



## REQUEST FOR TENDER (RFT) WORKS

<b>RFT NUMBER:</b>	<b>MFEM TORBA 01/19</b>
<b>DESCRIPTION:</b>	Construction of a New MFEM Office Building in Sola, Vanua Lava, TORBA Province
<b>EMPLOYER:</b>	Ministry of Finance and Economic Management PMB 9058 PORT VILA
<b>TENDER SUBMISSION ADDRESS:</b>	<u>Locked Tender Box</u> Central Tenders Board Office Ministry of Finance and Economic Management, PMB 9058, Top Floor S.I.P. Building [Former Melitco Building] Rue Pasteur PORT VILA.
<b>SUBMISSION DATE &amp; TIME:</b>	15 <sup>th</sup> November 2019 @ 3:00 pm
<b>OPENING DATE &amp; TIME:</b>	19 <sup>th</sup> November 2019 @ 10:00 am



## **REQUEST FOR TENDER**

### **TABLE OF CONTENTS**

#### **LETTER OF INVITATION**

#### **SECTION**

- 1. GENERAL CONDITIONS OF TENDERING**
- 2. SPECIAL CONDITIONS OF TENDERING**
- 3. EMPLOYER'S TECHNICAL SPECIFICATIONS**
- 4. TENDER RESPONSE SCHEDULES**
- 5. GENERAL CONDITIONS OF CONTRACT**
- 6. SPECIAL CONDITIONS OF CONTRACT**
- 7. FORMS**



## LETTER OF INVITATION

<b>To: All interested Building Constructors</b>	<b>RFT WORKS Ref</b>	<b>MFEM TORBA 01/19</b>
	<b>Date Issued</b>	<b>28<sup>th</sup> October 2019</b>
	<b>Validity of Tender</b>	<b>60 Working Days from Tender Submission Date</b>
	<b>Location of Works</b>	<b>TORBA Provincial Headquarters, Sola, Vanua Lava</b>
	<b>Completion Date</b>	<b>31<sup>st</sup> July 2020</b>
<b>Submission Date and Time (VANUATU Local Time)</b>		<b>15th November 2019, @3:00 pm</b>
<b>Works Required</b>  <p>The Government of the Republic of Vanuatu represented by the Ministry of Finance and Economic Management (the Employer) seeks Tender for the Construction of a new MFEM Building in Sola, Vanua Lava, TORBA Province. Its purpose/role is to devolve financial process to the Provinces for effective Government services to reach rural areas. The construction of the building shall be built in accordance with the drawings and specifications and the Contract (the “Works”).</p> <p>See scope of Works/specification of Works.</p>		
<b>EMPLOYER Project Code</b>	<b>MFEM TORBA 01/19</b>	

You are invited to submit a Tender in response to this Request for Tender (RFT). The Works are being procured by **Ministry of Finance and Economic Management** (the “Employer”). The completed Tender must be signed by your authorised representative and must be valid for a minimum period as indicated above from the Closing Date of the RFT.

This Tender is open to all Tenderers who wish to respond to the RFT. Tenderers may only associate with each other either under a consortium, joint venture or association relationship, or under a sub-contractual agreement to complement their respective areas of supply to enhance their capacity to perform the Works.

This Invitation to Tender comprises of:

- Section 1 General Conditions of Tendering
- Section 2 Special Conditions of Tendering
- Section 3 Employer’s Technical Specifications
- Section 4 Tender Response Schedules



Section 5 General Conditions of Contract  
Section 6 Special Conditions of Contract  
Section 7 Forms

A Contractor will be selected using the evaluation procedure described in the RFT.

Payments made against any Contract arising from this Tender will be made in the currency of the Tender and the Contract. The Employer reserves the right to accept or reject any Tender, and to cancel the Tender process and reject all Tenders, at any time prior to the award of Contract, without thereby incurring any liability to the affected Tenderer(s).

Instructions on how to respond to the Tender are provided in this RFT.

Please submit your Tender by mail, courier or hand to the address stated on the cover page of the RFT in a sealed envelope/package, marked as requested in this RFT. Your Tender must be received before the Closing Date and Time for submission of Tenders. Tenders received after this deadline shall not be considered and shall be rejected

Signed: .....

Name:

Mr. Letlet August

Title/Position: Director General

Address: Ministry of Finance and Economic Management,

PMB 9058,

PORT VILA Vanuatu.

(For and on behalf of the Purchaser)



## **SECTION 1 GENERAL CONDITIONS OF TENDERING**

### **TABLE OF CONTENTS**

1.1. PREPARATION OF TENDERS .....	6
1.2. VALIDITY OF TENDER.....	7
1.3. ELIGIBILITY OF THE TENDERER, EQUIPMENT AND SERVICES .....	7
1.4. QUALIFICATIONS OF THE TENDERER .....	8
1.5. CORRUPT OR FRAUDULENT PRACTICES .....	9
1.6. PRE-TENDER MEETING, CLARIFICATIONS AND ADDENDA .....	9
1.7. TENDER PRICES, CURRENCIES, PAYMENTS AND TAXES.....	10
1.8. SUBCONTRACTORS .....	10
1.9. THE RIGHT TO VARY QUANTITIES .....	10
1.10. TENDER SECURITY .....	10
1.11. TENDER SUBMISSION AND OPENING.....	11
1.12. EXAMINATION AND EVALUATION OF TENDERS.....	11
1.13. ACCEPTANCE OR REJECTION OF ANY OR ALL TENDERS .....	13
1.14. APPROVAL AND NOTIFICATION OF CONTRACT AWARD .....	13
1.15. PERFORMANCE SECURITY .....	14
1.16. DEBRIEFING OF UNSUCCESSFUL TENDERERS .....	14
1.17. SIGNING OF CONTRACT .....	14
1.18. DISPUTES AND SETTLEMENTS .....	14



## **1.1. PREPARATION OF TENDERS**

1.1.1. The Employer invites Tenders for the construction of Works as described in the Employer's Technical Specifications (See Section 3) of this RFT. The Tenderer shall inform itself fully of all circumstances and conditions relating to submitting a Tender, including site visits if appropriate, and shall satisfy itself as to the correctness and sufficiency of the RFT documentation.

1.1.2. The estimated timeframe for commencement and completion of the Works is given in the Special Conditions of Tendering (**SCT**) (See Section 2).

1.1.3. The Tenderer shall prepare its Tender using the Tender Response Schedules (**TRS**) as detailed in the **SCT**. In case of a consortium, association or joint venture, each member shall complete the **TRS**. The completed and signed TRS, together with the required supporting documentation will form the Tender and shall be the basis on which the Tender will be evaluated.

1.1.4. The Tenderer shall provide with the tender the following:

- (a) Proposed Work Method Statement and Construction Programme, giving descriptions, drawings, charts, as necessary, to comply with the requirements of the Employer's Technical Specifications. Any Tender that is not submitted with a proposed Work Method Statement and Construction Programme will be regarded as non-responsive and shall be rejected;
- (b) One only of the following as stated in the **SCT**:
  - i. In the case of the basis of payment under the contract being the actual quantities of work ordered and carried, a Bill of Quantities
  - ii. In the case of the basis of payment under the Contract being the tendered lump sum, a Schedule of Activities.

The preamble and instructions for completing a Bill of Quantities or a Schedule of Activities, as required, are contained in Section 3, the Employer's Technical Specifications.

1.1.5. A Tenderer who submits or participates as a member of a Consortium, Joint-Venture or association in more than one Tender will cause all the Tenders with that Tenderer's participation to be disqualified. However, any firm or organisation is permitted to be a sub-contractor to more than one Tenderer.

1.1.6. Alternative Tender(s) shall only be permitted if so stated in the **SCT**.

1.1.7. The Tenderer shall prepare one original and three copies of the TRS, prepared in the English language. The Tenderer shall enclose the original and the copies, attaching the relevant documents as required by the TRS in one sealed envelope (or parcel) and clearly mark it with the RFT Works number, the Tender description and the name and address of the Employer, the Tenderer's name and address, and the submission time and date. The outer envelope must also bear the statement "Not to be opened before the tender opening session".



- 1.1.8. The Tenderer may withdraw its Tender before the deadline for submission of Tenders by submitting a notice of withdrawal. The notice must be submitted in an envelope identifying the Works RFT and clearly labelled "Withdrawal of Tender". The withdrawal will be announced at the Tender Opening, but the withdrawn Tender will not be opened nor further considered.
- 1.1.9. The Tenderer may amend its Tender before the deadline for submission of Tenders by submitting a notice of amendment. The notice, and amended Tender, must be submitted in an envelope identifying the RFT and clearly labelled "Amendment of Tender". The amended Tender will be opened and announced at the Tender Opening and considered in the subsequent evaluation of Tenders.
- 1.1.10. The Employer will not be responsible for, or pay for, any expense or loss, which may be incurred by a Tenderer in the preparation and submission of its Tender.
- 1.1.11. The Employer may, at its discretion, extend the deadline for the submission of Tenders by amending the Tender Document in accordance with Section 1.6.3 in which case all rights and obligations of the Employer and Tenderers previously subject to the deadline shall thereafter be subject to the deadline as extended.
- 1.1.12. An authorised representative of the Tenderer shall sign the original Tender. The authorisation shall be in the form of a written power of attorney accompanying the Tender or in any other form demonstrating that the representative has been duly authorised to sign and legally bind the Tenderer.

## **1.2. VALIDITY OF TENDER**

- 1.2.1 The Tender shall remain valid for the validity period stated in the **SCT** from the closing date for Tenders. In exceptional circumstances, the Employer may request that Tenderers extend the Tender validity period. The request and the Tenderer's response shall be made in writing. The Tenderer may refuse the request, but its Tender will no longer be considered. The Tenderer agreeing to the request will not be required or permitted to otherwise modify its Tender for the period of the extension.

