**Request f or Tender**

**Takuvaine Stream Rock Gabion Walls Project**

**Contract No. C16-06**

**Date of Release: 01/09/2016**

**ID: 161711**

INFRASTRUCTURE COOK ISLANDS

 

**All queries regarding this Request for Tender should be directed to:**

**Contact Officer:** [solomona.solomona@cookislands.gov.ck](mailto:solomona.solomona@cookislands.gov.ck)

**TENDER CLOSING TIME: 3:00 pm (CI Time) Friday 16th September 2016**

Tender Documents Page i

**Document Acceptance**

|  |  |  |  |
| --- | --- | --- | --- |
| **Action** | **Name** | **Signed** | **Date** |
| Documents checked | Tenga Mana, Civil Engineer |  |  |
| Documents checked | Joanne Rose, Chartered Accountant |  |  |
| Documents checked | Catherine Evans, Crown Law Office |  |  |
| Documents checked | Secretariat, Tender Committee |  |  |
| Approved for issue | Ngametua Pokino,  Secretary, ICI |  |  |

**Glossary and Definitions**

|  |  |
| --- | --- |
| **Term** | **Explanation** |
| RFT | Request for Tender |
| Tender Team | The team that is responsible for the management of this Tender, including the evaluation and administrative functions |
| Tender Evaluation Team (TET) | The group of people within the Tender Team that will evaluate this  Tender |
| Principal | Secretary, Infrastructure Cook Islands |
| ICI | Infrastructure Cook Islands |
| MFEM | Ministry of Finance and Economic Management |
| Manual | The Cook Islands Government Financial Policies and Procedures manual |
| Designated Site | Takuvaine Stream, Avarua, Rarotonga. |
| Product (Materials) | Gabion Baskets, Infill Rocks, Backfill Materials, Filter Cloth |
| Services | Contract Works |
| ;8  Project Engineer | Tenga Mana  Responsible for the administration and overseeing Engineering aspects of the project. |
| Project Manager | Mac Mokoroa  Responsible for the day to day management of the project. |
| Engineers Representative | Patrick Tangapiri  Appointed by the Project Engineer and responsible to supervise the project works. |

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**Introduction**

**Summary of Requirement**

1. Through this RFT, Infrastructure Cook Islands (the 'principal'), wishes to implement the **Takuvaine Stream Rock Gabion Wall project**. This RFT is for the Supply and Build contract for the implementation of the contract works.

2. This RFT will identify Tenderers that are able to undertake the contract works as per NZS 3910:2013 - CONDITIONS OF CONTRACT FOR BUILDING AND CIVIL ENGINEERING CONSTRUCTION, for the Supply and Build Contract according to the specifications and standards set out in Appendix B – Tender Specification

3. Tenderers should note the requirements relating to the lodgement and content of responses to this RFT as set out in clauses 7 to 14 (Submission and Tender Closing Time) and Appendix A (Form of Tender and Compliance Checklist) are mandatory. The Principal will reject any Tender that fails to comply with one or more of these requirements.

4. Tenderers should ensure they are registered and have downloaded or received all files for the

RFT including all prospective notices.

5. Tenders are invited from companies’ offering to undertake the contract works Supply and Build Contract on a fixed-price contract basis.

6. Tenders will be evaluated according to the process set out in Appendix D for this RFT.

**Submission of Tender**

7. Tenders must be submitted in hard copy format (two copies) in an envelope marked "CONFIDENTIAL" and have the following information clearly exhibited on the outside:

TO: The Principal

Infrastructure Cook Islands

Arorangi Rarotonga COOK ISLANDS

FROM: (Name of Tenderer) (Tenderers address 1) (Tenderers address 2) (Tenderers address 3)

TENDER FOR: C16-06 TAKUVAINE STREAM ROCK GABION WALL PROJECT

TENDER CLOSES: 3.00PM, Friday 23rd September 2016

8. Tenders received must be recorded on the "Tenders Received at Closing Date" Form “by the receiver at the Agency” and placed in the Tender Box by the due time and date. Failure to do so will result in the tender being rejected.

9. Form of Tender is specified in Appendix A.

10. Facsimile and electronic tenders will not be accepted.

**Tender Closing Time**

11. Tenders close at 3.00pm on Friday 23rd September 2016.

12 The Tender Box is located at the Infrastructure Cook Islands office in Arorangi, Rarotonga, Cook Islands.

13. The Tenderer is responsible for ensuring that their Tender is placed in the designated Tender Box by the closing time.

14. Late tenders will not be accepted and will be returned unopened.

**Contact Officer**

15. Any queries in relation to this RFT should be by email to the Contact Officer: Person: Solomona Solomona

Telephone: (+682) 20321

Email: [solomona.solomona@cookislands.gov.ck](mailto:tenga.mana@cookislands.gov.ck)

**Further Information or Clarifications**

16. Any further information or clarification required by the Tender in relation to this RFT must be directed to the Contact Officer.

17. The Contact Officer may respond to queries received before the Enquiry Cut-Off Time (See Table 1) and may not respond to enquiries received after the relevant Enquiry Cut-Off Time.

18. The request and responses to any such request shall be given in writing and shall be circulated by sequentially numbered notices to registered Tenderers. Where the 'Principal' considers that the competitive advantage of individual Tenderers may be compromised by the distribution of responses to the request for information and/or clarifications to all Tenderers, the 'Principal' reserves the right to issue a response only to that Tenderer. Any additional information relating to this RFT will be uploaded to [**www.procurement.gov.ck**](http://www.procurement.gov.ck/) .

**Key Dates**

**Table 1: Approximate Dates for this Request for Tender**

|  |  |
| --- | --- |
| **Details** | **Date** |
| Issue of Request for Open Tender | Thursday 01 September 2016 |
| RFT Enquiry Cut-Off Time | 3.00pm Wednesday 14th September 2016 |
| Tender Close | 3.00pm Friday 23rd September 2016 |
| Tender Evaluation Complete | Wednesday 28th September 2016 |
| Contract Awarded and Contract Works Commencement | Friday 30th September 2016 |

**Selection Process**

19. All tenders deposited in the Tender Box by the Closing Time will be considered. Tenders submitted in the form specified in Appendix A (Forms A1 to A8) to this RFT will proceed to the tender evaluation stage.

20. Evaluation of the responses to this RFT will be in accordance with the Evaluation Criteria described in Appendix D. Failure to comply with the Standard Conditions will result in immediate exclusion from the Tender Evaluation process.

**Notification of Acceptance**

21. Tenders shall remain open for acceptance and shall not be withdrawn for a period of sixty (60) working days from the Closing Date of the tender.

22. Unsuccessful tenderers shall be notified in writing by the Principal or their representative within 10 working days of acceptance of the preferred tender.

23. If no tender is accepted by the Principal within twenty (20) working days after the Closing Date, each tenderer will be notified in writing by the Principal or their representative whether their tender is still under consideration or is no longer being considered.

24. The Tender Team reserves the right to contact referees and/or customers regarding the performance of the tenderer as it may pertain to this RFT.

25. The Principal shall not be bound to accept the lowest priced tender or the highest scored tender or any tender.

26. When the preferred companies has been identified by the Tender Evaluation Team, the Principal will invite the companies to enter into negotiations based on the draft contract at Appendix C to this RFT. Only when the parties have agreed to the terms of the contract and executed the contract will the Principal issue to the successful tenderer a Letter of Acceptance.

