



**BIDDING DOCUMENTS FOR
SUPPLY IBM BLADE SERVER
TO THE UNIVERSITY OF THE SOUTH PACIFIC**

INVITATION TO BID No. [GS2101-123-09]

[NOVEMBER 2009]

Date: 24 November 2009

Invitation to Bid

No. **GS2101-123-09**

SUPPLY IBM BLADE SERVER TO THE USP

The University of the South Pacific (“the USP”) invites Bids (“Bids”) from eligible, qualified and capable companies for the supply and delivery and installation of **IBM BLADE SERVERS** (“the Goods”) and provision of associated services (“Associated Services”) according to the requirements as defined in the bidding documents (“the Bidding Documents”).

The Bidding Documents include:

Section I:	Instructions to Bidders
Section II:	Bidding Data Sheet (this section details the required documents for this tender submission)
Section III:	Technical Bid Forms
Section IV:	Price Bid Form
Section V:	Commercial Terms and Conditions
Section VI:	Performance Guarantee Template

The Goods shall be supplied on the basis of a one-off supply. The USP does not guarantee any minimum level of business and the USP shall be under no obligation to buy any or all of the Goods and Associated Services exclusively from the selected contractor.

Bids must be delivered to in accordance to Article 19.1b. Closing date for the bids is **Tuesday 8th December 2009/10.30a.m.** *The bids will be opened the same day at 11.00a.m at the Finance Conference Room and bidders who choose to witness the tender opening are welcome to attend the bid opening*

Unless otherwise specified, bids sent by e-mail and facsimile *will not* be accepted.

The Bid prices shall be quoted in FJD /**VEP**. The Contract(s) under consideration shall be entered into with the USP. The Goods shall be delivered, as relevant, to a place of delivery to be specified by the USP. Bidders should include in their Bid prices any and all costs associated in respect to the place of delivery, including but not limited to the delivery, unloading, insurance, storage, assistance in the actual customs clearance process, and loading of relevant cargo.

The USP reserves the right to accept or reject any Bid, and to annul, in whole or in part, or to suspend the bidding process and reject all Bids at any time and without reason prior to award, without thereby incurring any liability to the affected Bidder or Bidders.

The complete set of Bidding Documents can also be downloaded from www.usp.ac.fj/public notices.

For those companies having obtained the Bidding Documents, we would appreciate a prompt fax/ e-mail acknowledging your receipt of this ITB. Should you choose not to submit a Bid, we would also appreciate a brief written notice to that effect and where practicable the return of materials forwarded to you with this letter.

Please address your queries or questions in writing at the address given below and kindly refrain from any telephone calls or personal visits.

Procurement Manager
University of the South Pacific
Laucala Campus
Suva.
Tel: (679) 3232410, Fax: (679) 3231545. Email: purchasing@usp.ac.fj

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SECTION I - INSTRUCTIONS TO BIDDERS (ITB)

Notes to Bidders: This section provides detailed information necessary for Bidders to prepare their Bids, in accordance with the requirements specified by the USP. It also provides information on Bid submission, opening, and evaluation, and on the award of contract. Bidders should read these Instructions to Bidders in conjunction with Section II, Bidding Data Sheet, of the Bidding Documents. These Instructions to Bidders will not be part of the Contract.

1. SCOPE

1.1 The entity of the USP specified in the cover note to these Bidding Documents invites Bids for the procurement of Goods and Associated Services as described in the Bidding Documents.

2. ELIGIBILITY OF BIDDERS

2.1 This bidding is open to all eligible companies as defined in ITB Article 2.

2.2 The USP may, in its sole unfettered discretion, disqualify or otherwise determine ineligible any potential Bidder that the USP believes is, has been or will be, whether directly or indirectly, engaged in criminal or any other unethical behaviour, financially unsound, or otherwise unfit in the USP's opinion to participate in the bidding exercise. This provision shall also be a condition precedent to, and continuing condition of, any Contract between the USP and a successful Bidder.

2.3 A Bidder shall not be eligible to participate in this bidding or in the performance of the contract under consideration if such Bidder, or any employee, executive, manager or director thereof:

- participated in the preparation of the concerned procurement notice or Bidding Documents, or any part thereof, being subsequently used by the USP; or
- received assistance in the preparation of its Bid or request to participate from a person or company who or that participated in the preparation of the concerned procurement notice or Bidding Documents, or any part thereof.

2.4 In its Bid, the Bidder shall indicate the origin of the Goods proposed.

2.5 Unless otherwise specified in Section II, Bidding Data Sheet, the Bidder must present the certificates of origin for all Goods required for the provisional acceptance or upon presentation of the invoice. The option chosen shall be specified in the Contract / Purchase Order.

2.6 A Bidder shall not be eligible to participate in this bidding or in the performance of the contract under consideration if such Bidder:

- is bankrupt or being wound up, is having its affairs administered by the courts, has entered into an arrangement with creditors, has suspended business activities, is the subject of proceedings concerning those matters, or is in any analogous situation arising

from a similar procedure provided for in national legislation or regulations;

- has been convicted of an offense concerning its professional conduct by a judgement which has the force of res judicata;

- has been subject of a judgement which has the force of res judicata for fraud, corruption, involvement in a criminal organization or any other illegal activity detrimental to the financial interests of the USP;

- is guilty of misrepresentation in supplying the information required as a condition of participation in this bidding exercise or fail to supply this information;

- is subject to a conflict of interest.

3. USP PRIVILEGES AND IMMUNITIES

3.1 Nothing in or relating to the Bidding Documents shall be deemed a waiver, expressed or implied, of any of the privileges and immunities of the USP.

4. ETHICS

4.1 In accordance with general USP procurement principles, it is a requirement of the USP that Bidders, or any executive, manager or director thereof, observe the highest standards of ethics during each phase of any procurement and execution of contracts. The USP defines for this purpose:

- 'coercive practice' means harming or threatening to harm, directly or indirectly, persons or their property to influence their participation in a procurement or affect the execution of a contract;
- 'collusive practice' means a scheme or arrangement between two or more Bidders, designed to establish bid prices or other terms at artificial, non-competitive levels;
- 'corrupt practice' means the offering, giving, receiving, or soliciting, directly or indirectly, of any thing, of value to influence the action of any USP official or any other person involved in any procurement or in contract execution;
- 'fraudulent practice' means a misrepresentation or omission of facts in order to influence a procurement or the execution of a contract.

4.2 In pursuance of this requirement, the USP will:

- Reject a Bid if it determines that the Bidder has, directly or through an agent, engaged in corrupt, fraudulent, collusive or coercive practices in competing for the contract;
- Terminate a contract if it determines that the contractor has, directly or through an agent, engaged in corrupt, fraudulent, collusive or coercive practices in competing for, and in executing, the contract;
- Declare the Bidder ineligible, either indefinitely or for a stated period of time, from being awarded any contract by the USP if it at any time determines that the Bidder has, directly or through an agent, engaged in corrupt, fraudulent, collusive or coercive practices in competing for, or in executing, the contract.

5. BIDDER'S RESPONSIBILITIES

5.1 The Bidder is expected to examine all instructions, forms, terms, and specifications in the Bidding Documents. Failure to furnish all information required by the Bidding Documents or to submit a Bid substantially responsive to the Bidding Documents in every respect will be at the Bidder's risk and may result in the rejection of its Bid.

