

SPREP PROCUREMENT MANUAL

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SECTION I: OVERVIEW

SPREP Procurement

1. The Secretariat of the Pacific Regional Environment Programme (SPREP) is the Pacific region's major intergovernmental organization. It is based in Apia, Samoa, and works on behalf of its 21 member countries and territories in the Pacific to provide assistance to protect and improve Pacific environments and to ensure sustainable development for present and future generations.

Purpose of the Manual

2. This manual was developed by the Secretariat to provide a rigorous procedure to direct the procurement process for consultants, goods, services, and works on behalf of SPREP. The Secretariat recognizes that ensuring a disciplined approach to procurement is an important factor in strengthening its institutional processes and governance. All procurement activities are to be undertaken in compliance of the procurement practices and procedures set forth in this Manual as well as all related SPREP policies and procedures, including among others environment and safeguard policies, child protection policies, international fiduciary standards and procedures.

Objectives of the Manual

Principles: To establish best practice and clearly state the standards and expectations which apply to all SPREP staff and executing entities (or sub-delegatees in the context of European Commission funded projects) involved in procurement processes;

Procedures: To document a user-friendly and common sense process to be followed by SPREP staff and other executing entities/sub-delegatees when undertaking procurement on behalf of SPREP; and

Outcomes: To provide transparent, impartial, and defensible procurement practices that will ensure that SPREP always expends public and donor funds efficiently and effectively to receive best value and in accordance with best practices.

SECTION II: PROCUREMENT PRINCIPLES

3. SPREP procurement principles help ensure that value for money, quality of goods procured, transparency, impartiality, competency, clarity, and socially and environmentally responsible purchasing decisions are consistently made by the organization.

Procurement Basics and Exceptions

4. Procurement is the acquisition of consultancy services, goods, non-consultancy services, or works from an external source. All SPREP procurement activities will be conducted in accordance with this manual, with the following exceptions:¹

1. Individual travel purchases: Procurement will be sourced by providing at least 3 quotes for prices and itineraries for each travel from known suppliers, with evaluations submitted to the officer with delegated authority for approval.

2. Donor-directed procurements: Where SPREP has a procurement role under a contract with a donor who requires certain donor procurement procedures to be followed; SPREP will follow the donor procedures in preference to its own. This procurement process will require endorsement by the Director General or Deputy Director General.

3. Project funding that specifies a preferred supplier: Where SPREP is obliged by a funding contract to procure services from a specified supplier; no additional procurement process is required. This procurement process will require endorsement by the Director General or Deputy Director General.

4. Partnership Agreements: Where there are pre-existing MOUs or similar association agreements between SPREP and its partners, and where SPREP agrees for the partner to carry out work under the terms of such existing agreements, including MOUs, no additional procurement process is required.

5. Retainer Agreements: Where SPREP has previously entered into a retainer agreement with a supplier using appropriate competitive procedures that have established, at the minimum, the qualifications and reputation of the supplier, price structure, general scope of services and terms of reference contemplated, and the ability and willingness of the supplier to respond to requests from SPREP, no additional procurement process is required so long as the services currently sought are consistent with the procedures and retainer agreement in place for that supplier. Authorized SPREP staff shall maintain appropriate records of the competitive process used to select a supplier from the list of suppliers with current retainer agreements in force at the time the selection is made.

Application and Accountability

5. The SPREP Executives – the Director General and Deputy Director General are accountable for all organization procurement decisions. While the Executive may delegate their authority to staff and other delegated entities, they remain ultimately accountable for all organization

¹ All exceptions to the provisions of this Manual should be well documented with careful and comprehensive notes to justify the exceptions. The relevant agreements that led to the exceptions should be attached, if available.

procurement decisions. The Directors, the Finance and Administration Adviser, and other senior staff are accountable to the SPREP Director General for all procurement responsibilities delegated to them. This includes oversight and ensuring staff reporting to them are aware of SPREP's procurement manual and procedures.

6. SPREP's Procurement Officer is responsible for the overall management of the procurement process.

2.1 Value for money

7. The guiding principle of the procurement process is that SPREP must obtain '*value for money*' in a fair and transparent manner. Each procurement process must evaluate the relative costs and benefits of the available options to ensure that SPREP obtains the maximum benefit from the acquired goods and services within the time frames and resources available. **The best value for money option is not always the cheapest option.** To achieve value for money, SPREP requires staff involved in a procurement process to canvass potential suppliers, follow endorsed procedures, apply predefined selection criteria, and make sound and impartial judgments. This will help ensure that SPREP procured services deliver the highest quality of outputs within the available budget and time-frames.

2.2 Transparency

8. SPREP staff involved in procurement processes must fully document their procurement processes and conclude with a written contract containing all agreed terms and conditions. This will ensure transparency, ensure all potential suppliers have equal access to all relevant information, and enable SPREP's procurement decisions to stand up to internal and external scrutiny.

2.3 Impartiality

9. Procurement procedures must treat potential suppliers fairly and in a non-discriminatory manner. All candidates must have equal access to identical information, and receive impartial consideration following common rules and deadlines. SPREP staff must answer all enquiries about procurement, in a prompt and polite manner, but also in a way that ensures no potential supplier gains an unfair advantage. Answers to all procurement related enquiries will be made in writing either in email or in letter, and made publicly available to all potentially interested parties at a predetermined time identified in the call for tender documents.
10. SPREP staff involved in procurement processes must behave ethically, and are required to declare conflicts of interest at all times.

2.4 Clarity

11. To ensure certainty and to avoid confusion, the standards and duties relating to a procurement process must follow those documented in this procurement manual and include:

- **Thresholds:** the procurement value will pre-determine which procurement procedure to use;
- **Criteria:** standards for evaluating tenders and awarding contracts will be articulated and documented before tenders are published and the evaluation criteria and any weighting made available to all potential suppliers; and
- **Responsibilities:** the composition and duties of the associated evaluating committee will be clearly documented.

2.5 Social and Environmental Responsibility

12. SPREP's Environmental and Social Management Policy sets out SPREP's commitment to ensuring that the best possible environmental and social impacts of its work are achieved. When planning, approaching the market, and evaluating tenders, SPREP Officers should consider:

- Whether there are any standards (whether legislative, or industry best practice) or certifications that the product or service should meet;
- Whether there are environmentally or socially responsible options within the market that should be encouraged or could be prioritized; and
- Whether, upon procuring the goods or services, there are potential adverse social and/or environmental impacts that could result from the delivery and/or operation of that goods or services.

SECTION III: PROCUREMENT PROCESS

3.1 Selection of Appropriate Procurement Process

13. The procurement type adopted will be dependent on the estimated costs of the procurement and any other conditions related to the procurement. Estimate the maximum anticipated cost of the procurement, based on the specifications and research – including options, extensions, renewals or other mechanisms that may be executed over the life of the contract. **The options available in the SPREP procurement process are summarized in Table 1.**

3.2 Establishment of a Tender Evaluation Committee

14. Before the start of the procurement process, an Evaluation Committee is to be established for each procurement. The composition of the Evaluation Committee shall be identified by the Requesting Officer in consultation with the Procurement Officer and endorsed by their Director or the Executive according to the following: The request for Approval of the Evaluation Committee will be processed by the Procurement Officer as follows:

- Tender - in excess of USD \$300,000 - Approval by the Director General

- Tender – USD \$100,001 to USD \$300,000 - Approval by the Deputy Director General
- Tender – USD \$10,001 to USD \$100,000 - Approval by Division Director
- Tender equals/below USD \$10,000 – Approval by the Requesting Officer/Task Manager

3.3 Appointment and Composition of the Tender Evaluation Committee

15. **Appointment:** The person making the request, or the Requesting Officer, in consultation with the Procurement Officer draws up a list of potential nominees for the evaluation committee. The Procurement Officer ensures that there is a wide representation on the committee and considers the gender and ethnicity mix. Requesting Officers are allowed on the evaluation team as observers in exceptional cases. In cases where the Requesting Officer needs to be involved in the evaluation such as to ensure technical compliance, the Requesting Officer will be involved in the technical and not the commercial evaluation process. It is to be noted that from December 2014, the composition of the evaluation committee is to be approved by the Division Director, the Deputy Director General or the Director General.
16. Tender Committee members are appointed by SPREP management, comprising of a non-voting chairperson, and an odd number of voting members (the evaluators). The evaluators must have reasonable command of the language in which the tenders are submitted. They should have the technical and administrative ability to give an informed opinion on the tenders. Their identity is confidential. All Evaluation Committee members must attend all meetings. Any absence must be recorded and explained in the evaluation report. Evaluation Committee members must control and document their contacts with potential suppliers, and recognize, identify, and address any actual or perceived conflicts of interest.
17. **Composition:** The Evaluation Committee usually consists of three to five voting members, depending on the nature, complexity, and value of the procurement activity. There should also be a non-voting member, the Committee Chairperson. It is recommended that SPREP internal auditor should play the oversight function on the works of the Evaluation Committee. The minimum composition of the evaluation team members will be as follows:
 - I. **An Open Tender Evaluation Committee (>\$300,000)**, at a minimum should include:
 1. The senior SPREP Officer responsible for the tender;
 2. Division Director responsible for the tender;
 3. A SPREP officer from a different program area;
 4. The Finance and Administration Adviser
 5. An external representative with knowledge of the procurement area
 6. The Human Resource Adviser

7. The Procurement Officer – Chairperson/ Secretary
- II. **An Open Tender Evaluation Committee (\$50,001 up to \$300,000)**, at a minimum should include:
1. The Senior SPREP Officer responsible for the tender;
 2. The Director from the Division responsible for the tender;
 3. A SPREP officer from a different program area;
 4. Finance representative;
 5. An external representative with knowledge of the procurement area
 6. Human Resource representative
 7. The Procurement Officer – Chairperson/Secretary
- III. **An Open Tender Evaluation Committee (<\$50,000)**, at a minimum should include:
1. The senior SPREP Officer responsible for the tender;
 2. A SPREP officer from a different program area; and
 3. Finance representative
 4. Human Resource representative
 5. The Procurement Officer – Chairperson/Secretary

Role of the Evaluation Committee Members:

- The chairperson is responsible for coordinating the evaluation process in accordance with the procedures of this Procurement Manual and for ensuring its impartiality and transparency;
- The voting members of the Evaluation Committee have collective responsibility for decisions taken by the committee;
- All members of the Evaluation Committee must sign a Declaration of Impartiality and Confidentiality form prior to conducting the evaluation (opening of the bids). Any Evaluation Committee member or observer who has or might have an actual or potential conflict of interest with any tenderer or applicant must declare it and immediately withdraw from the Evaluation Committee.