27. Tenderers will not be entitled to see the evaluation documents. However, provision for appeal and request for further information leading to the cause of the decision will be provided.

28. If no tender has been accepted within the period stated, the Principal will notify the Tenderers that no tender was accepted and may:

1. Invite all Tenderers to provide additional information; and/or

2. Re-advertise the project extending the closing date of the tender. Tenderers may either re-tender or provide additional information to support their existing tender already received by the Principal.

**Probity**

29. No gifts or entertainment of any nature will be permitted between any parties involved throughout the tender process, including: tenderers or potential tenderers, tender team members, evaluation team members, the Head of Ministry, or any other member or organisation that may have an involvement with any aspect of the tender process.

**Statement of Requirements**

30. The specification of the Product and Services to be delivered are described in Appendix B.

31. To enable the Product and Services to be completed, Tenders must include provisions for the Tenderer, in the Tender Price to:

a. Provide all technical and administrative resources required to successfully deliver the Product and Services described in Appendix B.

b. Provide weekly progress reports to the Principal on the delivery status of the Product and Services.

c. Provide warranties and guarantees on handover of the Product and Services.

32. The Product and Services are to be delivered within the timeframe agreed to in the final Contract.

33. The tenderer should note that they can only tender for the whole of the Contract Works specified in Appendix B and according to the conditions set out in Appendix C. It is the tenderer’s responsibility to carry   
 out any site visits necessary.

**Conditions of Tendering**

**Standard Conditions**

34. Tenders must be completed in the format contained in Appendix A of this RFT. If offers do not comply with this format, they will not be accepted.

35. Tenders must be deposited in the required form in the Tender Box by the closing time as specified in

Clause 11 of this RFT.

36. A) All proposals and related documentation in respect of this RFT must be in the English language.

B) Tenderers are to tender on all parts of the tender, i.e. to supply product and services for the whole of the contract works as specified in the RFT.

37. A) Tenders must be presented in hard copy format only (two copies) and delivered in a sealed envelope to the location specified in Clause 12 of this RFT. Facsimile and electronic proposals will not be accepted.

B) All prices quoted must be in New Zealand dollars and inclusive of freight where applicable, and delivery charges to the site at Takuvaine, Rarotonga plus service charges.

38. Any foreign companies intending to submit a Tender must seek approval from the Business Trade Investment Board (BTIB) before submitting a Tender. Any fees associated with the application and registration process are to be covered by the Tenderer.

**Registration of Tenderers**

39. Prospective Tenderers must register their interest to participate in this RFT by emailing the Contact Officer prior downloading e-copy or uplifting a copy of the RFT document. Only Tenderers who have emailed the Contact Officer and have received an acknowledgement of receipts will receive notices as and when they are issued.

**Information Supplied by Tenderer**

40. The Principal may ask Tenderers to provide additional information during tender evaluations. The

Tenderer must supply that information in the form and within the time stated in the Principal's request.

41. The Principal may contact Tenderer's referees, competitors, or customers to enquire on the performance of the Tenderers', and/or make any other enquiries about the Tenderers' that the Principal may deem necessary.

42. Tenderers can provide additional documents/information to support their application.

43. The Principal reserves the right to require further clarification on any information or pricing supplied with any tender.

**Issue of Tender Document**

44. The Tenderer is not required to pay any fee prior to the issue of a printed copy of the Request for Tender documents.

45. RFT documents can also be obtained electronically from the Infrastructure Cook Islands or from the Cook Islands Government procurement website (www.procurement.gov.ck). Tenderers obtaining an electronic copy must ensure they are registered in accordance with clause 39.

**Negotiations**

46. Negotiations will not be permitted between the tender team and any prospective tenderers during the tender advertising period. However, prospective tenderers may seek clarification of the tender documents prior to submitting their tenders.

47. The Principal may enter into post offer negotiations with the preferred Tenderer(s) before a letter of acceptance is issued.

**Repudiation of Contract**

48. If the Tender is accepted and for some reason the Tenderer does not sign the Contract within 10

Working Days of the Principal asking the Tenderer to do so, the Principal will regard the Contract as null and void.

**Proposed Delivery Programme and Methodology**

49. Each Tenderer is required to submit, on placement of their tender, a proposed methodology/programme of works outlining how the works would be executed, including special tasks, targets and timelines, and make a provision for the possibility of time extensions.

50. The format for the Delivery Programme to be submitted by Tenderers is provided in Appendix A.

### Warranties and Guarantees

51. Unless otherwise agreed in writing, the Tenderer shall tender to provide the minimum warranties and guarantees that will cover within the Cook Islands as set out below:

Warranty on Parts & Service 1 year minimum

Construction Defect Liability Period 6 months

**Payment Schedule**

52. Payments will be made based on the payment schedule as detailed below:

|  |  |
| --- | --- |
| Payment Component | % of Contract Price |
| 1. Upon signing of the Contract, the Principal shall pay the Contractor 10% of the  Total Contract price. | 10% |
| 2. Payment on completion of the respective component of the contract works below:   * Supply and Prepare Site * Supply and Construct Gabion Wall * Clean Up | 80% |
| 3. After the lapse of the 6 months defect liability (computed from the date of Practical  Completion, ) the Principal shall pay the Contractor the residual 5% on total contract  Price less any amount deducted for remedial works conducted during this period.  Atiu  Aitu . | 10% |
| Note: All claims are to be directed to the following:  The Engineer  Contract No. C16-06  Infrastructure Cook Islands  PO Box 102, Rarotonga |  |

**APPENDICES**

**APPENDIX A. - FORM OF TENDER**

**Instructions**

a. Tenderers must complete and submit all of the forms in the format provided in this

Appendix.

b. Tenderers who fail to comply with the requirements in a. above will be deemed non- conforming and be excluded from the evaluation process.

c. Tenderers should note that the requirements relating to the lodgement of the responses to this RFT as set out in clauses 7 to 14 (Submission and Tender Closing Time) are mandatory.

d. Tenderers are required to tender for the whole contract works, i.e. the Supply and Build Contract.

**A1 - FORM OF TENDER**

**To:** The Secretary, Infrastructure Cook Islands Arorangi

Rarotonga

**COOK ISLANDS**

**Tender for:**  Takuvaine Stream Rock Gabion Wall Project, Contract No. C16-06

**Companies:**

I/We, the undersigned, having examined the Request for Tender, hereby offer to carry out part/whole of the Contract Works.

I/We, will achieve delivery in working days from the date of signing the contract.

I/We, agree to abide by this Tender for a period of sixty (60) days from the date fixed for receiving the same and it shall remain binding upon us and may be acceptable by you at any time before the expiry of that period.

Unless and until a Contract Agreement is prepared and executed, this Tender together with your written acceptance thereof, shall constitute a binding contract between us.

I/We understand that you are not bound to accept the lowest or any Tender you may receive.

I/We understand that no contract shall come to existence, and no legal or other obligations shall arise between us and you (or between us and any other agent of the Principal) in relation to the conduct, outcome or otherwise of the Tender process, prior to and apart from your acceptance of our Tender.

I/We understand that you may contact the referees nominated by us in this offer and make whatever enquiries you deem necessary regarding our financial health and ability to deliver the Contract Works.

