

REQUEST FOR PROPOSAL

RFP No.: RFP19/053
DATE: 19th July, 2019

SUBJECT: Technical Assistance to strengthen the capacity of the Tonga Electricity Commission in promoting private sector investments in Tonga's Power Sector

You are requested to submit a proposal to carry out specific tasks as outlined in the Terms of Reference (Annex II).

To enable you to submit a Proposal, please find enclosed:

- Annex I: Instructions to bidders
- Annex II: Terms of Reference, containing a description of SPC's requirements for which these services are being sought
- Annex III: Proposal Submission Form
- Annex IV: Technical Proposal Submission Form
- Annex V: Financial Proposal Submission Form
- Annex VI: SPC General Terms and Conditions for Contract for Professional Services

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 Grants Risk & Assets

ANNEX I
INSTRUCTIONS TO BIDDERS
Request for Proposal (RFP): RFP 19/053
Technical Assistance to strengthen the capacity of the Tonga Electricity Commission in promoting private sector investments in Tonga's Power Sector

1. Submission of Proposals

1.1. Your proposal shall comprise the following documents:

- a) Annex III: Proposal Submission Form
- b) Annex IV: Technical Proposal submission form and any relevant supporting documents
- c) Annex V: Financial Proposal submission form

1.2. Proposals must be received by the Pacific Community (SPC) at the address mentioned below on or before **16th August, 2019 no later than 12.00 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 and publication on SPC website. 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. 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 an evaluation purposes. All proposals should be in Word or pdf format. Please note that the maximum size attachments SPC can receive is 10Mb.

1.4. All prices in the proposals should be presented in priority in EURO's and inclusive of all taxes.

1.5. The proposal has to be in two separate sealed envelopes as follows:

- a) Part A (Envelope 1) should contain the Proposal Submission Form, Technical Proposal Form.
- b) Part B (Envelope 2) should contain the Financial Proposal Submission Form.

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

- c) The electronic submission procedures shall be:
 - i) Send in a first e-mail the technical proposal and related document(s), clearly indicating the RFP number in the email subject;

- ii Send in a second e-mail the financial proposal and related document(s). 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.
- 1.6. Proposals should be emailed to procurement@spc.int with the heading “RFP 19/053 Technical Assistance to strengthen the capacity of the Tonga Electricity Commission in promoting private sector investments in Tonga’s Power Sector” or sent by courier to:
- Pacific Community (SPC)
Procurement Unit – RFP 19/053
Private Mail Bag
Suva – FIJI
- 1.7 Any proposal received by the SPC after the deadline for submission of proposals, will be rejected.
- 1.8 Bidders must insist on an acknowledgment receipt for Proposals delivered to the Request for Proposal Box.
- 1.9 Request for proposal 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 (Fiji time)
Deadline for seeking clarification from SPC	2 nd August 2019	4:00pm
Deadline for SPC response to clarifications and posting on SPC website	6 th August 2019	
Deadline for the submission of proposals	16 th August 2019	12:00pm
Bids opening session	19 th August 2019	TBC
Notification of award to the successful bidder	September 2019	

3. Bidders’ 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 documents or to submit a bid substantially responsive to the bidding documents 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 cost 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 on 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 procedures 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 organizational status.
- 3.6. The bidder might be requested to provide additional information relating to their submitted proposal, if the Procurement Committee requests further information.
- 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 tender in writing to the following email address procurement@spc.int. The deadline for submission of clarifications is 2nd August, 2019.
 - 3.7.2 Any prospective tenderers seeking to arrange individual meetings with SPC during the tender period may be excluded from the tender procedure.
 - 3.7.3 No clarification meeting / site visit planned.

