as is reasonably practicable after the date of such notice but not later than 60 days after such notice, unless otherwise agreed by the project manager, submit to the project manager full and detailed particulars of his claim. In any event, such particulars shall be submitted no later than the date of submission of the draft final statement of account. The contractor shall thereafter promptly submit such further particulars as the project manager may reasonably require to assess the validity of the claim.

**52.2.** When the project manager has received the full and detailed particulars of the contractor's claim that he requires, he shall, without prejudice to Article 21 (4), after due consultation with the contracting authority and, where appropriate, the contractor, determine whether the contractor is entitled to additional payment and notify the parties accordingly.

**52.3.** The project manager may reject any claim for additional payment which does not comply with the requirements of Article 51.

## ACCEPTANCE AND MAINTENANCE

### *Article 53* General clauses

**53.1.** Verification of the works by the project manager with a view to provisional or final acceptance shall take place in the presence of the contractor. The absence of the contractor shall not be a bar to verification on condition that the contractor has been summoned in due form at least 30 days prior to the date of verification.

**53.2.** Should exceptional circumstances make it impossible to ascertain the state of the works or otherwise proceed with their acceptance during the period fixed for provisional or final acceptance, a statement certifying such impossibility shall be drawn up by the project manager after consultation, where possible, with the contractor. The verification shall take place and a statement of acceptance or rejection shall be drawn up by the project manager within 30 days following the date on which such impossibility ceases to exist. The contractor shall not invoke these circumstances in order to avoid his obligation to present the works in a state suitable for acceptance.

### *Article 54* Tests on completion

**54.1.** The works shall not be accepted until the prescribed verifications and tests have been carried out at the expense of the contractor. The contractor shall notify the project manager of the date on which such verification and tests may commence.

**54.2.** Works which do not satisfy the terms and conditions of the contract, or in the absence of such terms and conditions, which are not carried out in accordance with trade practices in the State where the works are located, shall, if required, be demolished and rebuilt by the contractor or repaired to the satisfaction of the project manager, otherwise this shall be done as of right after due notice at the expense of the contractor, by order of the project manager. The project manager may also require the demolition and reconstruction by the contractor, or repair to the satisfaction of the project manager, under the same conditions of work, in which unacceptable materials have been used, or carried out in the periods of suspension provided for in Article 38.

### *Article 55* Partial acceptance

**55.1.** The contracting authority may make use of the various structures, parts of structures or sections of the works forming part of the contract as and when they are completed. Any taking over of the structures, parts of structures or sections of the works by the contracting authority shall be preceded by their partial provisional acceptance. However, works may in cases of urgency be taken over prior to acceptance provided an inventory of outstanding work is drawn up by the project manager and agreed to by the contractor and the project manager beforehand. Once the contracting authority has taken possession of a structure, a part thereof or section of the works, the contractor shall no longer be required to make good any damage resulting otherwise than from faulty construction or workmanship.

**55.2.** The project manager may, at the request of the contractor and if the nature of the works so permits, proceed with partial provisional acceptance, provided that the structures, parts of structures or sections of the works are completed and suited to the use as described in the contract.

**55.3.** In the cases of partial provisional acceptance referred to in Article 55 (1) and 55 (2) the



maintenance period provided for in Article 62 shall, unless the special conditions provide otherwise, run as from the date of such partial provisional acceptance.

### **Article 56**

#### **Provisional acceptance**

**56.1.** The works shall be taken over by the contracting authority when they have satisfactorily passed the tests on completion and a certificate of provisional acceptance has been issued or is deemed to have been issued.

**56.2.** The contractor may apply, by notice to the project manager, for a certificate of provisional acceptance not earlier than 15 days before the works, in the contractor's opinion, are complete and ready for provisional acceptance. The project manager shall within 30 days after the receipt of the contractor's application either:

(a) issue the certificate of provisional acceptance to the contractor with a copy to the contracting authority stating, where appropriate, his reservations, and, *inter alia*, the date on which, in his opinion, the works were completed in accordance with the contract and ready for provisional acceptance; or

(b) reject the application giving his reasons and specifying the action which, in his opinion is required of the contractor for the certificate to be issued.

**56.3.** If the project manager fails either to issue the certificate of provisional acceptance or to reject the contractor's application within the period of 30 days, he shall be deemed to have issued the certificate on the last day of that period. The certificate of provisional acceptance shall not be deemed to be an admission that the works have been completed in every respect. If the works are divided by the contract into sections, the contractor shall be entitled to apply for separate certificates for each of the sections;

**56.4.** Upon provisional acceptance of the works, the contractor shall dismantle and remove temporary structures as well as materials no longer required for use in connection with the performance of the contract. He shall also remove any litter or obstruction and redress any change in the condition of the site as required by the contract.