The following is attached to this form:

1. A2 Compliance Checklist (and required attachments)

2. A3 Track Record

3. A4 Proposed Delivery Programme

4. A5 Team Composition and Task Assignment

5. A6 Referees Who May Be Contacted

6. A7 Tender Price

7. A8 Schedule of Quantity and Price

................................................................................................................................................................... Name of Tenderer (Print)

.................................................................................................................................................................. Signature of person duly authorized to sign tenders on behalf of the Tenderer

.................................................................................................................................................................. Position (Capacity of Signatory)

................................................................................................................................................................. Service Address of Tenderer (Physical Address, not Postal Address)

|  |  |  |
| --- | --- | --- |
| ............................................. | ................................................... | ............................................. |
| Telephone No. | Facsimile No. | Mobile No. |

...................................................................................................................... Email Address

...................................................................................................................... Signature of Witness of Tenderer

**A2 Compliance Checklist**

Table A2 below shall be filled out by indicating the extent to which the offered product complies with each of the requirements specified. The level of compliance shall be interpreted as follows:

High Fully provides or meets the requirements specified. May even exceed the requirements specified.

Medium Adequately but not fully provides or meets the requirements specified.

Low Partially but not adequately provides or meets the requirement specified.

None Does not provide or meet the requirements specified. (Make a comment if an alternative is proposed).

Use the Comments column to briefly qualify the level of compliance especially if customisation is required to achieve the level of compliance indicated. Entries are only required in the non-shaded areas.

**PRODUCT AND SERVICES – Materials & Construction**

|  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- |
| Functionality & Specifications | | High | Med | Low | None | Comment |
|  | | (v) | (v) | (v) | (v) |  |
| The Product and Services must meet all of the following requirements: | |  |  |  |  |  |
| 1. Product Type | Gabion baskets 2 x 1 x 1m, 8x10 mesh type, 3.7mm wire dia, pvc coated |  |  |  |  |  |
| 2.Product Type | Lacing wire, 3.2mm diameter, pvc coated |  |  |  |  |  |
| 3. Product Type | Rock infills, basalt type, 100mm – 200mm average diameter |  |  |  |  |  |
| 4. Product Type | Backfill materials  (on-site excavated materials or imported equivalent materials) |  |  |  |  |  |
| 5. Product Type | Geotextile Filter cloth (50m  long and 4m wide rolls) -  >4000G strength, comply  With AS/NZS ISO9001:2008 |  |  |  |  |  |
| 6. Services (Construction) | Prepare site (4m wide x 25m long x 0.5m deep below the stream bed) |  |  |  |  |  |
| 7. Services (Construction) | Place filter cloth according to the Drawings |  |  |  |  |  |
| 8. Services (Construction) | Construct gabion walls, 3 layers high x 24m long according to the Drawings and progressively placing backfill materials |  |  |  |  |  |
| 9. Services (Construction) | Connect gabion wall to existing rock wall |  |  |  |  |  |
| 10. Services (Construction) | Clean up and vacate site |  |  |  |  |  |
| 11. Deliver (Supply & Build) | Max 6 weeks to complete. |  |  |  |  |  |

**A3 Track Record**

|  |  |
| --- | --- |
| Product and Services |  |
| Client |  |
| Completion date |  |
| Project duration |  |
| Activities performed |  |
| Contract value | $ |

|  |  |
| --- | --- |
| Product and Services |  |
| Client |  |
| Completion date |  |
| Project duration |  |
| Activities performed |  |
| Contract value | $ |

**A4 Propose Delivery Programme**

|  |  |  |  |
| --- | --- | --- | --- |
| **Output** | **Duration** | **Proposed Start Date** | **Proposed Completion Date** |
| Contract signed | N/A | N/A | N/A |
| Supply of Products to designated site. |  |  |  |
| Construction Services |  |  |  |

**A5 Team Composition and Task Assignment**

|  |  |  |  |
| --- | --- | --- | --- |
| Staff: | | | |
| Name of Staff: | Area of Expertise | Position Assigned | Task(s) Assigned |
|  |  |  |  |
|  |  |  |  |
|  |  |  |  |
|  |  |  |  |
|  |  |  |  |
|  |  |  |  |
|  |  |  |  |
|  |  |  |  |
|  |  |  |  |
|  |  |  |  |

**A6 Referees who may be contacted**

The Principal will consider relevant references from at least two (2) sources including satisfied clients. Please provide address and contact details of companies/individuals to be contacted.

Referee 1

|  |  |
| --- | --- |
| Client |  |
| Address |  |
| Contact Person |  |
| Contact Phone |  |
| Email Address |  |
| Summary of client relationship /  product and services |  |

Referee 2

|  |  |
| --- | --- |
| Client |  |
| Address |  |
| Contact Person |  |
| Contact Phone |  |
| Email Address |  |
| Summary of client relationship /  product and services |  |

**A7 Tender Price**

To: The Principal

Infrastructure Cook Islands

PO Box 102

Arorangi, Rarotonga

**COOK ISLANDS**

Tender for: **Takuvaine Stream Rock Gabion Wall** **Project - Contract No. C16-06**

Companies:

I/We, the undersigned, having examined the Request for Tender Documents, hereby offer to carry out part/whole of the Contract Works for the Fixed Price of

Amount NZ$

VAT (15%) NZ$

**Total Includes VAT NZ$**

................................................................................................................................................................... Name of Tenderer (Print)

..................................................................................................................................................................

Signature of person duly authorized to sign tenders on behalf of the Tenderer

.................................................................................................................................................................. Position (Capacity of Signatory)

................................................................................................................................................................. Service Address of Tenderer (Physical Address, not Postal Address)

|  |  |  |
| --- | --- | --- |
| ............................................. | ................................................... | ............................................. |
| Telephone No. | Facsimile No. | Mobile No. |

...................................................................................................................... Email Address

...................................................................................................................... Signature of Witness of Tenderer

**A8 Schedule of Quantity and Prices**

**All prices and rates provided in NZ dollars, exclusive of VAT**

|  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- |
| **ITEM** | **DESCRIPTION** | **PROVISIONAL QUANTITY** | **UNIT** | **RATE** | **TOTAL** |
| **1** | **Site Preparations** |  |  |  |  |
| 1.1 | Supply and set out work area | LS | Item |  |  |
| 1.2 | Supply and prepare site (4m wide x 24m long) and stockpile excavated materials on site for reuse as backfill materials | 100 | m2 |  |  |
|  | Subtotal |  |  |  |  |
| **2** | **Gabion Wall Works** |  |  |  |  |
| 2.1 | Supply and place filter cloth according to the Drawings | 180 | m2 |  |  |
| 2.2 | Supply and construct gabion walls, 3 layers high x 24m long and progressively placing backfill materials according to the Drawings | 24 | m |  |  |
| 2.3 | Supply and connect gabion wall to existing rock wall | LS | Item |  |  |
|  | Subtotal |  |  |  |  |
|  |  |  |  |  |  |
| **3** | **Clean up** |  |  |  |  |
| 3.1 | Supply and clean up and vacate site | LS | Item |  |  |
|  | Subtotal |  |  |  |  |
|  |  |  |  |  |  |
| **4** | **Contract Price** |  |  |  |  |
| 4.1 | Total Excluding VAT |  |  |  |  |
| 4.2 | VAT |  |  |  |  |
| 4.3 | Total Including VAT |  |  |  |  |

**APPENDIX B - Tender Specifications**

B1 Product Requirements

B1.1 Overview

Infrastructure Cook Islands ('the Principal') desires for all materials supplied in general will:

1. Be durable and ideal for environmental conditions such as that in the Cook Islands;

2. Be treated to prolong life use;

3. Be readily available locally; and

B1.2 Specific Requirements

The mandatory (or minimum) requirement for the Products and Services are provided below in Table 1. Tenderers must ensure that their tendered fixed-price adequately covers the requirements.