## **1.3. ELIGIBILITY OF THE TENDERER, EQUIPMENT AND SERVICES**

- 1.3.1. A Tenderer may be a natural person, private entity, or government-owned entity or any combination of them in the form of a joint venture, consortium or association, under an existing agreement, or with the intent to constitute a legally enforceable joint venture, consortium or association. Government-owned enterprises in Vanuatu may only participate if they are legally and financially autonomous, operate under commercial law, and are not a dependent entity of the Government.
- 1.3.2. All members of a joint venture, consortium or association (other than sub-contractors) shall be jointly and severally liable for the execution of the Contract in accordance with the Contract terms. The joint venture, consortium or association agreement shall explicitly provide for the joint and several liability of the members towards the Employer. The joint venture, consortium or association agreement shall be included with the tender.



- 1.3.3. Except as provided for in Clause 1.3.4 Tenderers shall not be excluded from tendering on the basis of nationality, degree of foreign affiliation or ownership, location, size, race or other criterion, not having to do with their qualifications or decisions taken against any Tenderer under Clause 1.4.
- 1.3.4. The Tenderer, including all members constituting the Tenderer, shall not have the nationality of any country that is prohibited by the legislation of the Republic of Vanuatu or by any international Agreement to which Vanuatu is a signatory, or by an Act of Compliance with a Decision of the United Nations Security Council taken under Chapter VII of the Charter of the United Nations. These countries and any applicable conditions are listed in the **SCT**. These countries and any applicable conditions are listed in the **SCT**.
- 1.3.5. Materials, equipment and services must not be supplied from those countries that are prohibited by the legislation of the Republic of Vanuatu or by any international Agreement of which the Republic of Vanuatu is a signatory, or by an Act of Compliance with a Decision of the United Nations Security Council taken under Chapter VII of the Charter of the United Nations. These countries and any applicable conditions are listed in the **SCT**.
- 1.3.6. If the Tenderer is a joint venture, consortium or association (this does not include sub-contractors) all of the members shall appoint one member to act as the Member-in-Charge with authority to bind the joint venture, consortium or association. The composition or the constitution of the joint venture, consortium or association shall not be altered without the prior consent of the Employer.
- 1.3.7. The Tenderer must meet the following eligibility criteria:
- (a) Must be registered in its country of origin;
  - (b) Be free from insolvency, bankruptcy or similar status;
  - (c) Have the legal capacity to enter into contract;
  - (d) Be current with payments of taxes;
  - (e) Not be ineligible pursuant to Clause 1.5;
  - (f) The Tenderer and any director, officer, manager or supervisor of the Tenderer has not, within a period of 3 years preceding the date of issuance of the invitation to Tender been convicted of any criminal offence, whether in Vanuatu or elsewhere:
    - (i) Relating to his professional conduct;
    - (ii) Relating to the making of false statements or misrepresentations as to his qualifications to enter into a procurement contract;
    - (iii) Involving dishonesty;
    - (iv) Under anti-corruption legislation; and
  - (g) Not be suspended or disbarred by administrative or judicial proceedings from participating in procurements, whether in Vanuatu or elsewhere.

#### **1.4. QUALIFICATIONS OF THE TENDERER**

- 1.4.1. To qualify for an award of Contract, Tenderers shall demonstrate that they possess the necessary professional and technical qualifications and competence, financial resources, equipment and other physical facilities,





managerial capability, experience in the type of Works that are the object of this RFT business reputation and personnel to perform the Contract.

1.4.2. Tenderers shall meet the following minimum qualifying criteria.

- (a) Have an average turnover of construction work in the last three years of at least the amount specified in the **SCT**;
- (b) Provide three examples of work of a similar nature and complexity completed in the last three years;
- (c) Availability of minimum liquid assets or working capital or credit facilities from a Bank, as specified in the **SCT**;
- (d) Provide a suitable Site Manager with the qualifications stated in the **SCT**, and with experience in works of an equivalent nature and volume, a minimum experience as a Site Manager over the period stated in the **SCT**;
- (e) Provide a list of key equipment for the completion of the works with proposals for its timely acquisition (own, lease, hire, etc.); the required minimum equipment is provided in the **SCT**;
- (f) Any other criteria as specified in the **SCT**.

1.4.3. The Employer shall disqualify a Tenderer:

- (a) If it finds that the information submitted in a Tender concerning its qualifications is false, misleading, inaccurate or materially incomplete, or
- (b) Whose Tender has previously been rejected by the Employer under Clause 1.5.4 below, or under Clause 5.13.1 of the General Conditions of Contract (GCC).

**1.5. CORRUPT OR FRAUDULENT PRACTICES**

1.5.1. The Employer requires that Tenderers observe the highest standard of ethics during the procurement proceedings and the execution of contracts.

1.5.2. The Employer defines corrupt, fraudulent, collusive, coercive or obstructive practices, for the purpose of this provision in Clause 5.13.1 of the General Conditions of Contract (GCC).

1.5.3. Should any corrupt, fraudulent, collusive, coercive or obstructive practice of any kind come to the knowledge of the Employer, it shall, in the first place, allow the Tenderer to provide an explanation and shall take actions as below when a satisfactory explanation is not received.

1.5.4. In pursuance of this requirement, the Employer will, in the absence of an explanation that is satisfactory to the Employer, reject a Tender if it determines that the Tenderer recommended for award has, directly or through an agent or other third party, engaged in corrupt, fraudulent, collusive, coercive or obstructive practices in competing for the contract in question.

**1.6. PRE-TENDER MEETING, CLARIFICATIONS AND ADDENDA**

1.6.1. If any Pre-Tender/Site Meeting is to be held, the time, date and location will be stated in the **SCT**.

1.6.2. The Tenderer may seek clarifications of the RFT by contacting in writing the Employer named in the **SCT**, no later than 10 days before the Tender submission closing date. The Employer shall send its response simultaneously to all



Tenderers in writing, without disclosing the identity of the Tenderer requesting the clarification, or the identity of the other tenderers, no later than 7 days before the Tender submission closing date.

- 1.6.3. If for any reason the RFT has to be amended, the Employer will modify it by issuing an Addendum in writing, which should be acknowledged in writing by the Tenderer. The Tenderer should note that such an Addendum will form part of the RFT and may, if required, cause an extension of the tender submission closing date and time.

## **1.7. TENDER PRICES, CURRENCIES, PAYMENTS AND TAXES**

- 1.7.1. The Tenderer must provide with the tender a completed Bill of Quantities or Schedule of Activities as stated in the **SCT** giving full prices with its tender.

- 1.7.2. Prices shall be stated in Vanuatu Vatu (VUV) or, if requested in the **SCT** any freely convertible currency and all payments made under the Contract shall be made in the currency(ies) stated in the Tender.

- 1.7.3. Taxes and duties shall be as stated in the **SCT**.

## **1.8. SUBCONTRACTORS**

- 1.8.1. If the Tenderer proposes to subcontract any component comprising more than 10% of the value of the Works, the Tenderer shall provide details of the proposed subcontractors, indicating the proposed part of the Works to be subcontracted and the previous relevant experience of that subcontractor, including a statement that the proposed subcontractor(s) is/are eligible under the conditions of the RFT and qualified to perform that part of the works. Additionally, such subcontractors shall complete the TRS and provide with the tender supporting documentation as detailed in the **SCT** (if these are not required of subcontractors, the **SCT** will explicitly state).

## **1.9. THE RIGHT TO VARY QUANTITIES**

- 1.9.1. At the time the Contract is awarded the Employer reserves the right to increase or decrease the quantities, provided this does not exceed the percentage stated in the **SCT**, and without any change in the unit costs quoted in the Tender, and in accordance with the other terms and conditions in the **RFT**.

## **1.10. TENDER SECURITY**

- 1.10.1. If a Tender Security is required, it shall be in the amount and currency stated in the **SCT**. The Tenderer has the option of submitting it either by means of:
- (a) A bankers cheque; or
  - (b) An unconditional Bank Guarantee, in the format shown in Section 7.
- 1.10.2. The Tender Security shall be valid for 30 days beyond the original Tender validity period, or for 30 days beyond any extended Tender validity period, if one has been requested
- 1.10.3. The original of the Tender Security shall be included with the TRS, photocopies will not be accepted. If a Tender Security is required, any Tender not accompanied by a Tender Security will be rejected by the Employer.



1.10.4. The Tender Security of the successful Tenderer will be discharged when the successful Tenderer has signed the Contract Agreement and the required Performance Security has been received by the Employer.

1.10.5. The Tender Security for unsuccessful Tenderers will be returned upon expiry of the term of the security or formation of a contract with the successful tender and submission by the successful Tenderer of any required Performance Security, whichever is earlier.

1.10.6. The Tender Security may be forfeited if:

(a) Any Tenderer withdraws its Tender during the period of tender validity specified in Clause 1.2; or does not accept the correction of arithmetical errors; or

(b) The successful Tenderer fails to provide a Performance Security, if required to do so by Clause 1.14; or to sign a contract in accordance with Clause 1.16.

#### **1.11. TENDER SUBMISSION AND OPENING**

1.11.1. Tenders may only be delivered by hand, mail or by courier service in a sealed envelope/ package, marked as requested in the **SCT**, at the address, and, not later than, the time and date stated on the cover page of the RFT.

1.11.2. Tenders shall be opened at the place of submission stated on the cover page of the RFT, immediately after the time for submission of Tenders, in the presence of the Tenderers and/or their representatives who choose to attend.

1.11.3. The name and address of the Tenderer submitting the Tender together with the tendered total cost shall be read out and recorded. The Tender will be checked to ensure all required documents are present. If required as per Clause 1.9.1 the presence of the Tender Security will also be checked and the result read out.

1.11.4. A record of the Tender Opening will be prepared, including the information disclosed during the opening. Copies of the Record will be provided to all Tenderers who submitted a Tender.

1.11.5. A Tender received after the deadline for submission will be rejected, will remain unopened, and may be collected by the Tenderer if it so wishes. If not collected within 3 months of the Tender closing date it will be disposed of.

#### **1.12. EXAMINATION AND EVALUATION OF TENDERS**

1.12.1. All Tenders properly received shall be evaluated by a Technical Officer appointed by the Chairperson of the Tenders Board on behalf of the Employer.



The Technical Officer's determination of a Tender's compliance shall be based upon the contents of the Tender itself.