4. One Proposal per Bidder

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. Withdrawals of Proposals

- 5.1. The bidder may withdraw its Proposal after the submission, provided that written notice of the withdrawal is received by 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.
- 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 Evaluation Committee after the closing of the RFP.
- 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 Evaluation 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.
- 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. The table 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 (summary):

	CRITERIA	% Weighting	Points Attainable
1.	<ul style="list-style-type: none"> Minimum of a Master degree in economics, financial management or a related subject 	20%	140
2.	<ul style="list-style-type: none"> At least 15 years in utility (electricity) regulations, power tariff reviews and analysis in the SIDS or other developing countries. 	30%	210
3.	<ul style="list-style-type: none"> Experience in programme formulation especially in project planning, budgeting, monitoring and evaluation 	10%	70
4.	<ul style="list-style-type: none"> Wider (international) experience on IPP's and PPA's. 	10%	70
5.	<ul style="list-style-type: none"> Excellent leadership, analytical and evaluation skills, sound judgement, coordination, communication and facilitation skills are essential. 	15%	105
6.	<ul style="list-style-type: none"> Demonstrate commitment to work and experience in working in a multicultural environment, high level inter and intra-personal and communication skills. 	10%	70
7.	<ul style="list-style-type: none"> Excellent verbal and written skills in English. 	5%	35
	Total	100%	700
	Qualification/Minimum Score	70%	490

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 for fare quotes will be awarded maximum 200 points and other financial offers and incentives will be awarded 100 points. The formula used for scoring points for financial values and fare quotes 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 have satisfied themselves, before submitting their tender and to its correctness and completeness, taking into account of 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 unit 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 Consultancy, 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 to the proposal which is considered to be most responsive to SPC's technical specifications of energy efficient appliances as detailed in the Scope and Technical Specifications with due consideration to SPC Procurement and Supply Chain Management Guidelines which includes the general principal 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.

9.5. The SPC general conditions of contract (Annex VI) is not negotiable.

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, you can email complaints@spc.int with your allegations. Your protest will need to include:

- your full contact details
- the details of the relevant procurement
- the reasons for your protest, including how the alleged behavior negatively impacted on your bid
- copies of any documents supporting your grounds for protest
- the relief that is sought.

10.3 Your protest will be recorded and will be acknowledged promptly. You 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 your protest.

10.4 Your protest will be received in good faith and will not impact your involvement in future bids.

ANNEX II
TERMS OF REFERENCE

Technical Assistance to Strengthen the capacity of the TEC in Promoting Private Sector Investments
in Tonga's Power Sector
RFP 19/

A. Background

The Tonga Electricity Commission (TEC) with support from the Pacific Centre for Renewable Energy and Energy Efficiency (PCREEE) intends to tender for technical assistance to support its forthcoming Regulatory Reset in July 2020 as per the Electricity Concession Contract (ECC).

The PCREEE is part of the Pacific Community and was established in 2017 to assist Pacific Island Countries and Territories with their ambitious energy targets to scale-up sustainable energy investments and promote low carbon development initiatives.

The TEC was established in July 2008 by the Electricity Act 2007 and their principal functions are described in Section 4 of the Act, namely to:

- a. Develop and recommend regulations establishing standards for Electrical Safety
- b. License Electrician
- c. Develop and recommend regulations establishing requirements for major Electrical Works, including maintenance or protection for submarine cables
- d. carrying out all activities required under any concession contract;
- e. Take any Enforcement Action required;
- f. developing and recommending regulations establishing powers for a concessionaire (in addition to those set out in the concession contract or undertaking any work pursuant to a concession contract);

Function a-c above comprises the Public Safety role of the Regulator and d-f are the Economic Regulation oversight functions of the Regulator. These functions include the regulation of tariffs, establishing consumer service standards, managing electrical safety, as well as the licensing of electricians, and creation of regulations for major electrical works.

Tonga Power Limited (TPL) is a 100% state-owned enterprise providing reliable, safe and affordable electricity as its core service around Tonga and it operates under a strict regulatory framework through an ECC in which tariffs, operational efficiency benchmarks, consumer service standards and penalties are regulated by the TEC.

TPL has its own Company Constitution and also operates under the Public Enterprises Act 2010 which provides greater commercialization incentives for state-owned corporate entities. TPL is entrusted with enforcing the Electricity Act. TPL has been established with an independent Board of Directors drawn from the commercial sector of Tonga, appointed by Government.

