

SPECIAL CONDITIONS

CONTENTS

These conditions amplify and supplement, if necessary, the General Conditions governing the Contract. Unless the Special Conditions provide otherwise, those General Conditions remain fully applicable. The numbering of the Articles of the Special Conditions is not consecutive but follows the numbering of the Articles of the General Conditions. In exceptional cases, and with the authorisation of the appropriate Commission departments, other clauses may be added to cover specific situations.

Article 2 Language of the Contract

2.1 The language used shall be English.

Article 4 Communications

4.1 All written communication relating to this Contract between the Contracting Authority and/or the Project Manager, on the one hand, and the Contractor on the other must state the Contract title and identification number, and must be sent by e-mail to:

For the Contracting Authority;

Address: Office of the NAO, PO Box 40, Alofi, Niue

Email address – pats.sionetama@mail.gov.nu

and cc

Mr Warren Halatau-Niue Power Corporation Managaer -Email address:

Warren.Halatau@mail.gov.nu

For the Contractor;

<Name and address of contractor to be inserted>

Article 6 Subcontracting

6.3 When selecting subcontractors the Contractor must give preference to natural persons or companies from ACP States capable of implementing the tasks required on similar terms

Article 7 Supply of documents

All documents and drawings related to the manufacture of the Transformer and 11kV switchgears should be endorsed by the Contracting Authority before manufacture.

All technical specifications, maintenance procedures and schedules along with any other related information should be submitted (2 copies) to the contracting authority in a neatly binded (hard cover) folder.

Article 8 Assistance with local regulations

The Contractor may request the assistance of the Contracting Authority in obtaining copies of laws, regulations and information on local customs, orders or bye-laws of the country where the supplies are to be delivered which may affect the Contractor in the performance of its obligations under the contract. The Contracting Authority may provide the assistance requested to the Contractor at the Contractor's cost.

Article 9 General Obligations

9.9 The Contractor shall ensure the highest visibility to the financial contribution of the European Union. These activities must comply with the rules lay down in the Communication and Visibility Manual for EU External Actions published on the EuropeAid Website: https://ec.europa.eu/europeaid/funding/communication-and-visibility-manual-eu-external-actions_en.

Article 10 Origin

10.1 All goods purchased must originate in a Member State of the European Union or a country covered by the EDF regulation – Annex IV to the latter Agreement as revised by DECISION No 1/2014 of the ACP-EU Council of Ministers of 20 June 2014 (2014/428/EU). For these purposes, 'origin' means the place where the goods are mined, grown, produced or manufactured and/or from which services are provided. The origin of the goods must be determined according to the EU Customs Code or to the relevant international agreement applicable.

10.3. The Contractor shall present an official certificate of origin on provisional acceptance. Failure to comply with this obligation shall lead, after formal notice, to termination of the contract.

Goods originating in the EU includes goods originating in the Overseas Countries and Territories.

Article 11 Performance guarantee

11.1 The amount of the performance guarantee shall be 5 % of the total Contract price, including any amounts stipulated in addenda to the Contract.

Article 12 Liabilities and Insurance

12.1a) All supplies shall be fully insured for their full replacement value and associated expenses in accordance with International and Niue law.

"By way of derogation from Article 12.1, a) paragraph 2, of the general conditions, compensation for damage to the supplies resulting from the Contractor's liability in respect of the Contracting Authority is capped at an amount equal to NZD 500,000.00.

12.1b) "By way of derogation from Article 12.1,b), paragraph 2, of the general conditions, compensation for damage resulting from the Contractor's liability in respect of the Contracting Authority is capped at an amount equal to NZD 500,000.00.

12.2a), By derogation from Article 12.2 a) paragraph 1 of the general conditions, at the begin of the project, the Contractor shall ensure that itself, its staff, its subcontractors and any person for which the Contractor is answerable, are adequately insured with insurance companies recognized on the international

insurance market, unless the Contracting Authority has given its express written consent on a specific insurance company.

12.2a), paragraph 2 At the latest together with the return of the countersigned contract, the Contractor shall provide the Contracting Authority with all cover notes and/or certificates of insurance showing that the Contractor's obligations relating to insurance are fully respected. The Contractor shall submit without delay, whenever the Contracting Authority or the Project Manager so requests, an updated version of the cover notes and/or certificates of insurance.

By derogation from Article 12.2, a), paragraph 2 of the General Conditions it is at the begin of the project that the Contractor shall provide the Contracting Authority with all cover notes and/or insurance certificates showing that the Contractor's obligations relating to insurance are fully respected.

12.2b), paragraph 2 Depending on the nature of the Contractor's obligations, the Contracting Authority may require that the carriage of supplies be covered by a "transportation" insurance policy; the conditions of which may be specified in the Special Conditions, which may also specify other types of insurance to be taken out by the Contractor. This insurance shall in particular cover the loading, intermediate storage, unloading, including stowage and protection, if such operations are included in the contract.

This type of insurance will vary depending on the nature of transport (land, air or sea) and the nature of the risks to be covered: loading, intermediate storage, unloading, including stowage and protection, theft, damage, loss, wetting, etc.

In the case of use of Incoterms, the Contractor shall provide transport insurance to the extent that it assumes transportation risks. The question of the extent of the risks assumed by the Contractor (seller) depends in particular on the Incoterms used:

- **DAP - Delivered At Place:** Incoterm whereby the buyer bears all risks and costs of import clearance:
"the seller delivers when the goods are placed at the disposal of the buyer on the arriving means of transport ready for unloading at the named place of destination. The seller bears all risks involved in bringing the goods to the named place"¹, including customs clearance for export, but not for import at the port or at the border of the agreed place of destination.

