



COOK ISLANDS GOVERNMENT

**REQUEST FOR
PROPOSAL**

I s s u e d o n

18 February 2015

F o r

P R O C U R E M E N T O F

**SERVICES FOR THE SUPERVISION OF TE MATO VAI PROJECT STAGE 2
CONSTRUCTION**

RFP Reference No: TMV-RFP.001/2015

February 2015

Letter of Invitation

Reference No: TMV-RFP.001/2015

18 February 2015

To All Tender Parties,

1. The Ministry of Finance Economic Management, (hereinafter called the "Principal"), intends to procure consultancy services for the "**SUPERVISION OF TE MATO VAI STAGE 2 CONSTRUCTION**" (the "Consultancy Services").
2. The successful Consultant will be selected and engaged in accordance with the Cook Islands Government Financial Policies and Procedures Manual Part D Section 3 - Public Tendering, which is available online on the Cook Islands Government Procurement website <http://www.procurement.gov.ck/> and the Request for Proposals to supply the Consultancy Services ("RFP").
3. The RFP includes the following documents that may be downloaded via: WATSAN website www.watsan.gov.ck/waterpartnership, New Zealand Government Electronic Tenders Service <http://www.gets.govt.nz/>, Te Mato Vai website <http://www.tematovai.com> and Pacific Water and Wastes Association website <http://www.pwwa.ws/>
 - i. This Letter of Invitation
 - ii. Instructions to Consultants, Data Sheet and Evaluation Criteria
 - iii. Technical Proposal Standard Forms
 - iv. Financial Proposal Standard Forms
 - v. Background Information and Terms of Reference
 - vi. Draft Consultancy Agreement
4. We would like to stress that Consultants submitting proposals must fully comply with all aspects of the "Instructions to Consultants". Any proposal submitted that fails to contain a complete set of all required documents and technical forms, in the correct language, with all team members CVs duly certified will be rejected prior to technical evaluation. Should any financial information be provided in the technical proposal then again the proposal will be rejected prior to technical evaluation.
5. You are requested to acknowledge to the undersigned by email to <mailto:russell@kew.com.ws> receipt of this Letter of Invitation with a clear indication whether you intend to submit a proposal to supply the Consultancy Services.

Sincerely,



Richard Neves

Financial Secretary

Ministry of Finance Economic Management

TABLE OF CONTENTS

| | | |
|----------|--|-----------|
| 1 | Instructions To Consultants | 4 |
| 1.1 | Introduction | 4 |
| 1.1.1 | General | 4 |
| 1.1.2 | Conflict of Interest | 4 |
| 1.1.3 | Proposal Validity | 5 |
| 1.1.4 | Eligibility of Consultants | 5 |
| 1.2 | Clarifications and Amendments to RFP Documents | 6 |
| 1.3 | Preparation of Proposal | 6 |
| 1.4 | The Technical Proposal | 7 |
| 1.6 | Financial Proposal | 8 |
| 1.7 | Submission, Receipt, and Opening of Proposals | 8 |
| 1.8 | Proposal Evaluation | 9 |
| 1.8.1 | General | 9 |
| 1.8.2 | Evaluation of Technical Proposals | 9 |
| 1.9 | Public Opening and Evaluation of Financial Proposals | 10 |
| 1.9.1 | Public Opening of Financial Proposals | 10 |
| 1.9.2 | Evaluation of Financial Proposals | 10 |
| 1.10 | Ranking of Proposals | 11 |
| 1.11 | Negotiations | 11 |
| 1.12 | Confidentiality | 12 |
| 1.13 | Award of Contract | 12 |
| 1.14 | Contract Commencement Date | 12 |
| 2 | Data Sheet | 13 |
| 3 | ANNEX 1 - Data Sheet Evaluation | 15 |
| 4 | ANNEX 2 - Technical Proposal – Standard Forms | 17 |
| 4.1 | Form Tech-1 Technical Proposal Submission Form | 18 |
| 4.2 | Form Tech-2 Consultants Experience | 19 |
| 4.3 | Form Tech-3 Description of Approach, Methodology and Work Plan for Performing the Assignment | 20 |
| 4.4 | Form Tech-4 Team Composition and Task Assignments | 21 |
| 4.5 | Form Tech-5 Curriculum Vitae (CV) for Proposed Professional Staff | 22 |
| 4.6 | Form Tech-6 Staff Schedule ¹ | 24 |
| 4.7 | Form Tech-7 Work Schedule | 25 |
| 4.8 | Form Tech-8 Statutory Declaration Child Protection | 26 |
| 4.9 | Tech Form-9 Declaration on Fraud and Corruption | 28 |
| 5 | ANNEX 3 - Financial Proposal Standard Forms | 30 |
| 5.2 | Form Fin-1 Financial Proposal Submission Form | 31 |
| 5.3 | Form Fin-2 Summary of Prices | 32 |
| 5.4 | Form Fin-3 Breakdown of Expenses by Activity | 33 |
| 5.5 | Form Fin-4 Breakdown of Remuneration ¹ | 34 |
| 5.6 | Form Fin-5 Breakdown of Expenses (Reimbursable/Out-of-Pocket Expenditure) | 35 |
| 6 | ANNEX 4 - Terms of Reference | 36 |
| 6.1 | Introduction and Background | 36 |
| 6.2 | Rationale | 36 |
| 6.3 | Description of the Assignment | 36 |
| 6.3.1 | General | 36 |