**Table 1: Mandatory Requirements**

**PRODUCTS AND SERVICES**

|  |  |
| --- | --- |
| **Condition** | **Premium** |
| 1. Product Type | Gabion baskets 2 x 1 x 1m, 8x10 mesh type, 3.7mm wire dia, pvc coated |
| 2.Product Type | Lacing wire, 3.2mm diameter, pvc coated |
| 3. Product Type | Rock infills, basalt type, 100mm – 200mm average diameter |
| 4. Product Type | Backfill materials  (on-site excavated materials or imported equivalent materials) |
| 5. Product Type | Geotextile Filter cloth (50m long and 4m wide rolls) - >4000G strength, comply With AS/NZS ISO9001:2008 |
| 6. Services (Construction) | Prepare site (4m wide x 25m long x 0.5m deep below the stream bed) |
| 7. Services (Construction) | Place filter cloth according to the Drawings |
| 8. Services (Construction) | Construct gabion walls, 3 layers high x 24m long according to the Drawings and progressively placing backfill materials |
| 9. Services (Construction) | Connect gabion wall to existing rock wall |
| 10. Services (Construction) | Clean up and vacate site |
| 11. Deliver (Supply & Build) | Max 6 weeks to complete. |

B2 **General Scope of Works**

Under this Contract the Principal wishes to stabilise the stream embankment along a section of the Takuvaine Stream located near the Central Motel in Avarua, Rarotonga.

The work under the Supply and build Contract generally will involve:

* Setting out
* Site preparation
* Placing of filter cloth
* Construction of gabion walls
* Connecting gabion wall to the existing rock walls
* Clean up site

**APPENDIX C – CONSTRUCTION CONTRACT**

|  |
| --- |
|  |
| **Contract for Construction Works**  **Cook Islands Government** |

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**25. ENTIRE CONTRACT 14**

**AGREEMENT** dated  **2016**

**PARTIES**

## Her Majesty the Queen in right of the government of the Cook Islands acting by and through the Secretary of Infrastructure Cook Islands (“Principal”)

## The party named as Contractor in Schedule 1 (Contractor)

**RECITALS**

## The Principal has selected the Contractor to undertake the Project.

## It is a fundamental principle that the Contractor takes responsibility for the overall Project including establishing and maintaining an appropriate Programme of Works, quality control and supervision of costs.

## The Principal has agreed to pay the Contractor the Contract Price.

## The parties wish to record the terms of their agreement in this contract.

**AGREEMENT**

# Interpretation

## Unless otherwise expressly stated to the contrary, capitalized terms used in this contract shall have the following meaning:

### Completion Date means the due date for the Practical Completion of the Project as set out in Schedule 1;

### Contract Price means the amount set out in Schedule 1;

### Contract Works means the works to be executed by the Contractor to complete the Project in accordance with this contract;

### Defects extends to include all defects, faults, omissions, shrinkages, undue deterioration and other faults which are due to Materials or workmanship not being in accordance with this contract;

### Certificate of Final Completion shall have the meaning set out in clause ;

### Defects Liability Period shall have the meaning assigned to it in clause ;

### Defects Liability Retention means the funds retained in clause as retentions for potential defects;

### Force Majeure means any of the following causes provided they are outside the reasonable control of the affected party, were not reasonably foreseen and could not have been prevented or avoided by that party taking all reasonable steps:

#### Act of God, earthquake, cyclone, fire, explosion, flood, landslide, lightning, storm, tempest or drought;

#### Act of public enemy, sabotage, malicious damage, terrorism or civil unrest,

#### but does not include any strike, lock-out, trade dispute or labour disturbance affecting the affected party or any of its representatives;

### Materials means any raw or manufactured material, goods or things (other than Plant) required for use in the Contract Works;

### Payment means each payment of the Contract Price made to the Contractor;

### Payment Terms means the payment terms described in the Schedule 2;

### CPC means the practical completion certificate issued to the Contractor when the Contractor has achieved Practical Completion;

### Plans and Specifications means the plans and specifications annexed as Schedule 4;

### Plant means all appliances, temporary buildings and equipment of whatsoever nature required for carrying out the Contract Works but not intended to be incorporated in the Contract Works;

### Practical Completion shall have the meaning assigned to it in Clause ;

### Principal’s Representative means the person named in Schedule 1;

### Programme of Works means the programme for the construction of the Contract Work as further described in Clause ;

### Project means the project described in Schedule 1;

### Repair means renewal and/or replacement necessary to remedy defects;

### Site means the site described in Schedule 1;

### Subcontractor means any person who contracts with the Contractor to design, carry out or supply part of the Contract Works on behalf of the contractor;

### VAT means Value Added Tax under the Value Added Tax Act 1997;

### Working Day means any day on which trading banks are open for business in the Cook Islands other than;

#### A Saturday, Sunday or a public holiday; or

#### Any day during the period commencing on and including 24 December in one year and ending on and including 5 January in the following year.

# Contractor to undertake the Contract Works

## The Contractor shall construct, complete, deliver and remedy defects in the Contract Works and do all things described in this contract.

# Principal to Pay Contract Price

## The Principal shall pay the Contract Price on the Payment Terms together with the VAT.

## No payment shall be made pursuant to this contract until it is executed and signed by the Contractor and delivered to the Principal.

# Retention

## The Principal shall retain the following percentage from each Payment by way of retention and the limit of the total sums retained shall be, respect of:

### Total retention: 10% of the Contract Price.

### Defects Liability Retention: 50% of the total retention.

## Upon the issue, by the Principal of the CPC, the Principal shall be liable to pay all retention monies (excluding the Defects Liability Retention) owing to the Contractor at the date of the Practical Completion in accordance with the Payment Terms.

## Upon the expiry of the Defects Liability Period, the Principal shall pay the Defects Liability Retention on the date which is 10 working days after the date of the Certificate of Final Completion issued..