Article 13 Programme of implementation of tasks

13.2 The contractor will be required to submit a Programme of implementation task within the first 10 days following the signature of the contract of the last party.

Article 14 Contractor's drawings

As per the regulations of the General Conditions.

Article 15 Sufficiency of tender prices

¹ Idem.

15.1 The Contractor shall be deemed to include in its price all costs relating to the manufacturing/Supply and deliver of foundation transformers and 11kV switchgears.

For equipment to be imported into the country of the Contracting Authority, all duties applicable to their importation and NCT are included.

Article 16 Tax and customs arrangements

16.1 The contractor shall be responsible for the payment of all taxes duties levies and charges assessed on it in connection with contract.

The delivery conditions are Delivered at Place/ DAP¹

Article 17 Patents and licences

17.1 No derogation from Article 17 of the General Conditions is foreseen.

Article 18 Commencement order

18.1 The contract enters into force on the date on which the last party signs it

Article 19 Period of implementation of the tasks

19.1 The period of implementation, of the tasks will be a maximum of 180 days from contract signature by both parties.

Article 24 Quality of supplies

24.2 Preliminary technical acceptance is required. The quality of supplies must comply with the Technical Specifications.

Article 25 Inspection and testing

25.2 Inspection and testing of supplies will take place at the Niue Power Corporation, Alofi, Niue Island.

Article 26 General principles for payments

26.1 Payments shall be made in NZD currency

Payments shall be authorised by Niue Power Corporation and process by Office of the National Authorising Office, Alofi, Niue..

26.3 By derogation, the pre-financing payments shall be made within 60 days from the date on which an admissible invoice is registered by the Contracting Authority. The final payment to the Contractor of the amounts due shall be

¹ DAP (Delivered At Place — Incoterms 2010 International Chamber of Commerce
<http://www.iccwbo.org/products-and-services/trade-facilitation/incoterms-2010/the-incoterms-rules/>

made within 90 days following provisional acceptance of the goods, after receipt by the Contracting Authority of an admissible invoice.

26.5 In order to obtain payments, the Contractor must forward to the authority referred to in paragraph 26.1 above:

a) For the 40% pre-financing, the pre-financing guarantee.

When (i) the pre-financing requested is equal or below EUR 300 000 **and** (ii) the Contracting Authority does not require a financial guarantee following a risk assessment¹, by derogation from article 26.5 of the General Conditions no pre-financing guarantee is required.

b) For the 60% balance, the invoice(s) in triplicate together with the request for provisional acceptance of the supplies.

26.9 **Price revision is not applicable to this contract it is a fixed price contract.**

Article 28 Delayed payments

28.2 By derogation from Article 28.2 of the General Conditions, once the deadline laid down in Article 26.3 has expired, the Contractor shall, upon demand, be entitled to late-payment interest at the rate and for the period mentioned in the General Conditions. The demand must be submitted within two months of receiving late payment.

Article 29 Delivery

29.3 The Contractor shall bear all risks retaining to the goods until provisional acceptance at destination. The supplies shall be packed so as to prevent their damage or deterioration in transit to their destination. The packaging shall become the property of the recipient subject to respect for the environment

29.5/6/7 All deliveries must be accompanied by a Statement to say that the goods fully comply with the Terms and Conditions of the Contract and Technical Specification, and a delivery note and a copy of the Certificate of Origin for Lot 1. With the following information, the suppliers name, the contract ref, the Lot Number, packaging list, year of manufacture, the description for the supplies (make, model, colour)

All packages should be marked as follows;

**Attention: Niue Power Corporation
EDF 11th
Alofi
Niue Island**

Subject: 11 KV Transformers and Switchgears

Article 31 Provisional acceptance

¹ Such risk assessment is required, for example, when a company is awarded a contract without itself meeting the selection criteria, but relying on the capacity of another company.

The Certificate of Provisional Acceptance must be issued using the template in Annex C11.

- 31.2 By derogation from Article 31.2, second paragraph, the Contracting Authority's time limit for issuing the certificate of provisional acceptance to the Contractor shall not be considered included in the time limit for payments indicated in Article 26.3.

Article 32 Warranty obligations

- 32.6 The Contractor shall warrant that the supplies are new, unused, of the most recent models and incorporate all recent improvements in design and materials. The Contractor shall further warrant that none of the supplies have any defect arising from design, materials or workmanship. This warranty shall remain valid for one year after provisional acceptance.
- 32.7 The warranty must remain valid for one year after provisional acceptance.

Article 33 After-sales service

- 33.1 the Contractor shall provide or secure the provision of reliable and regular after-sales and maintenance service thereafter at the place of destination guaranteeing the upkeep and repair of the goods supplied and the rapid replenishment of spare parts.

The Contractor shall state in detail how it proposes to meet this obligation including the duration for which the service is guaranteed available beyond 12 months' period as specified in the Technical Specifications.

Article 40 Settlement of disputes

- 40.4 Any dispute arising out of or relating to this Contract which cannot be settled otherwise shall:
- (a) in the case of a national contract, be settled in accordance with the national legislation of the state of the Contracting Authority; and
 - (b) in the case of a transnational contract, be settled either:
 - (i) if the parties to the Contract so agree, in accordance with the national legislation of the state of the Contracting Authority or its established international practices; or
 - (ii) by arbitration in accordance with the Procedural rules on conciliation and arbitration of contracts financed by the European Development Fund, adopted by Decision 3/90 of the ACP-EEC Council of Ministers of 29 March 1990 (Official Journal No L 382, 31.12.1990, Annex a12 to the Practical Guide) Please attach Annex A12 of the Practical Guide to the present contract.

Article 44 Data Protection

Not applicable.

Article 45 Further additional clauses

Not Applicable

* * *