5.2 The Bidder shall bear all costs associated with the preparation and submission of its Bid, including costs relating to contract award, and the USP will in no case be responsible or liable for those costs, regardless of the conduct or outcome of the Bidding process.

5.3 Bidders must familiarize themselves with local conditions and take them into account in preparing their Bids. To obtain information on the assignment, technical requirements, and on the local conditions, Bidders are encouraged to attend, at their own cost and risk, a pre-bid meeting/-site visit, if one is specified in the Bidding Data Sheet. Attending the pre-bid meeting/on-site visit is optional.

6. ONE BID PER BIDDER

6.1 Each Bidder shall submit only one Bid, either individually or as a partner in a joint venture. A Bidder who submits or participates in more than one Bid (other than as a sub-contractor or in case of alternative bids that have been permitted or requested pursuant to ITB Article 11) shall cause all Bids with the Bidder's participation to be disqualified.

7. LANGUAGE OF BID

7.1 Unless another governing language is specified in Section II, Bidding Data Sheet, the governing language in respect to the Bid prepared by

the Bidder as well as all correspondence and documents relating to the Bid exchanged between the Bidder and the USP shall be English. Supporting documents and printed literature furnished by the Bidder may be in another language provided they are accompanied by an accurate translation in the governing language, in which case, for purposes of interpretation of the Bid, the translation shall govern.

8. CLARIFICATION OF BIDDING DOCUMENTS

8.1 Any prospective Bidder requesting any clarification on any contents in the Bidding Documents may notify the contact person of the USP stated in the cover note to these Bidding Documents in writing.

8.2 The USP will issue a clarification note in respect to any, in the opinion of the USP, reasonable request for clarification on the contents in the Bidding Documents, which it receives no later than seven (7) calendar days prior to the deadline for the receipt of Bids.

8.3 Such clarification note, containing the USP's response and a description of the contents of the query but without identifying the source thereof, shall be uploaded under the relevant procurement notice on the USP's web-site at www.usp.ac.fj under [http://www.policies.usp.ac.fj/public notices](http://www.policies.usp.ac.fj/public_notices).

9. AMENDMENTS TO BIDDING DOCUMENTS

9.1 At any time prior to the deadline for the receipt of Bids, the USP may, for any reason, whether at its own initiative or in response to a clarification requested by a prospective Bidder, modify the Bidding Documents by amendment which will be published under the relevant procurement notice on the USP's web-site at [http://www.policies.usp.ac.fj/public notices](http://www.policies.usp.ac.fj/public_notices)

9.2 All prospective Bidders are advised to regularly visit the USP web-site to view any amendment made to the Bidding Documents. **The amendments issued pursuant to ITB Articles 8.3 and 9.1 will be binding on the Bidders.** The USP will assume neither responsibility nor liability for the Bidder's non-familiarity with any amendment issued pursuant to any provision herein.

9.3 In order to allow prospective Bidders reasonable time in which to take the amendment into account in preparing their Bids, the USP may extend the deadline for the receipt of Bids.

10. DOCUMENTS COMPRISING THE BID

10.1 The Bid prepared by the Bidder shall comprise the Forms contained in Section III - Technical Bid Forms, Section IV - Price Bid Form and Section V - Commercial Terms and Conditions,

duly completed and signed by the Bidder and any other documents and/or information specified in the Bidding Data Sheet.

11. ALTERNATIVE BIDS

11.1 Unless otherwise specified in Section II, Bidding Data Sheet, alternative Bids shall not be considered.

12. BID PRICES

12.1 The Bidder shall indicate on the appropriate Price Schedule the unit prices (where applicable) and total Bid Price of the offered goods.

12.2 The Bidder's separation of price components will be solely for the purpose of facilitating the comparison of Bids by the USP and will not in any way limit the USP's right to contract on any of the terms offered.

12.3 All non-exempt duties, taxes, and other levies payable by the Contractor under the Contract / Purchase Order, or for any other cause shall be included in the rates, prices, and total Bid price submitted by the Bidder.

13. BID CURRENCY

13.1 Unless otherwise specified in Section II, Bidding Data Sheet, the unit rates and prices shall be quoted by the Bidder entirely in FJD

14. BIDDER'S QUALIFICATION

14.1 Pursuant to ITB Article 10, the Bidder shall furnish, as part of its Bid, the Qualification Information Form and other relevant documents establishing the Bidder's eligibility to bid and its qualifications to perform the Contract if its Bid is accepted.

14.2 The Bidder shall furnish as part of its Bid the documentary evidence establishing to the USP's satisfaction the Bidder's conformity with qualifications and eligibility requirements specified in the Bidding Documents. Such documentary evidence shall establish that:

- (a) in the case of a Bidder offering to supply the Goods under the Contract which the Bidder did not manufacture or otherwise produce, the Bidder has been duly authorized by the Goods' Manufacturer or producer to supply such goods;
- (b) the Bidder has the financial, technical, and production capability necessary to perform the Contract;
- (c) in the case of a Bidder not doing business within the country where the Goods will be delivered, the Bidder is or will be (if awarded the

Contract) represented by an agent in such country equipped and able to carry out the Contractor's maintenance, repair, and spare parts-stocking obligations.

15. CONFORMITY OF GOODS

15.1 Pursuant to ITB Article 10, the Bidder shall furnish, as part of its Bid, the Bid Forms and other relevant documents establishing that its offered goods and associated services conform to the Bidding Documents.

15.2 The documentary evidence of conformity of the offered goods and associated services to the Bidding Documents may be in the form of literature, drawings, printed materials, and data, and may include but not be limited to:

- (a) an item-by-item commentary establishing that the goods and services offered by the Bidder conform with the prescribed Technical Specifications and Schedule of Requirements, Section IV, demonstrating their substantial responsiveness, or a statement of deviations and exceptions to the provisions of the Technical Specifications and Schedule of Requirements;
- (b) as necessary, a detailed description of the essential technical and performance characteristics of the offered goods and associated services, including but not limited to information on available sources special tools, after-sales services etc as may be specified in Section IV, Technical Specifications and Schedule of Requirements.

15.3 Section IV, Technical Specifications and Requirements, contain the minimum technical specifications and requirements prescribed by the USP. For the purpose of the commentary and description required by this ITB Article 15, the Bidder shall confirm that the technical specifications and standards of its offered goods and associated services, as a minimum, comply with the requirements of the Bidding Documents. The Bidder may offer goods and associated services with other standards, brand names, catalogue/product numbers, provided that it demonstrates, to the USP's satisfaction, that such offered goods and associated services ensure substantial responsiveness to the requirements specified in the Bidding Documents.

16. PERIOD OF VALIDITY OF BIDS

16.1 Unless otherwise specified in Section II, Bidding Data Sheet, bids shall remain valid for a period of 30 days after the deadline for the receipt of Bids. A Bid valid for a shorter period shall be rejected by the USP as non-responsive.

16.2 In exceptional circumstances, the USP may solicit the Bidders' consent to an extension of the period of validity. The request and the responses thereto shall be made in writing. The Bid Security

provided under ITB Article 17 shall also be suitably extended. A Bidder may refuse the request without forfeiting its Bid Security. A Bidder granting the request will not be required nor permitted to modify its Bid.

