

PACIFIC AVIATION INVESTMENT PROGRAM (PAIP)
TONGA AVIATION INVESTMENT PROJECT (TAIP)
DESIGN & SUPERVISION SERVICES: TBU TERMINAL BUILDING IMPROVEMENTS
CONTRACT REF: TAL/QCBS/A-A14.1a

1st May 2017

CLARIFICATION NO. 3

The PAIP TFSU would like to issue the following clarification in response to questions asked by bidders in relation to the above named tender. The questions and answers are provided below:

Item	Reference	Question	Answer
Phase 1 Contract			
1	GCC 19e, 19.1.6 Payment upon Termination	<p>It the event of termination, we request to be reimbursed for any committed costs up to the date of termination. An example of such as expense could be the purchase of plant and equipment or pre-agreed relocation expenses for international personnel. Please insert an additional sub-clause:</p> <p><i>"(c) payment for costs incurred by the Consultant which were committed before the effective date of termination."</i></p>	This GCC is the standard condition used in the World Bank contracts and cannot be changed.
2	GCC 24.1 Conflicts of Interest	<p>We will not intentionally engage in any business activity which conflicts with the activities assigned under this Agreement however we suggest <i>"without consideration for future work"</i> and <i>"avoid conflict with their own corporate interests"</i> unreasonable. We would be happy to accept a clause which is more reasonable. A replacement clause could be:</p> <p><i>"The Consultant shall hold the Client's interests paramount, and use its best endeavours to avoid conflict with other assignments. In the event that a potential conflict of interest arises, the Consultant shall inform the Client and together the Parties shall reach a mutual agreement to resolve the conflict."</i></p>	This GCC is the standard condition used in the World Bank contracts and cannot be changed.
3	GCC 24.1 Insurance to be taken out by the Consultant	<p>We hold global insurance products with reputable insurers that are suited to its business and services performed. For this reason, we cannot agree to insurance terms or policies being subject to the acceptance of the Client. We are willing to discuss specific questions or</p>	This GCC is the standard condition used in the World Bank contracts and cannot be changed.

		<p>concerns relating to the insurances held. Please delete the words <i>"but on terms and conditions approved by the Client"</i> in the third line of this clause.</p> <p>We will provide Certificates of Currency only as evidence that the insurance policies are current.</p>	
4	<p>SCC, 20.c, 20.7 (new clause) Warranties</p>	<p>For clarity, we warrant that the Services will adhere to the service standards described in clause 20.1. Unless otherwise provided by Law, no other warranty, expressed or implied, is intended or shall apply, and that the remedies stated in the Contract are an exhaustive list of remedies available to the Client. As such, we request the following clause is inserted:</p> <p><i>"The Consultant warrants that, during a period of up to 12 months following completion of the Services, it will re-perform at no cost to the Client any defect in the Services. No other warranty, whether express or implied, is intended or shall apply under this Contract."</i></p>	<p>This GCC is the standard condition used in the World Bank contracts and cannot be changed.</p>
5	<p>SCC 41, Mode of Billing and Payment</p>	<p>Our proposal is based on receiving an advance payment equal to 10% of the Contract Price.</p>	<p>Please refer to III. Special Conditions of Contract, clause 41.2.1 which states</p> <p><i>An advance payment of 10% in foreign currency] [and of 10% in local currency] shall be made within 21 days after the receipt of an advance bank payment guarantee by the Client...</i></p>
6	<p>SCC 42, Interest on Delayed Payment</p>	<p>We request interest of 10% per annum, calculated daily.</p>	<p>The interest rate of 2% is standard and will remain unchanged.</p>
7	<p>SCC 46 (new clause), Idemnity</p>	<p>During the course of the project, our personnel will be interacting with Client personnel and equipment on site. We therefore requests a mutual indemnity provision be included. A suggested clause is offered below.</p> <p><i>"Each Party indemnifies and holds harmless the other Party against any death or injury to persons, damage to property of either Party or a third party, and infringement of any copyright or patent, caused by or arising out of a</i></p>	<p>The proposed clause cannot be introduced.</p>

		<i>Party's (the indemnifying party) negligent act or omission. This indemnity herein is reduced proportionately to the extent that the losses or damages are as a result of the other Party's negligent act or omission."</i>	
8	SCC 47 (new clause), Client Provided Information and Data	<p>We request to be entitled to rely on the accuracy and completeness of all information and data supplied by the Client during the performance of the Services. As such, we request the following new clause is inserted:</p> <p><i>"The Consultant shall be entitled to rely on the accuracy and completeness of all data, reports, documents and information supplied by the Client to the Consultant for the performance of the Services. The Client shall indemnify and hold harmless the Consultant for any damages or liability which results from an error or omission contained in such information."</i></p>	The proposed clause cannot be introduced.
PHASE 2 Contract			
9	GCC 66, Conflicts of Interest	<p>We will not intentionally engage in any business activity which conflicts with the activities assigned under this Agreement however we suggest <i>"without consideration for future work"</i> and <i>"avoid conflict with their own corporate interests"</i> unreasonable. We would be happy to accept a clause which is more reasonable. A replacement clause could be:</p> <p><i>"The Consultant shall hold the Client's interests paramount, and use its best endeavours to avoid conflict with other assignments. In the event that a potential conflict of interest arises, the Consultant shall inform the Client and together the Parties shall reach a mutual agreement to resolve the conflict."</i></p>	This GCC is the standard condition used in the World Bank contracts and cannot be changed.
10	GCC 69, Insurance to be taken out by the Consultant	<p>We hold global insurance products with reputable insurers that are suited to its business and services performed. For this reason, KA cannot agree to insurance terms or policies being subject to the acceptance of the Client. KA is willing to discuss specific questions or concerns relating to the insurances held. Please delete the words <i>"but on terms and conditions approved by the Client"</i> in the third line of this clause.</p> <p>We will provide Certificates of Currency only as evidence that the insurance</p>	This GCC is the standard condition used in the World Bank contracts and cannot be changed.

		policies are current.	
11	SCC 45.1(a) Mode of Billing and Payment	Our proposal is based on receiving an advance payment of 10% of the fees quoted in USD plus 10% of the fees quoted in TOP.	Please refer to III. Special Conditions of Contract, clause 45.1(a) which states <i>An advance payment [of 10% in foreign currency] [and of 10% in local currency] shall be made within 21 days after the Effective Date...</i>
12	SCC 46.1, Interest on Delayed Payments	We request interest of 10% per annum, calculated daily.	The interest rate of 2% is standard and will remain unchanged.
13	SCC (New Clause) Client Provided Information and Data	We request to be entitled to rely on the accuracy and completeness of all information and data supplied by the Client during the performance of the Services. As such, we request the following new clause is inserted: <i>"The Consultant shall be entitled to rely on the accuracy and completeness of all data, reports, documents and information supplied by the Client to the Consultant for the performance of the Services. The Client shall indemnify and hold harmless the Consultant for any damages or liability which results from an error or omission contained in such information."</i>	The proposed clause cannot be introduced.