# Contractor’s Obligations

## The Contractor will undertake and complete the Contract Works at its own cost, in accordance with the Programme of Works and the Plans and Specifications, in a good and workmanlike manner with all reasonable speed, in accordance with all consents. Specifically the Contractor covenants that it shall;

### Comply with all obligations, restrictions, requirements and standards imposed by or arising in consequence of, all statutes, regulations, the building code, and all other codes in force for the time being affecting the carrying out and completion of the Contract Works including any building upgrade works required;

### Obtain at its cost all relevant permits, consent and approvals required to enable the Contract Works to be lawfully commenced and carried out (including any consents necessary for any Variations);

### Arrange forthwith for all inspections by all relevant authorities to be carried out at all times in accordance with all applicable laws or the building code (as may be applicable in the circumstances);

### Notify all relevant authorities on completion of the Contract Works and obtain a code compliance certificate for the Contract Works;

### Comply with all proper instructions issued by the Principal in relation to this Contract;

### Ensure that all Materials used in and forming all or part of the Contract Works are new materials and of good quality and in accordance with the provisions of this contract;

### Provide all necessary supervision during this contract and have on the Site at all working times a competent representative; and

### Have full responsibility for:

#### The care of the Contract Works from the time it obtains possession of the Site until Practical Completion except where any loss or damage arises from the excepted risks listed in Clause ;

#### The adequacy, stability and safety of all Site operations and methods of construction;

#### Advising adjoining property owners and occupiers when access to property is required for the purposes of carrying out the Contract Works, or where access may be restricted during the course of Contract Works, and shall ensure any inconvenience to occupiers is kept to a minimum as far as is reasonably practicable.

# Contractor’s warranties

## The Contractor warrants and undertakes to the Principal that the Contractor:

### Is satisfied that the Contract Price is sufficient to cover the costs of performing all of its obligations under and in connection with this contract and all things and matters required for the due, proper and punctual performance of the Contract Works with the exception of Variations;

### Has taken into consideration all information which is relevant to the risks, contingencies and other circumstances which would in any way affect the Contract Works and /or the Contract Price with the exception of Variations;

### Has read and reviewed all information provided to it by the Principal regarding the Site and the conditions on, under and about the Site and had made its own inquiries, including review of archival and other records which are publicly available in relation to utilities, building and other structures which have previously been located on the Site;

### Is not entitled to and will not claim an entitlement to an increase in the Contract Price nor to any other compensation or benefit except those entitlements expressly provided for in this contract;

### Has fully inspected the site and any existing earthworks prior to commencing the Contract Works and has made due allowance for the conditions in this contract. Having inspected the Site and the earthworks and satisfied itself with the ground conditions for the purposes of the Contract Works, the Contractor shall not be entitled to claim, or request a Variation or an extension of time;

### Has fully inspected the Site and agreed with the Principal how the Contractor is permitted to access the Site and has satisfied itself that the access is appropriate for the Contract Works. The Contractor shall not be entitled to claim a Variation or an extension of time if access issues arise after the Contract Works have started;

### Will remain up to date with its payments to Subcontractors and will provide, if requested, confirmation and evidence of such payments to the Principal;

### Will provide guarantees for all of its work and for all of its work carried out by Subcontractors in favour of the Principal for the minimum periods as set out in the table of guarantees at Appendix A (as applicable) or as otherwise agreed in writing with the Principal;

### Will provide guarantees for all materials used and for all materials used by Subcontractors in favour of the Principal for the minimum periods as set out in the table of guarantees at Appendix A (as applicable) or as otherwise agreed in the writing with the Principal;

### Shall assign and where necessary, procure the assignment of all manufacturers warranties on any products used in the Contract Works to the Principal; and

### Shall upon 10 working days written notice from the Principal, provide the Principal with access to the Contractor’s records and files relating to the cost of the Contract Works, in hard copy, electronic or other format. The Principal shall keep confidential any commercially sensitive information obtained by it in the context of this clause.

## Where any guarantees and/or warranties are included in the Plans and Specifications, they will be in additions to the guarantees and warranties set out in this contract, and in the event of any inconsistency between them, the guarantees and warranties set out in this contract shall prevail.

# Design Obligations

## If the Contract Works include provisions of design services, the provisions of this clause shall apply.

## The Contractor warrants and undertakes to the Principal that the Contractor;

### Is experienced in the management, co-ordination and/or production of design documentation for the projects containing elements similar to the elements comprising the Contract Works;

### Has examined the documents, things and requirements comprising the contract, including but not limited to the Plans and Specifications; and

## The Contractor is responsible for any design and/or documentation work it carries out, and the performance and “build ability” of that design work and the Contractor must ensure that such works are designed, the design developed and the design documentation prepared with the degree of skill, care and diligence reasonably expected of a professional providing services similar to the design work, in accordance with innovative and cost effective design and constructions solutions and in accordance with this contract. The Contractor must ensure that:

### To the extent that the Contractor undertakes the design work, the Contractor has the necessary experience, skills, and expertise to carry out such work;

### Where it subcontracts the design work, such works are designed for the Contractor by appropriate consultants (approved by the Principal) in accordance with the proper professional architectural or engineering practices and principles;

### Such works and all services and features included in such works are professionally designed to be appropriate, adequate and fit for the purpose or purposes described in or reasonably able to be inferred from this contract;

### It has and will apply sufficient resources perform the design services to meet its obligations, including to comply with the Principal’s programming requirements; and

### Where the Contractor forms the opinion on reasonable grounds, at any time that an element of the design or design documentations does not comply with the contract or contains errors or omissions the Contractor must direct its consultants to rectify the non-compliance (at no additional cost to the Principal) and inform the Principal in writing.

# Mutual Obligations

## The Principal and the Contractor agree to adopt and conduct themselves in accordance with the following partnering principles:

### The establishment of a relationship based on mutual trust;

### Shared intentions to achieve a maximizing of each of their respective benefits;

### Openness, promptness, consistency and fairness in all dealings and communications and reasonableness and timeliness, having regard to the internal approval process of the Principal and in particular recognizing the levels of delegated authority of the Principals; and

### Non – adversarial dealings and constructive mutual steps both to avoid differences and to identify solutions.

## The Principal and the Contractor must, in their day to day interactions and in performing their obligations act in a manner entirely consistent with these partnering principles and the Principal must procure the same standard of conduct from the Principal’s Representative the Contractor must also procure that its subcontractors act in a manner entirely consistent with these partnering principles in performing their obligations in respect of the Contract Works.

## The Contractor agrees to further ensure that it actively maintains positive relationships with other key stakeholders in the Project.

# insurance

## Insurances required under this contract are to be effected by the parties as described in Schedule 3. The insurances specified are the minimum requirements for insurance and the parties are free to arrange whatever additional insurance protection they may consider appropriate.

## These insurance arrangements do not limit or alter any indemnities or affect in any way the liabilities the parties may have as contained in this contract.

## The insurances in Schedule 3 must:

### Begin by the earlier of either the possession date of the Site by the Contractor or the date when the Contractor commences work;

### Continue until the date of issue of the CPC; and

### Cover loss or damage and all liability risks arising from the carrying out of deferred work and work required to remedy defects until such work is completed.

# Variations

## The Contractor can only claim a Variation for the following excepted risks:

### Force Majeure;

### A General Strike or industrial action on the island where the Project is based, where the Project is over two or more islands, only in respect of that portion of the work on the affected island;

### Work required which is outside the scope of the Plans and Specifications, as first approved in writing by the Principal or the Principal’s representative; or

### Any act or omission of the Principal or of any person for whose acts or omissions the Principal is, as between itself and the Contractor, responsible.

## The Contractor must provide to the Principal as estimate of the price of work involved in a proposed Variation.

## The Principal may, at its option, accept or reject a Variation estimate from the Contractor and will advise the Contractor accordingly within 10 Working Days of receiving the estimate. No work may proceed in respect of the Variation unless the Principal has approved the estimate for the work in writing. The Principal shall not be liable to pay for any work carried out over and above an approved estimate without its prior written approval of a further estimate and the reason for the additional cost which shall be provided by the Contractor.

