

**PACIFIC AVIATION INVESTMENT PROGRAM**

**SAMOA AVIATION INVESTMENT PROJECT**

**Procurement of Physical Works for Airport Pavements, Drainage and Service Infrastructure, Faleolo International Airport, Samoa**

**CONTRACT REF: SAA/ICBW/S-A15.4**

25th August 2017

**CLARIFICATION NO.11 TO THE BIDDING DOCUMENTS**

The PAIP TFSU would like to issue the following clarification in response to question asked by a bidder in relation to the above named tender. The question and answer are provided below:

Item No.	Ref No and bid document page no.	Bidder's Question	Answer
1		Can you please provide a statement on the tax policy on the specified project?	Please refer to Annex 1 of this Clarification. This is provided as guidance only and the bidders are required to conduct their own analysis of the tax policy applicable to this project.
2		Can the Flight Schedule and tower-log of 2015 or 2016 (whichever is critical) be provided?	Please refer to the link <a href="https://www.dropbox.com/sh/1jfviiyqadle9an/AAARly4jvHzshEu2Ad7y6ECaa?dl=0">https://www.dropbox.com/sh/1jfviiyqadle9an/AAARly4jvHzshEu2Ad7y6ECaa?dl=0</a>
Section IX. PCC Part A – Contract Data			
3	1.1.2.14 Major Subcontractors	The threshold for determining the "Major Subcontractors" is undefined. This is relevant for Quality Assurance obligations in clause 4.9. Please provide the data for determining the term "Major Subcontractors".	<b>Part A – Contract Data</b> , clause 1.1.2.14 is amended to read: Cost of subcontract higher than: \$1m USD Please refer to Amendment 3.
Special Provisions General Provisions			
4	1.1.3.14(e) Taking Over	Warranties are required for Plant /Materials used in the execution of the Works. This should be limited to Plant/Materials forming part of permanent	Agreed Please refer to Amendment 3.

		works. Please delete the words "used in the execution of" and replace with "forming part of".	
5	1.1.6.11 Industry Best Practices	The requirement to meet standards observed by "leading international construction industries" is too subjective.  In order to avoid uncertainty about the standard required "by leading international construction industries", replace those words with "in the construction of similar works in International Airports in New Zealand and Australia."	The requirement is amended to read:  "Industry Best Practices" means Australia, New Zealand or equivalent technical standards acceptable to the Employer, World Bank Safeguards Standards, the ICAO Standards, good engineering practices and other practices, methods, equipment and procedures which are generally engaged in or observed in the construction of similar works in International Airports in New Zealand, Australia or other developed countries and that degree of skill, diligence, prudence and foresight which would reasonably be expected to be observed by a skilled, qualified and experienced engineer and contractor engaged in works of a similar size, type, nature, scope, purpose and complexity to the Works and which, with respect to any objective, may be expected, in the exercise of reasonable judgment, to accomplish that objective in a manner consistent with applicable Laws, reliability, safety, environmental protection, economy and expediency."  Please refer to Amendment 3.
6	2.1 Right of Access to the Site	There is no express obligation on the Employer to make such areas available for the duration of the Works.  At the end of the new sentence add: "The Employer shall ensure that the Contractor may use the agreed areas of the Site, or alternative areas that are acceptable to the Contractor, for the duration of the Works."	The clause has been amended. Please refer to Amendment 3.
7	3.1 The Engineer's	Typo. We cannot identify clause 1.16 referred to in this	Shall read 1.1.5.6 Please refer to Amendment 3

	Duties and Authorities	subclause.	
8	4.15 Access Routes	<p>Liability must be fault based.</p> <p>We wish to ensure that the Contractor's liability under this clause is limited to damage arising from its default. In the new sentence, after the words "... carrying out the Works" add "due to the Contractor's negligence or breach of its obligations under this Contract..."</p>	The requirement cannot be changed.
9	10.1 Taking Over the Works and Sections	<p>New para at end of 10.1 contradicts the deemed Taking Over provision at end of existing clause 10.1.</p> <p>Clause 10.1 provides for deemed Taking Over after 28 days. In order to preserve this entitlement, at the end of the proposed new paragraph, after the words "... to the Contractor" insert "... or Taking Over is deemed to have occurred..."</p>	The requirement cannot be changed.
10	11.9 Performance Certificate	<p>The Performance Certificate is acceptance of the Works (as provided for in the FIDIC base document).</p> <p>Reinstate the last paragraph of clause 11.9.</p>	The clause has been amended. Please refer to Amendment 3.
11		The Contractor's warranties and other obligations must not apply to remedial work performed by others. At the end of the new paragraph, after the words "... or otherwise at law" insert "... except in relation to work performed by others under this clause 11.9."	The requirement cannot be changed.
12	14.12 Discharge	Contractor's discharge of the Employer from any further liability should only take effect after we get the Performance Security back.	The requirement cannot be changed.