1.12.2. The Technical Officer shall evaluate the Tender on behalf of the Employer on the basis of its compliance to the Technical Specifications (see Section 3).

1.12.3. To assist in the examination, evaluation and comparison of Tenders, the Technical Officer may:

- (a) Ask Tenderers for written clarification of their Tenders including breakdown of costs, but no change in the cost or substance of the Tender will be sought, offered, or permitted except as required to confirm the correction of arithmetical errors discovered by the Technical Officer during the evaluation of Tenders. The Tenderer shall within the time specified comply with any such requests.
- (b) Make corrections for any computational errors. Corrections of computational errors will be made as indicated at Clause 1.11.5 below. For purpose of evaluating Financial Proposals, all prices quoted shall be converted into VUV using the selling rate of the Reserve Bank of the Republic of Vanuatu at the closing date for submission of the Tenders.

1.12.4. Any attempt by a Tenderer to influence the Technical Officer evaluation of Tenders or the CTB's award decisions will result in the rejection of its Tender.

1.12.5. Preliminary Examination

Prior to the detailed evaluation of Tenders, the Technical Officer will determine whether each Tender:

- (a) Has been properly signed;
- (b) Is from an eligible Tenderer;
- (c) Is accompanied by the required Tender Security; and
- (d) Has been completed in accordance with the RFT.

1.12.6. Detailed Evaluation

- (1) Each Tender will be subjected to a detailed examination to determine whether it is substantially responsive in that it adequately meets:
  - (a) The minimum specified qualifying criteria; and
  - (b) The minimum employer's technical specifications; and
  - © The completed Tender Response Schedules provided in Section 4 of the RFT, as required in the GCT and SCT, accompanied by the required supporting documentation required in the RFT.
- (2) A substantially responsive Tender is one which conforms to all the terms, conditions and specifications of the RFT, without material deviation or reservation. A material deviation or reservation is one that:
  - (a) Affects in any substantial way the scope, quality, or performance of the Works specified in the Employer's Technical Specifications;
  - (b) Limits in any substantial way the Employer's rights or the Tenderer's obligations under the Contract;



- (c) If rectified would affect unfairly the competitive position of other Tenderers presenting substantially responsive Tenders.

- (3) If a Tender is not substantially responsive it will be rejected by the Technical Officer and may not subsequently be made responsive by the Tenderer by correction or withdrawal of the nonconforming deviation or reservation.

#### 1.12.7. Financial Examination

- (1) Only those Tenders that are considered substantially responsive will be considered for financial evaluation.
- (2) The Technical Officer will determine for each Tender the evaluated Tender price by adjusting the Tender price as follows:
  - (a) Making any corrections for arithmetical errors;
    - (i) Where there is a discrepancy between the amounts in figures and in words the amount in words will govern;
    - (ii) In the case of a Bill of Quantities where there is a discrepancy between the unit rates and the line item total resulting from multiplying the unit rate by the quantity, the unit rate quoted will govern;
    - (iii) In the case of a Schedule of Activities the total price offered will govern;
  - (b) Making appropriate adjustments to reflect discounts (if any).
- (3) Following this, the Technical Officer will compare all evaluated Tenders and rank them accordingly, with the lowest priced technically compliant (substantially responsive) Tender being ranked No. 1, and so on.
- (4) For evaluation and comparison purposes only, and if multiple currencies where allowed in tendering, all prices quoted shall be converted into VUV using the VUV selling rate of the Reserve Bank of Vanuatu, at the closing date for submission of the Tenders.

### 1.13. ACCEPTANCE OR REJECTION OF ANY OR ALL TENDERS

- 1.13.1. The Employer reserves the right to accept or reject any Tender, and to cancel the Tender process and reject all Tenders, at any time prior to the award of Contract, without thereby incurring any liability to the affected Tenderer(s).

### 1.14. APPROVAL AND NOTIFICATION OF CONTRACT AWARD

- 1.14.1. The Contract will be awarded to the Tenderer whose Tender is substantially responsive and offers the lowest price.
- 1.14.2. Following the approval of the award the award decision shall be notified to all participating tenderers and no contract may be entered before 10 days have elapsed from the date of such notification.



### **1.15. PERFORMANCE SECURITY**

1.15.1. Together with the Contract the successful Tenderer shall deliver to the Employer, if required by the **SCT**, a Performance Security in the amount and for the period stated in the **SCT**, in the format specified in Section 7. The Performance Security shall be issued by an institution/authority acceptable to the Employer.

1.15.2. Failure of the successful Tenderer to submit a Performance Security will constitute sufficient grounds for the cancellation of the award.

1.15.3. In such an event, the Employer shall award the Contract to the next lowest evaluated Tenderer whose Tender is substantially responsive and has been determined by the Employer to be eligible and qualified to satisfactorily perform the Contract, subject to the Employer's right to reject all Tenders in accordance with Clause 1.13.

### **1.16. DEBRIEFING OF UNSUCCESSFUL TENDERERS**

1.16.1. Within 10 days of receipt of a written request by any unsuccessful Tenderer, but not before a contract is signed with the successful tenderer, the Employer shall communicate the reasons why its Tender was not successful.

### **1.17. SIGNING OF CONTRACT**

1.17.1. 10 days after the notification of the award decision to all participating tenderers the Employer shall send to the successful Tenderer two (2) sets of the unsigned Contract.

1.17.2. The successful Tenderer may be required to provide documentation, or additional documentation, evidencing its qualifications prior to Contract signature.

1.17.3. Within 7 days of receipt of the two (2) sets of the Contract Agreement the successful Tenderer shall sign, date and return both to the Employer.

1.17.4. The delegated representative of the Government of Vanuatu on behalf of the Employer will sign both Contracts and return one to the Tenderer.

### **1.18. DISPUTES AND SETTLEMENTS**

1.18.1. The Parties agree that the avoidance or early resolution of disputes is crucial for a smooth execution of the Contract and the success of the assignment. The Parties shall use their best efforts to negotiate all disputes arising out of, or in connection, with this Contract or its interpretation.

1.18.2. Failing successful negotiation any disputes will be settled by the courts in Vanuatu.



## SECTION 2 SPECIAL CONDITIONS OF TENDERING

These Special Conditions of Tender (**SCT**) apply to this Request for Tender (**RFT**) and supplement Section 1: General Conditions of Tendering.

**Tender Number:** MFEM Building TORBA 01/19  
**Tender Name:** Construction of a new MFEM Office Building in Sola, Vanualava, TORBA Province

Clause Ref.	Heading	Description
1.1.2	Estimated timeframe for commencement and completion	<p>Contract signing is proposed to occur no later than mid of December 2019.</p> <p>All construction activities under this tender are to be completed within four (4) months of Contract signing.</p>
1.1.3	Tender Response Schedules and other required documentation	Tenders are to complete and provide cover page listed at page 24. TRS 1, TRS 2 and all associated original and copies of documents as listed in each TRS 2, Part 1.9.
1.1.4	Basis of payment under the Contract and the type of document required	<p>The basis of payment under the contract is the tendered lump sum and the document required to be completed and included with the Tender is a Schedule of Activities.</p> <p>Under the Schedule of Activities – A contingency sum of 15 % only of the lump sum of the contract price.</p>
1.1.6	Alternative tenders	Alternative Tenders are not allowed.
1.2	Validity of Tender	Two (2) months or 60 working days shall be the validity period of tender
1.3.4 & 1.3.5	Prohibited countries	
1.3.7	Documentation to demonstrate that eligibility criteria are met	Tenderer is to provide a copy of valid and current Business License in the name of the organisation that is bidding or to include all business licenses and insurance certificate from all partner organisations with a letter of joint venture of consortium, confirming the arrangement of the organisations.
1.4.2 (a)	Qualification criteria	The minimum required annual volume of construction work in any of the last 3 years shall be equivalent to VUV to 10 million.
1.4.2 (c)	Qualification criteria	The minimum amount of liquid assets or working capital or credit facility is VUV 500,000 to 2 million. If the amount is expressed in the accounting system / financial accounts or reports of the Tenderer or any other relevant documents in a currency different from VUV, then the Tenderer shall convert the amounts into VUV using the





Clause Ref.	Heading	Description
		VUV selling rate of the Reserve Bank of Vanuatu, on the date that is 14 days prior to the closing date for submission of the Tenders.
<b>1.4.2 (d)</b>	Site Manager	<p>The qualifications of the Site Manager shall be INTV Level 2 certificate in carpentry, construction, construction management or relevant field.</p> <p>The minimum experience of the Site Manager in works of an equivalent nature and volume shall be <b>ten (10) years</b> with a minimum of <b>two (2) years</b> as a Manager.</p>
<b>1.4.2(e)</b>	Minimum equipment required	Minimum equipment required shall be all tools and equipment for employees to complete these works, and access to or ownership of a concrete mixer, generator, concrete vibrator and site levelling equipment.
<b>1.4.2(f)</b>	Other qualification Criteria	<p>The other qualification criteria to be applied will be:</p> <ol style="list-style-type: none"> <li>1. Have a minimum of five (5) years of general construction experience</li> <li>2. Have no previous history of terminations, or breach of contract</li> <li>3. Have no previous history of non-performance or poor past performances in terms of quality control, or safety or timely execution of services</li> <li>4. Demonstrate to have the equipment required for performing the works.</li> <li>5. Illustrate an understanding of the project through the submission of a works methodology and management plan</li> <li>6. Understanding and demonstrated experience in safety management required for a project such as this.</li> <li>7. Safety and Environmental Management plan statement showing that company has current system and procedures to manage safety and environmental effects of the project.</li> </ol>
<b>1.4.2(g)</b>	Other qualification Criteria	Tenderers must verify that they are complying with Vanuatu Tax laws relating to VAT by submitting a letter from the Customs Office to verify that they are up to date with their VAT payments.