**56.5.** Immediately after provisional acceptance, the contracting authority may make use of all the works as completed.

### **Article 57**

#### **Maintenance obligations**

**57.1.** The contractor shall be responsible for making good any defect in or damage to, any part of the works which may appear or occur during the maintenance period or within 30 days after its expiration and which arises either from:

(a) the use of defective plant or materials or faulty workmanship or design of the contractor; and/or  
(b) any act or omission of the contractor during the maintenance period.

**57.2.** The contractor shall at his own cost make good the defect or damage as soon as practicable. The maintenance period for all items replaced or renewed shall recommence from the date when the replacement or renewal was made to the satisfaction of the project manager. If the contract provides for partial acceptance, the maintenance period shall be extended only for the part of the works affected by the replacement or renewal.

**57.3.** If any such defect appears or such damage occurs, during the period referred to in Article 57 (1), the contracting authority or the project manager shall notify the contractor. If the contractor fails to remedy a defect or damage within the time limit stipulated in the notification, the contracting authority may:

(a) carry out the works himself, or employ someone else to carry out the works, at the contractor's risk and cost, in which case the costs incurred by the contracting authority shall be deducted from monies due to or from guarantees held against, the contractor, or from both; or

(b) terminate the contract.

**57.4.** If the defect or damage is such that the contracting authority has been deprived substantially of the whole or a part of the benefit of the works, the contracting authority shall, without prejudice to any other remedy, be entitled to recover all sums paid in respect of the parts of the works concerned together with the cost of dismantling such parts and clearing the site.

**57.5.** In case of emergency, where the contractor cannot be reached immediately or, having been reached, is unable to take the measures required, the contracting authority or the project manager may have the work carried out at the expense of the contractor. The Contracting authority or the project manager shall as soon as practicable inform the contractor of the action taken,

**57.6.** Where the special conditions stipulate that the maintenance work, necessitated by normal wear and tear, shall be carried out by the contractor, such work shall be paid for from a provisional sum. Deterioration resulting from the circumstances provided for in Article 21 or from abnormal use shall be excluded from "this obligation unless it reveals a fault or defect justifying the request for repair or replacement under Article 67.

**57.7.** The maintenance obligations shall be stipulated in the special conditions and technical specifications. If the duration of the maintenance period is not specified, it shall be 365 days. The maintenance period shall commence on the date of provisional acceptance.

**57.8.** After provisional acceptance and without prejudice to the maintenance obligations referred to in Article 67, the contractor shall no longer be responsible for risks which may affect the works and which result from causes not attributable to him. However, the contractor shall be responsible as from the date of provisional acceptance for the soundness of the construction, as laid down in the special conditions or in the law of the State where the works are carried out.

### **Article 58** **Final Acceptance**

**58.1.** Upon the expiration of the maintenance period, or where there is more than one such period, upon the expiration of the latest period, and when all defects or damage have been rectified, the project manager shall issue to the contractor a final acceptance certificate and a copy thereof to the contracting authority stating the date on which the contractor completed his obligations under the contract to the project manager's satisfaction. The final acceptance certificate shall be given by the project manager within 30 days after the expiration of the above stated period, or as soon thereafter as any works as instructed, pursuant to Article 57, have been completed to the satisfaction of the project manager.

**58.2.** The works shall not be considered as completed until a final acceptance certificate shall have been signed by the project manager and delivered to the contracting authority, with a copy to the contractor.

**58.3.** Notwithstanding the issue of the final acceptance certificate, the contractor and the contracting authority shall remain liable for the fulfillment of any obligation incurred under the contract, prior to the issue of the final acceptance certificate, which remains unperformed at the time such final acceptance certificate is issued. The nature and extent of any such obligation shall be determined by reference to the provisions of the contract.

## **BREACH OF CONTRACT AND TERMINATION**

### **Article 59** **Breach of contract**

**59.1.** Either party commits a breach of contract where he fails to discharge any of his obligations under the contract.

**59.2.** Where a breach of contract occurs, the party injured by the breach shall be entitled to the "following remedies:

- (a) damages; and / or
- (b) termination of the contract.

**59.3.** Damages may be either:

- (a) general damages; or
- (b) liquidated damages.

**59.4.** In any case where the contracting authority is entitled to damages, he may deduct such damages from any sums due to the contractor or from the appropriate guarantee.