| | | |
|----------|--|-----------|
| 6.3.2 | Contract Management and Administration..... | 37 |
| 6.3.3 | Programme Management..... | 39 |
| 6.3.4 | Quality Management | 39 |
| 6.3.5 | Traffic Management and Site Safety | 41 |
| 6.3.6 | Social and Environmental Management..... | 42 |
| 6.3.7 | Consultation/Liaison | 42 |
| 6.3.8 | Risk Management | 42 |
| 6.4 | Documentation | 43 |
| 6.4.1 | As-Built Drawings..... | 43 |
| 6.4.2 | Stream Crossing Data System Update Sheets | 43 |
| 6.5 | Supervision Services to be provided – Detailed Design Stage 2, Metering and Cross Connections..... | 43 |
| 6.6 | Required Outputs and Reporting | 44 |
| 6.7 | Institutional Arrangements | 44 |
| 6.8 | Timing & Expertise Required..... | 45 |
| 6.9 | Provisional Sums | 46 |
| 7 | Annex 5 - Typical Standard Contract for Consultancy Services | 47 |
| 1.0 | Term of Contract | 52 |
| 2.0 | The Services..... | 52 |
| 3.0 | Invoicing and Payment | 53 |
| 4.0 | Contract Management | 54 |
| 5.0 | Records, Reports and Information | 54 |
| 6.0 | The Contractual Relationship | 55 |
| 7.0 | Subcontractors | 55 |
| 8.0 | Insurance and Indemnity | 56 |
| 9.0 | Conflict of Interest..... | 56 |
| 10.0 | Resolving Disputes | 56 |
| 11.0 | Ending this Contract..... | 57 |
| 12.0 | Intellectual Property Rights..... | 59 |
| 13.0 | Confidential Information..... | 59 |
| 14.0 | Notices..... | 60 |
| 15.0 | Extraordinary Events | 60 |
| 16.0 | Anti-Corruption | 61 |
| 17.0 | Anti-Terrorism | 61 |
| 18.0 | Variations | 61 |
| 19.0 | General..... | 62 |
| 20.0 | Definitions | 63 |

1 INSTRUCTIONS TO CONSULTANTS

1.1 Introduction

1.1.1 General

- i. The Government of the Cook Islands (hereafter the Principal) named in the Data Sheet wishes to select a consulting firm/company/organisation to supply the Consultancy Services described in the Data Sheet following evaluation of proposals submitted in accordance with the method of selection specified in the Data Sheet.
- ii. Consultants submitting proposals to supply the Supervision services for the Te Mato Vai Stage 2 Construction (referred to in these Instructions to Consultants as “Consultants” or “Bidders” or in reference to the singular of each “Consultant” or “Bidder”) should familiarise themselves with local conditions and take them into account in preparing their proposals. To obtain first-hand information on the assignment and local conditions, Consultants are encouraged to visit the project site(s) in consultation with the nominated representative of the Principal. The Consultants representatives should contact the Principal’s Representative named in the Data Sheet to arrange for their visit and they should ensure that these officials are advised of the visit in adequate time to allow them to make appropriate arrangements.
- iii. Consultants shall bear all costs associated with the preparation and submission of their proposals. Costs might include site visit, collection of information; and if selected, attendance at contract negotiations.
- iv. The Principal is not bound to accept any proposal and reserves the right to annul the selection process at any time prior to contract award, without thereby incurring any liability to the Consultants.
- v. In preparing their proposals, Consultants are expected to examine in detail the documents comprising the Request for Proposal (“RFP”), which documents are listed in the Letter of Invitation. Material deficiencies in providing the information requested by the RFP will result in rejection of a proposal.
- vi. This RFP was prepared by the Te Mato Vai Project Management Unit, which consists of professional engineers and financial experts, a communication expert and lawyer, and was also reviewed and endorsed by wider stakeholders and project experts including the project’s steering group members the Cook Islands Tender Committee and their expert group