Table 1. Detailed Procurement Type Specifications

Procurement Type	Procurement Value (\$US)	Recommended Procurement Period	Evaluation Process	Authorized Process
Open Tender	>\$300,000	6-8 Weeks	• The Senior Officer responsible for the Tender • Director of the Division responsible for the Tender • A SPREP Officer from a different program area • An external representative(s) with knowledge of the procurement area • Finance and Administration Adviser • Human Resource Adviser • The Procurement Officer	Evaluation Panel and tender approved by the Director General. Approach the international market through an open request for tender: • Suppliers respond and bid for the work by submitting a tender; • Evaluate all responses received within the deadline against stated conditions and criteria; • Negotiate a contract with the preferred supplier.
Open Tender	\$100,001 – \$300,000	4-6 Weeks	• The Senior Officer responsible for the Tender • Director of the Division responsible for the Tender • A SPREP officer from a different program area • An external representative with knowledge of the procurement area • Finance representative • Human Resource representative • The Procurement Officer	Evaluation Panel and tender approved by the Deputy Director General Approach the international market through an open request for tender: • Suppliers respond and bid for the work by submitting a tender;

Procurement Type	Procurement Value (\$US)	Recommended Procurement Period	Evaluation Process	Authorized Process
				- Evaluate all responses received within the deadline against stated conditions and criteria; - Negotiate a contract with the preferred supplier.
Open Tender	\$50,001 - \$100,000	4-6 Weeks	- Senior Officer responsible for the Tender - An Adviser from the relevant Division - A SPREP officer from a different program area; - An external representative with knowledge of the procurement area - Finance representative - Human Resource representative - The Procurement Officer	Evaluation Panel and tender approved by the Division Director Approach the international market through an open request for tender: - Suppliers respond and bid for the work by submitting a tender; - Evaluate all responses received within the deadline against stated conditions and criteria; - Negotiate a contract with the preferred supplier.
Open Tender	\$10,001 - \$50,000	2 – 4 Weeks	- Senior Officer responsible for the Tender - A SPREP officer from a different program area; - Finance representative - Human Resource representative - The Procurement Officer	Evaluation Panel and tender approved by the Division Director Approach the international market through an open request for tender: Suppliers respond and bid for the work by submitting a tender;

Procurement Type	Procurement Value (\$US)	Recommended Procurement Period	Evaluation Process	Authorized Process
				- Evaluate all responses received within the deadline against stated conditions and criteria; - Negotiate a contract with the preferred supplier
Direct Source	\$1,001-\$10,000	1-2 Weeks	- Three competitive quotes for prices from known suppliers or a tender placed on the website for wider circulation; - Individual officer's evaluation submitted to the officer with delegated financial authority; - In case of individual consultants, compare at least three CVs against the consultancy Terms of Reference (TOR) and select the one most qualified.	For consultancy tenders, HR needs to review the tender evaluation report prior to approval. The tender evaluation report should be approved by the delegated authority. For consultancy tenders, only one extension will be considered at the discretion of the Deputy Director General. Directly approach three potential suppliers with the specifications, to request quotes when the procurement value is below a predetermined threshold; or Directly approach one or more potential supplier with the specifications, to request quotes when: - No suitable submissions were received in response to an open tender process; - There is no competition for the particular service due to technical reasons;

Procurement Type	Procurement Value (\$US)	Recommended Procurement Period	Evaluation Process	Authorized Process
				- It is a case of extreme urgency beyond SPREP's control; - It is an unsolicited and highly advantageous short-term value for money opportunity; - Additional services are required from the original supplier to replace parts or service equipment, or where changing supplier would lose compatibility with existing equipment or services. This procurement method does not involve the procedural rules of open tendering, but it may include a competitive process, for example obtaining multiple quotes and multiple CVs for individual consultants. Reference checks must be carried out prior to selection of successful candidate.
Over-the-counter purchase	≤\$1,000	1 Week	No quotes required (unless there's likely to be a disparity between suppliers)	Direct purchase of goods or services from a supplier, where the procurement value is below a threshold requiring a competitive process.

3.4 Honorarium / Sitting Fees

18. External Evaluation Committee members who have been selected for their technical expertise and knowledge will be eligible for sitting fees. This is currently set at a ceiling of US \$300 per procurement. The Requesting Officer must obtain the approval from their Director prior to negotiating the fees. The approval process is as follows:

- 1) Approval from Division Director - to ensure that there is a need;
- 2) Approval from the Finance and Administration Adviser - to ensure that funds are available and are within the guidelines; and
- 3) Establishment of an LOA with the external party.

SECTION IV: PREPARING THE DRAFT REQUEST FOR TENDER

4.1 Planning

19. Careful planning is essential to ensure that a given procurement process is successful. Before SPREP approaches potential suppliers, the specifications of goods or services or service outcomes must be clearly identified.

- **Specifications:** Specify in advance the performance, technical, and/or functional requirements of the required goods or services. The specifications should only refer to a particular trademark, producer, or supplier when there is no other way to describe it precisely, and then the specification should state that it, 'or an equivalent,' is required.
- **Conditions:** Identify in advance any conditions that potential suppliers must meet to participate in a procurement process. The potential supplier may have to demonstrate minimum legal, technical, or financial capacities, for example relevant experience in the technical field.

4.2 Types of Tenders

20. To help meet the objectives of a project or to satisfy SPREP's operational needs, SPREP may request tender through procurement procedures for consultancy services, goods, non-consultancy services and works, depending on the nature of the requirement.

Consultancy services: Consultants generally offer advice or propose solutions to problems, but they do not directly, carry out, or implement solutions.

Non-consultancy services: A contractor may in addition to providing advice, be involved in implementing the solutions with the contracting authority.

Goods: Goods are supplies, equipment, or machineries that are essential as input to the project to achieve project objectives.

Works: Works tender would involve infrastructure activities, such as building of roads, and all other activities related to civil or engineering works.

4.3 Terms and Conditions of Tender

21. For clarity and consistency, SPREP should prepare a standard set of terms and conditions for the most common types of procurement process: for example, consultancy services, goods, non-consultancy services, and works, through the preparation of a clear and concise terms of reference for the work required through the tender process. As circumstances may require, the Procurement Officer with support from the SPREP Legal Adviser should be available to address questions about the terms and conditions to the potential applicants or tenderers, in particular, prior to signing any agreement.

4.4 Request for Tender

22. The tender processes as described below are applicable to all types of tenders referred to in section 4.2 above, and the procedures will depend on the size of the tender amount as described in Table 1 above. When the specifications or Terms of Reference have been finalized, a draft Request for Tender (RFT) is prepared by the Requesting Officer using the template in Appendix A. The Procurement Officer is responsible for ensuring the information provided by the Requesting Officer complies with the underlying principles of SPREP procurement process and that it is clear, unambiguous and generic, and ensures fair competition among the suppliers. The Procurement Officer plays a support role to the Requesting Officer in the following areas:

- Provides information on previous, current, and upcoming procurement activities for similar products or services;
- Reviews the request for completeness and ensures that the specifications or descriptions are not restrictive or biased towards a specific supplier;
- Assists in market studies to identify sources of supplies, pricing, availability of information, and extent of competition;
- Provides advice on the best method to obtain goods and services in a timely manner, at the best possible price; and
- Is responsible for production of all tender assessment reporting related to the Tender Evaluation Committee.

The “Requesting Officer” is the officer requesting for goods or services/works through the tender procurement process.

4.5 Request for Tender Documentation

23. The Request for Tender must provide all relevant information about SPREP’s requirements that is necessary to enable a potential supplier to prepare responsive, tailored submissions.

Use the template in Appendix B for consultancy service, Appendix E for goods and works. Generally this should include:

- I. Terms and Conditions of Tender;
- II. Description: the nature, scope and quantity of the goods, services or works to be procured, including any technical specifications or other instructions;
- III. Standard Conditions for participation: business license, financial statements, references, evidence of eligibility to live and work in Samoa or project site, any financial guarantees, information or documents that potential suppliers must submit;
- IV. Submission guidelines: any minimum content and format requirements;
- V. Standard Evaluation criteria: qualifications, experience, competencies, and resourcing;
- VI. Include a description of organizational values, i.e. environmental leadership, service delivery, valuing people and integrity;
- VII. Offer Summary Table: for supplier comparison purposes. The tender document package should be completed by attaching the appropriate series of forms that allow the suppliers to submit offers in a consistent fashion, and confirm their acceptance of the type of contractual arrangements proposed;
- VIII. Tender Deadlines: Gives potential suppliers sufficient time to prepare and lodge a submission. Suggested minimum response periods are presented in Table 1; and
- IX. Tenderer is deemed ineligible due to association with exclusion criteria, including bankruptcy, fraudulent or negligent practice, violation of intellectual property rights, under a judgment by the court, misrepresentation, corruption, participation in a criminal organization, money laundering or terrorist financing, child labor, and deficiency in capability in complying main obligations.
- X. Tenderer to provide references of work done most recently to enable SPREP to carry out reference checks for consultants hired.

4.6 Request for Tender Approval

24. The Procurement Officer in consultation with the Requesting Officer prepares the "Request for Tender" for approval by the following process:

- Endorsement by Division Director that the need exists and sign off on the draft 'Request for Tender';
- Endorsement by the Finance & Administration Adviser that funds are available;
- For consultancy services, the routing slip should include the Human Resources Adviser's endorsement; and

- Approval by the Executive that the organization will be obligated to the terms of the tender

SECTION V: APPROACHING THE MARKET

5.1 Distribution of Request for Tender Documents

25. The tender documents are posted by the Records and Archive Officer (RAO) on SPREP's website. The RAO should also distribute the tender documents to all identified potential suppliers, either by e-mail, or by fax. Where feasible and appropriate, given the locations addressed in the Tender, postings in local newspapers or on the websites of CROP agencies may promote broader solicitation of tenders. Tender documents that need distribution through newspaper should be accompanied by a Purchase Order (PO). The Procurement Officer should ensure all tender documents are widely circulated.

5.2 Receipt and Opening of Tenders

26. Tendering parties or applicants must sign a declaration together with their applications, certifying that they do not fall into any of the exclusion situations cited under sections 5.7 (b) below and, where applicable, that each has taken adequate measures to remedy the identified situation.
27. Submitted tenders are received, registered, handled, opened and stored only by authorized SPREP staff members. The purpose of this formal process is to ensure that tenders are received, handled and opened according to good practice and that transparency and confidentiality are maintained as specified in the relevant regulations, rules, and procedures of the organization. This process is usually handled by the Records and Archive Officer (RAO) and the Corporate Services Assistant (CSA) who normally are not directly involved in the procurement function. As specified in the request for tender (RFT) documents, offers should be received:
- At the correct place, date and time;
 - In writing;
 - Via mail, courier service, hand delivery, or e-mail; and
 - For tenders received by e-mail, this must be on the 'secure' email address tenders@sprep.org dedicated for the purpose of receipt of tenders.
28. The email address must be safely secured, i.e. password protected, and should only be accessible by the RAO responsible for the receipt of tenders by email and the Procurement Officer. The tenders should be sealed, except in the case of quotations.

5.3 Registration of Tenders

29. Upon receipt, the RAO should properly record the date and time of delivery and issue a receipt or acknowledgement to the tendering party. The tenders received by hand delivery should be recorded by the Corporate Services Assistant (CSA), in the Tender Log Book before placing in the tender box at the receptionist area.

5.4 Storage of Tenders

30. Tenders received by fax should be sealed in individual envelopes and kept in the locked tender box with the other sealed tenders. The locked tender box should be accessible only by the Procurement Officer who is responsible for the procurement functions, until the date and time specified for the tender opening. Tenders received by email must be on the secured email address and will not be accessible to anyone (other than the RAO and the Procurement Officer) until the Opening of the Tenders meeting.