## The Contract Price and the elements that make up the Contract Price shall be adjusted by the value of Variations being added to or deducted from it.

## The Contractor shall not vary the Plans and Specifications or the Contract works generally without an order in writing from the Engineer.

## The Engineer may order any Variations to the Contract works within the scope of the contract which:

### Increases or decreases the quantity of any work;

### Omits any work;

### Requires additional work to be done.

# Programme of Works

## The Contractor shall within 10 working days of execution of this contract and in consultation with the Principal prepare a Programme of Works in respect of the Contractor’s construction and completion of the Contract Works. The Contractor will keep the Principal informed of progress of the Contract Works and if at any time Contract Works fall behind the Programme of Works, such that any key milestone dated listed in the Programme of Works will not be met, or in the reasonable opinion of the Principal, may not be met, the Principal may serve a notice on the Contractor requiring the Contractor to take such action and to apply such additional resources as are necessary to accelerate the Contract Works so that any key milestone date in the Programme of Works will be met. Any costs incurred as a result of such notice shall be at the sole costs of the Contractor.

# Extension of Time

## The Contractor must start work within 5 Working Days of being given possession of the Site and achieve Practical Completion of the Contract Works on the Completion Date.

## The Contractor may apply to the Principal to extend the time for the Practical Completion due to the delay arising from any of the following causes:

### A consent or approval not being obtained (through no fault of Contractor);

### Unforeseeable physical conditions;

### The Contract Works being suspended with the written consent of the Principal;

### Loss or damage to any part of the Contract Works (through no fault of the Contractor);

### Variations;

### Unusually inclement weather that materially interferes with the progress of the Contract Works;

### Strike, lockout or industrial action affecting the island or islands on which the Project is based;

### The Principal not giving a direction within a reasonable time after being asked by the Contractor in writing to do so;

### The Principal not supplying Materials, information, work or services on time;

### A separate contractor’s act or omission;

### The Contractor dying; or

### Something else of significance beyond the Contractor’s control.

## The Contractor must apply in writing within 5 Working Days or as soon as practicable after the delay begins. The application must state in sufficient detail the grounds for the extension, including the cause of the delay relied on, and must specify the number of Working Days claimed.

## The Principal must respond to the Contractor’s claim within 10 Working Days after the later of receiving the Contractor’s claim or receiving sufficient detail for the Principal to properly assess the Contractor’s claim. If the Principal fails to respond within 10 Working Days the Contractor must notify the Principal of the failure. If after a further 5 Working Days of such notification the Principal has not responded, the time for Practical Completion must be extended by the extension of time claimed by the Contractor.

# Practical Completion

## Practical Completion is that stage in the execution of the Programme of Works when the Contract Works are complete in accordance with Schedule 5, and the Contract Works may be lawfully occupied by the Principal or any person authorized by the Principal without being unreasonably inconvenienced by the rectification of minor defects.

# Subcontractors

## The Contractor may only subcontract the Contract Works with the consent of the Principal.

## The Contractor is responsible for the work of all subcontractors engaged by the Contractor to carry out any part of the Contract Works. The Contractor is in particular responsible for the procuring of any guarantee required by or called for under this contract or the Plans and Specifications and for ensuring that all subcontractors act in strict accordance with all legislation and any consent issued in respect of the works.

14.3 The Contractor is not required to provide facilities for sub-contractors

# Defects Liability

## When the Contractor believes that the Contract Works qualify for the issue of a Certificate of Final Completion on the basis that:

### The Defects Liability Period has expired;

### The Contractor has confirmed that the Contract Works have been inspected and quality for the Certificate of Final Completion;

### The Contractor has remedied any minor omission or minor defects in the Contract Works; and

### The Contractor has obtained the code compliance certificate,

## then the Contractor shall give to the Principal a provisional Certificate of Final Completion confirming that the Defects Liability Period has expired and that there are no outstanding omissions or defects.

## The Defects Liability Period for the Contract Works shall commence on the date of Practical Completion of the Contract Works. The Defects Liability Period shall be 6 months.

## Upon receipt of the provisional Certificate of Final Completion and once the Principal is satisfied that the prerequisites in clause 15.2 have been satisfied and the Contractor has provided the Principal with all guarantees and warranties required under this contract and the Plans and Specifications, then the Principal shall issue a Certificate of Final Completion to the Contractor.

# Liquidated damages

## If the Contractor does not achieve Practical Completion by the Completion Date, the Principal is entitled to deduct liquidated damages at the rate set out in Schedule 1. The liquidated damages shall run from the Completion Date to the actual date of Practical Completion.

## Without prejudice to any other means of recovery, the Principal may deduct the amount of liquidated damages from any monies payable to the Contractor in accordance with the contract.

# Indemnities

## The Contractor guarantees to the Principal that it shall, at its own expense, Repair all Defects that may compromise the Contract Works and make good any damage caused by any Defect.

## The Contractor indemnifies the Principal in respect of all direct losses incurred by the Principal that may be occasioned by or arise out of any Defect in the Contract Works.

## If the Contractor does not Repair any Defects within 10 Working Days, or where imported Plant or Materials are required for such Repair, within a reasonable period of receiving notice from the Principal that the Contract Works is defective, the Principal may remedy the Defect and recover all costs thereby incurred from the Contractor but without releasing the Contractor from any obligations or liability. Such costs may include the cost of all labour, material, travelling, and other chargers incurred by the Principal in repairing such Defect.

## The Contractor shall not be liable for any direct, indirect or consequential loss or damage solely attributable to:

### Any act omission or negligence of the Principal or any other person for which the Principal is responsible, as between itself and the Contractor; or

### Any forces of nature which could not be reasonably foreseen or mitigated by the Contractor.

## The Contractor further indemnifies and holds the Principal harmless from and against any costs, claims, liabilities, or expenses which the Principal may incur or for which the Principal may become liable arising from any failure by the Contractor to Repair and/or rectify any Defect in accordance with the requirements of this clause.

# Compliance with Laws

## In carrying out the Contract Works the Principal and the Contractor shall comply with the provisions of all statutes, regulations, codes and policies that may be applicable to the Contract Works.

## The Contractor must comply, at its costs with all licenses, consents, approvals, obtained and all conditions attaching to such licenses, consents or approvals.

# Disputes

## Any dispute arising under this contract shall, in the first instance be referred to the Principals Representative and appropriate person for the Contractor for resolution. If the dispute is not resolved within 14 Working Days, the dispute will be referred to the Head of Agency and the equivalent person in respect of the Contractor. Where this process fails to achieve a resolution, the matter will be referred to arbitration in accordance with the Arbitration Act 2014.

# Notices

## All notices to a party must be delivered by hand or sent by post, courier, fax or email to that party’s address for notices stated in Schedule 1.

## Notices must be signed or in the case of email sent by the appropriate manager or person having authority to do so.

## A notice will be considered to be received:

### If delivered by hand, on the date it is delivered

### If sent by post on the 7th Working Day after the date it is sent;

### If sent by courier on the date it is delivered;

### If sent by fax, on the sender receiving fax machine report that it is successfully sent; or

### If sent by email, upon receipt of a confirmation email from the recipient.

## A notice received after 4pm on a Working Day or on a day that is not Working Day will be considered to be received on the next Working Day.