Clause Ref.	Heading	Description
		In addition, Tenderers must provide Insurance Certificate/letter that your company is well insured.
1.4.2(h)	Documentation to demonstrate that qualifying criteria are met.	As per TRS 2
1.6.1	Pre-Tender/ Site Meeting	A Pre-Tender Meeting will be held on the following dates:  1. At 10:00 am on 31 <sup>st</sup> October 2019 at MFEM Conference Room (S.I.P. Building)
1.6.2	Contact Person for clarifications	The Contact Person appointed by the Employer is:  <b>Mr. Henrickson Malsokle</b> Executive Officer MFEM PMB 9058 PORT VILA  Email: <a href="mailto:halmalsokle@vanuatu.gov.vu">halmalsokle@vanuatu.gov.vu</a>  And  <b>Mr. Judicael Mlonturala</b> Principal Architect PWD Head Office PORT VILA Tel: (678) 22888  Email: <a href="mailto:jmlonturala@vanuatu.gov.vu">jmlonturala@vanuatu.gov.vu</a>
1.6.3	Site Supervisor	<b>Mr. Tony Alatoa</b> Site Supervisor PWD Sola, Vanua Lava TORBA Province  Email: <a href="mailto:talatoa@vanuatu.gov.vu">talatoa@vanuatu.gov.vu</a>
1.7.1	Bill of Quantities or Schedule of Activities	Schedule of Activities will apply to any subsequent Contract.
1.7.2	Currency	VUV - Vanuatu Vatu.



Clause Ref.	Heading	Description
1.7.3	Taxes and Duties	Tenders are to be inclusive of all relevant taxes and duties.
1.8	Subcontracting	N/A
1.9	Variation in Quantities	(10%) increase/decrease in quantities
1.10.	Tender Security	A Tender Security is not required.
1.11	Marking of Tender	<p>The Bidder shall clearly mark the submission as:</p> <p><b>“Confidential: MFEM TORBA 01/19 Construction of New MFEM Office Building in Sola, Vanua Lava, TORBA Province”</b> on the top hand left corner of the envelope and the submissions shall be addressed to:</p> <p><b><u>Locked Tender Box</u> Central Tenders Board Office Ministry of Finance and Economic Management PMB 9058 Top Floor S.I.P. Building [Former Melitco Building] Rue Pasteur PORT VILA</b></p>
1.12.	Performance Security	A Performance Security of 10 % of the Contract Value is required. This shall be provided in the currency as stipulated in Clause 1.7.2 of the SCT. The performance security shall be valid from its issuance and until 28 days after the defects liability period as defined in the GCC and/or SCC as applicable.



### SECTION 3 EMPLOYER'S TECHNICAL SPECIFICATIONS GENERAL SPECIFICATION

#### SUPPLEMENTARY SPECIFICATIONS

The Supplementary Specifics shall be read in conjunction with the General specifications. Insofar as any modified or additional clauses in the Supplementary specifications may conflict with or be inconsistent with the General Specifications, the modified or additional clauses in the supplementary specifications shall prevail.

The type and frequency of tests required for compliance and acceptance is detailed in the relevant Table "Field and Laboratory Compliance Testing of Materials and workmanship" attached at the end of this section.

#### DRAWINGS AND WORK SCHEDULES

Project Specific Drawings: The following shall form part of the Tender and the Contract.

Drawing No.	Title
[Employer to enter]	[Employer to enter]
[Employer to enter]	[Employer to enter]

Standard Drawings: The following shall form part of the Tender and the Contract

Drawing No.	Title
[Employer to enter]	[Employer to enter]
[Employer to enter]	[Employer to enter]

Schedule of Works: [Tabulate below the location and type of works to be done (if not shown on the drawings)] [Employer to enter]

[Employer to attach here the relevant table "Field and Laboratory Compliance Testing of Materials and workmanship"]

#### SCHEDULE OF ACTIVITIES

[When preparing the RFT there should be a Preamble to the Schedule of Activities (a standard preamble is given below, which should be reviewed for each particular application), followed by the Schedule of Activities specific to this RFT]



## PREAMBLE TO THE SCHEDULE OF ACTIVITIES

1. The Schedule of Activities shall be read in conjunction with the General Conditions of Tendering, Special Conditions of Tendering, General Conditions of Contract, Special Conditions of Contract, Technical Specifications and Drawings.
2. The Tenderer shall provide a tender in accordance with the format of the Schedule of Activities.
3. Payment for all of the Works will be the tendered Lump Sum either exclusive or inclusive of VAT and duties (specify as required). The payment of the Lump Sum will be spread over the period of implementation. It shall be calculated on the basis of the percentage of implemented Works at the time of the Interim Certificate.
4. A breakdown of the Works is provided in the Schedule of Activities. This breakdown of the tendered Lump Sum over the major activities of the Contract constitutes the means by which the amount payable for the Works is apportioned for Interim Payments.
5. This is the extent of the purpose of the Schedule of Activities. It is not to be regarded or construed as placing or constituting any limit on the Contractor's obligations to provide all the Works described in the contract documentation against the tendered Lump Sum.
6. The whole cost of complying with the provisions of the Contract shall be included in the Lump Sum, and where no item is provided in the Schedule of Activities, the cost shall be deemed to be distributed among prices entered for the related items of Work.
7. Provisional Sums included and so designated in the Schedule of Activities shall be expended in whole or in part at the direction and discretion of the Employer in accordance with the Conditions of Contract.
8. The amounts entered and included under Preliminary Items **1 to 15** of the Schedule of Activities shall not exceed **15 %** of the tendered Lump Sum price.
9. A Contingency Sum of **15 % of the Lump Sum Contract price** is included in the Schedule of Activities for use by the Employer to cover such contingencies as commissioning additional Works or carrying out Variations. When commissioning additional works or carrying out variations the value of these shall be calculated using the quoted unit prices. In the event that the contingency is not used or only partially used the sum remaining is to be deducted from the overall Contract Price.
10. In the case of Arithmetic Errors, the Lump Sum will govern. The sums entered for the individual items in the Schedule of Activities will be adjusted by the Employer to accord with the Lump Sum tendered.



### Schedule of Activities

Item	Activity	Description of Works	Price (VUV)
1	Mobilization	Familiarize on site and locate position of new building. Setting out of building profile and organization of actual works	
2	Footing to Slab	<p>Construct new perimeter footing reinforced with Y12 main bars and R10 stirrups at 300mm cts as specified on drawings</p> <p>Install Y12 wall and floor starter bars at 400mm cts.</p> <p>Construct under-slab block work and fill-compact all hollow blocks as specified on plan.</p> <p>Construct floor slab and reinforced with F72 mesh to full floor area.</p>	
3	Walls to Beam	<p>Construct new 150mm thick concrete hollow block wall as specified on plan with Y12 bars at 400 cts horizontally and D12 at 600 cts vertically.</p> <p>Fill in all hollow blocks and compact. Plaster both sides of walls to complete.</p> <p>Construct concrete columns with reo as specified on plan</p> <p>Construct concrete beam with Y12 main bars and R10 stirrups at 300mm cts</p>	
4	Roof Structure	<p>Construct roof framing to sizes and hold down fixtures specified in drawing</p> <p>Strengthen any weak points of roof structure by adding new rafters or purlins and hold down with approved roof fixings.</p> <p>Inspect all hold down details and replace any loose fittings</p>	



		<p>Strap all purlins to rafters with 6 nails per leg</p> <p>Place and fix new fascia board to full roof perimeter</p>	
5	Roof Cover	<p>Position in place sisalation sheets and fix</p> <p>Place new colorbond roof sheets and screw fix at every 2<sup>nd</sup> corrugation</p> <p>Place new colorbond flashing and screw fix.</p>	
6	Ceiling/Soffit	<p>Position and construct ceiling and soffit joist to whole building using 50 x 50 timber at 600 cts bothways</p> <p>Run final check to make sure all joist members and fixings are in place as specified.</p>	
7	Fixed Furniture	<p>Construct partitions and working benches in offices working spaces.</p> <p>Construct kitchen benches in the kitchen and kitchen cupboards</p> <p>Construct reception bench and with glass front</p>	
8	Windows/Doors	<p>Install door leafs to all door openings with hinges and appropriate door locks</p> <p>Install breeze way louvre frames to all windows and fit in new louvre blades</p> <p>Construct 16mm plywood shutters for cyclone on aluminium sliding frame for all windows</p> <p>Construct windows and doors as specified on plan and install door leafs and louvres.</p> <p>Install new grills and widow screens to all windows</p>	



9	Floor	Place new ceramic tiles to full floor area of house/building	
10	Electricity	<p>Install new electrical wiring and connect to all power outlets and light switches</p> <p>Install new power outlets and switches</p> <p>Install cables of computers, air-cools &amp; power points</p>	
11	Plumbing and Septic Tank	<p>Install new toilet sets with fittings</p> <p>Install new shower heads with taps and fittings</p> <p>Install new hand basins with taps and fittings</p> <p>Install new water supply pipe linings and drainage pipes</p> <p><u>Septic Tank</u></p> <p>Construct new septic tank and soak away</p>	
12	Steps & Rumps	<p>Construct the steps to the main building</p> <p>Construct rumps for disability people with iron railings attached to.</p>	
13	Paint	<p>Clean up all walls, expose timber and apply 3 coats of paint.</p> <p>Paint ceiling and soffit by applying 3 coats of paint.</p>	
14	Water Tank	Install a 1000 litter poly water tank outside the building	
15	Cleaning up and demobilize	Apply final touches, do landscaping if appropriate, clean up and vacate site	
16	Contingency Sum of 15% of the contract sum	Contingency	
	<b>Total VT</b>		





MFEM Site location [photo] for construction of the building in Sola, Vanua Lava Island, Torba Provincial Council Area.

Note: The Drawing Design plan of the building will be email separately to you.