17. BID SECURITY

17.1 If specified in Section II, Bidding Data Sheet, the Bidder shall furnish, as part of its Bid, a Bid Security in the amount specified in Section II, Bidding Data Sheet.

17.2 The Bid Security is required to protect the USP against the risk of Bidder's conduct, which would warrant the Bid Security's forfeiture, pursuant to ITB Article 17.7.

17.3 If provided therefore under ITB Article 17.1, the Bid Security shall be denominated in FJ and shall be in the form of a bank cheque drawn in favour of "USP".

17.4 Any Bid not secured in accordance with ITB Articles 17.1 and 17.3 will be rejected by the USP as non-responsive, pursuant to ITB Article 26.4.

17.5 Unsuccessful Bidders' Bid Securities will be discharged or returned as promptly as possible, but not later than thirty (30) calendar days after the date of expiration of the bid validity period prescribed by the USP pursuant to ITB Article 16.

17.6 The successful Bidder's Bid Security will be discharged upon such Bidder signing the Contract / accepting the Purchase Order and furnishing the Performance Security, if applicable, pursuant to ITB Articles 33 and 34.

17.7 The Bid Security may be forfeited:

- (a) if the USP determines, on the basis of objectively verifiable evidence, that such Bidder has provided materially false or misleading information to the USP;
- (b) if a Bidder (i) withdraws its Bid during the period of Bid validity specified by the Bidder on the Bid Submission Form, or (ii) does not accept the correction of errors pursuant to ITB Article 26.2; or
- (c) in the case of a successful Bidder, if the Bidder fails or refuses (i) to sign the Contract in accordance with ITB Article 34.2; or (ii) to furnish a Performance Security in accordance with ITB Article 35.

18. FORMAT AND SIGNING OF BID

18.1 The Bidder shall prepare an original and the number of copies of the Bid indicated in Section II, Bidding Data Sheet, clearly marking each "ORIGINAL" and "COPY", as appropriate. In the event of any discrepancy between them, the original shall govern.

18.2 The original and the copy or copies of the Bid shall be typed or written in indelible ink and shall be signed by the Bidder or a person or persons duly authorized to bind the Bidder to the Contract.

18.3 Any interlineations, erasures, or overwriting shall be valid only if they are initialled by the person or persons signing the Bid.

19. SUBMISSION, SEALING AND MARKING OF BIDS

19.1 Bidders may always submit their Bids by mail or by hand. When so specified in Section II, Bidding Data Sheet, Bidders shall have the option of submitting their Bids electronically and/or by facsimile. Bidders submitting their Bids by email or facsimile shall follow the procedures specified in Section II, Bidding Data Sheet. Bids must be properly secured and sealed. The bidders shall submit the completed Section III - Technical Bid Forms (comprising *inter-alia* the specification of the products / services being offered, past experience of similar supplies, financial turnover, profile of their firm, and, all other information and / or evidence, *except price*, asked for by USP in the Section II, Bidding Data Sheet. Any deviations from the commercial (delivery, payment etc) terms set out in the ITB shall also be brought out by the bidder in the Technical Bid. In addition, the bidders shall also sign and stamp each page of Section V – Commercial Terms and Conditions, as confirmation of their acceptance to the terms and conditions contained therein and submit it along with the completed Technical Bid Forms in a separate envelope clearly marked "**Technical Bid**".

19.1a The Section IV - Price Bid Form shall contain the pricing terms corresponding to the Technical Bid and shall be submitted in a separate sealed envelope clearly marked "**Price Bid**".

19.1b Bidders may deposit their Bids (both Technical Bid and Price Bid, in two separate sealed envelopes, marking envelope as Technical Bid and Price Bid respectively and then put these two envelopes in one big envelope marked with the tender number and closing date) in the tender box.

The envelope addressed to:

*The Registrar
The University of the South Pacific Tender Box
Registrar's Office
Suva.*

19.1c Fiji Bids will only be received at the location nominated above.

19.2 The inner and outer envelopes shall:

(a) be addressed to the USP at the address indicated in 19.1 above.

(b) bear the USP Bidding Reference Number and Title indicated in the cover note to these Bidding

Documents, and a statement: **“DO NOT OPEN BEFORE”**, to be completed with the deadline for the receipt of Bids pursuant to ITB Article 20.

19.3 All inner and outer envelopes shall also indicate the name and address of the Bidder to enable the Bid to be returned unopened in case it is declared “late” or the Bid is validly withdrawn by the Bidder.

19.4 If the outer envelope is not sealed and marked as required by ITB Article 19.2, the USP will assume no responsibility for the misplacement or premature opening of the Bid.

20. DEADLINE FOR THE RECEIPT OF BIDS

20.1 Bids must be received by the USP at the address and no later than the time and date specified in the cover note to the Bidding Documents.

20.2 The USP may, at its discretion, extend the deadline for the receipt of Bids by amending the Bidding Documents in accordance with ITB Article 9, in which case all rights and obligations of the USP and Bidders previously subject to the deadline will thereafter be subject to the deadline as extended.

21. LATE BIDS

21.1 Any Bid received by the USP after the deadline for receipt of Bids prescribed by the USP pursuant to ITB Article 20 will be rejected and returned unopened to the Bidder.

22. WITHDRAWAL, MODIFICATION AND SUBSTITUTION OF BIDS

22.1 The Bidder may withdraw, modify or substitute its Bid after the Bid’s submission, provided that written notice of the withdrawal, modification or substitution is received by the USP prior to the deadline prescribed for the receipt of Bids.

22.2 The Bidder’s withdrawal, modification or substitution notice shall be prepared, sealed, marked, and delivered in accordance with the provisions of ITB Article 19, with the outer and inner envelopes additionally marked **“WITHDRAWAL”**, **“MODIFICATION”** or **“SUBSTITUTION,”** as appropriate.

22.3 No Bid may be substituted or modified after the deadline for receipt of Bids.

22.4 No Bid may be withdrawn in the interval between the deadline for receipt of Bids and the expiration of the period of Bid validity specified in the cover note of these Bidding documents, or as extended pursuant to ITB Article 20.2. Withdrawal of a Bid during this interval may result in the Bidder’s forfeiture of its Bid Security, pursuant to ITB Article 17.7 (b).

23. OPENING OF BIDS

23.1 In general, the USP Bid Opening Board will open all Bids publicly. USP will open all Bids, including modifications and substitutions pursuant to ITB Article 22, in the presence of Bidders’ representatives who choose to attend, at the time, on the date, and at the place specified in Section II, Bidding Data Sheet. Any specific opening procedures required if submission of Bids by email and/or by facsimile is permitted in accordance with ITB Article 19.1 shall be as specified in Section II, Bidding Data Sheet. The Bidders’ representatives who are present shall sign a register evidencing their attendance.

23.2 First, envelopes marked **“WITHDRAWAL”** shall be opened and read out. Bids for which an acceptable notice of withdrawal has been submitted pursuant to ITB Article 22.1 shall not be opened and shall be returned unopened. Next, envelopes marked **“SUBSTITUTION”** shall be opened and read out and exchanged with the corresponding Bid being substituted, and the substituted Bid shall not be opened, but returned to the Bidder. Envelopes marked **“MODIFICATION”** shall be opened and read out with the corresponding Bid. Only envelopes that are opened and read out at Bid opening shall be considered further.