1.1.2 Conflict of Interest

- i. Consultants must provide professional, objective, and impartial advice and at all times hold the Principal’s interests paramount, without any consideration for future work. In providing advice, they must avoid conflicts with other assignments and their own individual or corporate interests. Consultants shall not be recruited for any assignment that would be in conflict with their prior or current obligations to other clients, or that may place them in a position of not being able to carry out the assignment in the best interest of the Principal. Without limitation on the generality of the foregoing, Consultants, and any of their associates shall be considered to have

a conflict of interest and shall not be recruited under any of the circumstances set forth below;

- a. A firm/company/organisation that has been engaged by the Principal to provide goods, works, or non-consulting services for a project, and each of its affiliates, shall be disqualified from providing consulting services related to those goods, works or services. Conversely, a firm/company/organisation hired to provide consulting services for the preparation of the terms of reference, and its affiliates, shall be disqualified from subsequently providing goods, works or non-consulting services resulting from or directly related to the firm/company/organisation's consulting services for such preparation or implementation.
- b. Neither consultants (including the personnel and sub-consultants of consulting firms) nor any of their affiliates shall be hired for any assignment that, by its nature, may be in conflict with another assignment of the consultants. For example, consultants hired to prepare engineering design for an infrastructure project shall not be engaged to prepare an independent assessment for the same project, and consultants assisting a client in the privatisation of public assets shall neither purchase, nor advise purchasers of, such assets. Similarly, consultants hired to prepare terms of reference for an assignment shall not be hired for the assignment in question.
- c. Consultants (including the personnel and sub-consultants of consulting firms) that have a business or family relationship with a Government employee who is directly involved in preparation of the terms of reference for a contract. The selection process for such contract, or supervision of such contract may not be awarded the contract unless the conflict stemming from this relationship has been resolved in advance in a manner acceptable to the Principal throughout the selection process and the execution of the contract.

1.1.3 Proposal Validity

- i. The Data Sheet indicates how long the Consultants Proposals must remain valid after the Deadline for submission of proposals date. During this period, the Consultants shall maintain the availability of experts nominated in their proposals. The Principal will make its best effort to complete negotiations within this period. In case of need, the Principal may request the Consultants to unconditionally extend the validity period of their proposals for up to 30 days. Consultants have the right to reasonably refuse to extend the validity period of their proposals.

1.1.4 Eligibility of Consultants

- i. Consultants must meet the following general eligibility requirements:
 - a. Possess a valid business license to perform the Consultancy Services in the Cook Islands through Business Trade Industry Board (BTIB) if applicable;
 - b. Be free from insolvency, bankruptcy, or similar status;
 - c. Have legal capacity to enter into contract;
 - d. Have an adequate record of business integrity and ethics, and
 - e. The firm/company/organisation and or any of its principals have not been convicted within the last year of, or currently under investigation for, a criminal

- offence involving corruption or other misconduct reflecting a lack of suitability to participate in procurement.
- f. Any individual or organisation (including, as the Cook Islands Government deems relevant, an organisation's named personnel, directors or equivalent) which meets any one of the following criteria will be ineligible to provide proposals or act as a subcontractor for this opportunity:
 - a. Inclusion on the Asian Development Bank and World Bank "Listing of Ineligible Firms and Individuals". See <http://web.worldbank.org/external/default/main?theSitePK=84266&contentMDK=64069844&menuPK=116730&pagePK=64148989&piPK=64148984>
 - g. Complete a Declaration on Child Protection to ensure promotion of the well-being of children and young persons and seeks to protect them from harm, ill-treatment, abuse, neglect and deprivation – see standard Form TECH-8 of this RFP.
 - h. Complete a Declaration on Fraud & Anti-Corruption acknowledgement – see standard Form TECH-9 of this RFP.

1.2 Clarifications and Amendments to RFP Documents

- i. Consultants may request a clarification of any of the RFP documents up to 5 days before the Deadline for submission of proposals date indicated in the Data Sheet. Any request for clarification must be sent in writing to the address indicated in the Data Sheet. The Principal will respond in writing and will send written copies of the response, including an explanation of the query but without identifying the source of inquiry to all Consultants. Should the Principal deem it necessary to amend the RFP as a result of a clarification, it shall do so following the procedure under Sub-clause (iii)
- ii. There are no negotiations allowed between any Consultant and the Principal or its tender evaluation team during the advertising stage.
- iii. At any time before the Deadline for submission of proposals date, the Principal may, whether at its own initiative, or in response to a clarification requested by a Bidder, amend the RFP by issuing an addendum. The addendum shall be sent to all Bidders and will be binding on them. To give Consultants reasonable time in which to take an amendment into account in their proposals, the Principal may at its discretion, if the amendment is substantial, extend the Deadline for submission of proposals date.