## **SECTION 4 TENDER RESPONSE SCHEDULES**

### **TABLE OF CONTENTS**

#### **Schedule**

- |   |   |
|---|---|
| 1 | Tender Submission Form                    |
| 2 | Eligibility and Qualification Information |

## **RESPONSE TO REQUEST FOR TENDER WORKS**



[Tenderer to enter name of Government of Vanuatu Procuring Entity (the “Employer”)]

<b>RFT NUMBER:</b>	[Tenderer to enter tender number, as per Invitation to Tender]
<b>DESCRIPTION:</b>	[Tenderer to enter brief description of requirements, as per Invitation to Tender]
<b>EMPLOYER:</b>	[Tenderer to enter name of Employer, as per Invitation to Tender]
<b>SUBMISSION ADDRESS:</b>	[Tenderer to enter submission address, as per Invitation to Tender]
<b>SUBMISSION DATE &amp; TIME:</b>	[Tenderer to enter date and time, as per Letter of Invitation to Tender]

**TENDER RESPONSE SCHEDULE 1  
TENDER SUBMISSION FORM**

[To be completed on Tenderer’s letterhead]

The completed Tender form and attachments together will comprise the Tenderer’s offer

**To: Tenderer**

We agree to be bound by the **General Conditions of Tender, Special Conditions of Tender, General Conditions of Contract, Special Conditions of Contract**, and we hereby offer to perform the Works, in conformity with the Request for Tender (RFT) and in accordance with the Technical Specifications including the Bill of Quantities / Schedule of Activities, for a Total tender price of:

[Total tender price and currency in words]

CURRENCY & AMOUNT	<input type="text"/>
----------------------	----------------------

[Total tender price in figures]

This amount is

- ☐ Exclusive of VAT and duties  
☐ Inclusive of VAT and duties

We confirm receipt of the Addenda and Variations to the Invitation to Tender listed below:



Addendum	Dated	Date Received

Our Tender shall be valid for the period of time specified in the RFT, and it shall remain binding upon us and may be accepted at any time before the expiration of that period. If our Tender is accepted, we commit to obtaining a Performance Security in accordance with the RFT for the due performance of the Contract. Furthermore we warrant that we comply with all the eligibility criteria specified in the RFT.

We have no conflict of interest, and our firm, its affiliates and subsidiaries have not been declared ineligible under the laws of the Republic of VANUATU or in accordance with the RFT.



We further warrant that:

- (i) We are free from insolvency, bankruptcy or similar status;
- (ii) We have the legal capacity to enter into contract;
- (iii) We are current with payment of taxes;
- (iv) We and any director, officer, manager or supervisor of ours has not, within a period of three years preceding the date of issuance of the invitation to tender, been convicted of any criminal offence, whether in VANUATU or elsewhere:
  - a. Relating to professional conduct
  - b. Relating to the making of false statements or misrepresentations as to his eligibility or qualifications to enter into a procurement contract;
  - c. Involving dishonesty;
  - d. Under anti-corruption legislation;
- (v) We have not been suspended or disbarred by administrative or judicial proceedings from participating in procurements, whether in Vanuatu or elsewhere.

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

Signed:

Name:

Title/Position:

Authorised for and on behalf of:

Supplier:

Address:



## TENDER RESPONSE SCHEDULE 2 ELIGIBILITY AND QUALIFICATION INFORMATION

[The Tenderer must complete this schedule and attach any relevant supporting documents]

### 1.1 Status of Tenderer:

Tenderer's Legal Name:	
Country of Registration:	
Address in Country of Registration:	
Year of Registration:	
Business Certificate Number	
VAT Registration Number (if applicable)	
Registration No. in Vanuatu	

### 1.2 Annual turnover of Works contracts for the last three completed years

Year	Total Amount for the Year in VUV or equivalent
Average Annual Construction Turnover for these 3 years	
Current Commitments	

### 1.3 Balance Sheet Information and Income Statement for the past financial year (or last 3 financial years if required e.g. international tender) [EMPLOYER to specify – adjust table below if only past year is required]

Information from Balance Sheet			
Amounts in VUV Equivalent [EMPLOYER to enter applicable exchange rates]			
Years	[Enter year]	[Enter year]	[Enter year]
Total Assets			
Total Liabilities			
Net Worth			
Current Assets			
Current Liabilities			
Information from income statement			
Amounts in VUV Equivalent [EMPLOYER to enter applicable exchange rates]			
Total Revenues	[Enter year]	[Enter year]	[Enter year]
Profits before Tax			
Profits after Tax			

### 1.4 Access to financial resources

Source of financing	Total amount in VUV equivalent RBV exchange rate	Amount actually available after taking into account other commitments Amount in VUV equivalent RBV exchange rate



### 1.5 Works of a similar nature and volume over the past 3 years (3 examples)

Contract No 1 of 3		
Contract Identification:		
Award Date:		
Completion Date:		
Role in Contract:		[State Contractor, or Subcontractor)
Brief Description of Work undertaken		
Total Contract Amount in VUV equivalent to RBV exchange rate		
If partner in a JV or subcontractor, specify participation of total contract amount:	Percentage of Total:	
Employer's Name Address Telephone Number Fax Number E-mail address		
Contract No 2 of 3		
Contract Identification:		
Award Date:		
Completion Date:		
Role in Contract:		[State Contractor, or Subcontractor)
Brief Description of Work undertaken		
Total Contract Amount in VUV equivalent to RBV exchange rate		Amount
If partner in a JV or subcontractor, specify participation of total contract amount:	Percentage of Total	
Employer's Name Address Telephone Number Fax Number E-mail address		
Contract No 3 of 3		
Contract Identification:		
Award Date:		
Completion Date:		
Role in Contract:		[State Contractor, or Subcontractor)
Brief Description of Work undertaken		
Total Contract Amount in VUV equivalent to RBV exchange rate		Amount



If partner in a JV or subcontractor, specify participation of total contract amount:	Percentage of Total	
Employer's Name Address Telephone Number Fax Number E-mail address		

### 1.6 Proposed Site Manager and other Key Staff

Name	Role/Responsibility	Qualifications & General experience in Construction (years)	Experience in proposed post (years)
	Site Manager		

[Complete and attach CV for the nominee(s)]

### 1.7 Contractor's proposed key Plant / Equipment

Description of equipment Brand, model	Age (years) Condition (new, good, poor)	Owned, leased or to be purchased No of units available and location

### 1.8 Method Statement and Works Programme

Proposed Work Method Statement and Construction Programme, giving descriptions, drawings, charts, as necessary, to comply with the requirements of the Employer's Technical Specifications to be attached to this TRS.

### 1.9 Documentation attached:

Attached with this TRS are the Originals of the following documents:	Type
Power of Attorney for the signatory to sign the Tender	Original
Tender Security	Original
Proposed Work Method Statement and Construction Programme	Original
Completed Bill of Quantities or Schedule of Activities [EMPLOYER to delete whichever is not applicable]	Original



Completed Schedules	Original
<b>Enclosed with this TRS are copies of the following documents:</b>	
Business Registration Certificate in the Tenderer's country of registration	Copy
Latest Income Tax Clearance Certificate (if applicable – refer SCT)	Copy
In case of government owned entity in Vanuatu, documents establishing legal and financial autonomy and compliance with commercial law.	Copy
Details of name, address, contact data of banks that may provide references if contacted by the Employer.	Copy
Financial statement (balance sheet including all related notes, and income statements) for the past financial year, complying with the following conditions: <ul style="list-style-type: none"> <li>The financial statement must reflect the financial situation of the Tenderer and not sister or parent companies;</li> <li>The financial statement must be complete, including all notes to the financial statement</li> </ul> The financial statement must correspond to the latest financial year, already completed and audited (no statements for partial periods shall be requested or accepted).	Copy
Documents proving access to financial resources	Copy
Documents proving the qualifications and experience of the Site Manager	
Any other documents requested by this RFT	Copy
<b>The following documents are also attached. CV</b>	
[EMPLOYER to enter]	[EMPLOYER to enter]
Etc.	

Signed:

Name:

Title/Position:

Authorised for and on behalf of:

Supplier:

Address:





## **SECTION 5 GENERAL CONDITIONS OF CONTRACT**

### **TABLE OF CONTENTS**

5.1. GENERAL PROVISIONS.....	34
5.2. OBLIGATIONS OF THE EMPLOYER.....	36
5.3. OBLIGATIONS OF THE CONTRACTOR .....	37
5.4. PERFORMANCE OF THE WORKS .....	38
5.5. INDEMNIFICATION AND INSURANCE REQUIREMENTS .....	39
5.6. MATERIALS AND WORKMANSHIP.....	40
5.7. COMPLETION AND CERTIFICATES.....	42
5.8. VARIATION ORDERS.....	43
5.9. TERMS OF PAYMENT .....	43
5.10. PAYMENTS ON TERMINATION .....	45
5.11. PERFORMANCE SECURITY .....	45
5.12. LIQUIDATED DAMAGES.....	46
5.13. TERMINATION AND SUSPENSION .....	46
5.14. DISPUTES AND SETTLEMENT .....	47
5.15. FORCE MAJEURE.....	47
5.16. INTEGRITY/ PROBITY .....	47



## SECTION 5 GENERAL CONDITION OF CONTRACT (GCC)

### 5.1. GENERAL PROVISIONS

(1) The Employer is the Government of Vanuatu Procuring Entity stated in the Contract, represented by the person named in the 'Special Conditions of Contract' (SCC).

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

(3) The Contract Documents listed in the Contract Agreement represent the entire and integrated Contract between the Employer and the Contractor. The Contract is governed by and shall be construed in accordance with the Laws of the Republic of Vanuatu, and the ruling language of the Contract is English.