23.3 All other envelopes shall be opened one at a time, reading out: The Bidders’ names, Bid prices, (in the case of Price Bid opening) discounts, and the presence or absence of requisite Bid Security and such other details as the USP, at its discretion, may consider appropriate, will be announced at the Bid Opening. No Bid shall be rejected at the Bid Opening, except for late Bids, which shall be returned unopened to the Bidder pursuant to ITB Article 21.

23.4 The Bids (including modifications and substitutions sent pursuant to ITB Article 19.2) that are not opened and read out at Bid Opening shall not be considered further for evaluation, irrespective of the circumstances.

24. CONFIDENTIALITY

24.1 If any Bidder wishes to contact the USP on any matter related to its Bid, it should do so in writing.

24.2 Any effort by a Bidder to influence the USP in its decisions on Bid evaluation, Bid comparison, or Contract Award may result in the rejection of the Bidder’s Bid.

25. CLARIFICATION OF BIDS

25.1 During evaluation of the Bids, the USP may ask any Bidder for a clarification of its Bid. The request for clarification and the response shall be in writing, and no change in the prices or substance of the Bid shall be sought, offered, or permitted. Failure

by any Bidder to timely and duly respond to a request for clarification may result in the rejection of its Bid.

26. PRELIMINARY EXAMINATION

26.1 The USP will examine the Bids to determine whether they are complete, whether any computational or arithmetical errors have been made, whether a Bid Security, if required, has been furnished, whether the documents have been properly signed, and whether the Bids are generally in order.

26.2 Arithmetical errors will be rectified on the following basis. If there is a discrepancy between the unit price and the total price that is obtained by multiplying the unit price and quantity, the unit price shall prevail, and the total price shall be corrected unless in the opinion of the USP there is an obviously gross misplacement of the decimal point in the unit price, in which case the line item total as quoted will govern, and the unit rate will be corrected. If there is an error in a total corresponding to the addition or subtraction of subtotals, the subtotals shall prevail and the total shall be corrected. If there is a discrepancy between words and figures, the amount in words will prevail. The amount stated in the Bid will be adjusted by the USP in accordance with the above procedure for the correction of errors and, with the concurrence of the Bidder, shall be considered as binding upon the Bidder. If the Bidder does not accept the corrected amount, the Bid will be rejected, and the Bid Security may be forfeited in accordance with ITB Article 17.7.

26.3 The USP may waive any minor informality, nonconformity, or irregularity in a Bid which does not constitute a material deviation, provided such waiver does not prejudice or affect the relative ranking of any Bidder.

26.4 Prior to the detailed evaluation, the USP will determine the substantial responsiveness of each Bid to the Bidding Documents. For purposes of these articles, a substantially responsive Bid is one which conforms to all the terms and conditions of the Bidding Documents without material deviations. Deviations from, or objections or reservations to critical provisions, such as those concerning Bid Security, will be deemed to be a material deviation.

26.5 If a Bid is not substantially responsive, it will be rejected by the USP and may not subsequently be made responsive by the Bidder by correction of the nonconformity.

27. CURRENCY FOR BID EVALUATION

27.1 Unless otherwise specified in accordance with ITB Article 13.1, Bids shall be evaluated as quoted in the currency of the F\$. In the event, (i) the USP has permitted Bids in currencies other than the FJD, and (ii) valid Bids have been received containing several currency options, the exchange rate to be applied by the USP shall be the rate of

exchange it follows on the date of opening of the Price Bids.

28. EVALUATION AND COMPARISON OF BIDS

28.1 The USP will first evaluate and compare Technical Bids, which have been determined to be substantially responsive, pursuant to ITB Article 26.

28.2 The USP will then compare the quoted Bid prices of the technically compliant bids.

28.3 The USP's evaluation of a Bid may take into account, in addition to the Bid price, other factors as specified in Section II, Bidding Data Sheet.

28.4 The lowest or any tender will not necessarily be accepted.

28.5 The University reserves the right to conduct post tender negotiations with one or more selected Bidders regarding any aspect of the contract.

Bidders may be obliged to establish reasonableness of their quote notwithstanding that their quote is the most competitive of all the bids received. This may require bidders sharing with the USP evaluation committee copy(ies) of invoices raised on other customers, comparable to USP in size and scope of purchase, for the goods / services under consideration in this tender.

28.6 Bidders will be responsible for all costs associated with the attendance of their company officers as may be required during the tender assessment phase for the purpose of discussion or negotiations with the University.

29. AWARD CRITERIA

30.1 Subject to ITB Articles 34 and 35, the USP will award the Contract to the successful Bidder whose Bid has been determined to be substantially responsive and has been determined to be the lowest evaluated Bid, provided further that the Bidder is determined to be qualified to perform the Contract satisfactorily.

30. USP'S RIGHT TO VARY QUANTITIES AT TIME OF AWARD

31.1 The USP reserves the right at the time of award to increase or decrease the quantity of Goods originally specified in the Bidding Documents without any change in unit price or other terms and conditions.

31. USP'S RIGHT TO ACCEPT ANY BID AND TO REJECT ANY OR ALL BIDS

32.1 The USP reserves the right to accept or reject any Bid, and to annul, in whole or in part, or to suspend the Bidding process and reject all Bids at any time and without reason prior to award, without

thereby incurring any liability to the affected Bidder or Bidders.

32. NOTIFICATION OF AWARD

33.1 Prior to the expiration of the period of Bid Validity, the USP will notify the successful Bidder in writing, e.g. by facsimile or registered letter, that its Bid has been accepted.

33. LETTER OF INTENT

33.1 At the same time as or after the USP notifies the successful Bidder that its Bid has been accepted, the USP will send the successful Bidder two original signed and stamped sets of the Letter of Intent (LOI).

33.2 Upon receipt by the USP of one original set of signed and stamped LOI and the furnishing of a Performance Security (if one is required), in form and content acceptable to the USP in accordance with ITB Article 34.1, the USP shall notify the unsuccessful Bidders, and shall promptly discharge the Bid Securities, if any, of the winning Bidder and

the unsuccessful Bidders, in accordance with ITB Article 17.

34. PERFORMANCE SECURITY

34.1 Within seven (7) calendar days of the date of notification of award by the USP, the successful Bidder shall furnish a Performance Security in an amount, form and format as provided for in the Section II, Bidding Data Sheet.

34.2 Failure of the successful Bidder to comply with the requirement of ITB Article 34.1 and ITB Article 33.2 shall constitute sufficient grounds for the annulment of the award and forfeiture of the Bid Security, in which event the USP may make the award to the next lowest evaluated Bidder or call for new Bids.

35. PURCHASE ORDER

35.1 USP will follow its LOI with a firm Purchase Order on receipt of the required Performance Security.

Section II - BIDDING DATA SHEET

Note to Bidders: This Bidding Data Sheet should be read in conjunction with Section I “Instructions to Bidders”.