Background

The 1st ECC signed between the TEC and TPL was in 2008. On 1st September 2015, the 2nd ECC was signed. This ECC has a 5 yearly reset process for updating the agreed baselines for the calculation of the power tariff in Tonga.

The 2015 Reset provided the TEC with the opportunity to promote and modify the Regulatory Instrument to replace the said 2008 ECC, one which better reflects the realities of the 2015 Energy Market in Tonga. It takes into account the Kingdom of Tonga's recently declared policy to maximise the use of renewable energy sources with implementation targets of 50% and 100% set for dates in the not-too-distant future.

This TA seeks to assist the TEC with analyzed and verified data and information to support its positions on the Reset Process. It seeks to thoroughly review the ECC before the Reset Process start in December 2019. According to the ECC the Regulatory Period is up until 1st July 2020.

The TA will be based on a part-time basis at the Tonga Electricity Commission. He/She will report directly to the SPC as the hiring entity while maintaining close contact with the TEC. The TEC will work in close coordination with the PCREEE and the TA and will be responsible for ensuring that the project is implemented in accordance with the work plan, timeframe and budget to achieve the objectives outlined in the scope of work.

Objective

The objective of the TA is to strengthen the capacity of the TEC in negotiating and setting the tariff parameters and baselines for the power tariff in Tonga and in effect promote investments in renewable energy and energy efficiency while maintaining affordability, safety and reliability.

The TA will have the following to be reviewed and carefully determined in collaboration with TEC for the forthcoming Regulatory Reset in July 2020:

- the fuel and non-fuel component of the Regulated Tariff;
- the adjustment formula for the non-fuel component of the Regulated Tariff, including indexation factors;

- the adjustment formula for the fuel component of the Regulated Tariff, including the fuel type and mix of generation to be used in the adjustment formula for fuel price and for setting the Fuel Efficiency Rate targets in the Efficiency Standards;
- the Efficiency Standards used in the fuel cost adjustment formula;
- the Service Standards, Metering Reporting Standards and any other reporting standards, and any penalties for breach thereof;
- the Capital Expenditure Maxima for the next Regulatory Period;
- the duration of the next Regulatory Period;
- whether the Tariff Period should be changed (by lengthening or shortening the period) for the next Regulatory Period.

In addition to the above, the TA will also assess:

- a. the current need for regulations relating to establishing standards for Electrical Safety
- b. the process and policies regarding the Licensing of Electricians
- c. the current need for regulations establishing requirements for major Electrical Works, including maintenance and protection for submarine cables

B. Scope of Work

The TA will carry out the following tasks (list is not exhaustive) as agreed to with the TEC and approved by SPC as the hiring entity:

Review

- Conduct a thorough review the whole of the ECC Document paying particular attention to the completeness of the document, in accordance with best practices in the regulation industry.
- Review of the existing tariff design for thermal generation, transmission and renewable energy generation taking into account the current market scenario including the renewable energy generation
- Review of the existing approach of return on investment taking into account domestic market
- Review of the existing approach for allowing depreciation on electricity producing assets and adequate compensation for the production and sell of electricity

Assess

- Assess each component of the tariff parameters and whether their basis are still practical and are in accordance with Laws and Regulations in Tonga as well as best practices in the industry.
- Assess the existing and need for standards on electrical safety

- Assess the process and policies regarding licensing of electricians

Recommendations

- Based on the review and assessments conducted and based on actual data and experiences over the concession contract period recommend, with justifications, modifications to the tariff parameters, standards on electrical safety and the licensing of electricians.

Capacity Building

- Capacity Building will be a key part of the TA with the expectation that staff of the TEC and PCREEE will actually get hands on experiences on the data collection, analysis and interpretations under the guidance of the TA. The TA is also expected to conduct at least 3 half-day workshops and updates to the Commission, PCREEE as well as to other key players in Tonga's energy sector.