# Discretionary Termination

## In addition to any other rights of termination that the Principal may have under the contract or at law generally, the Principal reserves the right to terminate the contract at any time. When exercising this right, the Principal shall give at least 20 Working Days notice to the Contractor who shall then do everything necessary to comply with the notice and demobilize from the Site. At the time of giving notice to the Contractor the Principal shall inform the Contractor of the date of termination.

## The Principal shall meet the costs of early termination and demobilization and the Contractor shall be entitled to be paid in accordance with the contract for all work up to the date of termination. The Contractor shall be entitled to such reasonable costs which the Contractor can demonstrate are a direct result of such early termination but it will not be entitled to any payment for anticipated profit for preliminary and general costs in respect of the unfinished work or any consequential loss of any kind whatsoever.

# Termination

## The Principal may terminate this contract immediately by written notice to the Contractor if:

### The Contractor suspends work on site for 10 Working Days; or

### A receiver, liquidator, statutory manager is appointed to the Contractor, the Contractor is adjudged bankrupt, or otherwise enters into a compromise with its creditors; or

### The Contractor breaches this contract and fails to remedy the breach within 5 Working Days of receipt of written notice from the Principal to remedy the breach.

# Confidentiality

## The Contractor must use its best endeavours to keep confidential all matters relating to the contract. The Contractor must not disclose any information except to the extent that:

### The disclosure of that information is necessary for the Contractor to carry out its obligations under this contract or to enforce any of its rights under it; and

### That disclosure is required by law.

## The Contractor must keep confidential any claim or dispute under the contract.

## The Contractor must not advertise its relationship with the Principal or its involvement in the Contract Works without the written permission of the Principal.

## The Contractor must ensure that its subcontractors and suppliers are bound by a clause similar to this clause.

# General

## Subject to clause , the Contractor must not assign or novate any rights under the contract without first obtaining the Principal's consent. The Principal's consent may be given or withheld at the Principal's absolute discretion.

## The Principal may assign its rights under this contract without the consent of the Contractor.

## The Principal is entitled to set off, against any sums that would otherwise be due to the Contractor, amounts in respect of any claims it has, including damages for breach of contract by the Contractor (whether pursuant to this contract or any other contract between the Principal and the Contractor).

## The Principal may, acting reasonably, request that the Contractor immediately remove any on-site personnel from the Site. The Contractor shall pay any costs incurred in such removal and any costs of subsequent replacement and the person required to be removed (or prevented access) shall not again be employed in relation to the Contract Works without the permission of the Principal.

## This contract evidences the entire agreement between the Contractor and Principal in connection with the Contract Works and supersedes and extinguishes all prior agreements between the Contractor and the Principal relating to such matters.

## Except as provided at law or elsewhere in the contract, nothing in the contract can be varied, waived, discharged or released, unless both parties agree in writing.

## This contract may be signed in any number of counterparts (which may be emailed pdf or facsimile copies) all of which when taken together shall constitute one and the same contract.

## This contract is governed by Cook Islands law and the parties submit to the jurisdiction of the High Court of the Cook Islands.

## Unless otherwise noted, all amounts referred to, including the Contract Price, exclude VAT.

1. **ENTIRE CONTRACT**

## The provisions in the:

### construction contract;

### schedules, and

### tender documents

### constitute the entire contract.

## In the event of a conflict arising between the terms of the entire contract the order of precedence of the documents are as set out in 25.1 above.

SCHEDULE ONE: PARTICULARS

SCHEDULE TWO: PAYMENT TERMS

SCHEDULE THREE: INSURANCES

SCHEDULE 4 – PLANS AND SPECIFICATIONS

SCHEDULE 5 – PRACTICAL COMPLETION

APPENDIX A – TABLE OF GUARANTEES

**SIGNED for and on behalf of**

**[Contractor]**

By: Witness:

--------------------------------------------------------- --------------------------------------------

Name:…………………………………………. Name:……………………………

Title:…………………………………………… Title:……………………………….

Date: --------------------------------------------- Date: ------------------------------------

**SIGNED for and on behalf of Her Majesty the Queen in right of the government of the Cook Islands acting by and through the Secretary of Infrastructure Cook Islands**

By: Witness:

------------------------------------------------------ --------------------------------------------

Name:…………………………………………. Name:…………………………

Title:…………………………………………… Title:……………………………….

Date: ----------------------------------------------- Date: -------------------------------------

Schedule 1: Particulars

|  |  |
| --- | --- |
| **Project:** | Takuvaine Stream Rock Gabion Walls |
| **Site:** | Takuvaine Stream, Avarua, Rarotonga |
| **Principal:** | Secretary of Infrastructure Cook Islands |
|  |  |
| **Engineer** |  |
| Person: | Tenga Mana |
| Street Address: | Main Road, Arorangi, Rarotonga |
| Postal Address: | PO Box 102, Rarotonga |
| Telephone: | (+682)20321 |
| Facsimile: | [(+682) 24321 |
| Mobile: | [(+682) 76526 |
| E-mail: | [tenga.mana@cookislands.gov.ck](mailto:tenga.mana@cookislands.gov.ck) |
| |  |  | | --- | --- | | **Engineer’s representative** |  | | Person: |  | | Street Address: |  | | Postal Address: |  | | Telephone: |  | | Facsimile: |  | | Mobile: |  | | E-mail: |  | | |  | | --- | | Patrick Tangapiri | | Main Road, Arorangi, Rarotonga | | PO Box 102, Rarotonga | | (+682)20321 | | [(+682) 20321 | | [(+682) 52517 | | [patrick.tangapiri@cookislands.gov.ck](mailto:patrick.tangapiri@cookislands.gov.ck) | |
| **Contractor** |  |
| Contractor: | [TBA] |
| Street Address: | [TBA] |
| Postal Address: | [TBA] |
| Telephone: | [TBA] |
| Facsimile: | [TBA] |
| Mobile: | [TBA] |
| E-mail: | [TBA] |
|  |  |
| **Completion Date:** | Six weeks from the date both parties have signed the contract |
|  |  |
| **Contract Price:** | [TBA] |
|  |  |
| **Liquidated damages:** | $500.00 (plus VAT) per week |
|  |  |

Schedule 2: Payment Terms (Refer clause 52 of the Request for Tender)