Instructions to Bidders		Amendment/Modification of Relevant Article in the Instructions to Bidders
ITB Article	Description	
5.3	Pre-Bid Meeting/ On-Site Visit	A pre-bid meeting/on-site visit will not be held.
7.1	Governing Language	The language of the Bid and all correspondence and documents exchanged between the Bidder and the USP shall be <i>English</i>
10.1	Other Documents Comprising the Bid	In addition to the mandatory documents comprising the Bids as stated in ITB Article 10.1, the following additional mandatory documents are required: <ol style="list-style-type: none"> 1. Technical Bid <ul style="list-style-type: none"> • Company Profile • Detailed CVs of staff who shall be engaged in the exercise under this tender. • Copies of audited annual financial statements for last two years (in case the bidder is a firm). • Evidence of having successfully supplied, installed and currently maintaining similar servers of atleast F\$45K value). (i.e a letter from client firm) • Section III A Bid Submission Form (stamp & sign) • Section III B Qualification information Form (stamp & sign) • Section III C Technical Specifications & Schedule of Requirements (stamp & sign on each page) • Section III –D Manufacturers Authorization form • <i>Section V – Commercial Terms and Conditions (stamp & sign on each page)</i> 2. Price Bid Section IV - Price Bid Form (stamp and sign on each page and submit in separate sealed envelope)
11.1	Alternative Bids	Alternative Bids <i>will not be considered.</i>
13.1	Bid Currency	The Bid currency is (F\$).
16.1	Bid Validity Period	The Bid validity period is [sixty (60)] calendar days.
17.1	Bid Security	The Bid Security is required: (No) Amount of Bid Security: (specify)
18.1	Number of Copies of Bid	The number of copies of the Bid is: (Two)
19.1	Submission of Bids by Email and/or Facsimile	Bidders may submit their Bids by e-mail and facsimile: No
23.1	Bid Opening	Bids will be opened publicly: Yes
28.3	Criteria for Bid Evaluation	Criteria for Bid evaluation: <i>Lowest evaluated Bid price from amongst substantially responsive and technically compliant bids.</i>
34.1	Performance Security	The Performance Security is required: Yes Amount of Performance Security: 5% of PO Value valid for 3 months beyond the expiry of 5 year warranty period

Section III – TECHNICAL BID FORMS

Note to Bidders: It is mandatory that the Bidder duly completes and signs the Bid Submission Form and other forms contained in this Section.

SECTION III – A BID SUBMISSION FORM

Date [*Bidder to insert date*]

Bidding Reference No GS2101-123-09

To: The University of the South Pacific (USP)

Having examined the Bidding Documents No GS2101-123-09 and any addenda thereof, the receipt of which is hereby duly acknowledged, we, the undersigned, offer to deliver, supply warranty, **install and provide support for IBM Blade Servers**, in conformity with the said Bidding Documents for the price(s) quoted in the Price Schedule separately attached herewith and made part of this Bid.

We agree to abide by this Bid for the Bid Validity Period specified in the Bidding Documents, and it shall remain binding upon us and may be accepted at any time before the expiration of that period.

We accept and agree that the terms and conditions of Contract contained in the Bidding Documents will apply to any contract resulting from this bidding exercise.

We represent and warrant that we are not participating, as Bidders, in more than one Bid in this Bidding process.

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

We certify and confirm that we comply with the eligibility requirements stated in ITB Article 2 of the Bidding Documents.

Yours sincerely,

Authorized Signature:

Name and Title of Signatory:

Name of Firm:

Address:

Date:

SECTION III – B QUALIFICATION INFORMATION FORM

General Information

1. Name of Bidder:			
2. Street Address:	Postal Code:	City:	Country:
3. P.O. Box and Mailing Address:			
4. Telephone Number:			
5. Fax Number:			
6. E-mail Address:			
7. www Domain:			
8a. Contact Name:			
8b. Contact Title:			
9. Parent Company, if any (full legal name):			
10. Principal subsidiaries, associates, and/or representative(s), if any and relevant to the Services:			
11. Corporate Seal:			
12. Type of Business:			
13. Year Established:			
14. Number of Staff Employed:			

Financial Information

15. For the last three financial years of the Bidder:			
Year	Net Profit (F\$; end of period)	Revenues (F\$)	Operating Profit (F\$)

Experience

16. Contracts of similar scale/volume during the last three years:				
Customer Name and Contact Details	Value (F\$)	Year	Goods Provided	Country

Signature _____ of _____ Bidder: _____

Section III C- TECHNICAL SPECIFICATIONS AND SCHEDULE OF REQUIREMENTS (Part of Technical Bid –

#	Technical Specifications/Description	Compliance Remarks <i>The Bidders are required to specify <u>make</u> and put item-by-item commentary on the Technical Specifications demonstrating substantial responsiveness of the Goods to those specifications, or a statement of deviations and exceptions to the provisions of the Technical Specifications.</i>
1.	IBM Blade Center H Chassis with 2x2900W PSU with DVD Rom - Qty :1	
2.	2900W Power Module with Fan Pack This power supply option for IBM Blade Center H supplies 2900W of power output. The power subsystem is an added redundant. Qty: 2	
3.	Gb Ethernet Switch Module Cisco Gb Ethernet Switch Modules for IBM BladeCenter or IBM server connectivity module. Qty: 2	
4.	20 port 4 GB SAN switch Module :for SAN connectivity - - Qty: 2	
5.	IBM Short Wave SFP Module Qty: 4	
6.	Blade Centre Advanced Management Module Qty:1	
7.	2.8m, 200-240V, Triple 16A IEC 320-C20 Qty:4	
8.	HS22 Blade Servers Intel Xeon Quad Core with 4x2GB RAM, 2.5in SAS Bay, no O/S ---Qty: 3	
9.	300 GB 2.5in SAS Hard Drives 10K 6Gbps SAS HDD -- Qty:6	
10.	4GB Fibre Channel Expansion Card for IBM Blade Servers -- Qty:3	
	Delivery to the USP- Laucala Bay Campus within 3 weeks upon issuance of USP Purchase Order	
	Standard five year warranty and service - Guaranteed availability of replacement components for five years.	

Minimum response time: 3 hours

Signature of Bidder: _____

SECTION III –D MANUFACTURER’S AUTHORIZATION FORM

Note to Bidders: If the Bidder is not the Manufacturer of the goods offered, the Bidder shall require the Manufacturer to fill in this Form in accordance with the instructions indicated. This letter of authorization should be on the original letterhead of the Manufacturer and should be signed by a person with the proper authority to sign documents that are binding on the Manufacturer.

To: *The USP*

WHEREAS *[name of the Manufacturer]* who are established and reputable manufacturers of *[name and/or description of the Goods]* having factories at *[address of factory]*.

do hereby authorize *[name and address of the Bidder]* to submit a Bid, and subsequently negotiate and sign the Contract with you against the Invitation to Bid No **(Tender No.)** for the above Goods manufactured by us.

We hereby extend our full guarantee and warranty for the Goods offered by the above Bidder against this Invitation to Bid.