C. Expected Outputs

The key outputs for this TA include the following:

- An inception report based on a desk study of the situation and outlining the actual activities to be conducted under this TA plus the report structure
- A draft TA report with the results of the analysis and recommendations
- A final report that incorporates comments from the TEC, SPC and related stakeholders
- A report on the training activities conducted as part of this TA

D. Institutional Arrangement

The contractor will report directly to the Manager PCREEE as the contract supervisor. However, the contractor is expected to liaise regularly during the course of this assignment with the Chief Executive Officer (CEO) and the staff of the Tonga Electricity Commission. Other key stakeholders will be consulted during the assignment period as and when required.

E. Duration of work

The entire consultancy shall be for 60 days commencing September 2019 and must be completed no later than 29 November 2019

F. Duty Station (if relevant)

- The Consultant is expected to do most of the work remotely but shall be in country for a maximum of 15 days for face-to-face meetings and trainings. There shall be at least two trips to the country, one preferably at the start of the assignment and the other towards to the end of the assignment to present the full findings and recommendations.

G. Qualifications of the Successful Contractor

	CRITERIA	% Weighting	Points Attainable
1.	<ul style="list-style-type: none">• Minimum of a Master degree in economics, financial management or a related subject	20%	140
2.	<ul style="list-style-type: none">• At least 15 years in utility (electricity) regulations, power tariff reviews and analysis in the SIDS or other developing countries.	30%	210
3.	<ul style="list-style-type: none">• Experience in programme formulation especially in project planning, budgeting, monitoring and evaluation	10%	70
4.	<ul style="list-style-type: none">• Wider (international) experience on IPP's and PPA's.	10%	70
5.	<ul style="list-style-type: none">• Excellent leadership, analytical and evaluation skills, sound judgement, coordination, communication and facilitation skills are essential.	15%	105
6.	<ul style="list-style-type: none">• Demonstrate commitment to work and experience in working in a multicultural environment, high level inter and intra-personal and communication skills.	10%	70
7.	<ul style="list-style-type: none">• Excellent verbal and written skills in English.	5%	35
	Total	100%	700
	Qualification/Minimum Score	70%	490

H. Scope of Bid Price and Schedule of Payments

Key Deliverables	<u>Duration</u>	<u>Percentage of payment</u>
An inception report accepted by SPC and TEC based on a desk study of the situation and outlining the actual activities to be conducted under this TA plus the draft report structure	2 weeks after signature on contract by both parties.	20%
A draft TA report with the results of the analysis and recommendations	3 weeks after signature on contract by both parties.	40%
A final report accepted by SPC and TEC that incorporates comments from all key stakeholders	2 weeks after signature on contract by both parties.	20%
A report accepted by SPC and TEC on the training activities conducted as part of this TA	1 week after signature on contract by both parties.	20%

ANNEX III
PROPOSAL SUBMISSION FORM
Request for Proposal (RFP) no: 19/053

To: The RFP Committee
The Pacific Community
Procurement Unit
Private Mail Bag, Suva – FIJI
Email: procurement@spc.int

Dear Sir /Madam:

Having examined the Solicitation Documents, the receipt of which is hereby duly acknowledged, we the undersigned, offer to supply the required services for the sum as may be 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 lodgment 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;
- Excepted 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.
- The SPC general conditions of contract are not negotiable.

We undertake, if our proposal is accepted, to commence and complete delivery of all items in the contract within the time frame stipulated. 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.

Company Name

Dated this _____ day of _____ 20__.

.....

Position of Representative

.....

Name of Representative

.....

Signature of Representative

.....

Annex IV
TECHNICAL PROPOSAL SUBMISSION FORM
Request for Proposal (RFP): RFP 19/053

PART A – Background

CRITERIA	RESPONSE BY BIDDER
Name:	
Physical Address:	
Postal Address:	
Telephone Contact:	
Email:	
Two contacts of referees /references. Attach additional details as applicable.	

PART B – Qualifications

CRITERIA	RESPONSE BY BIDDER
Minimum of a Master degree in economics, financial management or a related subject (this will be evaluated through the CV's of nominated personnel)	

PART C – Knowledge / Experience

CRITERIA	RESPONSE BY BIDDER
At least 15 years in utility (electricity) regulations, power tariff reviews and analysis in the SIDS or other developing countries.	