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

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

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

**Bill of Quantities** means the priced and completed Bill of Quantities forming part of the Tender;

**Construction Supervisor** means the person named in the **SCC** who, on behalf of the Employer, supervises the Construction and certifies the completion of the Works

**Contingency Sum** means a sum specified by the Employer to meet unforeseeable costs likely to be incurred during the contract;

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

**Contractor** means the person or organisation stated in the Contract Agreement whose Tender to provide the Works and Services has been accepted by the Employer;

**Contract Price** means the price stated in the Contract;

**Date for Commencement** means the date by which the Contractor shall commence the execution of the Works as defined in the **SCC**;

**Date for Completion** means the date by which the Works are expected be completed as defined in the **SCC**;

**Days** mean calendar days;



**Day works** are varied work inputs subject to payment on a time basis for the Contractor's employees and equipment, in addition to payments for associated Materials and Plant;

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

**Defects Liability Certificate** is the certificate issued by the Construction Supervisor upon verification of the completion of notified defects;

**Defects Liability Period** means the period stated in the **SCC** following the issuance of the Practical Completion ("Taking Over") Certificate, during which the Contractor shall rectify any defects arising as a result of the performance of the Works;

**Drawings** include calculations and other information provided or approved by the Construction Supervisor for the execution of the Contract;

**Employer** means the Government of Vanuatu procuring entity stated in the Contract Agreement;

**Equipment** is the Contractor's machinery and vehicles brought temporarily to the Site to construct the Works;

**Force Majeure** means an event or situation beyond the control of either party that is not foreseeable, is unavoidable, and its origin is not due to negligence or lack of care on the part of either party. Such events may include, but not be limited to, wars or revolutions, natural disasters (such as earthquakes, tsunamis, fires, floods etc.), epidemics, quarantine restrictions, and freight embargo;

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

**Months** mean calendar months;

**Practical Completion ("Taking Over") Certificate** means the Certificate issued by the Construction Supervisor on acceptance of the works by the Employer and its date of issue is the date from which the Defects Liability Period commences;

**Provisional Sum** means a sum specified by the Employer and included in the contract for the execution of any part of the Works, which sum may be used in whole, or in part, or may not be used at all, on the instructions of the Employer;

**Schedule of Activities** means a breakdown of the Works to be provided and includes the lump sum price of the Works;

**Site** means the place of performance of the Works as specified in the Contract;

**Site Manager** means the person appointed by the Contractor to act as the Contractor's representative on Site during the performance of the Works;

**Specifications** means the Specification of the Works included in the Contract and any modification or addition made or approved by the Construction Supervisor;



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

**Variation** is an instruction given by the Employer which varies the Contract;

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

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

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

Words indicating a gender include either gender.

## **5.2. OBLIGATIONS OF THE EMPLOYER**

### **5.2.1. Access to the Site and Payments**

- 1) The Employer will arrange to place the site and access thereto at the disposal of the Contractor as provided for under the Contract.
- 2) The Employer shall pay to the Contractor sums due under the Contract.

### **5.2.2. Construction Supervisor**

(1) The Employer shall appoint a Construction Supervisor, as named in the **SCC**, for the Works and shall provide written notice to the Contractor of such an appointment. The Employer may from time to time replace the Construction Supervisor by giving written notice to the Contractor of such replacement.

(2) The duties and powers of the Construction Supervisor are to:

- (a) Issue written instructions which the Contractor shall carry out without delay, notwithstanding the provisions of Clause 5.8. Such instructions may include, but are not limited to, those which in the opinion of the Construction Supervisor may be necessary to resolve ambiguities or discrepancies in the various documents forming the Contract. If instructions are given orally they shall within 7 days be confirmed in writing;
- (b) Issue instructions as to the expenditure of the provisional sum, if any. The Construction Supervisor on a fair and reasonable basis shall value any costs arising out of such instruction;
- (c) Supply details of lines, levels and/or reference points to enable the Contractor to set out the works;
- (d) Order the removal or the rectification of defects; and/or
- (e) Instruct the Contractor to delay the start of or the progress of any activity on the Works Programme (refer to Clause 5.4.4). Any claims or costs that may arise out of such an instruction shall be forwarded by the Contractor to the Construction Supervisor and shall include therein details and supporting documentary evidence. The claim(s) shall be submitted within 7 days from the date of the instruction. The Construction Supervisor shall evaluate and determine the appropriate form of the compensation for the delay, so as to advise the Contractor within 14 days and forward a copy of the advice to the Employer. However, the Construction Supervisor shall prior to the issue of the instructions under this Clause obtain approval from the Employer.
- (f) Any other duties and powers assigned to the Construction Supervisor, in addition to the above, are stated in the **SCC**.



(3) The Construction Supervisor may appoint a Representative to supervise the Contract and delegate any or all of the duties and powers of the Construction Supervisor to that Representative. If such an appointment is made the Construction Supervisor shall provide written notice to the Contractor and the Employer and specify the duties and powers that are delegated to the Construction Supervisor's Representative.

(4) The Construction Supervisor may require the instant dismissal from the Works of any agent, foreman or other person employed on the Works, or in connection with the Works, whether employed by the Contractor or not, where in the reasonable view of the Construction Supervisor that person breached any regulation or obligation in connection with the Works or applicable at the Site, or in connection with other persons involved with the works, or is negligent, or incompetent, or behaves in any other way inappropriate. The Contractor shall immediately comply with, or ensure immediate compliance with, such requirement for dismissal, and the Contractor shall not again employ a person so dismissed on or in connection with the Works.

### **5.3. OBLIGATIONS OF THE CONTRACTOR**

#### **5.3.1. General Obligations**

(1) The Works to be performed shall be as specified in the Drawings and Specifications and the Contractor with due diligence and in a good workmanlike manner shall carry out and complete the Works to the reasonable satisfaction of the Construction Supervisor.

(2) The Contractor shall check and verify dimensions on Drawings on Site before proceeding with the Works, and shall bring any ambiguities in the Drawings and Specifications to the attention of the Construction Supervisor for clarification.

(3) The Contractor shall comply with all notices required by statute, statutory instrument, rule, order, regulation, or by-law applicable to the Works and shall pay all fees and charges in connection therewith.

(4) The Contractor shall at all times keep upon the Site a Site Manager acceptable to the Construction Supervisor, to supervise and direct the performance of the Works.

(5) The Contractor shall allow the Construction Supervisor and any person authorised by the Construction Supervisor access to the Site and to any place where work in connection with the Contract is being carried out or is intended to be carried out.

(6) The Contractor shall carry out all instructions of the Construction Supervisor which comply with the applicable laws of the Republic of Vanuatu.

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

(8) The Contractor shall not subcontract any part of the Works without the written consent of the Construction Supervisor. If requested, the Construction Supervisor shall not unreasonably withhold such consent.



### **5.3.2. Sufficiency of Tender Prices**

- (1) The Contractor shall be deemed to have inspected and examined the site and its surroundings and to have satisfied himself as to the nature of the ground and the subsoil before submitting his tender. He shall also be deemed to have taken into account the form and nature of the site, the extent and nature of the work and materials necessary for the completion of the works, the means of communication with and access to the site, the accommodation he may require and in general to have obtained for himself all necessary information as to the risks, contingencies and any other circumstances influencing or affecting his tender.
- (2) The Contractor shall be deemed to have satisfied himself before submitting his tender as to the correctness and sufficiency of the tender and of the rates and prices stated in the Bill of Quantities or Schedule of Activities, which shall cover all his obligations under the contract.
- (3) Since the Contractor is deemed to have determined his prices on the basis of his own calculations, operations and estimates, he shall, at no additional charge, carry out any work that is the subject of any item whatsoever in his tender for which he indicates neither a unit price nor a lump sum.

### **5.3.3. Safety, Health and Welfare and Environment**

- (1) The Contractor shall be responsible for all activities on the Site and shall comply with all relevant provisions of the laws of the Republic of Vanuatu.

### **5.3.4. Copyright**

- (1) The intellectual property and copyright (IP) in all drawings, documents and other materials containing data and information furnished to the Employer by the Contractor shall remain vested in the Contractor, or, if they are furnished to the Employer directly or through the Contractor by any third party, including Suppliers of materials, the copyright in such materials shall remain vested in such third party save insofar as the Contractor shall grant to the Employer a world-wide, non-exclusive, irrevocable and royalty-free licence to use the IP to give effect to the provisions of this agreement.

## **5.4. PERFORMANCE OF THE WORKS**

### **5.4.1. Site of the Works, Date for Commencement and Completion**

- (1) The Site of the Works, Expected Site Possession Date, Date for Commencement and Date for Completion are provided in the **SCC**, unless the dates are otherwise agreed in writing with the Construction Supervisor. However, the Contractor cannot take possession of the Site until the Contractor has provided copies of the relevant Insurance policies to the Construction Supervisor.

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

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

### **5.4.2. Adverse Weather Conditions**

- (1) In the event that unforeseeable adverse weather conditions affect the Contractual Works Programme, the Contractor may require an extension of time and, in such an event, shall notify the Construction Supervisor who shall extend the Date for





Completion by a period determined by him/her without additional costs accruing to the Contract, provided the Contractor has supportive documentary evidence to substantiate that the inclement weather conditions prevailing at the time are worse than the average conditions normally prevailing in that locality and are, therefore, deemed to be unforeseeable.

#### **5.4.3. Working Hours**

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

#### **5.4.4. Contractual Works Programme and Communications**

(1) Within 14 days of signing the contract the Contractor shall update the proposed Work Programme, including a revised methods statement (as included in the tender), and this will constitute the first Contractual Works Programme

(2) The Contractual Works Programme shall be revised, as required by the Construction Supervisor, showing the modifications to such programme necessary to ensure completion of the Works within the Time for Completion.

(3) Communications between parties that are referred to in these Conditions shall be effective only when made in writing, and only when having been delivered and acknowledged in writing between one party and the other.

#### **5.4.5. Contractor's Risks**

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

#### **5.4.6. Protection of Works and Property**

(1) The Contractor shall, throughout the execution and completion of the Works and the remedying of any defects therein, take reasonable precautions for safety and protection to prevent damage, injury or loss to:

- (a) Employees of the work site and other persons who may be affected;
- (b) The Works and materials to be incorporated therein, whether in storage on or off the site, under the care, custody or control of the Contractor or any sub-contractor of the Contractor;
- (c) Other property at or adjacent to the site including but not limited to trees, shrubs, lawns, walkways, pavement, roadways, structures and utilities not designated for removal, relocation or replacement in the course of the construction.

(2) Any damage caused to existing buildings, structures, services, roads and other site features shall be made good at the sole expense of the Contractor.

### **5.5. INDEMNIFICATION AND INSURANCE REQUIREMENTS**

#### **5.5.1. Indemnification**

(1) The Contractor shall keep the Employer and employees or agents of the Employer indemnified against any legal liability, loss, claim, action or proceeding for personal



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

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

#### **5.5.2. Insurances**

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

(2) The Contractor shall not cancel, cause to be cancelled, or alter the terms and conditions of any insurance policy covering this Contract without the express permission of the Employer.