[signature for and on behalf of Manufacturer]

(TENDER NO.GS 2101-123-09)**SECTION IV - PRICE BID FORM**

1. TO BE SUBMITTED IN A SEPRATE SEALED ENVELOPE CLEARLY MARKED 'PRICE BID'. PLEASE REFER TO ARTICLE 12 OF ITB FOR MORE DETAILS;
2. **BIDDERS DISCLOSING PRICE ELSEWHERE IN THEIR SUBMISSION WILL HAVE THEIR BIDS SUMMARILY REJECTED**

#	Item	Unit Price, VEP – delivery to USP Laucala Campus	Quantity	Total Price, VEP – delivery to USP Laucala Campus
A.	B.	C.	D.	E = C x D
I. Supply and Installation				
1.	IBM eServer Blade Center H Chassis with 2x2900W PSU and DVD Rom		1	
2.	2900W Power Module with Fan Pack		2	
3.	Gb Ethernet Switch Module		2	
4.	20 port 4 GB SAN switch Module		2	
5.	IBM Short Wave SFP Module		4	
6.	IBM Blade Centre Advance Management Module		1	
7.	2.8m, 200-240V, Triple 16A IEC 320-C20		4	
8.	HS22 Blade Servers		3	
9.	300 GB 2.5in SAS Hard		6	
10.	4GB Fibre Channel Expansion Card		3	
		Sub-total, A		
II. Warranty Support for 5 years (This will payable by USP in 5 equal annual instalments at the beginning of each year).				
1.	IBM eServer Blade Center H Chassis with 2x2900W PSU and DVD Rom		1	
2.	2900W Power Module with Fan Pack		2	
3.	Gb Ethernet Switch Module		2	
4.	20 port 4 GB SAN switch Module		2	
5.	IBM Short Wave SFP Module		4	
6.	IBM Blade Centre Advance Management Module		1	
7.	2.8m, 200-240V, Triple 16A IEC 320-C20		4	
8.	HS22 Blade Servers		3	
9.	300 GB 2.5in SAS Hard		6	
10.	4GB Fibre Channel Expansion Card		3	
		Sub-total, B		
<i>Note: The Warranty Sub-total has been multiplied by 0.834 to adjust for payments spread over 4 years, for this component.</i>		Total Price (A+0.834B) in figures (for comparing bids)		
Total price in words				

Country of Origin of proposed Goods: _____

Signature of Bidder: _____

Section V – COMMERCIAL TERMS AND CONDITIONS

1. DEFINITIONS

1. These Commercial Terms and Conditions shall constitute the General Conditions of Contract, where no separate contract is signed with the selected Bidder(s), and, the Bidders by putting their signature and stamp on each page of this Section V are binding themselves to these Terms and Conditions. In the Commercial Terms and Conditions as defined below, words and expressions shall have the following meanings assigned to them:

- (a) “Contract” means the agreement of the Parties relating to the procurement of Goods and / or the USP Purchase Order (PO), and all attachments incorporated by reference, which shall form an integral part of the Contract. In the event of any discrepancy, the documents to prevail shall be given precedence in the following order: (i) the Contract (where separately signed), (ii) the USP Purchase Order, (iii) its attachments, and (iv) these Commercial Terms and Conditions;
- (b) “Contractor” means the person or entity named in the ‘CONTRACTOR’ named field of the USP Purchase Order and any agreed in writing by the USP legal successor(s) in title;
- (c) “Day” means any calendar day;
- (d) "Delivery Date" means the latest possible date by which the Goods shall be delivered by the Contractor to the USP, as specified in the ‘DELIVERY DATE’ named field of the USP Purchase Order;
- (e) “*Force Majeure*” shall mean any unforeseeable exceptional situation or event beyond the Parties’ control which prevents either of them from fulfilling any of their obligations under the Contract, was not attributable to error or negligence on their part (or of their partners, contractors, agents or employees), and could not have been avoided by the exercise of due diligence. Defects in equipment or material or delays in making them available, labour disputes, strikes or financial problems cannot be invoked as *Force Majeure* by the defaulting Party. Neither of the Parties shall be held liable for breach of its obligations under the Contract if it is prevented from fulfilling them by *Force Majeure*. The Party invoking *Force Majeure* shall notify the other without delay, stating the nature, likely duration and foreseeable effect, and take any measure to minimise possible damage;
- (f) “Goods” means all of the goods to be supplied to the USP by the Contractor under the Contract;
- (g) “USP” means The University of the South Pacific;
- (h) “USP Purchase Order” means the USP’s official Purchase Order document;
- (i) “Party” means the USP or the Contractor and “Parties” means the USP and the Contractor; and
- (j) “Place(s) of Delivery” means the location(s) or place(s) where the Goods are to be delivered, as specified in the ‘SHIP TO’ named field of the USP Purchase Order.

2. CONCLUSION OF THE CONTRACT

2.1 The Contract is made between the USP and the Contractor. The Contractor is engaged as an independent contractor for the sole purpose of delivering the Goods.

2.2 The Contract shall be concluded upon the Contractor duly following the countersigning procedure as stated in the USP Letter of Intent (LOI).

3. FUNDING

This Contract shall become and remain effective only on the condition that an official Purchase Order is issued by USP following the conclusion of tender exercise. In the event this is not or no longer the case, the USP shall without unreasonable delay notify the Contractor thereof. Any continuation of the Contractor’s performance under this Contract after being notified by the USP shall be at the Contractor’s risk and expense.

4. DELIVERY AND TAKE-OVER OF GOODS

The Contractor shall deliver the Goods at the Place(s) of Delivery. On behalf of the USP, a duly authorised representative(s), shall take-over the Goods upon delivery. Take-over of the Goods by the USP shall not be deemed acceptance of the Goods by the USP. The time of delivery as specified in the Contract / PO shall be strictly adhered to, and time shall be of the essence.

5. QUALITY OF GOODS

5.1 The Contractor shall deliver Goods that are:

- a) of the quality, quantity and description as required by the Contract / PO; and
- b) free from any right or claim of a third party, including rights based on industrial property or other intellectual property.

5.2 Should the Goods be of the type “homogeneously defined” or disposable, the Contractor shall provide a sample and undertake, certify, and guarantee that all Goods delivered shall be of the same quality and characteristics as the sample(s) provided.

6. INSPECTION AND ACCEPTANCE

6.1 The duly authorised representative(s) of the USP shall have the right, before payment, to inspect the Goods either at the Contractor's stores, during manufacture, at the ports and/or in places of shipment, or at the Place(s) of Delivery. The Contractor shall provide all facilities for such inspection. The USP may issue a written waiver of inspection. Any inspection carried out by representative(s) of the USP or any waiver thereof shall be without prejudice to other provisions of the Contract concerning obligations assumed by the Contractor, including specifications of the Goods.

6.2 Upon delivery and inspection of the Goods, the USP shall inspect the goods as soon as possible and complete the Goods Receiving Document. Should any Goods fail to conform to the technical specifications, codes and standards under the Contract, the USP may reject the Goods. The Contractor shall, at no cost to the USP, replace the rejected Goods or, alternatively, rectify the non-conformity.

6.3 In the case of Goods ordered on the basis of specifications or samples, the USP shall have the right to reject the Goods or any part thereof and terminate the Contract if the Goods do not conform to the specifications and/or samples. Nothing in this clause shall in any way release the Contractor from any warranty or other obligations under the Contract.

7. SHIPPING AND INSURANCE

For overseas orders, shipping arrangements shall be co-ordinated by USP. Original shipping documents including the packing list shall be airmailed by the Contractor to the (Procurement Manager, USP, Laucala Campus, Private Mail Bag, Suva, Fiji Islands).