### ***Article 60***

#### **Termination by the contracting authority**

**60.1.** The contracting authority may, at any time and with immediate effect, terminate the contract, except as provided for under Article 60 (2).

**60.2.** Except as otherwise provided in these general conditions, the contracting authority may, after giving seven days' notice to the contractor, terminate the contract and expel the contractor from the site in any of the cases where:

- (a) the contractor fails to carry out the works substantially in accordance with the provisions of the contract;
- (b) the contractor fails to comply within a reasonable time with a notice given by the project manager requiring him to make good any neglect or failure to perform his obligations under the contract which seriously affects the proper and timely performance of the works;
- (c) the contractor refuses or neglects to carry out administrative orders given by the project manager;
- (d) the contractor assigns the contract or sub-contracts without the authorization of the contracting authority;
- (e) the contractor becomes bankrupt or insolvent, or has a receiving order made against him, or compounds with his creditors, or carries on business under a receiver, trustee or manager for the benefit of his creditors, or goes into liquidation;
- (f) any adverse final judgment is made in respect of an offence relating to the professional conduct of the contractor;
- (g) any other legal disability hindering performance of the contract occurs;
- (h) any organizational modification occurs involving a change in the legal personality, nature or control of the contractor, unless such modification is recorded in an endorsement to the contract;
- (i) the contractor fails to provide the required guarantee or insurance, or if the person providing the earlier guarantee or insurance is not able to abide by his commitments.

**60.3.** Termination shall be without prejudice to any other rights or powers under the contract of the contracting authority and the contractor. The contracting authority may, thereafter, complete the works himself or conclude any other contract with a third party for the account of the contractor. The contractor's liability for delay in completion shall immediately cease when the contracting authority expels him from the site without prejudice to any liability thereunder that may have already occurred.

**60.4.** The project manager shall, upon the issue of the notice of termination of the contract, instruct the contractor to take immediate steps to bring the works to a close in a prompt and orderly manner and to reduce expenditure to a minimum.

**60.5.** The project manager shall, as soon as is possible after termination, certify the value of the works and all sums due to the contractor as at the date of termination.

(a) a report of work performed by the contractor shall be drawn up by the project manager as soon as possible after inspection of the works, and inventory taken of temporary structures, materials, plant and equipment. The contractor shall be summoned to be present during the inspection and the taking of the inventory. The project manager shall also draw up statements of emoluments still owed by the contractor to workers employed by him in relation to the contract and of sums owed by the contractor to the contracting authority;

(b) the contracting authority shall have the option of acquiring in whole or in part temporary structures which have been approved by the project manager, plant and materials specifically supplied or manufactured in connection with the execution of work under the contract;

(c) the purchase price of the temporary structures, equipment, plant and materials referred to above shall not exceed the unpaid portion of the expenditure incurred by the contractor, such expenditure being limited to that required for the performance of the contract under normal conditions;

(d) the contracting authority may purchase, at market prices, the materials and items supplied or ordered by the contractor and not already paid for by the contracting authority on such conditions as the project manager considers appropriate.

**60.7.** The contracting authority shall not be obliged to make any further payments to the contractor until the works are completed, whereupon the contracting authority shall be entitled to recover from the contractor the extra costs, if any, of completing the works, or pay any balance due to the contractor prior to the termination of the contract.

**60.8.** If the contracting authority terminates the contract, it shall be entitled to recover from the contractor any loss it has suffered up to the maximum amount stated in the contract. If no maximum amount is stated, the contracting authority shall not be entitled to recover more than the part of the contract price corresponding to the value of that part of the works which cannot, by reason of the contractor's failure, be put to the intended use.

**60.9.** Where the termination is not due to an act or omission of the contractor, the latter shall be entitled to claim in addition to sums owing to him for work already performed, an indemnity for loss suffered.

### *Article 61*

#### **Termination by the contractor**

**61.1.** The contractor may, after giving 14 days -notice to the contracting authority, terminate the contract if the contracting authority:

(a) fails to pay the contractor the amounts due under any certificate issued by the project manager after the expiry of the time limit stated in Article 51 (2); or

(b) consistently fails to meet his obligations after repeated reminders; or

(c) suspends the progress of the works or any part thereof for more than 180 days, for reasons not specified in the contract, or not due to the contractor's default.

**61.2.** Such termination shall be without prejudice to any other rights of the contracting authority or the contractor under the contract. Upon such termination, the contractor shall, subject to the law of the State of the contracting authority be entitled to immediately remove his equipment from the site.