1.3 Preparation of Proposal

- i. A Consultant's proposal (the "Proposal") will consist of two (2) components:
 - a. The Technical Proposal;
 - b. The Financial Proposal.
- ii. The Proposal, as well as all related correspondence exchanged by the Consultants and the Principal, shall be in English. All reports prepared by the contracted Consultant shall also be in English.
- iii. The Proposal should include a cover letter signed by a person(s) with full authorization to make legally binding contractual (including financial)

commitments on behalf of the firm/company/organisation. The letter should specify all association arrangements, and certify that each consultant associated to the firm/company/organisation will perform its designated tasks under the assignment if the lead firm/company/organisation is awarded the contract. (Form TECH-1 and Form FIN-1).

- iv. The Technical Proposal shall clearly demonstrate the Consultant's understanding of the assignment requirements and capability and approach for carrying out the tasks set forth in the TOR through its nominated experts.
- v. The Consultant must tender to provide services for the whole of the Contract Works.

1.4 The Technical Proposal

The Consultant shall provide its Technical Proposal in accordance with Annex 1 "Technical Proposal - Standard Forms" which shall contain the following information set out in paragraphs from i to vii. Such information must be provided by the Consultant and each associate:

- i. A brief description of the organisation and outline of recent experience of the Consultant and each associate on at least 5 assignments of a similar nature is required in Form TECH-2. For each assignment, the outline should indicate inter alia, the assignment, contract amount and the Consultant's involvement. Information should be provided only for those assignments for which the Consultant was legally contracted by the client as a corporate entity or as one of the major companies within an association. Assignments completed by individual experts working privately or through other consulting firms cannot be claimed as the experience of the Consultant, or that of the Consultant's associate(s), but can be claimed by the individuals themselves in their CVs. Consultants should be prepared to substantiate the claimed experience if so requested by the Principal.
- ii. A concise, complete, and logical description of how the Consultant's team will carry out the services to meet the requirements of the TOR using Form TECH-3.
- iii. A work schedule showing in graphical format the timing of major activities, anticipated coordination meetings, and deliverables such as reports required under the TOR using Form TECH-7.
- iv. A staffing schedule (Form TECH-6) indicating clearly the duration in terms of person-months of each nominated expert including any domestic expert (if required). Shall indicate when experts are working in the Project office and when they are working at locations away from the Project office.
- v. Team composition and assigned tasks shall be listed using Form TECH-4.
- vi. Curriculum Vitae (CV) for all proposed professional staff should be included using Form TECH-5. **Note that CVs of all team members must be certified by the subject person.**
- vii. Comments, if any, on the terms of reference in the RFP to improve performance in carrying out the Consultancy Services or any part of it. Innovativeness will be appreciated, including workable suggestions that could improve the quality/effectiveness of the assignment. In this regard, unless the Consultant clearly states otherwise, it will be assumed by the Principal that work required to implement any such improvements, are included in the inputs on the Consultant's Staffing Schedule.

- viii. The Technical Proposal shall not include any financial information and any Technical Proposals containing financial information shall be declared non-responsive and rejected by the Principal.

1.6 Financial Proposal

- ix. All information provided in the Consultants' Financial Proposal will be treated as Confidential with the exception of the Consultant's total price which shall be read out during the opening of the Financial Proposals. The Financial Proposal must be submitted in hard copy using the format provided in Annex 2. The Financial Proposals of bidders whose Technical Proposals fail to achieve the minimum technical score of 750 points will not be opened and the bidder will not be invited to attend the Financial Proposal opening. The Technical Proposal and unopened Financial Proposal will be returned after Contract award.
- x. The amounts stated under the Provisional Sums and the contingency percentages (if any) in the Financial Proposal must be exact figures as specified in the Data Sheet for these cost categories. Also, the list of experts and their respective inputs, identified on Form FIN-4 must match the list of experts and their respective inputs shown in the Staffing Schedule on Form TECH-6 on the Consultant's Technical Proposal. No proposed schedule of payments should be included in the Consultant's Financial Proposal. The payment schedule and the currency of payments will be determined during contract negotiations.
- xi. For the purpose of evaluation of Financial Proposals, the Principal will compute the NZ Dollar equivalent of the cost estimates submitted by the Consultants at the rate of exchange for the applicable currency determined as of the date of opening of Financial Proposals from the source indicated in the Data Sheet.
- xii. This Contract is subject to taxation in Cook Islands, namely VAT and Withholding Tax and the Consultant is responsible for ensuring that any bid fully complies with the taxation requirements in Cook Islands. The Principal reserves the right to forward the value of the tax charged by the Consultant on the Consultancy Fee direct to its Revenue Management division. If this right is exercised by the Principal, the value of the tax charged by the Consultant on the Consultancy Fee will not be included in payments made to the Consultant under the Contract. Withholding Tax is not payable if the Consultant is paying income tax in its country of residence but this is subject to a written exemption obtained by the Revenue Management division. The Consultant must quote fee rates excluding any taxes payable in Cook Islands.