		We request that the final sentence of this clause is retained.	
13	PCC 18.2(d)	<p>This specifies maximum amounts for insurance deductibles being USD5,000 for all Employer's risks.</p> <p>While a USDD5,000 deductible should be achievable for most Employer's risks, it is very unlikely that a USD 5,000 deductible will be achievable for cyclone or earthquake perios for this project. The level of deductible will also significantly affect the cost of insurance depending on insurer appetite for this project (especially the liability insurer).</p> <p>Given that the insurance specified may not be procurable, can the Employer please consider a higher deductible for cyclone and earthquake perils?</p>	<ul style="list-style-type: none"> <li>- For cyclone or earthquake perils only a higher deductible up to USD50,000 will be considered. Plesae refer to Amendment 3.</li> </ul>
14	Technical Requirem ents Clause 1.4.3 Scope Overview	<p>Clause 1.4.3 refers:</p> <p>Co-ordinate with the AGL works designer and contractor, then design, supply and install the necessary civil infrastructure associated with the airfield lighting upgrade;</p> <p>Co-ordinate with the Terminal designer and contractor, then design, supply and install the necessary civil infrastructure associated with a concrete hardstand and air bridge interface;</p> <p>We need to better understand these interfaces to define scope for tender pricing. Can you provide further information to define this interface e.g.</p> <p>Terminal contract scope of works, AGL contract scope of works.</p>	<p>No supply and installation of AGL fittings or cables, this is electrical infrastructure. The key wording is "civil infrastructure". I.e raising rings, light pots, ducts in the first meter etc</p>
15	PCC	PCC 13.5(b) (ii) specifies 15%	15% is replaced with \$750,000.

	13.5(b) (ii) Appendix to Bid – Provisional Sums	Appendix to Bid – Provisional Sums identifies a total of \$750,000 of Provisional Sums which are also identified in the Schedule of Prices. Please advise the significance of the 15% and 15% of what value?	Please refer to Amendment 3.
16	Technical Requirements Clause 1.12.9 Aprong Redevelopment and Widening Page 47.	Document refers to Sections 1.11.7, 1.11.9, 1.11.10, 1.11.11 and 1.11.12 for proposed apron infrastructure. These sections (with the exception of 1.11.7) do not exist.  Please confirm the Sections should be 1.12.7, 1.12.9, 1.12.10, 1.12.11, and 1.12.12.	The clause has been amended. Please refer to Amendment 3
17	Bid security	Refer to No.42 of ITB and BDS. The ESHS Performance Security hasn't required in the BDS. Bidder just need submit its Code of Conduct that will apply to Contractor's Personnel to ensure compliance with its ESHS obligations under the contract. So the Industrial and Commercial Bank of China consider deletion of the sentence from the Bid Security form is necessary.	Deletion of the following phrase from the Bid Security template is acceptable: <i>"...and, if required, the Environmental, Social, Health and Safety (ESHS) Performance Security,..."</i>

**Annex 1  
SAIP Taxation**

<b>Type of Taxation</b>	<b>Samoa</b>
<b>Import of goods to be used on the Project</b>	There are no Exemptions. MoF will pay import duties on goods and materials used for a specific project under the duty concession scheme.
<b>Import of personal effects for living/working (foreign consultants)</b>	<p>There are no Exemptions. For Diplomats, MoF will pay these under its Duty Concession Scheme whilst contractors and consultants paid under projects will need to pay their own duties/VAGST. For contractors that are importing equipment only for use on project work and intend to re-export at the completion of work, exemption is requested through MfR and not MoF and MfR is the Ministry to approve these requests.</p> <p>For Samoa, section 130 of the Customs Act 2014 provides that the Comptroller has the discretion to release such goods from Customs without payment of duty provided a security in the sum equal to the amount of duty payable on such goods is provided. Further, such security will be released if the goods temporarily imported are exported or shipped for export within 12 months from the date of their importation.</p>
<b>Income tax of foreign individual consultants</b>	The bid price should be inclusive of income tax/withholding tax also known as direct tax(15% for non-resident and 10% for resident).
<b>Income tax of foreign consulting companies</b>	
<b>Income tax of national staff/consultants</b>	Income tax applies in each country; application of rates differs within each country and for different pay rates, therefore respective tax regulations should be consulted. Recovery of tax by PAIP is required in Tonga, but not in Kiribati or Tuvalu or Samoa.-Refer to comment above
<b>Superannuation/Provident Fund for national staff/consultants<sup>1</sup></b>	Employer's contribution (7%) is part of gross fees/ salary cost; Employee's contribution (7%) <sup>2</sup> – I think this is for resident staff only, Im not sure please confirm with NPF and arrangements with other ongoing project works please.
<b>Goods and services tax on supply provided under</b>	VAGST of 15% is an added tax or also known as an indirect tax. For Samoa, 15% VAGST is added on top of the overall bid price (remuneration and reimbursable) <b>if</b> the bidder is deemed liable to 15% VAGST.