5.5 Opening of Tenders

31. Tender opening is a formal process of opening, reading, and recording in writing all tenders received in response to the request for tenders (RFT), at the date, time and place stipulated in the tender documents. It is recommended that the tender opening takes place as soon as feasible after the deadline for receipt of tenders. Apart from being efficient, it will reduce any risk of manipulating tenders received or accepting late bids.
32. The tender opening process is normally conducted by the authorized Tender Evaluation Committee. Members of the Tender Evaluation Committee should be present at the opening of the tenders; however in the event that not all members are available, a minimum of 3 members is required for the opening of tenders including the chair of the Tender Evaluation Committee. Tender envelopes and tender proposals sent by email are opened one by one, and the opening official/panel should check that the tenders meet the procedural requirements of the tender documents. For example, that there is one original tender, the right number of copies, that there is a tender form properly signed by the supplier and any other documentation as requested. During the tender opening the following information is usually read out loud:
- Supplier's name and place of business;
 - Price and any discounts, including currency of the tender;
 - Delivery time;
 - Delivery terms; and
 - Offer validity
33. The chair of the Tender Evaluation Committee should certify the opening process by signing the tender register.

34. In tenders where specific bidders are requested to submit a financial bid separately from the technical bid; the process of opening technical bids first is to be followed. In the event that the bidder failed the technical aspect of the tender, their financial bids will be returned unopened.

5.6 Receipt of Tabulation of Valid Tenders

35. A tabulation/abstract of the tender is used to record prices, as well as delivery terms, etc. in order to facilitate the evaluation process. This tabulation/abstract is done as soon as possible after the opening of the tender or as part of the opening record/report. The tenders after they have been opened, dated, and signed by the opening official/panel, together with the opening record/report and a tabulation/abstract of the offers, if applicable, are then handed to the Requesting Officer in charge of the tender.

5.7 Invalidation of Tenders

36. Only tenders that are deemed valid are submitted to the tender evaluation committee for assessment. Criteria that render a tender to be invalid include the following:²
- a) Tenders received after closing date;
 - b) Tenderer is deemed ineligible due to association with exclusion criteria, including bankruptcy, fraudulent or negligent practice, violation of intellectual property rights, under a judgment by the court, misrepresentation, corruption, participation in a criminal organization, money laundering or terrorist financing, child labor, and deficiency in capability in complying main obligations;
 - c) Tenderer has misrepresented information required by the contracting authority as a condition for participating in the procedure or has failed to supply that information; and
 - d) Tenderer was previously involved in the preparation of procurement documents where this entails a distortion of competition that cannot be remedied otherwise.

SECTION VI: TENDER EVALUATION

6.1 Evaluation Process

37. SPREP's Financial Regulations require staff involved in an evaluation process to receive, open and treat all quotes and tenders in a way that guarantees fairness and impartiality, and that protects the confidentiality of the information provided by potential suppliers. The evaluation

² Adopted from *Practical Guide to Contract Procedures for EU External Actions*, http://ec.europa.eu/europeaid/funding/about-funding-and-procedures/sources-funding_en, Section 2.3.3.1

process will determine which proposal would best meet SPREP's needs, and achieve value for money.

38. All tenders or quotes received within the requested deadline need to be evaluated against the conditions and weighted criteria indicated in the information that was available to potential suppliers. Some criteria are typically general, while others should be developed specifically for the particular procurement. Only those potential suppliers that satisfy the conditions set as prerequisites for participation qualify for further assessment – any that fail to do so must be eliminated. All tenders or quotes satisfying stipulated conditions are then evaluated on the basis of their relative value for money. The value-for-money evaluation should consider:

- a) Costs – direct and indirect benefits and costs considered over the whole procurement cycle;
- b) Quality and fitness for purpose;
- c) Environmental considerations;
- d) Convenience and timeliness;
- e) The relative risks, including the performance history of the prospective suppliers;
- f) The flexibility to adapt to possible change over the lifecycle of the goods or service;
- g) Attributes of proposed contract terms. For example, contract extension;
- h) Previous experience in a similar field and with the same type of requirement;
- i) Experience from the region;
- j) Available capacity and or equipment to undertake the assignment; and
- k) Qualification and experience of proposed personnel including reference checks.

6.2 Code of Ethics

39. All staff, including external representation on the tender evaluation committee, should at all times exercise care and avoid situations in which private interest conflicts or might reasonably be thought to conflict with carrying out their duties. Particular situations in which officials should exercise care include those where gifts, travel, and accommodation, or conflicts of interest could give rise to a perception of bias.

6.3 Confidentiality

40. All members involved in evaluating offers should be careful to observe confidentiality of the offers and ascertain that information about the content of the submissions or the evaluation process is not revealed outside the group involved in the procurement process.

41. The Procurement Officer ensures the confidentiality of the process. In order to ensure confidentiality of the process, the Procurement Officer will be the only person that can communicate with the bidders during the period between the closure date and the Opening of the Tenders. All clarifying questions by the suppliers or service providers during this time must be channeled through the Procurement Officer. The Procurement Officer will refer the queries to the Requesting Officer for the tender and copy all members of the evaluation committee, and responses by SPREP to the suppliers should be channeled through the Procurement Officer.
42. During the period of evaluation, the Procurement Officer will be the only person who can communicate with the bidders. All clarifying questions intended for the suppliers or service providers during this time must be channeled through the Chair.

6.4 Gifts and Hospitality

43. Staff and external representation on the Evaluation Committee must not improperly use their position to gain a benefit, gift, or hospitality. Hospitality can include presentations, demonstrations, briefings and discussions, accompanied by meals, unless such presentations are expressly invited in the tender solicitation from all tendering parties, and do not include meals, alcohol, or gifts. Social contact with potential and known tendering parties should be avoided when an approach to market is underway and before contractual arrangements are finalized. Offers of hospitality and entertainment must not be accepted by SPREP staff during these times and must be disclosed in accordance with relevant financial guidelines.

6.5 Conflicts of Interest

44. For the purposes of the procurement manual, conflict of interest refers to a conflict between the official duties of staff/external representatives on Evaluation Committee and their private interests or personal relationships, where the private interests or personal relationship could improperly influence the way a staff member carries out their official duties. Staff/external representatives on the Evaluation Committee should ensure that all interactions with businesses are able to withstand public scrutiny.
45. Whether a potential conflict of interest can be avoided or not, the Evaluation Committee members must declare it immediately in writing by filling in the "Conflict of Interest Form" (Appendix A), and arrangements must be put in place to avoid or remove the conflict. This may include excluding the official from any further participation in a procurement process.
46. Irrespective of potential conflicts of interest, all members of an Evaluation Committee must sign the Declaration of Impartiality, Confidentiality and Conflict of Interest form during the Opening of the tenders. (**See Appendix A**). Likewise, all bidders should declare any areas that may constitute conflict of interest related to this bid (**Appendix B Sec. 3.3**).

6.6 Selection of the Preferred Bidder

47. The individual or the evaluation committee responsible for assessing the quotes or tenders needs to submit, to the designated staff member with the delegated financial authority its

recommendation on the preferred supplier. Use the template in Appendix F to summarize the panel conclusions. The panel report should justify its reasons for concluding that the bidder:

- a) Satisfies the conditions for participation;
- b) Is fully capable of undertaking the contract; and
- c) Has submitted a proposal that will provide the best value for money, in accordance with the specific criteria in the request document and the general value for money criteria.

The designated staff member with the delegated financial authority needs to approve the recommendation of the selection panel for it to take effect.

6.7. Approval of Evaluation Report

- 48. The Tender Evaluation report must be written by the Chair of the Tender Evaluation Committee and reviewed by the tender Evaluation Committee before sending for approval by the appropriate authority.
- 49. To ensure that the tender evaluation report reflects the selection agreed by the tender evaluation committee, the Procurement Officer will need to sign off on the tender evaluation report prior to the report being approved.
- 50. For all consultancy tenders, the evaluation report needs to be reviewed by HR prior to submission of approval to the delegated authority.
- 51. Approval of the tender evaluation report is a delegated authority that will only approve the report upon endorsement from the Procurement Officer and HR.
- 52. Any firm found to have a conflict of interest shall be ineligible for award of a contract.

SECTION VII: AWARDING A CONTRACT

- 53. In consultation with the Legal Adviser and the Finance & Administration Adviser, a contract will be drawn up and negotiated with the preferred supplier:
 - The draft contract is to be drawn up by the Procurement Officer in consultation with the Requesting Officer for the tender;
 - The Procurement Officer will ensure that the issues raised in the evaluation report are covered in the draft contracts; and sends the draft contract with routing slip to the Division Director for endorsement;
 - The draft contract and routing slip with the approved tender evaluation report is next sent to the Finance and Administration Team who will be responsible for ensuring the contract is duly signed by both parties;
 - The Finance and Administration Team then circulates the contract and routing slip to the Financial Adviser, Legal Adviser, Internal Auditor, and the Human Resource Adviser where applicable (HRA approval required only for consultancy services), for approval;
 - Both copies of the contracts are approved and signed by the Director General upon

receipt of the approved routing slip with the relevant attachments.

- All documentation related to the tenders is to be centrally filed with the Finance and Administration Team.

54. Once the contract is awarded, the Procurement Officer must:

- Inform all potential suppliers whose submissions were evaluated of the decision;
- On request, provide an unsuccessful tender with the reasons it was unsuccessful;
- In the case of select or open tenders, the results should be published on the SPREP website, including:
 - d) A description of the goods or services procured;
 - e) The name and address of the successful supplier;
 - f) The value of the successful tender; and
 - g) The date the contract was awarded.

SECTION VIII: COMPLAINTS

55. SPREP will consider, respond promptly and impartially to a complaint lodged by an unsuccessful bidder under the Procurement Policy. The complaint will be received in good faith and will be dealt with in a way that does not prejudice the complainant's ongoing or future participation in procurement or affect any rights of the complainant.
56. The complaint will need to be in writing and lodged with the Director General, within 10 working days of the award of the contract notice being published. The formal complaint should outline the name of the tender and the details of the complaint.
57. The complaint when received should be referred to the Internal Auditor who will record the complaint and acknowledge its receipt within 3 working days. The Internal Auditor will investigate the complaint and where necessary convene a Procurement Complaints Committee to preside over the complaint.

The Procurement Complaints Committee will consist of 3 persons and will be made up of the following:

1. Internal Auditor (Chairperson)
2. A Director previously uninvolved in the tender process
3. Legal Adviser

58. All tender documents will be made available to the Complaints Committee, and the Chairperson of the Evaluation, together with the Evaluation Committee, will be interviewed.

59. The Complaints Committee/Internal Auditor will provide a report to the Director General on its investigation with an outcome within 10 working days of convening the investigation. The Internal Auditor (IA) will submit a response to the complainant and copy the Director General and the Complaints Committee on the outcome of the complaint.
60. The IA should keep records of all complaints, including outcomes, reasons for such outcomes, and response times. The tender evaluation committee should use the complaints' processes to identify general or recurring problems in procurement processes, and undertake corrective action.