1.7 Submission, Receipt, and Opening of Proposals

- i. The original Proposal (both Technical and Financial Proposals) shall contain no interlineations or overwriting, except as necessary to correct errors made by Consultants themselves. Any such corrections, interlineations or overwriting must be initialed by the authorized person(s) who signed the Proposal.
- ii. An authorized representative of the Consultant shall initial all pages of the original hard copy of the Financial Proposal. No other copies of the Financial Proposal are required.
- iii. The Technical and Financial Proposals shall be marked "ORIGINAL" or "COPY" as appropriate. All required copies of the Technical Proposal as specified in the Data Sheet

will be made from the original. If there are discrepancies between the original and the copies of the Technical Proposal, the original governs.

- iv. The original and all copies of the Technical Proposal to be sent to the Principal shall be placed in a sealed envelope clearly marked ***“TECHNICAL PROPOSAL”***. Similarly, the original Financial Proposal shall be placed in a sealed envelope clearly marked by red felt pen ***“FINANCIAL PROPOSAL”*** and with a warning ***“DO NOT OPEN WITH THE TECHNICAL PROPOSAL”***. The envelopes shall be placed into an outer envelope and sealed. The outer envelope shall bear the submission address, reference number and title of the Project and other information indicated on the Data Sheet. **If the Financial Proposal is not submitted by the Consultant in a separate sealed envelope and duly marked as indicated above, this will constitute grounds for declaring both Technical and Financial Proposals non-responsive.**
- v. Proposals must be delivered, submitted and in the slot of the locked tender box clearly marked “Tenders” at the indicated Principal submission address on or before the time and date stated in the Data Sheet or any new date established by the Principal in accordance with this RFP.
- vi. Facsimile and electronic proposal will not be acceptable as original submissions due to confidentiality issues and to avoid allegations of document tampering. Electronic proposals will be requested by the PMU in addition to an original hard copy after the closing date for ease of analysis. No proposals shall be revealed to anyone, until the agreed day that the Tender box is to be opened

1.8 Proposal Evaluation

1.8.1 General

- i. From the Deadline to the time the Proposals are opened to the time the Contract is awarded, the Consultant should not contact the Principal on any matter related to its Technical and/or Financial Proposal. Any effort by a Consultant to influence the Principal in examination, evaluation, ranking of Proposals or recommendation for award of contract may result in rejection of the Consultant’s Proposal.
- ii. Bidders may request to see evaluation documents; this decision is at the discretion of the Principal.

1.8.2 Evaluation of Technical Proposals

- i. The Principal’s Evaluation Panel (PEP) will be responsible for evaluation and ranking of Proposals received.
- ii. The PEP evaluates and ranks the Technical Proposals on the basis of Proposal’s responsiveness to the TOR using the Evaluation Criteria and points system specified in the Data Sheet. Each Proposal will be given a technical score (St). A proposal shall be rejected at this stage if it fails to achieve the minimum St of 750 points.
- iii. The PEP may need to contact the referees and previous clients of the bidder during the evaluation, so the Consultants are requested to ensure correct details are included in their tender proposal for further referencing.
- iv. A Technical Proposal may not be considered for evaluation in any of the following cases:
 - a. The Consultant that submitted the Proposal or one of its associated consultants does not meet the eligibility requirements described in Sub-Clause 1.1.4(i)a to 1.1.4(i)f;

- b. The Consultant that submitted the Proposal or one of its associated consultants was found not to be legally incorporated or established in their home country;
- c. The Technical Proposal and any other form was submitted in format which does not comply with the requirements in the Instructions;
- d. The Technical Proposal included details of costs of the services or any other financial information;
- e. Technical Proposal reached the Principal after the Deadline for the submission of proposals date specified in the Data Sheet.