<sup>1</sup> Superannuation Funds are listed here for information on employment responsibilities; however, this is not classed as tax. In Tonga, Superannuation is effective from 1 July 2012.

<sup>2</sup> This will increase to 6% on 01 July 2015 and then to 7% on 01 July 2016 for both employees and employers.

<p><b>contract</b></p>	<p>A bidder is liable to VAGST if both of the following are met:</p> <p><b>1<sup>st</sup> Requirement</b></p> <ul style="list-style-type: none"> <li>- For a <i>supply of services</i> contract, <sup>3</sup> the bidder must be carrying out his/her/its continuous or regular activity (from which the services are supplied) via a fixed place of business in Samoa which includes any of the following: <ul style="list-style-type: none"> <li>(a) a place of management, branch, office, factory, warehouse or workshop but does not include a liaison office; or</li> <li>(b) a building site, or a construction, assembly or installation project, or supervisory activities connected with such site or project but only if the site, project or activities continue for more than 6 months in Samoa; or</li> <li>(c) the supply of services by the person, including consultancy services, through employees or other persons engaged by the person for such purpose, but only if activities of that nature continue for the same or a connected project for a period(s) aggregating more than 6 months in any 12-month period</li> </ul> </li> <li>- For a <i>supply of goods</i> contract,<sup>4</sup> the goods must be supplied in/transported to Samoa by the bidder.</li> </ul> <p><b>2<sup>nd</sup> Requirement</b></p> <ul style="list-style-type: none"> <li>- The bidder makes or will make more than SAT\$130,000 in Samoa in a tax year (12-months period).</li> </ul> <p>In the case of hybrid contracts, if the contract requires a supply of services to be carried out first and then followed by supply of goods, then this entire contract is deemed a contract for supply of services or a services contract. Likewise, if the contract requires a supply of goods to be carried out first and then supply of services second, then this entire contract is deemed a contract for supply of goods or a goods contract. This is due to the 'Mixed Supplies' rule under section 14 of the VAGST Act 2015 which provides that for hybrid contracts, it is the 'principal supply' which overrides and determines (plus the threshold requirement) the correct VAGST treatment for such contracts.</p> <p>Once a bidder determines that both requirements are met, then he/she/it must ensure that 15% VAGST is included in his/her/its overall bid price; and then ensure to contact the Taxpayer Services Division of the Ministry for Revenue, for VAGST registration. In the case of foreign bidders who bid for a contract to supply goods to Samoa, if your bid price is more than \$130,000 then you are required to appoint a tax agent that has already registered with the Ministry for Revenue to act as your GST representative in Samoa.<sup>5</sup> This appointed GST representative will be responsible for the following:</p> <ul style="list-style-type: none"> <li>- Applying for your (foreign) registration;</li> </ul>
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<sup>3</sup> Section 17(1) of VAGST Act 2015

<sup>4</sup> Section 16 of VAGST Act 2015

<sup>5</sup> Section 44 of VAGST Act 2015

	<ul style="list-style-type: none"> <li>- Filing required GST returns; and</li> <li>- Paying of any GST liability.</li> </ul>
<b>Goods and services tax on in-country living costs</b>	<p>Included in per diem rates, per RFPs/bids/contracts.</p> <p>For Samoa, contractors (be it local or foreign) are required to pay 15% VAGST that has been imposed on their local purchases (either living costs or goods to be used to carry out the contract works). For those foreigners that are not liable to VAGST, which means they have not registered with the Ministry for Revenue and have not included 15% VAGST in their bid price, the VAGST portion incurred from local purchases cannot be refunded. Only those foreigners that have been deemed liable to VAGST and have therefore included 15% VAGST in their bid price and registered with the Ministry for Revenue for VAGST purposes, are entitled to a refund.</p>
<b>Goods and services tax on in-country procurement for goods and services to be used on the Project</b>	Consumption Tax <sup>6</sup> or Value Added Goods and Services Tax (VAGST) in Samoa
	15%
	For bids/contracts, to be included in quoted rates. Recovery of tax by PAIP required (mechanism to be clarified); contractor to supply copy of contracts and invoices-There is no recovery of taxes from procurement in country. That is up to the contractor to buy locally and pay the taxes included.
	For procurement directly by Project, recovery of tax by PAIP required- refer to above