Experience in programme formulation especially in project planning, budgeting, monitoring and evaluation	
Wider (international) experience on IPP's and PPA's.	
Excellent leadership, analytical and evaluation skills, sound judgement, coordination, communication and facilitation skills are essential.	
Demonstrate commitment to work and experience in working in a multicultural environment, high level inter and intra-personal and communication skills.	
Excellent verbal and written skills in English.	

ANNEX V
FINANCIAL PROPOSAL SUBMISSION FORM
Request for Proposal (RFP): RFP 19/053

Part A: Declaration

1. The undersigned contractor propose and agrees if this proposal is accepted, to enter into an agreement with the Owner, to commence and to complete all the work specified or indicated in the contract documents.
2. In submitting this proposal, contractor represents that; he/she has examined all the RFP documents to provide professional services to complete Technical Assistance to strengthen the capacity of the Tonga Electricity Commission in promoting private sector investments in Tonga's Power Sector
3. Contractors agree to complete the services for the following price (VIP) per month:

Particulars	Amount (EURO)
Fees (daily rate or per month)	
Travel related costs (if any)	
Costs stipulated in country of Consultancy	
Any other costs	
Total financial offer (inclusive of all taxes)	

Print name and sign

Date

Title _____

SPC GENERAL CONDITIONS OF CONTRACT FOR PROFESSIONAL SERVICES

Request for Proposal (RFP): RFP 19/053

1. LEGAL STATUS

The Contractor has the legal status of an independent contractor. The Contractor's personnel and sub-contractors are not to be considered in any respect employees or agents of SPC.

2. SOURCE OF INSTRUCTIONS

The Contractor will only accept instructions from SPC in the performance of this contract. The Contractor will refrain from any action that may adversely affect SPC and will fulfil its commitments with the fullest regard to the interests of SPC.

3. CONTRACTOR'S RESPONSIBILITY FOR EMPLOYEES

The Contractor shall be responsible for the professional and technical competence of its employees and will select, for work under this contract, reliable individuals who will perform effectively in the implementation of this Contract, respect the local customs, and conform to a high standard of moral and ethical conduct.

The contractor shall not discriminate against any person because of race, medical condition, religious creed, ancestry, national origin, age, sex or handicap.

4. SPECIFIED PERSONNEL

The Contractor must ensure that the services are performed in accordance with this contract. Where personnel have been specified, they must provide those services. SPC may remove any personnel (including Specified Personnel) from work in respect of this Contract. If it does so, or if Specified Personnel are unable or unwilling to perform the contract, the Contractor will provide replacement personnel (acceptable to SPC) of suitable ability and qualifications at no additional cost and at the earliest opportunity.

5. ASSIGNMENT

The Contractor may not assign, transfer, pledge or make other disposition of this

Contract or any part thereof, or any of the Contractor's rights, claims or obligations under this Contract except with the prior written consent of SPC.

6. SUB-CONTRACTING

In the event the Contractor requires the services of sub-contractors, the Contractor shall obtain the prior written approval and clearance of SPC for all sub-contractors. The approval of SPC of a sub-contractor shall not relieve the Contractor of any of its obligations under this Contract. The terms of any sub-contract shall be subject to and conform with the provisions of this Contract.

7. OFFICIALS NOT TO BENEFIT

The Contractor warrants that no official of SPC has received or will be offered by the Contractor any direct or indirect benefit arising from this Contract or the award thereof. The Contractor agrees that breach of this provision is a breach of an essential term of this Contract.

8. INDEMNIFICATION

The Contractor shall indemnify, hold and save harmless, and defend, at its own expense, SPC, its officials, agents, servants and employees from and against all suits, claims, demands, and liability of any nature or kind, including their costs and expenses, arising out of acts or omissions of the Contractor, or the Contractor's employees, officers, agents or sub-contractors, in the performance of this Contract. This provision shall extend, inter alia, to claims and liability in the nature of workmen's compensation, products liability and liability arising out of the use of patented inventions or devices, copyrighted material or other intellectual property by the Contractor, its employees, officers, agents, servants or sub-contractors. The obligations under this Article do not lapse upon termination of this Contract.