Progress payments

* 1. The Contractor is entitled to progress payments for construction work carried out under this contract, including the value of approved Variations.
  2. The Contractor may serve payment claims on the Principal under the contract. Payment claims shall be submitted in respect of construction work carried out during periods of one week. The Contractor’s payment claims shall:
     1. Be in writing;
     2. Present on formal invoice the total amount claimed for including details
     3. Identify the contract to which the progress payment relates;
     4. Identify the construction work and the relevant period to which the progress payment relates;
     5. Indicate a claimed amount on the basis of:
        1. the estimated extent and value of the works that have been carried out during the period to which the progress payment relates;
        2. the estimated extent and value of all construction work done which is claimed in respect of approved variations to the work; and
        3. the estimated extent and value of Materials delivered to the site that are intended to be incorporated into the works but have not yet been so incorporated;
     6. Indicate the manner in which the claimed amount was calculated; and
     7. Indicate the due date for payment, which shall be 30 Working Days after the date of service of the payment claim.
  3. Within 10 Working Days of receiving a payment claim from the Contractor, the Principal shall issue a payment schedule to the Contractor. The Principal’s payment schedule shall:
     1. Be in writing;
     2. Identify the payment claim to which itrelates;
     3. Indicate a scheduled amount;
     4. Indicate the manner in which the scheduled amount was calculated; and
     5. Indicate the reason or reasons for any difference between the scheduled amount and the claimed amount and, where the principal is withholding payment on any basis, the reason for withholding payment.
  4. Every scheduled amount shown in a payment schedule, together with the amount of VAT payable, shall be paid by the Principal to the Contractor within20 Working Days of the date of the payment schedule.
  5. The Defects Liability Retention shall be paid out to the Contractor by the Principal within 20 Working Days of the issue of the Certificate of Final Completion in accordance with clause 15 of this contract.
  6. No later than 30 days after the completion of the Contract Works, or within such further time as the Principal may reasonably allow, the Contractor shall submit a final account of all of the Contractor’s payment claims to the Principal. That account shall be headed “final payment claim” and be signed by the Contractor, and shall:
     1. Be in writing;
     2. Identify the contract to which the final payment claim relates;
     3. Identify the relevant period or periods towhich the final payment claim relates;
     4. Identify the construction work to which the final payment claim relates, which shall include all works completed by the Contractor that have yet to be paid for by the Principal;
     5. Indicate the amount claimed for those works, the amount claimed in respect of all outstanding claims, and the manner in which those sums have been calculated; and
     6. Indicate the due date for payment, which shall be30 Working Days after the date of service of the payment claim.
  7. Within 10 Working Days of receiving a final payment claim from the Contractor the Principal shall issue a final payment schedule to the Contractor. The Principal’s final payment schedule shall:
     1. Be in writing;
     2. Identify the final payment claim to which it relates;
     3. Indicate a scheduled amount;
     4. Indicate the manner in which the scheduled amount was calculated; and
     5. Indicate the reason or reasons for any difference between the scheduled amount and the claimed amount and, where the Principal is withholding payment on any basis, the reason for withholding payment.
  8. Every scheduled amount shown in a final payment schedule, together with the amount of VAT payable, shall be paid by the Principal to the Contractor within 20 Working Days of the date of the final payment schedule.
  9. Upon the issue of the final payment schedule, the Principal shall cease to be liable to the Contractor in respect of any of the Principal’s obligations under the contract except for the Principal’s obligations:
     1. To pay the scheduled amount due;
     2. To pay any retention monies withheld; and
     3. To pay any scheduled amounts shown in any payment schedule issued prior to the issue of the final payment schedule but unpaid at that time.

Schedule 3: Insurances

Insurances

* 1. The Contractor is to arrange the following insurances:

1. Public liability: $500,000; and
   1. The insurances the Contractor or the Principal arrange under this contract must meet the following requirements:
      1. Except for insurance of Contractor’s Plant and equipment, insurances arranged by the Contractor must be in the joint names of the Contractor and the Principal;
      2. The insurance must include a provision that a default by one insured does not prejudice the rights of the other;
      3. The insurance must include a waiver of the insurer’s right to subrogation against the insured parties;
      4. The insurance must operate as if separate policies had been issued to each of the insured parties other than in relation to the amount of insurance available; and
      5. The insurer or insurers and the insurance contracts must be acceptable to the other parties, provided that those parties must not be unreasonable in agreeing to the arrangements, and the insurance contracts must not be able to be cancelled or changed without the consent of the parties.

Schedule 4 – Plans and Specifications

As attached

Schedule 5 – Practical Completion

1. Practical Completion
   1. Practical Completion is where the Contractor has:
   2. Delivered to the Principal all of the following (to the extent that the Contractor is responsible under this contract):
      * 1. All necessary authorities and certification relating to lawful occupation of the Contract Works by the Principal;
        2. All relevant test certificates and approval certificates from relevant authorities required for occupation and use;
        3. All inspection certificates required for occupation and use under any applicable legislative requirement; and
        4. All deeds of warranty and producer statements that have not already been provided;
   3. Completed all of the work except for minor omissions and minor defects:
      1. which do not prevent the works from being reasonably capable of being used for their intended purpose, and the rectification of which will not prejudice the convenient use of the Contract Works; and
      2. the value to remedy of which shall not cost in aggregate more than the value of the Defects Liability Retention remaining once PCC is issued;
   4. Removed all rubbish from the Site and site works have been cleaned to an acceptable standard;
   5. If required by the Principal, obtained from independent design consultants selected by the Principal, confirmation that the works are practically complete.
   6. The Principal may, but is not obliged to, waive any of these requirements at its sole discretion.

**APPENDIX D - EVALUATION CRITERIA**

The Evaluation Criteria has been drawn from the Statement of Requirements, Standard Conditions and Special Conditions as articulated in the RFT. In accordance with clause 24.5 of the Manual, Tenders that did not meet the Standard Conditions are deemed non-compliant.

**D1 Standard Conditions**

|  |  |
| --- | --- |
| **Criteria** | **Compliant**  **(Yes/No)** |
| 1. Tender was deposited in the Tender Box by the closing time specified in the  RFT. |  |
| 2. Tender is complete: contents and format contained in Appendix A (Forms A1  to A8) of the RFT has been followed. |  |
| 3. Proposal and related documentation was submitted in the English  language. |  |
| 4. Tenderers must tender on all parts of the tender, i.e. to supply and build construction for the whole of the contract works as specified in the RFT. |  |
| 5. Tenders must be presented in hard copy format only as specified in this RFT |  |
| 6. All prices must be in NZ dollars inclusive of freight and delivery charges to Takuvaine, Rarotonga. |  |

**D2 Special Conditions**

A Weighted Criteria methodology will be applied to this RFT to identify the Tenderer who is offering the greatest value for money.

Only fully compliant Tenders will be evaluated. An Evaluation Committee will be established to evaluate the Tenders. Expert advisors may be used to support and advise the Committee during the evaluation process. In some instances, Tenderers may be required to provide additional information during this time.

The Evaluation Committee will make recommendations to the CI Government Tender Committee (consisting of the MFEM Financial Secretary and the Solicitor General) for approval.

Evaluations will be conducted against the attributes outlined in the table below.

|  |  |
| --- | --- |
| **Criteria** | **Weight (%)** |
| **Non-Price Attributes** |  |
| 1. Compliance with contract terms | 5 |
| 2. Relevant Experience | 15 |
| 3. Implementation - can deliver the Products and Services within reasonable set  timeframe.  timeframe (12 weeks) | 10 |
| 4. Locally based company and resources | 15 |

|  |  |
| --- | --- |
| **5. Price** | 55 |
| **TOTAL WEIGHTING** | **100** |

**D3 Risk Evaluation**

Evaluation Committee will conduct a Risk Assessment for each Tender submitted. This will identify the most significant risks presented by the Tender and consider the likelihood of the risk occurring; the consequence of that risk; and a risk mitigation strategy. In conclusion, the mitigated risk will be determined to form an overall measure of the risk represented by each Tender.

The Risk Mitigation Strategy may include the inclusion of specific clauses in the executed contract. Therefore, a Tender considered to be High Risk might still be selected subject to the Tenderer’s willingness to accept the proposed contract amendments.