SECTION IX: PROCUREMENT RULES ON SUB-DELEGATION

61. As an implementing agency, SPREP will sub-delegate tasks and activities funded by bilateral donors or international organizations, including EU and GEF, to a vetted executing entity (or executing partner in SPREP terms, or sub-delegatee in EU terms, and executing agency in GEF terms). In the Executing Partner Agreement (EPA) signed between SPREP and the executing partner or sub-delegatee, all relevant rules and procedures of SPREP, including the procurement policies and procedures should be clearly described. The basic rule is that the executing partner or sub-delegatee should follow the appropriate policies, rules and procedures (equivalent to the procedures used by SPREP) in all material aspects for providing financing from the donor funds through procurement. Where there is observation of weaknesses or lack of capacity to follow such rules, SPREP should conduct training or workshops to bring the executing partner or sub-delegatee up the level where it can execute the project activities, including procurement, following the proper rules and procedures without problem. Under exceptional cases, SPREP may take over the procurement process with the executing entity as observer; this may be considered as another form of capacity building.
62. Throughout the project implementation period, SPREP will perform oversight functions on the activities undertaken by the executing partner and monitor its performance against compliance with relevant policies, rules, and procedures in all procurement activities. The EPA will also indicate consequence of non-compliance and remedies thereof.

APPENDIX A: CONFLICT OF INTEREST DECLARATION

Part A – Declaration of Impartiality, Confidentiality, and Conflict of Interest.

(Please read and fill in appropriate section of the Declaration form for all tender evaluation committee members. Tick appropriate boxes)

RESPONSIBLE:

DIVISION:

TENDER NAME:

I understand that a conflict of interest (COI) may arise where my private interests influence, or may be seen to influence, my actions as a Secretariat staff. In recommending or approving this contractor/Supplier I affirm that, except as set out below:

- ☐ I, the undersigned, declare that I agree to participate in the evaluation of the above-captioned tender. By making this declaration, I confirm that I have familiarized myself with all relevant information concerning the tender process and evaluation. I further declare that I shall execute my responsibilities honestly and fairly.
- ☐ To the best of my knowledge and belief, there are no facts or circumstances, past or present, or that could arise in the foreseeable future, which might constitute a conflict of interest or if such exists
- ☐ I will disclose this at the outset to the chairperson of this evaluation committee/ or panel or as soon as I become aware of it.
- ☐ I confirm that I, my family members and any organization that I am involved with shall not receive any financial gain or advantage as a result of my participation.
- ☐ I agree to hold in trust and confidence any information or documents disclosed to me or discovered by me or prepared by me in the course of or as a result of this evaluation and agree that these documents or information shall be only used for the purposes of this evaluation and shall not be disclosed except to a party entitled to know and such party should likewise agree to execute and be bound by the terms of this Declaration.

Supplier	Relationship	IS there a COI?	Describe any conflict of interest (COI)
		Yes ☐ No ☐	
		Yes ☐ No ☐	
		Yes ☐ No ☐	
		Yes ☐ No ☐	
		Yes ☐ No ☐	
Name:			
Signed:			
Designation:			
Date:			

Part B - Record of Resolution by the Management

With respect to the above declaration, the Division Director passed the following resolution:

_____ (name of the person making the declaration) should refrain from performing or getting involved in performing the work/duty, as described in Part A, which may give rise to a conflict.

_____ (name of the person making the declaration) may continue to handle the work/duty as described in Part A, and recommend the following action to mitigate the declared interest.

Division Director

Signature:

Signature:

(This form is to be used for procurement of goods & services through the tender process by all members in any tender evaluation committee of the Secretariat. If no conflict of interest exists as in Part A, then do not fill in Part B).

APPENDIX B: REQUEST FOR TENDERS FOR CONSULTANCY

REQUEST FOR TENDERS - CONSULTANCY

File: **Insert file no. / name**

Date: **Insert date**

To: Interested suppliers

Contact: **Insert contact details of the staff member who can be contacted for further information**

Subject: **Request for tenders: Insert title**

1. Background

- 1.1. The Pacific Regional Environment Programme (SPREP) is an intergovernmental organization charged with promoting cooperation among Pacific islands countries and territories to protect and improve their environment and ensure sustainable development.
- 1.2. For more information see: www.sprep.org.

2. Specifications: statement of requirement

- 2.1. SPREP would like to call for tenders from qualified and experienced **designers/ economists/ garden maintenance companies/ etc.** who can offer their services to provide **a series of training workshops/ regular maintenance services/ expert assistance to SPREP in developing a regional strategy on...etc.**
- 2.2. The successful applicant will need to provide **[insert the nature, scope and quantity of the goods or services]** by **insert date**.
- 2.3. **Describe any technical specifications or other instructions, e.g. list the terms of reference for a consultancy.**

3. Conditions: Information for Applicants

- 3.1. To be considered for this tender, interested suppliers must meet the following conditions: **list any conditions, i.e. financial performance/ guarantees, information or documents that potential suppliers must submit.**
- 3.2. Applicants should declare any areas that may constitute conflict of interest related to this bid.

4. Submission guidelines

- 4.1. Tender documentation should demonstrate that the interested supplier satisfies the conditions stated above and is capable of meeting the specifications and timeframes. Documentation must also include supporting examples to address the evaluation criteria. **Describe any additional minimum content and format requirements.**
- 4.2. Tender documentation should outline the interested supplier's complete proposal: methods, personnel (and their skill sets/curricula vitae), timeframes and costs.
- 4.3. Tenderers/Bidders must insist on an acknowledgement of receipt of tenders/proposals /bids.

5. Tender Clarification

- 5.1. Any clarification questions from applicants must be submitted by email to **contact person** copy maraeap@sprep.org before **[insert date]**. A summary of all questions received with an associated response will be posted on the SPREP website www.sprep.org/tender by **[insert date]**.

6. Evaluation criteria

- 6.1. SPREP will select a preferred supplier on the basis of SPREP's evaluation of the extent to which the documentation demonstrates that the tenderer offers the best value for money, and that the tenderer satisfies the following criteria.
- 6.2. **e.g. Expertise in ... [indicate any weighting applied to criteria]**
- 6.3. **e.g. Demonstrated experience in ...**
- 6.4. **e.g. Familiarity with / comprehensive understanding of ...**
- 6.5. **Describe any other factors to be considered in assessing submissions.**

7. Deadline

- 7.1. **The due date for submission of the tender is: xxxxxxx**
- 7.2. Late submissions will be returned unopened to the sender.
- 7.3. Please send all tenders clearly marked 'TENDER: **Title of Tender**' to:
mail:

SPREP
Attention: Procurement Officer
PO Box 240
Apia, SAMOA

Email: tenders@sprep.org

Person: Submit by hand in the tenders box at SPREP reception, Vailima, Samoa.

SPREP reserves the right to reject any or all tenders and the lowest or any tender will not necessarily be accepted.

For any complaints regarding the Secretariat's tenders please refer to the Complaints section on the SPREP website.

APPENDIX C: SAMPLE CONSULTANCY AGREEMENT

CONSULTANCY AGREEMENT

AP xxx

Date

Consultant name and address

Consultancy (Title of the Consultancy)

between

The Secretariat of the Pacific Regional Environment Programme (SPREP)

and

Consultant name

(together, “the Parties”)

Dear XXX

I am pleased to offer you this Consultancy Agreement (“the Agreement”) with the Secretariat of the Pacific Regional Environment Programme (SPREP) in accordance with the following terms and conditions.

Interpretation

“Confidential Information” means any information (in any form) expressly marked or designated as “confidential” that the Consultant discloses to SPREP or SPREP discloses to the Consultant or which, by its nature, may reasonably be regarded as being sensitive or of commercial value to the disclosing Party. Information cannot be marked or designated as “confidential” if it is: (i) publicly available, (ii) rightfully known by the Consultant before disclosure by SPREP or rightfully known by SPREP before disclosure by the Consultant, or (iii) independently created or obtained by the Consultant or by SPREP without reference or access to each other's Confidential Information.

“Deliverables” means completed work components or products (reports, outputs, and the like) as contained in the Terms of Reference.

“Director General” means the Director General of SPREP and includes “Officer-in-charge” and “Acting Director General”.

“Intellectual Property” includes, but is not limited to, copyright (including future copyright and rights in the nature of, or analogous to, copyright), trademarks, trade names, designs, inventions (including patents), non-patentable processes and methods, Confidential Information, know-how, and show-how, technical and other data or information, trade secrets, service marks, circuit layouts and the like.

“Services” means the work to be done under the Terms of Reference.

1. Terms of Reference for Services & Deliverables

The Terms of Reference are set out in the Attachment which forms part of this Agreement.

Deliverables are to be submitted to SPREP in accordance with the Terms of Reference.

2. Duration

- a) The work will commence on the (fill in date).
- b) The work will finish on (fill in date).

3. Remuneration

- a) The total consultancy fee is USD xxxxx.

- b) Payment schedule will be made upon receipt of final deliverables prescribed below:

Deliverable	Percentage	USD
Total	100%	xxxxxxx

- c) The consultant must submit an invoice for each payment instalment

4. Travel

If travel is required,

- a) SPREP will provide the Consultant with a return economy airfare by the most direct and economical route available.
- b) A per diem allowance at current SPREP rates on the approved itinerary will be paid in advance by SPREP, or where appropriate by the agreed work commencement date.
- c) If there are any variations to the initially approved itinerary, a reconciliation of actual entitlement against actual advance must be submitted to SPREP at the completion of the Agreement and any refunds by either Party made at that time.

5. Status of Consultant

- a) The Consultant shall be considered as having the legal status of an independent contractor and not the status of an official or staff member of SPREP. Agents, employees or representatives of the Consultant shall not be considered as being officials or staff of SPREP.
- b) The Consultant is entitled only to those benefits stated in this Agreement.

6. Title Rights

- a) Other than material purchased by the Consultant from the Consultant's own funds, any material permanently obtained for the purpose of fulfilling this Agreement shall be the property of SPREP.

- b) Unless otherwise stated in this Agreement, intellectual property shall be the property of SPREP.

7. Delay

The Consultant must notify the Director General in writing as soon as the Consultant becomes aware of circumstances which may give rise to delay together with an estimate of further time required for the completion of the Services.

8. Confidentiality

Unless otherwise stated in this Agreement or as otherwise agreed in writing by the Parties, neither Party will disclose or use in any way any Confidential Information except to the extent that disclosure or use of such Confidential Information is necessary to enable the Services to be performed.

9. Financial responsibility

The Consultant agrees it is responsible for:

- a) payment of applicable taxes, superannuation and the like;
- b) relevant insurance cover such as medical, travel and professional liability.

10. Indemnity

- a) The Consultant shall perform the Services with due professional care and skill.
- b) The Consultant shall have full regard to SPREP's interests and not knowingly take any action that might adversely affect SPREP.
- c) The Consultant agrees to indemnify and hold harmless SPREP of and from any and all claims, demands, losses, causes of action, damage, lawsuits, judgments, including lawyer's fees and costs, arising from
 - (i) any negligent act or omission by the Consultant (including any of its personnel) in connection with this Agreement;
 - (ii) any breach by the Consultant (including any of its personnel) of its obligations under this Agreement;
 - (iii) any use or disclosure by the Consultant (including its personnel) of Confidential Information held or controlled in connection with this Agreement.
 - (iv) Intellectual property breaches.