8. OBSERVANCE OF LAW AND EXPORT LICENCES

The Contractor shall comply with all laws, ordinance, rules and regulations bearing upon the performance of its obligations under the terms of the Contract. If an export licence or any other governmental authorisation is required for the Goods, it shall be the obligation of the Contractor to obtain such licence or governmental authorisation. In the event of the Contractor's failure to obtain such licence or authorisation within a reasonable time, the USP may immediately terminate the Contract. Where the award procedure or execution of the Contract is vitiated by substantial errors or irregularities or by fraud, the USP shall suspend execution of the Contract. Where such errors, irregularities or fraud are attributable to the Contractor, the USP may also refuse to make payments or may recover monies already paid, in proportion to the seriousness of the errors, irregularities or fraud. The purpose of suspending the Contract shall be to verify whether presumed substantial errors and irregularities or fraud have actually occurred. If they are not confirmed, execution of the Contract shall resume as soon as possible. A substantial error or irregularity shall be any infringement of a contract or regulatory provision of Fiji, resulting from an act or an omission that causes or might cause a financial loss.

9. PRICE

The price of the Goods shall be as stated in the Purchase Order and may not be increased.

10. PAYMENT

10.1 Unless otherwise stipulated in the Purchase Order, the USP shall make payment within thirty (30) Days of the later of:

- (a) successful delivery of the goods and or warranty support (annually in advance) to USP as confirmed by **Acting Director – ITS**, the consignee officer, and approved by the Deputy Vice Chancellor;
- (b) receipt of customary shipping documents and any other documents specified in the Contract; and
- (c) receipt of the original invoice issued by the Contractor.

10.2 All invoices shall be in original and shall contain the USP Purchase Order number, and a description, the quantities, unit and total price(s) of the Goods delivered. The currency of invoice and payment shall be as specified in the Purchase Order. Unless otherwise authorised by the USP, a separate invoice shall be submitted for each shipment under the Contract / PO. Subject to Clause 11 below ('Tax Exemption'), if applicable, the VAT amount shall be separately identified in the invoice.

10.3 Payments shall be made in the currency stated in the Contract / PO, on the basis of the equivalent value of FJD on the day of payment and paid directly into the nominated bank account.

10.4 The USP shall not pay any charge for late payments.

11. TAX EXEMPTION

The Contractor's price shall reflect any tax exemption to which the USP is entitled. If it is subsequently determined that any taxes that have been included in the price are not required to be paid or if, having been paid, any such taxes are subject to refunding, the USP shall deduct the amount from the Contract price. Payment of such adjusted amount shall constitute full payment by the USP. In the event that any taxing authority refuses to recognize the USP's exemption from taxes, the Contractor shall immediately consult with the USP to determine a mutually acceptable procedure for settling the applicable amount.

12. WARRANTY

12.1 The Contractor warrants that the Goods furnished under the Contract conform to the technical specifications, description and standards specified in the Contract, and are new and unused, and free from defects in design, workmanship and/or materials.

12.2 The Contractor shall provide a warranty for the Goods for a period of **5 years** from the date of acceptance of the Goods by the USP, unless the standard manufacturer's warranty period is longer in which case the longer period shall apply.

12.3 In the case of "homogeneously defined" or disposable goods, should any portion of the Goods, at any time, not comply with clause 5.1 or 5.2 herein or otherwise prove to be defective, the Contractor shall, upon written notification from the USP, replace that portion of the Goods and bear all costs associated with the replacement of same.

13. PACKING

13.1 The Goods shall be packed and marked in a proper manner and in accordance with the Contract and any statutory requirements and any requirements of the carrier(s). In particular, the Goods shall be marked with the USP Purchase Order number and the net, gross and tare weights, the name of the contents shall be clearly marked on each container and all containers of hazardous goods (and all documents relating thereto) shall bear prominent and adequate warnings.

13.2 The Contractor shall provide such packing of the Goods as is required to prevent their damage or deterioration during transit to their final destination. The packing shall be sufficient to withstand, without limitation, rough handling during transit. Packing case size and weights shall take into consideration,

where appropriate, the remoteness of the final destination and the absence of appropriate handling facilities at all points in transit.

13.3 All packaging materials shall be non-returnable.

14. DEFAULT AND DAMAGES

14.1 If due to reasons attributable to the Contractor, the Contractor fails or refuses to:

- (a) deliver any or all of the Goods under the Purchase Order;
- (b) comply with any or all of the terms and conditions set out in the Purchase Order; or
- (c) deliver any or all of the Goods under the Purchase Order on or before the Delivery Date;

the USP may hold the Contractor in default under the Purchase Order.

14.2 When the Contractor is thus in default, the USP may, by written notice to the Contractor, immediately terminate the Purchase Order in whole or in such part or parts thereof in respect of which the Contractor is in default.

14.3 Alternatively to clause 14 above when the Contractor is thus in default, the USP may, at its own discretion, set a reasonable period of time for the Contractor to remedy its default. Any new Delivery Date shall be specified in a written amendment to the Purchase Order, duly countersigned by the Contractor.

14.4 The USP may, at its discretion, impose penalties upon the Contractor calculated in accordance with clause 15 for each Day the Contractor is late in delivering the Goods past the Delivery Date initially specified in the Purchase Order.

14.5 If the Contractor does not remedy its default within the period of time accorded under clause 16, the USP may, by written notice to the Contractor, terminate the Purchase Order with immediate effect.

14.6 Upon any termination of the Purchase Order, in whole or such part(s) thereof in respect of which the Contractor is in default, the USP may engage another contractor to deliver the Goods and recover any difference in price and any additional costs from the Contractor.

14.7 The Contractor shall indemnify the USP for all losses, charges, costs and expenses, which the USP may suffer or incur as a result the Contractor's default, including those resulting from engaging another contractor pursuant to this clause 14.

15. PENALTIES

If, in accordance with clause 15, the USP imposes penalties on the Contractor, such penalties shall amount to zero point five percent (0.5%) of the total Purchase Order price for each Day following the initial Delivery Date specified in the Purchase Order but shall not amount to more than one hundred percent (100%) of the total Purchase Order value. The penalties for the delay may be deducted by USP from any sum(s) due, or to become due, by the USP to the Contractor.

16. DELAY NOT ATTRIBUTABLE TO THE CONTRACTOR

If the Contractor is delayed at any time in the delivery of the Goods or fulfilment of any other of the Contractor's obligations by any act or omission of the USP, or by any of its officials, or by any separate contractor(s) contracted by the USP, or by changes ordered in the type and/or quantity of the ordered Goods, or the Place(s) of Delivery, or any causes beyond the Contractor's reasonable control, or by any other cause, which the USP determines may reasonably justify the delay, the Delivery Date of the Goods, or fulfilment of any other of the Contractor's applicable obligations shall be extended for such reasonable period of time as the USP and the Contractor mutually determine. The set reasonable period of time and any amended delivery date shall be specified in a written amendment to the Contract / PO, duly countersigned by the Contractor.