9. INSURANCE AND LIABILITIES TO THIRD PARTIES

9.1 The Contractor will hold insurance against all risks in respect of its employees, sub-contractors, property and equipment used for the execution of this Contract, including appropriate worker's compensation for personal injury or death.

9.2 The Contractor will also hold liability insurance in an adequate amount to cover third party claims for any claims arising from or in connection with the provision of services under this contract.

9.3 The Contractor shall, upon request, provide SPC with satisfactory evidence of insurance cover as required under this Article.

10. ENCUMBRANCES/LIENS

The Contractor shall not cause or permit any lien, attachment or other encumbrance by any person to be placed on file or to remain on file in any public office or on file with SPC against any monies due or to become due for any work done or materials furnished under this Contract, or by reason of any other claim or demand against the Contractor.

11. TITLE TO EQUIPMENT

Title to any equipment and supplies that may be provided by SPC rests with SPC. Such equipment shall be returned to SPC at the conclusion of this Contract or when no longer needed by the Contractor. On return, the equipment shall be in the same condition as when delivered to the Contractor, subject to normal wear and tear. The Contractor shall be liable to compensate SPC for equipment determined to be damaged or degraded beyond normal wear and tear.

12. COPYRIGHT, PATENTS AND OTHER PROPRIETARY RIGHTS

SPC is entitled to all intellectual property and other proprietary rights including but not limited to patents, copyrights, and trademarks, with regard to products, or documents and other materials which bear a direct relation to or are produced or prepared or collected in consequence of or in the course of the execution of this Contract. At SPC's request, the Contractor shall take all necessary steps, execute all necessary documents and generally assist in securing such proprietary rights and

transferring them to SPC in compliance with the requirements of the applicable law.

13. USE OF NAME, EMBLEM OR OFFICIAL SEAL OF SPC

The Contractor shall not advertise or otherwise make public the fact that it is a Contractor with SPC, nor shall the Contractor, in any manner whatsoever use the name, emblem or official seal of SPC, or any abbreviation of the name of SPC in connection with its business or otherwise.

14. CONFIDENTIAL NATURE OF DOCUMENTS AND INFORMATION

14.1 All maps, drawings, photographs, mosaics, plans, reports, recommendations, estimates, documents and all other data compiled by or received by the Contractor under this Contract shall be the property of SPC, shall be treated as confidential and shall be delivered only to SPC authorised officials on completion of work under this Contract.

14.2 The Contractor may not communicate at any time to any other person, Government or authority external to SPC, any information known to it by reason of its association with SPC which has not been made public except with the authorisation of SPC; nor shall the Contractor at any time use such information to private advantage. These obligations do not lapse upon termination of this Contract.

15. FORCE MAJEURE AND OTHER CHANGES IN CONDITIONS

15.1 Force majeure, as used in this Article, means acts of God, war (whether declared or not), invasion, revolution, insurrection, or other acts of a similar nature or force which are beyond the control of the Parties.

15.2 In the event of and as soon as possible after the occurrence of any cause constituting force majeure, the Contractor shall give notice and full particulars in writing to SPC, of such occurrence or change if the Contractor is thereby rendered unable, wholly or in part, to perform its obligations and meet its responsibilities under this Contract. The Contractor shall also notify SPC of any other changes in conditions or the occurrence of any event which interferes or threatens to

interfere with its performance of this Contract. The notice shall include steps proposed by the Contractor to be taken, including any reasonable alternative means for performance that is not prevented by force majeure. On receipt of the notice required under this Article, SPC shall take such action as, in its sole discretion, it considers to be appropriate or necessary in the circumstances, including the granting to the Contractor of a reasonable extension of time in which to perform its obligations under this Contract.