11. Termination

- a) If the Consultant acts in a manner which in the reasonable opinion of the Director General has a serious negative impact upon SPREP, the Director General may immediately terminate this Agreement.
- b) Other than termination in accordance with sub-clause (a), either Party may terminate this Agreement at any time by giving the other ten days' notice in writing of its intention to do so.
- c) Upon receipt of a notice to terminate:
 - (i) the Parties will take all action necessary to cancel outstanding commitments relating to the Services under this Agreement and will use their best efforts to honour their respective prior commitments.
 - (ii) SPREP will make payment for work satisfactorily completed up to the time of termination, up to the stated maximum.
 - (iii) The Consultant will return all unexpended funds.
- d) Termination or expiry of this Agreement will not prejudice any rights or obligations of the Parties which exist, whether under this Agreement, at law or otherwise, prior to termination or expiry.
- e) Clauses 6, 8, 9, 10 and 11, and any other relevant provisions, will survive the termination or expiry of this Agreement.

12. Applicable Law

This Agreement shall be governed by the laws of Samoa and subject to the jurisdiction of Samoan Courts.

13. Dispute resolution

The Parties shall cooperate to carry out their obligations in good faith and shall endeavour to resolve any disagreement in an amicable manner, including through use of mediation and conciliation processes, prior to taking any Court action.

14. Variation of Agreement

This Agreement may be varied by written agreement of the Parties.

15. Counterparts

This Agreement may be executed in any number of counterparts (including by facsimile or electronic copies) each of which, when taken together, will constitute one and the same document.

Should these terms and conditions be acceptable to you, please sign below, also initial each page of the Agreement and its attachment, and return one copy of each to me.

Yours sincerely

Kosi Latu

Director General

SPREP

Consultant name: _____

Position: _____

Company name: _____

ATTACHMENT

TERMS OF REFERENCE

APPENDIX D: SAMPLE SERVICES AGREEMENT

SERVICES AGREEMENT

AP **xxxx**

Date

Name

Address

xxxxxx

between

The Secretariat of the Pacific Regional Environment Programme (SPREP)

and

xxxxxx

(together, “the Parties”)

Dear **xxxx**,

I am pleased to offer you this Services Agreement (“the Agreement”) with the Secretariat of the Pacific Regional Environment Programme (SPREP) in accordance with the following terms and conditions.

Interpretation

“Director General” means the Director General of SPREP and includes “Officer-in-charge” and “Acting Director General”.

“Services” means the work to be done under the Terms of Reference.

1. Terms of Reference for Services

The Terms of Reference are set out in the Attachment which forms part of this Agreement.

2. Duration

The Services will be for a period of xxxx commencing xxxxx and ending xxxxx.

3. Remuneration

- a) The Contractor will receive the sum of xxxx as Services fees after completion xxxxx.
- b) SPREP reserves the right to withhold remuneration if in the opinion of the Director General (acting reasonably) the Services under this Agreement are unsatisfactorily, incompetently, or incompletely performed or money is owed to SPREP by the Contractor.

4. Status of Contractor

- a) The Contractor shall be considered as having the legal status of an independent contractor and not the status of an official or staff member of SPREP. Agents, employees or representatives of the Contractor shall not be considered as being officials or staff of SPREP.
- b) The Contractor is entitled only to those benefits stated in this Agreement.

5. Delay

The Contractor must notify the Director General in writing as soon as the Contractor becomes aware of circumstances which may give rise to delay together with an estimate of further time required for the completion of the Services.

6. Financial responsibility

The Contractor agrees it is responsible for:

- a) payment of applicable taxes, superannuation and the like
- b) relevant insurance cover including for liability

7. Liability

- a) The Contractor shall perform the Services with due professional care and skill.

- b) The Contractor agrees to provide remedial work for a further 6 months from the date of final payment if shortcomings are subsequently discovered in the Services provided.
- c) The Contractor shall have full regard to SPREP's interests and not knowingly take any action that might adversely affect SPREP.
- d) The Consultant agrees to indemnify and hold harmless SPREP of and from any and all claims, demands, losses, causes of action, damage, lawsuits, judgments, including lawyer's fees and costs, arising from
 - (i) any act or omission by the Consultant (including any of its personnel) in connection with this Agreement;
 - (ii) any breach by the Consultant (including any of its personnel) of its obligations under this Agreement;
 - (iii) any use or disclosure by the Consultant (including its personnel) of Confidential Information held or controlled in connection with this Agreement.
 - (iv) Intellectual property breaches.

8. Termination

- a) If the Contractor acts in a manner which in the reasonable opinion of the Director General has a serious negative impact upon SPREP, the Director General may immediately terminate this Agreement.
- b) Other than termination in accordance with sub-clause (a), either Party may terminate this Agreement at any time by giving the other ten days' notice in writing of its intention to do so.
- c) Upon receipt of a notice to terminate:
 - (i) the Parties will take all action necessary to cancel outstanding commitments relating to the Services under this Agreement and will use their best efforts to honour their respective prior commitments.
 - (ii) SPREP will make payment for work satisfactorily completed up to the time of termination, up to the stated maximum.
- d) The Contractor will return all unexpended funds.
- e) Termination or expiry of this Agreement will not prejudice any rights or obligations of the Parties which exist, whether under this Agreement, at law or otherwise, prior to termination or expiry.
- f) Clauses 6, 7 and 8 and any other relevant provisions, will survive the termination or expiry of this Agreement.

9. Applicable Law

This Agreement shall be governed by the laws of Samoa.

10. Dispute resolution

The Parties shall cooperate to carry out their obligations in good faith and shall endeavour to resolve any disagreement in an amicable manner, including through use of mediation and conciliation processes, prior to taking any Court action.

11. Variation of Agreement

This Agreement may be varied by written agreement of the Parties.

12. Counterparts

This Agreement may be executed in any number of counterparts (including by facsimile or electronic copies) each of which, when taken together, will constitute one and the same document.

Should these terms and conditions be acceptable to you, please sign below, also initial each page of the Agreement and its attachment, and return one copy of each to me.

Yours sincerely,

Mr. Kosi Latu
Director General
SPREP

XXXX
XXXX
XXXX

Date:

Date:

ATTACHMENT

TERMS OF REFERENCE

APPENDIX E: REQUEST FOR TENDERS FOR GOODS AND WORKS

REQUEST FOR TENDERS – GOODS AND WORKS

File: Insert file no. / name

Date: Fill in the date

To: Interested suppliers

Contact: Insert contact details of the staff member who can be contacted for further information

Subject: Request for tenders: **Insert title**

1. Background

- 1.1. The Pacific Regional Environment Programme (SPREP) is an intergovernmental organization charged with promoting cooperation among Pacific islands countries and territories to protect and improve their environment and ensure sustainable development.
- 1.2. For more information, see: www.sprep.org.

2. Specifications: statement of requirement

- 2.1. SPREP would like to call for tenders from qualified **supplier/engineering company to provide goods and engineering work for the following project:.....**
- 2.2. The successful applicant will need to provide **[insert the nature, scope and quantity of the goods or services]** by **insert date**.
- 2.3. **Describe any technical specifications or other instructions, e.g. list the terms of reference for the goods and/or work required for the assignment/project.**

3. Conditions: information for applicants

- 3.1. To be considered for this tender, interested suppliers must meet the following conditions: **list any conditions, i.e. Financial performance/ guarantees, information or documents that potential suppliers must submit.**
- 3.2. Applicants should declare any areas that may constitute conflict of interest related to this bid.

4. Submission guidelines

- 4.1. Tender documentation should demonstrate that the interested supplier satisfies the conditions stated above and is capable of meeting the specifications and timeframes. Documentation must also include supporting examples to address the evaluation criteria. **Describe any additional minimum content and format requirements.**
- 4.2. Tender documentation should outline the interested supplier's complete proposal: methods, personnel (and their skill sets/curricula vitae), timeframes and costs.
- 4.3. Tenderers/Bidders must insist on an acknowledgement of receipt of tenders/proposals/bids.

5. Tender Clarification

- 5.1. Any clarification questions from applicants must be submitted by email to **contact person** copy maraeap@sprep.org before **[insert date]**. A summary of all questions received with an associated response will be posted on the SPREP website www.sprep.org/tender by **[insert date]**.

6. Evaluation criteria

- 6.1. SPREP will select a preferred supplier on the basis of SPREP's evaluation of the extent to which the documentation demonstrates that the tenderer offers the best value for money, and that the tenderer satisfies the following criteria.
- 6.2. **e.g. Expertise in ... [indicate any weighting applied to criteria]**
- 6.3. **e.g. Demonstrated experience in ...**
- 6.4. **e.g. Familiarity with / comprehensive understanding of ...**
- 6.5. **Describe any other factors to be considered in assessing submissions.**

7. Deadline

- 7.1. **The due date for submission of the tender is: xxxxxx**
- 7.2. Late submissions will be returned unopened to the sender.
- 7.3 Please send all tenders clearly marked 'TENDER: **Title of Tender**' to:
mail:

SPREP
Attention: Procurement Officer
PO Box 240
Apia, SAMOA

Email: tenders@sprep.org

Person: Submit by hand in the tenders box at SPREP reception, Vailima, Samoa.

SPREP reserves the right to reject any or all tenders and the lowest or any tender will not necessarily be accepted.

For any complaints regarding the Secretariat's tenders please refer to the Complaints section on the SPREP website.

APPENDIX F: SAMPLE GOODS AND WORKS CONTRACT

Contract for Goods and Works

[short title for Contract] [add Contract Reference number if applicable]

The Parties

The Secretariat of the Pacific Regional Environment Programme (SPREP)

(Buyer)

PO Box 240, Apia, Samoa

and

[insert the legal name of the Supplier] **(Supplier)**

[insert address] For a company use the registered office. For others use physical address.

The Contract

Agreement

The Supplier agrees to sell and the Buyer agrees to buy the Goods/Works described in this Contract. This Contract sets out the Parties' rights and obligations.

The documents forming this Contract are:

- | | |
|--|-------------------|
| 1. This page | Page 1 |
| 2. Contract Details and Description of Goods/Works | Schedule 1 |
| 3. Standard Terms and Conditions | Schedule 2 |
| 4. Any other attachments described at Schedule 1. | |

How to read this Contract

5. Together the above documents form the whole Contract.
6. Any Supplier terms and conditions do not apply.
7. Clause numbers refer to clauses in Schedule 2.
8. Words starting with capital letters have a special meaning. The special meaning is stated in the Definitions section at clause 17 (Schedule 2).

Acceptance

In signing this Contract each Party acknowledges that it has read and agrees to be bound by it.

For and on behalf of the **Buyer:**

(signature)

Name:

Position:

Date:

For and on behalf of the **Supplier:**

(signature)

Name:

Position:

Date:

Schedule 1

Contract Details and Description of Goods/Works

Start Date		Reference Schedule 2 clause 1
End Date		Reference Schedule 2 clause 1
Type of contract	Goods and/or Works	

Contract Managers Reference Schedule 2 clause 6	Buyer's Contract Manager		Supplier's Contract Manager
	Name:		
	Title / position:		
	Address:		
	Phone:		
	Fax:		
	Email:		

Addresses for Notices Reference Schedule 2 clause 14	Buyer's address		Supplier's address
	For the attention of:	[Contract Mgr or senior mgr]	[Contract Mgr or senior mgr]
	c.c.	[cc if senior manager above]	[cc if senior manager above]
	Delivery address:		
	Postal address:		
	Fax:		
	Email:		

Delivery timeframe Reference Schedule 2 clause 2.7	The Goods must be delivered within [insert number] Business Days from the date of order. OR [insert specific date]
Delivery Address Reference Schedule 2 clause 2.7	[insert physical delivery address or addresses if more than one]

Delivery note

The Supplier will provide a delivery note along with the Goods when delivered.
[optional]

Description of Goods/Works

[Insert a comprehensive & concise description of the Goods to be delivered and works to be performed. Use the headings for guidance and the questions as prompts.]