17. FORCE MAJEURE

As soon as possible after the occurrence of any event constituting *Force Majeure*, but no later than three (3) Days, the Contractor shall give notice and full particulars in writing to the USP of the *Force Majeure*. If the Contractor is thereby rendered unable, wholly or in part, to meet its obligations under the Contract, the USP may terminate the Contract / PO with immediate effect by providing written notice to the Contractor.

18 INDEMNITY

18.1 The Contractor shall indemnify, hold and save harmless and defend at its own expense the USP, and all of the foregoing's officials, agents, servants and employees from and against all suits, claims, demands and liability of any nature or kind, including costs and expenses, arising out of acts or omissions of the Contractor or its employees, agents or subcontractors in the performance of the Contract.

18.2 Clause 18 shall include, without limitation, claims and liabilities in the nature of workmen's compensation and claims and liabilities arising out of the use of patented inventions or devices.

19. ASSIGNMENT

19.1 The Contractor shall not assign, transfer, pledge or make other disposition of the Purchase Order or any part thereof or of any of the Contractor's rights, claims or obligations under the Purchase Order except with the express written consent of the USP. Any assignment made without such consent shall be void and of no effect.

19.2 The Contractor shall not subcontract any of its obligations under the Contract / PO without the express written consent of the USP. The USP may require the Contractor to furnish particulars of the proposed subcontract as the USP deems necessary.

19.3 The USP's approval of any subcontracting shall not relieve the Contractor from any liability or obligation under the Contract. In any subcontract, the Contractor agrees to bind the subcontractor by the same terms and conditions by which the Contractor is bound under the Contract / PO.

20. INSOLVENCY AND BANKRUPTCY

20.1 Should the Contractor become insolvent or should control of the Contractor change by virtue of insolvency, the USP may with immediate effect and without prejudice to any other right or remedy available to it, suspend the performance of the Contractor's obligations or terminate the Purchase Order with immediate effect, by providing the Contractor with written notice thereof.

20.2 Should the Contractor be adjudged bankrupt, or should the Contractor make a general assignment for the benefit of its creditors, or should a receiver be appointed on account of the Contractor's insolvency, the USP may, without prejudice to any other right or remedy available to it, terminate the Purchase Order with immediate effect by providing the Contractor with written notice thereof.

21. TERMINATION

21.1 The USP shall have the right to terminate the Purchase Order or any of the provisions thereof at any time by serving a **three days** notice to the Contractor.

22. WAIVER

A waiver of any breach of or default under the Contract / PO shall not constitute a waiver of any other breach or default and shall not affect the other terms of the Contract / PO. The rights and remedies provided by the Purchase Order are cumulative and are not exclusive of any other rights or remedies.

23. ADVERTISING

The Contractor shall not advertise or otherwise make public the fact that it is a contractor to the USP. The Contractor shall not in any way use the name, emblem, logo, official seal, or any abbreviation of the USP.

24. DISCRETION AND CONFIDENTIALITY

The Contractor is required to exercise the utmost discretion in all matters relating to the Contract / Purchase Order. Unless required in connection with the performance of the Purchase Order or expressly authorised in writing by the USP, the Contractor shall not disclose at any time to any third party any information which has not been made public and which is known to the Contractor by reason of its association with the USP. The Contractor shall not, at any time, use such information to any private advantage. These obligations do not lapse upon any completion, expiration, cancellation or termination of the Contract / PO.

25. NOTICES

Any notice given in connection with the Contract shall be given in English and in writing and shall be deemed to be validly given if sent by registered mail or by fax or by email to the other Party at the following:

- (a) for the USP: the contact details set out in the 'USP BUYER' name field of the Purchase Order; and
- (b) for the Contractor: the contact details set out in the 'CONTRACTOR' named field of the USP Contract/Purchase Order.

26. STAFF MEMBERS NOT TO BENEFIT

The Contractor shall not grant to any official of the USP any direct or indirect benefit or preferential treatment on the basis of the Purchase Order or the award thereof. Any breach of this provision shall constitute a fundamental breach of the Purchase Order.

27. GOVERNING LAW

The Contract shall be governed by and construed in accordance with the substantive laws of the Republic of Fiji.

28. SETTLEMENT OF DISPUTES

28.1 The Parties shall use their best efforts to negotiate and amicably settle any disputes, controversies or claims arising out of, or in connection with, the Contract / Purchase Order or its interpretation.

28.2 If the Parties fail to settle the dispute amicably within thirty (30) Days of commencement of the negotiations, the dispute shall be settled through arbitration. One (1) sole arbitrator shall be appointed by the Vice-Chancellor of the University of the South Pacific who shall have full powers to make final and binding decisions subject to prevailing laws of Fiji. The appointing authority shall be the Vice-Chancellor of the University of the South Pacific. The place of arbitration shall be Suva and the language used in the arbitration proceedings shall be English.

29. PRIVILEGES AND IMMUNITIES

No provision of the Contract / Purchase Order shall be deemed, or interpreted as, a waiver of the privileges and immunities enjoyed by the USP.

30. AMENDMENTS

No modification, amendment or change to the Contract/Purchase Order, or waiver of any of its provisions, or any additional contractual relationship with the Contractor shall be valid unless approved in the form of a written amendment to the Contract/Purchase Order, signed by a fully authorised representative of each Party.

31. VALIDITY

The invalidity in whole or part of any condition of the Contract / Purchase Order or clause thereof shall not affect the validity of the remainder of such condition or clause.

32. ENTIRE AGREEMENT

The Contract / Purchase Order constitute the entire agreement and understanding of the Parties and supersede any previous agreement, whether orally or in writing, between the Parties relating to the subject matter of the Contract.

33. GOVERNING LANGUAGE

The Contract / Purchase Order shall be executed in the English language which shall be the binding and controlling language for all matters relating to the meaning and interpretation of the Contract / Purchase Order.

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Section VI – PERFORMANCE GUARANTEE – SAMPLE TEMPLATE

(Where required, the contractor shall issue a performance guarantee through its bank. The recommended format for the performance guarantee is detailed below :)

PERFORMANCE GUARANTEE

To: University of the South Pacific, Laucala Campus, Suva.

The undersigned **(BANK NAME)** in **(ADDRESS DETAILS)** taking into consideration:

that **(NAME AND ADDRESS OF VENDOR)** – hereinafter called “contractors“- have received from yourselves - hereinafter called ‘principals‘- an order/ contract for **(DETAILS OF PURCHASE ORDER/ CONTRACT)**, and that the principals require from the contractors a bank guarantee for a sum of **(DETAIL AGGREGATE SUM OF BANK GURANTEE)** as a security for the due fulfillment by the contractors of their contractual obligations in this respect, declares:

hereby to guarantee irrevocably and unconditionally up to a maximum amount of **(DETAIL AGGREGATE SUM OF BANK GURANTEE)** the due fulfilment by the contractors of their obligations in this regard, and consequently undertakes to pay to the principals on their first written demand, all that which the principals declare the contractor is due to them in this respect, such with due observance of the above maximum amount.

Our liabilities under this Letter of Guarantee shall be released when **(CONTRACTORS DETAILS)** have fulfilled the terms and conditions of the Purchase order/contract or on **(three months after the CONTRACT END DATE/ PURCHASE ORDER COMPLETION DATE)** whichever is earlier, unless further extension be made.

Our guarantee expires upon return of this document to us.

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Authorized Signatory of the Bank