15.3 If the Contractor is rendered permanently unable, wholly or in part, by reason of force majeure to perform its obligations and meet its responsibilities under this Contract, SPC shall have the right to suspend or terminate this Contract on the same terms and conditions as are provided for in Article 16, "Termination", except that the period of notice shall be seven (7) days instead of thirty (30) days.

16. TERMINATION

16.1 Either party may terminate this contract for cause, in whole or in part, with thirty days' written notice to the other party. The initiation of arbitral proceedings in accordance with Article 17 "Settlement of Disputes" below shall not be deemed a termination of this Contract.

16.2 SPC reserves the right to terminate without cause this Contract, at any time with fifteen days written notice to the Contractor, in which case SPC shall reimburse the Contractor for all reasonable costs incurred by the Contractor prior to receipt of the notice of termination.

16.3 In the event of any termination by SPC under this Article, no payment shall be due from SPC to the Contractor except for work and services satisfactorily performed in conformity with the express terms of this Contract. The Contractor shall take immediate steps to terminate the work and services in a prompt and orderly manner and to minimise losses and further expenditure.

16.4 Should the Contractor be adjudged bankrupt, or be liquidated or become insolvent, or should the Contractor make an assignment for the benefit of its creditors, or

should a receiver be appointed on account of the insolvency of the Contractor, SPC may, without prejudice to any other right or remedy it may have, terminate this Contract forthwith. The Contractor shall immediately inform SPC of the occurrence of any of the above events.

17. SETTLEMENT OF DISPUTES

17.1 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.

17.2 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.

18. 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, including its subsidiary organs.

19. TAX EXEMPTION

19.1 Under the 'Host Country Agreement' with the Country hosting SPC Offices, SPC, being an International Organisation, is exempt from all direct taxes, except charges for public utility services, and is exempt from customs duties and charges of a similar nature in respect of articles imported or exported for its official use. In the event any governmental authority refuses to recognise SPC's exemption from such taxes, duties or charges, the Contractor shall immediately consult with SPC to determine a mutually acceptable procedure.

19.2 Accordingly, the Contractor authorises SPC to deduct from the Contractor's invoice any amount representing such taxes, duties or

charges, unless the Contractor has consulted with SPC before the payment thereof and SPC has, in each instance, specifically authorised the Contractor to pay such taxes, duties or charges under protest. In that event, the Contractor shall provide SPC with written evidence that payment of such taxes, duties or charges has been made and appropriately authorised.

20. CHILD LABOUR

20.1 The Contractor represents and warrants that neither it, nor any of its suppliers is engaged in any practice inconsistent with the rights set forth in the Convention on the Rights of the Child, including Article 32 thereof, which, inter alia, requires that a child shall be protected from performing any work that is likely to be hazardous or to interfere with the child's education, or to be harmful to the child's health or physical mental, spiritual, moral or social development.

20.2 Any breach of this representation and warranty shall entitle SPC to terminate this Contract immediately upon notice to the Contractor, at no cost to SPC.

21. HUMAN RIGHTS

21.1 The Contractor recognises, respects and upholds the human rights of every individual, being a minimum those protected by the Universal Declaration of Human Rights. The Contractor will actively seek to ensure they are not complicit in human rights abuses committed by others.

21.2 The Contractor is committed to respecting, and acting in a manner which avoids infringing on, human rights. In this regard the Contractor acknowledges the Guiding Principles on Business and Human Rights: Implementing the United Nations 'Protect Respect and Remedy' framework (2011).

21.3 To meet these commitments, the Contractor will not accept modern slavery, forced labour and human trafficking in his supply chain.

21.4 Any breach of this representation and warranty shall entitle SPC to terminate this Contract immediately upon notice to the Contractor, at no cost to SPC.

22. OBSERVANCE OF THE LAW

The Contractor must comply with all laws, ordinances, rules, and regulations bearing upon the performance of its obligations under the terms of this Contract.

23. AUTHORITY TO MODIFY

No modification or change, nor waiver of any of this contract's provisions will be valid and enforceable against SPC unless provided by an amendment to this contract signed by the authorised official of SPC.

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Community**

**Communauté
du Pacifique**

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