Context [optional]

[Describe the background to the purchase of the Goods and/or works to be performed.]

[What are the overarching goals, objectives and outcomes you want to achieve?]

Description of Goods/Construction Works to be performed

[Provide short description of the nature of the Goods being purchased. Include any product codes or serial numbers, and any specific certifications or standards that the Goods must comply with; and/or short description or works or constructions to be performed, including the construction technical specifications.]

Performance Standards

[Describe the quality standards or key performance indicators that apply to the Goods or the supply of the Goods and/or the construction works to be performed]

Specific code of conduct / health & safety / legislative requirement/s [optional]

[Reference any specific code of conduct (other than *SSC Standards of Integrity and Conduct*), health & safety or legislative requirement/s the Supplier must be aware of in supplying the Goods and/or performance of constructions and civil engineering work. These can be noted in the 'Attachments' box at the end of Schedule 1. Attach a copy and/or provide a web address where the document/s can be located.]

Transfer of Records [optional]

[If appropriate – include details of the Records that the Supplier must transfer to the Buyer during the term of the Contract, or at the end of the Contract. Make this a specific Deliverable under the Contract.]

CHARGES: The following section sets out the Charges. Charges are the total maximum amount payable by the Buyer to the Supplier for delivery of the Goods and performance of work/construction/engineering work. Charges include **Cost**, and where agreed, **Expenses**. The Charges for this Contract are set out below.

Cost

Reference Schedule 2
clause 5

If contracts is for goods purchase, list the cost in the table below by items:

[If Buyer is to pay Expenses for delivery state these in 'Expenses' below.]

[Specify any discount for early payment.]

If this Contract is for Works to be performed, provide the cost of work in detailed, including design cost, all relevant expenses for the work; attach a separate cost breakdown to this contract, including timeline for the construction and completion of work.

Item / model / product number

Unit cost (exc GST)

	[Insert description of item or model number]	[insert price]	
	[Insert description of item or model number]	[insert price]	
	Total Cost (exc GST)	[insert total]	

ExpensesReference Schedule 2
clause 5**Specific items and agreed cost per item - specified Expenses**

Item of Expense	Cost or rate (exc GST)	Total max cost (exc GST)
e.g. freight/courier/insurance	[insert cost per item]	[insert total cost]
e.g. packaging costs	[insert cost per item]	[insert total cost]
e.g. storage	[insert cost per item]	[insert total cost]
Total Expenses (exc GST)		[insert total]

InvoicesReference Schedule 2
clause 5

The Supplier must send the Buyer an invoice for the Charges at the following times:

At the end of the month, for Goods delivered during that month.

Addresses for invoicesReference Schedule 2
clause 5**Buyer's address**

For the attention of:	
Physical address:	
Postal address:	
Email:	If you allow invoices to be sent by email – otherwise delete
Fax:	If you allow invoices to be sent by fax – otherwise delete

AttachmentsReference 'Contract documents' described at
Page 1

[Describe any attachments to this Contract. This includes any specific code of conduct, health & safety or legislative requirement the Supplier must be aware of in delivering the Goods. Attach a copy and/or provide a web address where the document can be located – otherwise state 'None']

Schedule 2

Standard Terms and Conditions – Goods/Works

1. Length of Contract

- 1.1 This Contract starts on the Start Date.
- 1.2 This Contract ends on the End Date, unless terminated earlier.

2. Supply of Goods/or Performance of work/engineering

Both Parties' obligations

- 2.1 Both Parties agree to:
 - a) Act in good faith and demonstrate honesty, integrity, openness, and accountability in their dealings with each other
 - b) Discuss matters affecting this Contract or the supply of the goods, whenever necessary
 - c) Notify each other immediately of any actual or anticipated issues that could:
 - i) significantly impact the goods or the charges; ii). Receive media attention; and
 - d) Comply with all applicable laws and regulations.

Orders

- 2.2 If this Contract is for a one-off purchase of goods, the signing of this Contract by both Parties is the order for the goods.
- 2.3 If this Contract is for the ongoing supply of goods, the Buyer will place orders for the goods with the Supplier from time to time. Each order must:
 - a) be in writing; b) be sent by post, fax, email, e-procurement system or other electronic means; c) specify the volume and type of goods ordered; and d) be in any form that is agreed between the Buyer and the Supplier.
- 2.4 The goods are supplied under the terms of this Contract. Any Supplier terms and conditions stated in its sales order form, delivery receipt, e-procurement system or elsewhere do not apply.

- 2.5 If this contract is for works, the signing of contract commits supplier to undertake all designing, engineering, and construction work for the project.

Buyer's obligations

- 2.6 The Buyer must pay the Supplier the charges for the goods as long as the Supplier has delivered the goods and invoiced the Buyer, all in accordance with this Contract. The buyer must pay the cost of the construction work, engineering design and guarantee of the performance of the final work completed, according to the list of cost breakdown by the time of work completion.

Supplier's obligations

- 2.7 The Supplier must supply goods which meet the Description of Goods in Schedule 1, the requirements of this Contract, and which are supplied in accordance with orders from the Buyer.
- 2.8 The Supplier must deliver the goods to the delivery address stated in Schedule 1, or such other address the Buyer specifies, on time, and for the charges. It is essential that goods are delivered on time.
- 2.9 The Supplier must notify the Buyer immediately in writing if the Supplier becomes aware of any actual or possible delay in delivery of the goods.
- 2.10 If a warranty or maintenance obligation (including a warranty from a manufacturer) applies in relation to the goods or any items incorporated into or supplied with the goods, the Supplier must ensure that the benefit of the warranty or obligation is passed on to the Buyer.
- 2.11 The supplier must carry out the work according to the schedule of performance and specification of engineering design. If there is any potential delay of performance, supplier will be responsible for the damage to the buyer and compensate the buyer per contract agreement.

Goods must satisfy criteria

- 2.12 The goods must:
- a) Be of merchantable quality and free from defects in design, materials or construction
 - b) Be fit for the purposes for which they are intended to be used
 - c) Comply with the Description of Goods stated in Schedule 1

- d) Comply with any sample of the goods provided by the Supplier, except if the Buyer has agreed otherwise in writing
- e) Be new and unused, unless the Buyer has agreed otherwise in writing, and
- f) Be packaged so as to protect the contents and keep them clean, dry and in a new condition until they are first used, if appropriate.

Supplier warranties

2.13 The Supplier warrants that:

- a) the goods do not breach any law or standard
- b) Supply of the goods in accordance with this Contract will not infringe the rights of any person
- c) When ownership is stated to pass in this Contract, full ownership of the goods passes to the Buyer and no-one else has any rights in the goods
- d) All Goods supplied to the Buyer comply with all of the criteria stated in clause 2.10
- e) Any documentation supplied with the goods is adequate (in terms of both quantity and quality) to enable the Buyer to use and maintain the goods in the manner intended by the Buyer
- f) All information provided by the Supplier to the Buyer is accurate, and
- g) The Supplier has told the Buyer about any conflict of Interest relating to the supply of goods or this Contract.

Spare parts

2.14 If stated in Schedule 1 the Supplier must maintain an adequate stock of spare parts and equipment for the goods, for supply to the Buyer as and when required.

3. Acceptance and rejection of goods

Inspection and acceptance

- 3.1 The signing of a delivery note by any of the Buyer's Personnel does not indicate the Buyer's acceptance of the goods.
- 3.2 If, following the Buyer's inspection of the goods, any of the goods do not meet the requirements of this Contract, then the Buyer may, within a reasonable time after

completing the inspection, do any of the following at the Buyer's option, but at the Supplier's cost:

- Require the Supplier to repair the goods
- Require the Supplier to replace the goods, or
- Reject the goods.

3.3 The Buyer must give Notice to the Supplier if it decides to exercise any of the options under clause 3.2.

Repair or replacement

3.4 If the Supplier receives a notice from the Buyer to repair or replace the goods, the Supplier must promptly repair or replace the goods in question, so that the goods (or replacement goods) comply with the warranties in clause 2.13.

3.5 If the Buyer is not satisfied with the Supplier's progress in repairing or replacing the goods, the Buyer may either:

- Reject the goods, in which case clauses 3.6 to 3.7 will apply; or
- Arrange for the goods to be repaired by someone else, in which case the Supplier will reimburse all costs and expenses incurred by the Buyer in doing so.

Rejection

3.6 If the Supplier receives a Notice from the Buyer rejecting the goods, it must remove any rejected goods from the Buyer's premises at its own risk and expense. If the Supplier does not remove the rejected goods within 15 business days of notice of rejection, the Buyer may return the goods and recover from the Supplier any cost and expense incurred.

3.7 If the Buyer rejects any goods, the Supplier, at the Supplier's cost, will do whichever one of the following the Buyer elects. The Buyer must state the action required in its Notice issued under clause 3.3:

- a) Provide a full refund of the charges paid for the rejected goods, within 10 business days of the Buyer electing to receive a refund, or
- b) Provide a credit for the charges paid for the rejected goods, against the charges payable for other goods, or

- c) Promptly replace the rejected goods with goods that meet the requirements of this Contract.

No limitation

- 3.8 The Buyer's rights under clauses 3.2 to 3.7 are in addition to, and do not limit, any other rights or remedies the Buyer may have.

4. Ownership and risk

Ownership of Goods

- 4.1 Ownership of the goods passes to the Buyer on the earlier of:
- a) The date the Buyer has paid the charges for those goods, or
 - b) The date those goods have been delivered.
- 4.2 Risk in the goods passes to the Buyer on the date those goods have been delivered.
- 4.3 Ownership and risk in any goods rejected by the Buyer under clauses 3.6 to 3.7 will pass back to the Supplier as follows:
- a) If the Buyer has paid the charges for those rejected goods, once the Supplier has provided a refund, credit or replacement in accordance with clause 3.7, and
 - b) In all other cases, when the Goods are collected from the place to which they were delivered.
- 4.4 Ownership of any replaced goods by the Supplier under clauses 3.2 to 3.5 will pass back to the Supplier once the Supplier has delivered the replacement goods.

5. Charges and payment

Charges & invoices

- 5.1 The charges are the total maximum amount payable by the Buyer to the Supplier for the delivery of the goods. Charges include the cost, and where agreed, expenses. For engineering or construction work, charges are the total maximum amount payable to the supplier/engineering company for the performance or work, or construction of engineering structures.
- 5.2 Unless otherwise stated in Schedule 1 the charges for the goods include all of the following:

- a) Costs of shipping, carriage and freight
- b) Insurance charges
- c) Customs duties and clearance charges, and
- d) Other costs incurred by the Supplier in delivering the goods to the Buyer.