#### **5.5.3. Amounts and Evidence of Cover**

(1) Such indemnification and insurances shall be in the type and amounts specified in the **SCC**, shall cover the period from the Date for Commencement to the end of the Defects Liability Period and shall be effected within fourteen (14) days of the date of contract signature, and in terms approved by the Employer.

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

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

### **5.6. MATERIALS AND WORKMANSHIP**

#### **5.6.1 Conforming to Contract**

All materials used in the Works and the standards of workmanship shall conform to the provisions of the Contract. In the absence of such provisions, materials and standards of workmanship shall be of a kind that is suitable for their purpose and consistent with the nature and character of the Works. Any material not otherwise specified shall be new and, where applicable, material and workmanship shall be to the satisfaction of the Construction Supervisor.. If the Construction Supervisor is of the opinion that any materials or the work or any part thereof, whether fixed or not, is unsatisfactory he may direct its replacement, removal or correction at the Contractor's expense.





#### **5.6.2. Proprietary Items**

Unless specifically stated to the contrary, it is not intended to give any preference to the manufacturer or brand mentioned wherever a proprietary item is specified. If the Contractor proposes to use a substitute proprietary item, he must provide full details of the item proposed to the Construction Supervisor for approval and the Construction Supervisor shall decide whether or not the proposed substitute may be used. If approved, the substitution shall be recorded in writing by the Construction Supervisor, and the substitution shall only be used after the Contractor has received such written approval.

#### **5.6.3. Storage of Material**

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

#### **5.6.4. Access to Works and Materials**

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

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

#### **5.6.5. Defects and Tests**

(1) The Construction Supervisor shall check the Contractor's work and notify the Contractor of any Defects that are found. Such checking shall not affect the Contractor's responsibilities. The Construction Supervisor may instruct the Contractor to search for a Defect and to uncover and test any work that the Construction Supervisor considers may have a Defect.

(2) If the Construction Supervisor instructs the Contractor to carry out a test not specified in the Specification to check whether any work has a Defect and the test shows that it does, the Contractor shall pay for the test and any samples. If there is no Defect, the cost of testing will be compensated by the Employer to the Contractor.

(3) The Construction Supervisor shall give notice to the Contractor of any Defects before the end of the Defects Liability Period, which begins at the date of the issue of the Practical Completion ("Taking Over") Certificate, and is defined in the **SCC**. The Defects Liability Period shall be extended for as long as Defects remain to be corrected.

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



## **5.7. COMPLETION AND CERTIFICATES**

### **5.7.1. Practical Completion ("Taking Over") Certificate**

- (1) When, in the opinion of the Contractor, the whole of the Works have been substantially completed and have satisfactorily passed any tests on completion prescribed by the Contract, he shall request the Construction Supervisor to issue a Practical Completion ("Taking Over") Certificate in the format provided.
  - (a) The Construction Supervisor shall within 14 days of the date of such request, issue to the Contractor, with a copy to the Employer, a Practical Completion ("Taking Over") Certificate, stating the date on which, in his opinion the Works were substantially completed in accordance with the Contract; or
  - (b) The Construction Supervisor shall within 14 days of the date of such request, reject the application, giving reasons and specifying the work to be done in order for a Practical Completion ("Taking Over") Certificate to be issued; or
  - (c) If the Construction Supervisor fails either to issue the Practical Completion ("Taking Over") Certificate or to reject the Contractor's request within a period of twenty eight (28) days of the date of such request, and if the Works are substantially complete in accordance with the Contract, the Practical Completion ("Taking Over") Certificate shall be deemed to have been issued on the last day of that period.
- (2) Upon the issue of the Practical Completion ("Taking Over") Certificate 50% of the Retention money shall be certified by the Construction Supervisor for payment by the Employer to the Contractor;
- (3) The Construction Supervisor may, at the request of the Contracting Authority or Contractor and if the nature of the works so permits proceed with partial taking over, provided that the structures, parts of structures or sections of the works are completed and suited to the use as described in the contract. In the cases of partial taking over, the defects liability period for the works taken over shall, unless the **SCC** provide otherwise, run from the date of such partial taking over.

### **5.7.2. Defects Liability Certificate**

- (1) Any defects which appear within the Defects Liability Period stated in the **SCC** after the date of substantial completion of the Works (as recorded in the Practical Completion ("Taking Over") Certificate) shall be made good by the Contractor entirely at his own cost.
- (2) The Defects Liability Certificate shall be issued by the Construction Supervisor once the Defects Liability Period has been completed and all defects that have been notified to the Contractor have been rectified.
- (3) The Contract shall not be considered as completed until a Defects Liability Certificate has been signed and issued by the Construction Supervisor to the Employer, with a copy to the Contractor, stating the date when the Contractor shall have completed his obligations to execute and complete the Works and remedy any defects to such work to the satisfaction of the Construction Supervisor.
- (4) Upon issuance of the Defects Liability Certificate and no later than the Final Payment Certificate, the Construction Supervisor shall certify the remaining fifty



(50) percent of the Retention money for payment by the Employer to the Contractor.

## **5.8. VARIATION ORDERS**

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

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

(3) After receiving approval from the Employer, the Construction Supervisor shall issue the Variation Order to the Contractor within 3 days. By signing and returning a copy of the Variation Order the Contractor agrees to the terms and conditions of the Variation Order.

(4) The Contractor shall, in writing and within 7 days of receiving the Variation Order, notify the Construction Supervisor of any disagreement with the Variation Order. Any disagreement shall be settled in accordance with Clause 5.14.

## **5.9. TERMS OF PAYMENT**

### **5.9.1. Contract Price**

(1) Unit Costs / Lump Sum charged by the Contractor for the Works performed under the Contract shall not vary from the Unit Costs / Lump Sum offered by the Contractor in its Tender. The total payments to be made against the Contract shall not exceed the Contract Price stated in the Contract Agreement, except for changes made to the Contract as provided for in Clause 5.8.

(2) The Rates in the Bill of Quantities / Schedule of Activities [**EMPLOYER to delete whichever is not appropriate, depending on the type of contract in question**], shall not be subject to adjustment during the Contract to take into account any change in cost to the Contractor of any plant, equipment, materials, service, labour or any other thing necessary for the completion of the Works.

### **5.9.2. Provisional Sum**

The Contractor shall be entitled only to such amounts in respect of the work to which the Provisional Sum relates as the Employer shall determine.

### **5.9.3. Advance Payment**

(1) If specified in the **SCC**, the Employer will make an advance payment to the Contractor in the percentage stated in the **SCC** against submission of an unconditional Bank Guarantee for the full value of the advance, in the format provided.

(2) The advance payment shall be repaid by deducting amounts as specified in the **SCC** from payments otherwise due to the Contractor. The total advance payment to be recovered during the period of the Contract.



#### **5.9.4. Interim Payments**

(1) The Contractor shall submit, at the intervals stated in the **SCC**, an Interim Payment Statement to the Construction Supervisor, in the form approved by the Construction Supervisor, showing:

- (a) The value of the Works executed on the Site, including any materials and goods delivered to the Site for incorporation in the Works, for the period covered by the Statement;
- (b) Any other sums to which the Contractor considers himself to be entitled under the Contract (if applicable);
- (c) Less the total of interim progress payments made by the Employer;
- (d) Less the amount to be deducted for Retention, at the rate stated in Clause 5.9.6;
- (e) Less the amount, if any, to be recovered from the Contractor due to an advance payment having been made to the Contractor.

(2) The Construction Supervisor shall satisfy himself that the Works accomplished for the respective period have been completed without defects in pursuance of the Contract, and any statutory Acts regulating construction Works in Vanuatu, and within 7 days shall certify the interim payment which he considers due and payable to the Contractor in respect of the above mentioned items. The Employer shall pay to the Contractor the amount so certified within 30 days of the date of the Payment Certificate issued by the Construction Supervisor. The basis for calculation of payments shall be that specified in the Bill of Quantities / Schedule of Activities **[EMPLOYER to delete whichever is not appropriate, depending on the type of contract in question]**.

(3) When defects are detected in the Works accomplished for the respective period they shall be priced and their cost shall be retained from the amount due for that period. If the defects are not completed by the time of submission of the next Interim Payment Statement the costs shall be retained until the completion of the defects and the issuance of the Practical Completion ("Taking Over") Certificate.

#### **5.9.5. Final Payment**

(1) Within 30 days of issuance of the Defects Liability Certificate, the Contractor shall submit a Final Payment Statement to the Construction Supervisor, in the form approved by the Construction Supervisor, showing:

- (a) The value of all the work done in accordance with the Contract;
- (b) Any further sums which the Contractor considers to be due to him under the Contract (if applicable);
- (c) Less any sums due to the Employer under the provisions of Clause 5.12 – Liquidated Damages;
- (d) Less the amount to be deducted for Retention, at the rate stated in Clause 5.9.6;
- (e) Less the total of all interim payments received under the Contract and any sums that might be due from the Contractor to the Employer.

The basis for calculation of the value of the work done shall be that specified in the Bill of Quantities / Schedule of Activities **[EMPLOYER to delete whichever is not appropriate, depending on the type of contract in question]**.

(2) Provided the Contractor shall have provided all documents reasonable necessary for the computation of the amount to be certified, the Construction Supervisor shall within 30 days of receiving the Contractor's Final Payment Statement, issue a Final



Payment Certificate certifying the amount due to the Contractor or to the Employer, as the case may be, and such sums shall be a debt payable within 30 days of the date of the Final Payment Certificate.

(3) In the event that the Contractor fails or neglects to submit a Final Payment Statement, the Construction Supervisor may nevertheless issue a Final Payment Certificate provided he has sufficient information to calculate the value of such Certificate.

(4) The Employer shall within 30 days from the date of the Final Payment Certificate pay to the Contractor the amount due to the Contractor.

(5) If on the Final Payment Certificate a payment is due to the Employer the Contractor shall within 30 days from the date of the Final Payment Certificate pay the Employer that amount due.