A Technical Proposal that does not meet the prescribed criteria is 1.8.1 considered for evaluation will be returned to the bidder together with the unopened Financial Proposal after contract award.

1.9 Public Opening and Evaluation of Financial Proposals

1.9.1 Public Opening of Financial Proposals

Financial Proposals for Consultants who's Technical Proposal scored 750 points and above will, unless otherwise notified by the Principal, be publicly opened on the date, time and place indicated in the Data Sheet. At the public opening of Financial Proposals, Consultant representatives who choose to attend will sign an Attendance Sheet. At the opening:

- i. The mark of each Technical Proposal that met the minimum mark of 750 will be read out
- ii. Each Financial Proposal will be inspected to confirm that it has remained sealed and unopened.
- iii. The Principal's representative will open each of the Financial Proposals related to Technical Proposals that met the minimum mark of 750. Such representative will read out aloud the name of the Consultant and the total price shown in the Consultant's Financial Proposal. This information will be recorded in writing by the Principal's representative.
- iv. The Principal's representative will provide attendees with details of the applicable currency exchange rate(s) which will be used to compute NZ Dollar (NZD) equivalents during evaluation of Financial Proposals. The source for determining the exchange rates will be indicated in the Data Sheet.

1.9.2 Evaluation of Financial Proposals

- i. The detail and contents of each Financial Proposal will be subsequently reviewed by the Principal. During the examination of Financial Proposals, the Principal's staff and any others involved in the evaluation process will not be permitted to seek clarification or additional information from any Consultant who has submitted a Financial Proposal.
- ii. Financial Proposals will be reviewed to ensure that the figures provided therein are consistent with the details of the corresponding Technical Proposal (e.g personnel schedule inputs, number and duration of field trips, applicable per diems, etc)
- iii. The commercial terms in each Financial Proposal will be checked for compliance with the requirements set forth in the Data Sheet. For instance, each Financial Proposal must include provisional sums and contingencies (if any) in the amounts specified in the Data Sheet and the validity period of the Consultants' Proposals must accord with the validity period set down in the Data Sheet.

- iv. Financial Proposals will be checked for computational errors or material omissions, and prices will be corrected and adjusted as necessary. In the case of material omissions, the cost of the relevant Financial Proposal will be increased by application of the highest unit cost and quantity of the omitted item as provided in the other submitted Financial Proposals.
- v. The evaluated total price (ETP) for each Financial Proposal will be determined. The ETP for each Financial Proposal will be converted into New Zealand Dollars using the exchange rates stated by the Principal on the date of public opening of Financial Proposals.
- vi. If a discount has been offered in any Financial Proposal, such discount will be applied pro-rata against each currency cost item, i.e., each expert's remuneration and each out-of-pocket cost item. However, the discount will not apply to the provisional sums or contingency items (if any) shown in the Data Sheet. The Principal reserves the right to reject, at its sole discretion, any or all evaluated Financial Proposals and if necessary, call for submission of new Financial Proposals.
- vii. In order to allow comparison on a common basis, each Financial Proposal will be carefully scrutinized in accordance with the procedure outlined in Clauses 1.8.2 (vi to xii) and ETP in New Zealand Dollars will be determined. The score for each Financial Proposal is inversely proportional to its ETP and will be computed as follows:

Sf = 1,000 x Fm/F where:

- a. Sf is the financial score of the Financial Proposal being evaluated
- b. Fm is the ETP of the lowest priced Financial Proposal
- c. F is the ETP of the Financial Proposal under consideration

The lowest evaluated Financial Proposal will receive the maximum score of 1,000 marks.

1.10 Ranking of Proposals

Following completion of evaluation of Technical and Financial Proposals, final ranking of the Proposals will be determined. This will be done by applying a weight of **80 percent to the technical score and 20 percent to the financial score** of each evaluated qualifying Technical and Financial Proposal and then computing the relevant combined total score for each Consultant. After such final ranking, the first ranked Consultant will be invited for contract negotiations.