Invoices

5.3 The Supplier must provide valid tax invoices for all charges on the dates or at the times specified in Schedule 1. The Buyer has no obligation to pay the charges set out on an invoice, which is not a valid tax invoice. To be valid a tax invoice must:

- a) Clearly show all GST due
- b) Be in the currency stated in Schedule 1
- c) Be clearly marked 'Tax invoice'
- d) Contain the Supplier's name, address and GST number, if the Supplier is registered for GST
- e) Contain the Buyer's name and address and be marked for the attention of the Buyer's Contract Manager, or such other person stated in Schedule 1
- f) State the date the invoice was issued
- g) Name this Contract and provide a description of the goods delivered
- h) Contain the Buyer's contract reference or purchase order number if there is one
- i) State the charges due, calculated correctly, and
- j) Be supported by GST receipts if expenses are claimed and any other verifying documentation reasonably requested by the Buyer.

Payment

5.4 If the Buyer receives a valid tax invoice on or before the 3rd Business Day of the month, the Buyer must pay that tax invoice by the 20th calendar day of that month. Any valid tax invoice received after the 3rd Business Day of the month will be paid by the Buyer on the 20th calendar day of the month following the month it is received. The Buyer's obligation to pay is subject to clauses 5.3, 5.5 and 12.10.

- 5.5 If the Buyer disputes a tax invoice, or any part of a tax invoice, that complies with clause 5.3, the Buyer must notify the Supplier within 10 business days of the date of receipt of the tax invoice. The Buyer must pay the portion of the tax invoice that is not in dispute. The Buyer may withhold payment of the disputed portion until the dispute is resolved.

6. Contract management

Contract Manager

- 6.1 The persons named in Schedule 1 as the Contract Managers are responsible for managing the Contract, including:
- a) Managing the relationship between the Parties
 - b) Overseeing the effective implementation of this Contract, and
 - c) Acting as a first point of contact for any issues that arise.

Changing the Contract Manager

- 6.2 If a Party changes its Contract Manager it must tell the other Party, in writing, the name and contact details of the replacement within 5 business days of the change.

7. Information management

Information and Records

- 7.1 The Supplier must:
- a) Keep and maintain records in accordance with prudent business practice and all applicable laws
 - b) Make sure the Records clearly identify all relevant time and expenses incurred in providing the goods and/or construction performance
 - c) Make sure the records are easy to access, and
 - d) Keep the records safe.
- 7.2 The reasonably requests. All information provided by the Supplier must be in a format that is usable by the Buyer, and delivered within a reasonable time of the request. Supplier must give information to the Buyer relating to the goods that the Buyer purchased.
- 7.3 The Supplier must co-operate with the Buyer to provide information immediately if the information is required by the Buyer to comply with an enquiry or it's statutory,

parliamentary or other reporting obligations.

- 7.4 The Supplier must make its records available to the Buyer during the term of the Contract and for 7 years after the end date (unless already provided to the Buyer earlier).
- 7.5 The Supplier must make sure that records provided by the Buyer, or created for the Buyer, are securely managed and securely destroyed on their disposal.

Reports

- 7.6 The Supplier must prepare and give to the Buyer the reports stated in Schedule 1, by the due dates stated in Schedule 1.

8. The contractual relationship

Independent contractor

- 8.1 Nothing in this Contract constitutes a legal relationship between the Parties including partnership, joint venture, agency, or employment. The Supplier is responsible for the liability of its own, and its personnel's, salary, wages, holiday or redundancy payments and any GST, corporate, personal and withholding taxes, ACC premiums or other levies attributable to the Supplier's business or the engagement of its Personnel.

Neither Party can represent the other

- 8.2 Neither Party has authority to bind or represent the other Party in any way or for any purpose.

Permission to transfer rights or obligations

- 8.3 The Supplier may transfer any of its rights or obligations under this Contract only if it has the Buyer's prior written approval. The Buyer will not unreasonably withhold its approval.

9. Insurance

Where insurance is a requirement

- 9.1 It is the Supplier's responsibility to ensure its risks of doing business are adequately covered, whether by insurance or otherwise. If required in Schedule 1, the Supplier must have the insurance specified in Schedule 1 and the Supplier must:
 - a) Take out insurance, with a reputable insurer, and maintain that insurance cover for

the term of this Contract and for a period of 3 years after the End Date, and

- b) Within 10 business days of a request from the Buyer provide a certificate confirming the nature of the insurance cover and proving that each policy is current.

10. Conflicts of Interest

Avoiding Conflicts of Interest

10.1 The Supplier warrants that at the start date, it has no conflict of Interest in supplying the goods, providing construction and engineering work, or entering into this Contract.

10.2 The Supplier must do its best to avoid situations that may lead to a conflict of interest.

Obligation to tell the Buyer

10.3 The Supplier must tell the Buyer immediately, and in writing, if any conflict of interest arises in relation to the goods or works in this Contract. If a conflict of interest does arise the Parties must discuss, agree and record in writing whether it can be managed and, if so, how it will be managed. Each Party must pay its own costs in relation to managing a conflict of interest.

11. Resolving disputes

Steps to resolving disputes

11.1 The Parties agree to use their best endeavors to resolve any dispute or difference that may arise under this Contract. The following process will apply to disputes:

- a) A Party must notify the other if it considers a matter is in dispute
- b) The Contract Managers will attempt to resolve the dispute through direct negotiation
- c) If the Contract Managers have not resolved the dispute within 10 business days of notification, they will refer it to the Parties' senior managers for resolution, and
- d) If the senior managers have not resolved the dispute within 10 business days of it being referred to them, the Parties shall refer the dispute to mediation or some other form of alternative dispute resolution.

11.2 If a dispute is referred to mediation, the mediation will be conducted:

- a) By a single mediator agreed by the Parties, or if they cannot agree, refer to the

courts.

b) At a fee to be agreed by the Parties.

11.3 Each Party will pay its own costs of mediation or alternative dispute resolution under clause 11.

Obligations during a dispute

11.4 If there is a dispute, each Party will continue to perform its obligations under this Contract as far as practical given the nature of the dispute.

Taking court action

11.5 Each Party agrees not to start any court action in relation to a dispute until it has complied with the process described in clause 11.1, unless court action is necessary to preserve a Party's rights.

12. Ending this Contract

Termination by the Supplier

12.1 The Supplier may terminate this Contract by giving 20 business days' notice to the Buyer, if the Buyer fails to pay charges that are properly due, and are not in dispute under clause 5.5. The charges must be overdue by 20 business days and the Supplier must have first brought this to the Buyer's attention in writing within this period.

12.2 At any time during the term of this Contract the Supplier may notify the Buyer that it wishes to terminate this Contract. The Buyer will, within 20 business days following receipt of the Supplier's Notice, notify the Supplier whether, in its absolute discretion, it consents to the Supplier's Notice of termination. If the Buyer: a) consents, the Contract will be terminated on a date that is mutually agreed between the Parties, or b) does not consent, the Contract will continue in full force as if the Supplier's Notice of termination had not been given.

12.3 The Supplier may also terminate this Contract under clause 12.9.

Termination by the Buyer

12.4 The Buyer may terminate this Contract at any time by giving 20 business days' notice to the Supplier.

12.5 The Buyer may terminate this Contract immediately, by giving notice, if the Supplier:

- a) Becomes bankrupt or insolvent
- b) Has an administrator, receiver, liquidator, statutory manager, mortgagee's or chargee's agent appointed
- c) Becomes subject to any form of external administration
- d) Ceases for any reason to continue in business or to supply the goods
- e) Is unable to supply the goods for a period of 20 business days or more due to an extraordinary event
- f) Requires the supply of goods within the period of an extraordinary event
- g) Is in breach of any of its obligations under this Contract and the breach cannot be remedied
- h) Repeatedly fails to perform or comply with its obligations under this Contract, whether those obligations are minor or significant
- i) Does something, or fails to do something, that, in the Buyer's opinion, results in damage to the Buyer's reputation or business
- j) Has a conflict of interest that in the Buyer's opinion is so material as to impact adversely on the supply of the goods or the Buyer, or
- k) Provides information to the Buyer that is misleading or inaccurate in any material respect.

Termination by a Party if a breach has not been remedied

- 12.6 If a Party fails to meet the requirements of this Contract (defaulting Party) and the other Party (non-defaulting Party) reasonably believes that the failure can be remedied, the non- defaulting Party must give notice (default notice) to the defaulting Party.
- 12.7 A default notice must state:
- a) The nature of the failure
 - b) What is required to remedy it, and
 - c) The time and date by which it must be remedied.
- 12.8 The period allowed to remedy the failure must be reasonable given the nature of the failure.
- 12.9 If the defaulting Party does not remedy the failure as required by the default notice, the non-defaulting Party may terminate this Contract immediately by giving a further

notice.

12.10 If the Buyer gives a default notice to the Supplier, the Buyer may also do one or both of the following things:

- a) Withhold any payment of cost due until the failure is remedied as required by the default notice, and/or
- b) If the failure is not remedied as required by the default notice, deduct a reasonable amount from any cost due to reflect the reduced value of the goods to the Buyer.

Supplier's obligations on termination or expiry of this Contract

12.11 On giving or receiving a notice of termination, the Supplier must:

12.12a) stop supplying the Goods

- b) comply with any conditions contained in the Notice, and
- c) immediately do everything reasonably possible to reduce its losses, costs, and expenses, arising from the termination of this Contract.

On termination or expiry of this Contract, the Supplier must, if requested by the Buyer, immediately return or securely destroy all Confidential Information and other material or property belonging to the Buyer.

Consequences of termination or expiry of this Contract

12.13 The termination or expiry of this Contract does not affect those rights of each Party which: a) accrued prior to the time of termination or End Date, or b) relate to any breach or failure to perform an obligation under this Contract that arose prior to the time of termination or End Date.

12.14 If this Contract is terminated the Buyer:

- a) Will only be liable to pay charges that were due for goods delivered before the effective date of termination, and/or the completed work performed by the Supplier;
- b) May recover from the Supplier, or set off against sums due to the Supplier, any charges paid in advance that have not been incurred.

Handover

12.15 If the Buyer requests it, the Supplier will provide all reasonable assistance to support

any replacement supplier to supply the goods and/or in case construction/ engineering work, provide alternative mode for continuation of work with agreement with the Buyer.

13. Confidential Information

Protection of Confidential Information

13.1 Each Party confirms that it has adequate security measures to safeguard the other Party's Confidential Information from unauthorized access, or use by third parties, and that it will not use or disclose the other Party's Confidential Information to any person or organization other than:

- a) To the extent that use or disclosure is necessary for the purposes of providing the goods, or in the case of the Buyer, using the goods
- b) If the other Party gives prior written approval to the use or disclosure
- c) If the use or disclosure is required by law (including under the Official Information Act 1982), ministers, or parliamentary convention, or
- d) In relation to disclosure, if the information has already become public, other than through a breach of the obligation of confidentiality by one of the Parties.

Obligation to inform staff

13.2 Each Party will ensure that its personnel:

- a) Are aware of the confidentiality obligations in this Contract, and
- b) Do not use or disclose any of the other Party's Confidential Information except as allowed by this Contract.