**61.3.** In the event of such termination, the contracting authority shall pay the contractor for any SPC Headquarters: Noumea, New Caledonia. Regional offices: Suva, Fiji, and Pohnpei, Federated States of Micronesia. Country office: Honiara, Solomon Islands.

loss or damage the contractor may have suffered. Such additional payment shall not exceed a limit which has to be specified in the contract.

## **Article 62** **Force majeure**

**62.1.** Neither party shall be considered to be in default or in breach of his obligations under the \_ contract if the performance of such obligations is prevented by any circumstances of *force majeure* which arises after the date of notification of award or the date when the contract becomes effective, whichever is the earlier.

**62.2.** The term *force majeure*, as used herein shall mean acts of God, strikes, lock-outs or other industrial disturbances, acts of the public enemy, wars whether declared or not, blockades, insurrection, riots, epidemics, landslides, earthquakes, storms, lightning, floods, washouts, civil disturbances, explosions, and any other similar unforeseeable events, not within the control of either party and which by the exercise of due diligence neither party is able to overcome.

**62.3.** Notwithstanding the provisions of Articles 36 and 60, the contractor shall not be liable to forfeiture of his performance guarantee, liquidated damages or termination for default if, and to the extent that, his delay in performance or other failure to perform his obligations under the contract is the result of an event of *force majeure*. The contracting authority shall similarly not be liable, notwithstanding the provisions of Articles 51 and 61, to payment of interest on delayed payments, for non-performance or for termination by the contractor for default, if, and to the extent that, the contracting authority's delay or other failure to perform its obligations is the result of *force majeure*.

**62.4.** If either party considers that any circumstances of *force majeure* have occurred which may affect performance of his obligations, he shall promptly notify the other party and the project manager, giving details of the nature, the probable duration and the likely effect of the circumstances. Unless otherwise directed by the project manager in writing, the contractor shall continue to perform his obligations under the contract as far as is reasonably practicable, and shall seek all reasonable alternative means for performance of his obligations which are not prevented by the *force majeure* event. The contractor shall not put into effect such alternative-means unless directed so to do by the project manager.

**62.5.** If the contractor incurs additional costs in complying with the project manager's directions or using alternative means under Article 62 (4), the amount thereof shall be certified by the project manager.

**62.6.** If circumstances of *force majeure* have occurred and Continue for a period of 30 days then, notwithstanding any extension of time for completion of the works that the contractor may be reason thereof have been granted, either party shall be entitled to serve upon the other 30 days' notice to terminate the contract. If, at the expiry of the period of 30 days, *force majeure* still continues, the contract shall terminate and, in consequence thereof under the law governing the contract, the parties shall be released from further performance of the contract.

## **Article 63** **Decease**

**63.1.** Where the contractor is a natural person, the contract shall be automatically terminated if that person dies. However, the contracting authority shall examine any proposal made by the heirs or beneficiaries if they have notified their wish to continue the contract. The decision of the contracting authority shall be notified to those concerned within 30 days of receipt of such proposal.

**63.2.** Where the contractor consists of natural persons and one or more of them die, a report shall be agreed between the parties on the progress of the works and the contracting authority shall decide whether to terminate or continue the contract in accordance with the undertaking given by the survivors and by the heirs or beneficiaries, as the case may be.

**63.3.** In the cases provided for in Article 63 (1) and 63 (2), persons offering to continue to perform the contract shall notify the contracting authority thereof within 15 days of the date of decease.

**63.4.** Such persons shall be jointly and severally liable, or as otherwise stated in the special conditions, for the proper performance of the contract to the same extent as the deceased contractor. Continuation of the contract shall be subject to the rules relating to establishment of the guarantee provided for in Article 15.

#### *Article 64*

##### **Settlement of disputes**

64.1 The Parties will use their best efforts to settle amicably any dispute, controversy or claim arising out of, or relating to this contract or the breach, termination or invalidity thereof.

64.2 If a dispute is not settled within sixty days of one Party notifying the other of a request for amicable settlement, the dispute can be referred by either Party to arbitration in accordance with the general principles of international law. The arbitration will be governed by the Arbitration Rules of the United Nations Commission on International Trade Law (UNCITRAL) as at present in force. The arbitral tribunal shall have no authority to award punitive damages. The Parties shall be bound by any arbitration award rendered as a result of such arbitration as the final adjudication of any such controversy, claim or dispute.

#### *Article 65*

##### **Privileges and immunities**

Nothing in or relating to this contract shall be deemed a waiver, express or implied, of any of the privileges and immunities of SPC.