1.11 Negotiations

- i. Negotiations will be held at the date, time and address indicated in the Data Sheet. Normally, such negotiations commence not less than ten (10) days after issuance of the Principal's invitation to attend the negotiations. The invited Consultants will, as a prerequisite for attendance at the negotiations, confirm availability of all nominated experts and satisfy such other pre-negotiation requirements as the Principal may specify. Failure in satisfaction of such requirements may result in the Principal proceeding to negotiate with the next-ranked Consultant. Representatives conducting

- negotiations on behalf of the Consultant must have written authority to negotiate technical, financial, and other terms and conclude a legally binding agreement.
- ii. The technical negotiations cover review of the Consultant's Technical Proposal, including the proposed technical approach and methodology, work plan, staffing schedule, organizational arrangements, and any suggestions made by the Consultant or the Principal to improve the implementation of the assignment. Negotiations will not result in substantial modifications to either the Consultant's Technical Proposal or the TOR.
 - iii. The financial negotiations will generally fine-tune duration of experts' inputs and quantities of out-of-pocket expenditure items may be increased or decreased from the relevant quantities stated in the Financial Proposal. Unless exceptional circumstances exist, the experts' remuneration and specified unit rates for out-of-pocket expenditures will not be subject to negotiations.
 - iv. The Principal's Representative shall prepare minutes of the negotiations which will be signed by the Principal and the Consultant.
 - v. If contract negotiations fail for any reason, the Principal will commence negotiations with the next ranked Consultant.

1.12 Confidentiality

Information relating to details of evaluation of Proposals leading up to contract award shall not be disclosed to Consultants who submitted Proposals or to other persons not officially and directly concerned with the recruitment process until the winning firm/company/organisation has been notified and contract awarded.

1.13 Award of Contract

After completion of negotiations, the Principal shall award the contract to the selected Consultant. Upon execution of the Contract, the Principal shall promptly notify the other Consultants who submitted Proposals that they were unsuccessful by formal letter of the results. An unsuccessful bidder may contact the Principal for further information leading to their unsuccessful proposal and even request to sight the evaluation panel decision.

1.14 Contract Commencement Date

The Data Sheet indicates the anticipated date for the commencement of the contract services. The Principal reserves the right to change the commencement date as it sees fit and shall notify the selected Consultant accordingly.

2 DATA SHEET

Project: Procurement of Services for the Supervision of Te Mato Vai Stage 2 Constructions.

Reference Number: TMV-RFP.001/2015

| | | |
|------------------------|---|--|
| Clause Reference (ITC) | | |
| 1.1.1(i) | Principal | Ministry of Finance and Economic Management (MFEM) |
| | Method of Selection | Quality and cost based selection (QCBS) |
| | Consultancy Services | Supervision of Te Mato Vai Stage 2 Construction |
| | <p>Contact Person(s) and Address of the Principal: Richard Neves Financial Secretary Ministry of Finance Economic Management Avarua, Rarotonga, Cook Islands richard.neves@cookislands.gov.ck</p> <p>Also attention: Garth Henderson, Client Side Representative garth.henderson@cookislands.gov.ck</p> | |
| 1.1.3(i) & 1.8.2(iii) | Validity of Proposal | 60 (sixty) days from Deadline for submission of proposals date |
| 1.1.1 (ii) | <p>Name and Address of the Principal's Representative where correspondence concerning this Request for Proposal is to be sent: Russell Abrams Project Manager Te Mato Vai Project Management Unit PO Box 3286 TMV Compound Avarua Rarotonga, Cook Islands russell@kew.com.ws</p> | |
| 6.9 | Provisional Sums for land transportation, safety tools and equipment. Reimbursable AT COST on provision of receipts with invoice | \$100,000 NZD |
| 1.8.1 (iv) | Reference exchange rate | ANZ Bank on the due date |
| 1.6(vii) | Local Taxation | VAT & PAYE for staff |
| 1.6(iii) | <p>Consultants must submit an original and 4 copies of the Technical Proposal, an original and 4 copies of the Financial Proposal to the Te Mato Vai Project Management Unit at the address below in 6.4</p> | |
| | <p>Consultants must submit the Proposal at the following address: Te Mato Vai Project Management Unit CCECC Compound, Avarua P O Box 3286, Rarotonga, Cook Islands</p> | |

| | | |
|-----------------------|--|--|
| 1.6(v) & 1.7.2(iv)(e) | Deadline for submission of proposals date ¹ (time and date) | 12pm Wednesday 04 March 2015 2015 (local CI time) <i>Please Note:</i> 1. <i>No Extension Request allowed</i> 2. <i>Section 2.1 deadline for clarification requests.</i> |
| 1.7.2(ii) | Evaluation Criteria | Refer to Annex 1 - Data Evaluation Sheet |
| 1.8.1 | Expected date, time and place of Opening of Financial Proposals | Wednesday 18 March 2015, 2pm (afternoon) at Te Mato Vai Project Management Unit Office |
| 1.10(i) | Expected Date and time to start contract negotiations at this address Time- 10am Venue – Project Management Unit Te Mato Vai Date – 25 March 2015 | |
| 1.13 | Expected date for commencement of consulting services | At the date of contract award |

¹ Proposal consists of Technical and Financial Proposals.