14. Notices

Delivery of Notices

14.1 All Notices to a Party must be delivered by hand or sent by post, courier, fax or email to that Party's address for Notices stated in Schedule 1.

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

Receipt of Notices

14.3 A notice will be considered to be received:

- a) If delivered by hand, on the date it is delivered
- b) If sent by post within Samoa, on the 3rd Business Day after the date it was sent
- c) If sent by post internationally, on the 7th Business Day after the date it was sent
- d) If sent by courier, on the date it is delivered
- e) If sent by fax, on the sender receiving a fax machine report that it has been successfully sent, or
- f) If sent by email, at the time the email enters the recipient's information system as evidenced by a delivery receipt requested by the sender and it is not returned undelivered or as an error.

14.4 A notice received after 5pm on a business day, or on a day that is not a business day, will be considered to be received on the next business day.

15. Extraordinary Events

No fault if failure to deliver due to an Extraordinary Event

15.1 Neither Party will be liable to the other for any failure to perform its obligations under this Contract where the failure is due to an extraordinary event.

Obligations of the affected Party

15.2 A Party who wishes to claim suspension of its obligations due to an extraordinary event must notify the other Party as soon as reasonably possible. The notice must state:

- a) The nature of the circumstances giving rise to the extraordinary event
- b) The extent of that Party's inability to perform under this Contract
- c) The likely duration of that non-performance, and
- d) What steps are being taken to minimize the impact of the extraordinary event on the delivery of the goods.

Alternative arrangements requiring immediate termination

15.3 If the Buyer, acting reasonably, requires the goods to be supplied during a period affected by an extraordinary event, then despite clause 15.4, the Buyer may terminate this Contract immediately by giving notice.

Termination of Contract

15.4 If a Party is unable to perform any obligations under this Contract for 20 business days

or more due to an extraordinary event, the other Party may terminate this Contract immediately by giving notice.

16. General

Changes to this Contract

16.1 Any change to this Contract is called a variation. A variation must be agreed by both Parties and recorded:

- a) in writing and signed by both Parties, or
- b) through an exchange of emails where the authors have delegated authority to approve the variation.

This is the entire Contract

16.2 This Contract, including any Variation, records everything agreed between the Parties relating to the supply of the goods. It replaces any previous communications, negotiations, arrangements or agreements that the Parties had with each other relating to the supply of the goods before this Contract was signed, whether they were verbal or in writing.

Waiver

16.3 If a Party breaches this Contract, and the other Party does not immediately enforce its rights resulting from the breach that:

- a) does not mean that the Party in breach is released or excused from its obligation to perform the obligation at the time or in the future, and
- b) does not prevent the other Party from exercising its rights resulting from the breach at a later time.

Publication of information about this Contract

16.4 The Supplier may disclose the existence of this Contract but must obtain the Buyer's prior written approval before making reference to the Buyer or this Contract in its publications, public statements, promotional material or promotional activities about this Contract.

16.5 Each Party agrees not to post on websites or social networking sites and not to publicly display objectionable or derogatory comments about the goods, this Contract, each other, or any personnel and to ensure that its personnel do not do so.

Signing the Contract

16.6 The date of execution is date this Contract is signed. This Contract is properly signed if each Party signs the same copy, or separate identical copies, of Page 1. If this Contract is signed on two separate dates or separate copies are signed, the date of execution is the later of the two dates. Where separate copies are signed the signed copy can be the original document, or a faxed or emailed copy.

Clauses that remain in force

16.7 The clauses that by their nature should remain in force on expiry or termination of this Contract do so, including clauses: 7 (Information management), 9 (Insurance), 11 (Resolving disputes), 12 (Ending this Contract), 13 (Confidential Information), 16 (General) and 17 (Definitions).

Precedence

16.8 If there is any conflict or difference between the documents forming this Contract (as stated on Page 1) then the order of precedence is:

- a) a variation agreed between the Parties under clause 16.1
- b) Schedule 1
- c) any attachment to Schedule 1
- d) Schedule 2.

17. Definitions

17.1 When used in this Contract the following terms have the meaning beside them:

Attachment- Any supplementary document named in Schedule 1 as an Attachment to this Contract.

Business Day- A day when most businesses are open for business in Samoa. It excludes Saturday, Sunday and public holidays. A business day starts at 8.30am and ends at 5pm.

Buyer- The Buyer is the purchaser of the goods and/or engineering works/constructions.

Charges- The total amount payable by the Buyer to the Supplier as stated in Schedule 1. The Supplier's charges include costs and any expenses stated in Schedule 1, in case of goods contract; charges include costs and any expenses to undertake engineering work/constructions, in case of a works contract. Charges are payable on successful delivery of goods and/or completion of performance of engineering work/constructions, provided a valid tax invoice has been submitted.

Confidential Information- Information that:

- a) is by its nature confidential
- b) is marked by either Party as 'confidential', 'in confidence', 'restricted' or 'commercial in confidence'
- c) is provided by either Party, or a third party 'in confidence'
- d) either Party knows or ought to know is confidential, or
- e) is of a sensitive nature or commercially sensitive to either Party.

Conflict of Interest- A conflict of interest arises if a Party or its personnel's personal or business interests or obligations do or could conflict or be perceived to conflict with its obligations under this Contract. It means that its independence, objectivity or impartiality can be called into question. A conflict of interest may be:

- a) actual: where the conflict currently exists
- b) potential: where the conflict is about to happen, or could happen
- c) perceived: where other people may reasonably think that a person is compromised.

Contract- The legal agreement between the Buyer and the Supplier that comprises Page 1 (the front sheet), Schedule 1, this Schedule 2, any other Schedule, and any variation and attachment.

Contract Manager- The person named in Schedule 1 as the Contract Manager. Their responsibilities are listed in clause 6.

Cost- The amount payable to the Supplier for the goods calculated on the basis stated in Schedule 1 excluding any expenses. The amount payable to the Supplier/Company for undertaking engineering work/construction with detailed cost breakdown attached to this contract.

Delivery Address- The address where the Supplier must deliver the goods as specified in Schedule 1 or such other address as specified by the Buyer. In case of works contract, the specified address/location where the construction work is to be performed.

Description of Goods- The specific requirements for the goods as described in Schedule 1.

End Date- The earlier of the date this Contract is due to end as stated in Schedule 1, the date of termination as set out in a notice of termination, or any other date agreed between the Parties as the date the Contract is to end.

Description of Works- The specific requirements for engineering work, design, specifications of the work and other related construction information as described in Schedule 1.

Expenses- Any actual and reasonable out-of-pocket costs incurred by the Supplier in the delivery of the goods or performance of works and agreed to by the Buyer in Schedule 1.

Extraordinary Event- An event that is beyond the reasonable control of the Party immediately affected by the event (including where the Buyer has failed to make due payment because of an event beyond its reasonable control). An extraordinary event does not include any risk or event that the Party claiming could have prevented or overcome by taking reasonable care. Examples include:

- a) acts of God, lightning strikes, earthquakes, tsunamis, volcanic eruptions, floods, storms, explosions, fires, pandemics and any natural disaster
- b) acts of war (whether declared or not), invasion, actions of foreign enemies, military mobilization, requisition or embargo
- c) acts of public enemies, terrorism, riots, civil commotion, malicious damage, sabotage, rebellion, insurrection, revolution or military usurped power or civil war, or
- d) contamination by radioactivity from nuclear substances or germ warfare or any other such hazardous properties.

Goods- The goods described in Schedule 1 that the Supplier must supply under this Contract.

Works- Engineering or constructions to be carried out by the Supplier/Company under this contract.

GST- The goods/works and services tax payable in accordance with the goods/works and Services Tax Act of the location where the goods are to be delivered or work is to be carried out.

Notice- A formal or legal communication from one Party to the other that meets the requirements of clause 14.

Party- The Buyer and the Supplier are each a Party to this Contract, and together are the Parties.

Personnel- All individuals engaged by either Party in relation to this Contract, or the supply of goods. Examples include: the owner of the business, its directors, employees, subcontractors, agents, external consultants, specialists, technical support and co-opted or seconded staff.

Records- All information and data necessary for the management of this Contract, the supply of Goods and/or performance of engineering work or construction. Records include but are not limited to, reports, invoices, letters, emails, notes of meetings, photographs and other media recordings. Records can be printed hard copies or soft copies stored electronically.

Schedule- An attachment to this Contract with the title 'Schedule'.

Start Date- The date when this Contract starts as stated in Schedule 1.

Supplier- The person, business, company or organisation named as the Supplier on page 1. It includes its Personnel, successors, and permitted assignees.

Variation- A change to any aspect of this Contract that complies with clause 16.1.

APPENDIX G: TENDER EVALUATION AND RECOMMENDATION

TENDER EVALUATION

File: Insert file no. / name

Date: Insert date

To: Insert person with delegated financial authority (e.g. Deputy Director) and Human Resource Adviser

From: Chairperson

Subject: Tender Evaluation and Recommendation: **Insert title**

1. Requirement / Terms of reference

1.1. Briefly outline the requirement or the consultancy's terms of reference.

2. Recommendation

2.1. The evaluation committee recommends that SPREP awards the contract to: **supplier X**.

2.2. This recommendation is on the basis that the information **supplier X** tendered demonstrated that they satisfied the conditions, are fully capable of undertaking the contract, and will provide the best value for money. Further information is provided in the committee's evaluation below.

3. Conditions and evaluation criteria

3.1. The conditions that were stated in SPREP's **advertisement/statement of requirement** were: **[insert any conditions]**.

3.2. The specific evaluation criteria were: **[insert criteria, e.g. the consultant expertise required, and give each criterion a number for reference in the table of evaluations below]**.

3.3. The general criteria evaluated the relative value for money represented by the proposals, i.e. **[delete any not relevant]**:

a) costs – direct and indirect benefits/costs over the whole procurement cycle;

- b) quality and fitness for purpose;
- c) environmental considerations;
- d) convenience and timeliness;
- e) the relative risks, including the performance history of the suppliers;
- f) the flexibility to adapt to change over the lifecycle of the goods or service;
- g) favourability of proposed contract terms (e.g. contract extension options).

6. Budget

- 4.1 State the budget allowed for this activity.

5. Recommendation and evaluation

- 5.1. The evaluation committee members were: [give names and job titles].
- 5.2. SPREP received proposals from [X] potential suppliers within the deadline. Of these:
- [X] met the conditions set as prerequisites for participation and were evaluated against the criteria;
 - The evaluation committee scored each of these proposals out of [X] for each criterion [note if any criteria were weighted more heavily than others – e.g. 20 points for costs; 10 points for experience]. Scores against the criteria ranged from [X] to [X] out of a possible [XX];
 - In summary, our evaluations were:

Prospective supplier	Value for money		Total score					TOTAL
	\$ quote (USD)	Score	(1)	(2)	(3)	(4)	(5)	

- We concluded that [X] of the proposals were competitive: [supplier X, supplier Y and supplier Z], and agreed to recommend awarding the contract to [supplier X].
- [Optional: The strengths of supplier X were: A, B, C.]
- [Optional: The strengths of supplier Y were: A, B, C.]
- [Optional: The strengths of supplier Z were: A, B, C.]

5.3. Signed by:

[Name]

Chairperson of the evaluation committee