(7) The Employer shall not be liable to the Contractor for any matter or thing arising out of or in connection with the Contract or the execution of the Works, unless the Contractor shall have included a claim in respect thereof in his Final Payment Statement.

#### **5.9.6. Payment Retention and Release**

(1) In order to take into account any list of outstanding Works at the time of taking over of the Works and the obligation of the Contractor to complete the proper execution of the Works a Payment Retention of 10% shall be deducted from the payments due to the Contractor with respect to each interim payment and the final payment of the Contract.

(2) 50% of the sum retained shall be paid by the Employer to the Contractor within 30 days following the issue of the Practical Completion ("Taking Over") Certificate.

(3) The substitution of the Payment Retention by a Bank guarantee or security bond may be provided by the Contractor on the date of issue of the Practical Completion ("Taking Over") Certificate. The remaining 50% shall be released within 30 days upon the issue of the Final Payment Certificate.

#### **5.10. PAYMENTS ON TERMINATION**

(1) Upon termination of the Contract, the Contractor shall be entitled to payment of the unpaid balance of the value of the Works executed adjusted by the following:

- (a) Any sums to which the Contractor is entitled under this Clause; and
- (b) Any sums to which the Employer is entitled.

##### **5.10.1. Taxes and Duties**

(1) Refer to the **SCC**.

#### **5.11. PERFORMANCE SECURITY**

(1) The proceeds of the Performance Security provided by the Contractor shall be payable to the Employer as compensation for any loss resulting from the Contractor's failure to complete its obligations under the Contract.

(2) The Performance Security shall be discharged by the Employer and returned to the Contractor not later than 30 days following the date of Completion of the



Contractor's obligations under the Contract, including any defects liability obligations.

#### **5.12. LIQUIDATED DAMAGES**

(1) Liquidated damages as applicable are as stated in the **SCC**.

#### **5.13. TERMINATION AND SUSPENSION**

##### **5.13.1. Termination for Default**

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

- (a) Abandons the works, refuses or fails to comply with a valid instruction of the Employer or fails to proceed expeditiously and without delay; or
- (b) Persistently or repeatedly refuses or fails to supply sufficient properly skilled workers or proper materials; or
- (c) Persistently disregards laws, ordinance, or rules, regulations or orders, of a public authority having jurisdiction; or
- (d) Otherwise is guilty of substantial breach of a provision of the Contract; or
- (e) Has engaged in corrupt, fraudulent, coercive or obstructive practices in competing for or in executing the Contract. Termination for Insolvency

(2) The Employer may at any time terminate the Contract by giving notice to the Contractor if the Contractor becomes bankrupt or otherwise insolvent. In such event, the Contractor shall be compensated for the Works completed and materials supplied up to the date of termination only, provided that such termination will not prejudice or affect any right of action or remedy that has accrued or will accrue thereafter to the Employer.

##### **5.13.2. Termination for Convenience**

(1) The Employer may, without cause, by written notice order the Contractor to terminate its engagement under the Contract. Upon such termination, the Contractor shall be paid for the Work performed up to the date of termination, provided that any such uncompleted Works were not late or otherwise overdue for completion at the date of termination. The Contractor shall promptly make every reasonable effort to procure cancellation upon terms acceptable to the Employer of all outstanding subcontracts.

##### **5.13.3. Termination by the Contractor**

(1) In the event the Employer fails to comply with the requirements under Clause 5.9.3 and 5.9.4 within a period of 30 days after the payments became due, the Contractor may after a further 7 days serve a notice to the Employer to terminate this Contract and any costs shall be determined in accordance with the provisions of Clause 5.9.4.

##### **5.13.4. Property**

(1) All materials, plant, equipment on the Site, and Works shall be deemed to be the property of the Employer if the Contract is terminated because of the Contractor's default.





#### **5.13.5. Suspension of Funding**

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

#### **5.13.6. Suspension of the Works**

(1) In the event that the Works are suspended due to circumstances beyond the control of the Employer or the Contractor, the Employer shall after due consultation with the Contractor, determine any extension of time to which the Contractor is entitled and the amount that shall be added to the Contract Price (if any) under Clause 5.8. The Contractor shall make all reasonable effort to find alternative arrangements for plant that is idle due to the suspension of Works.

### **5.14. DISPUTES AND SETTLEMENT**

#### **5.14.1. Negotiated Settlement**

(1) The Parties agree that the avoidance or early resolution of disputes is crucial for a smooth execution of the Contract and the success of the assignment. The Parties shall use their best efforts to negotiate all disputes arising out of, or in connection, with this Contract or its interpretation. Failing successful negotiation the courts in Vanuatu will settle any disputes in line with the laws of the Republic of Vanuatu.

### **5.15. FORCE MAJEURE**

#### **5.15.1. No Breach of Contract**

(1) The failure of a Party to fulfil any of its obligations under the contract shall not be considered to be a breach of, or default under, this Contract insofar as the inability arises from an event of Force Majeure, provided that the Party affected by such an event (a) has taken all reasonable precautions, due care and reasonable alternative measures to carry out the terms and conditions of this Contract, and (b) has informed the other Party as soon as possible about the occurrence of such an event.

#### **5.15.2. Extension of Time**

(1) Any period within which a Party shall, pursuant to this Contract, complete any action or task shall be extended for a period equal to the time during which such Party was unable to perform such action as a result of Force Majeure.

#### **5.15.3. Payments**

(1) During the period of its inability to complete the Works as a result of an event of Force Majeure the Contractor shall be entitled to continue to be paid under the terms of this Contract, as well as to be reimbursed for additional costs reasonably and necessarily incurred by them during such period for the purposes of the Contract and in reactivating the Contract after the end of such period.

### **5.16. INTEGRITY/ PROBITY**

(1) Neither the Contractor, nor any Representative of the Contractor will engage in fraud, corruption, collusion, coercion and/or obstructive practises in competing for, or in executing the contract. Should the Contractor, or any Representative of the Contractor engage in the above, they could face any, or all, of the following sanctions:

- (a) Immediate termination of contract (refer Termination and Suspension above);
- (b) Liability for damages to the Government of Vanuatu and other competing bidders;



(c) Debarment (blacklisting) for five years from engaging in any further contract with the Government of Vanuatu; and

(d) Public Prosecution under the Penal Code Act.

(2) The Contractor, or any Representative of the Contractor, shall immediately report to the Police, Public Prosecutor and Chairman of the Public Service Commission any attempt by the Employer, or the Employer's Representative, to demand bribes or gifts in relation to this contract.





## SECTION 6 SPECIAL CONDITIONS OF CONTRACT

These Special Conditions (SCC) of Contract supplement and/or amend the General Conditions of Contract. The SCC will be updated and included in the Contract Documents when these are prepared for issue to the successful Tenderer.

<b>GCC Ref.</b>	<b>Heading</b>	<b>Description</b>
<b>5.1 (1)</b>	Employer's Representative	The Employer is represented by: [EMPLOYER to enter name of person] [EMPLOYER to enter contact address] Tel: [EMPLOYER to enter telephone number] Fax: [EMPLOYER to enter fax number] Email: [EMPLOYER to enter e-mail address]
<b>5.1 (2)</b>	Contractor's Representative	The Contractor is represented by: [EMPLOYER to enter name of person] [EMPLOYER to enter contact address] Tel: [EMPLOYER to enter telephone number] Fax: [EMPLOYER to enter fax number] Email: [EMPLOYER to enter e-mail address]
<b>5.1(6) 5.2.2(1)</b>	Construction Supervisor	The Construction Supervisor appointed by the Employer to supervise the construction and certify completion is: [EMPLOYER to enter name of person] [EMPLOYER to enter contact address] Tel: [EMPLOYER to enter telephone number] Fax: [EMPLOYER to enter fax number] Email: [EMPLOYER to enter e-mail address]
<b>5.1(6) 5.4.1(1)</b>	Date for Commencement	[EMPLOYER to insert date]
<b>5.1(6) 5.4.1(1)</b>	Date for Completion	[EMPLOYER to insert date]
<b>5.1 (6), 5.6.5 (3) &amp; 5.7.2 (1)</b>	Defects Liability Period	The Defect Liability Period shall be [EMPLOYER to enter number] months from the issue of the Practical Completion ("Taking Over") Certificate.
<b>5.2.2(2)(f)</b>	Other duties and powers assigned to the Construction Supervisor	The other powers and duties assigned to the Construction Supervisor under this contract are as follows: [EMPLOYER to describe]
<b>5.4.1 (1)</b>	Site of the Works	The exact location of the Site is: [EMPLOYER to enter location] [EMPLOYER to enter address]



<b>GCC Ref.</b>	<b>Heading</b>	<b>Description</b>
		[EMPLOYER to describe how to locate Site]
<b>5.4.1 (1)</b>	Expected Site Possession Date	[EMPLOYER to enter]
<b>5.5.3 (1)</b>	Insurances	[EMPLOYER to enter minimum amounts for each of the insurances required, as well as any additional details or conditions] [Refer to Procurement Manual for Guidance]
<b>5.7.1 (3)</b>	Partial Practical Completion ("Taking Over") Certificates	[EMPLOYER to state if partial Practical Completion ("Taking Over") Certificates are permitted, and if so, EMPLOYER to state if any deviations from Clause 5.7.1 (3) apply]
<b>5.9.3 (1)</b>	Advance Payment	[EMPLOYER to delete whichever option is not applicable] No advance payments are to be made under the contract; [OR] The Amount of the Advance Payment will be [EMPLOYER to enter] % of the Contract price.  The Formula for Recovery of Advance payment will be [EMPLOYER to enter].
<b>5.9.4 (1)</b>	Interim Payment Statements	The Contractor shall submit Interim Payments Statements as follows: [EMPLOYER to enter details] [EMPLOYER to enter full details] [Refer to Procurement Manual for guidance]
<b>5.10.1</b>	Taxes and Duties	[EMPLOYER to insert any deviations, if applicable]
<b>5.12.1</b>	Liquidated Damages	EMPLOYER to insert, if applicable]