3 ANNEX 1 - DATA SHEET EVALUATION

| Evaluation Criteria | | | Maximum Weight | Company 1 | | Company 2 | | Company 3 | |
|---------------------|---|---|----------------|-----------|-------|-----------|-------|-----------|-------|
| | | | | Rating | Score | Rating | Score | Rating | Score |
| I | Qualification of the Firm/company/organisation | | 200 | | | | | | |
| | a | Experience in similar works | 100 | | | | | | |
| | b | Experience in similar geographical areas and familiarity of the Pacific water utilities operations and management | 100 | | | | | | |
| II | Approach and Methodology | | 300 | | | | | | |
| | a | Understanding of the objectives | 100 | | | | | | |
| | b | Quality of the methodology | 100 | | | | | | |
| | c | Innovativeness | 50 | | | | | | |
| | d | Use of local resources | 50 | | | | | | |
| III | Work Plan | | 100 | | | | | | |
| | a | Logical planning of outputs for completion | 100 | | | | | | |
| IV | Personnel | | 400 | | | | | | |
| | Supervising Engineer / Team Leader | | 100 | | | | | | |
| | a | Qualifications | 40 | | | | | | |
| | b | Relevant experience in tasks required and familiarity with local conditions including the Pacific water utilities operations and management | 50 | | | | | | |
| | c | Experience in training / capacity building | 10 | | | | | | |
| | Construction Engineer | | 100 | | | | | | |
| | a | Qualifications | 40 | | | | | | |
| | b | Relevant experience in tasks required and familiarity to water treatment systems such as settling tanks, AVFs and systems relevant to the Pacific countries | 50 | | | | | | |
| | c | Experience in communication with traditional leaders and local community | 10 | | | | | | |

| | | | | | | | | | |
|--------------|---|--|-------------|--|--|--|--|--|--|
| | Site Supervisors (4) | | 200 | | | | | | |
| a | Qualifications | | 100 | | | | | | |
| b | Relevant experience in tasks required and familiarity to local water supply systems and conditions in Cook Islands. | | 100 | | | | | | |
| | | | | | | | | | |
| TOTAL | | | 1000 | | | | | | |
| | <u>Rating</u> | | | | | | | | |
| | <i>Excellent</i> | | 100% | | | | | | |
| | <i>Very good</i> | | 90% | | | | | | |
| | <i>Above average</i> | | 80% | | | | | | |
| | <i>Average</i> | | 70% | | | | | | |
| | <i>Below average</i> | | 50% | | | | | | |
| | <i>Non complying</i> | | 0% | | | | | | |
| | <u>Score</u> | | | | | | | | |
| | <i>Maximum Weight x Rating/100</i> | | | | | | | | |

4 ANNEX 2 - TECHNICAL PROPOSAL – STANDARD FORMS

| | |
|--------|--|
| TECH-1 | Technical Proposal Submission Form |
| TECH-2 | Consultant Firm/company/organisation's Experience |
| TECH-3 | Description of the Approach, Methodology and Work Plan for Performing the Assignment |
| TECH-4 | Team Composition and Task Assignments |
| TECH-5 | Curriculum Vitae (CV) for Proposed Professional Staff <i><u>(Note: Please ensure all CVs are signed and certified by the subject staff)</u></i> |
| TECH-6 | Staff Schedule |
| TECH-7 | Work Schedule |
| TECH-8 | Declaration on Child Protection |
| TECH-9 | Declaration on Fraud & Anti-Corruption |

4.1 Form Tech-1 Technical Proposal Submission Form

(Location, Date)

To: ___ (Name and address of (Principal))

Dear Sir or Madam:

We, the undersigned, offer to provide the consulting services for _____(Insert title of assignment) in accordance with your Request for Proposals dated ___(Insert Date) and our Proposal. We are hereby submitting our Proposal, which includes this Technical Proposal, and a Financial Proposal sealed under a separate envelope.

We are submitting our Proposal in association with:_____ (Insert a list with full name and address of each associated Consultant or insert 'none')

We hereby declare that all the information and statements made in this Proposal are true and accept that any misinterpretation contained in it may lead to our disqualification.

If negotiations are held during the period of validity of the Proposal, as indicated in the Data Sheet, we undertake to negotiate on the basis of the proposed staff. Our Proposal is binding upon us and subject to the modifications resulting from Contract negotiations.

We undertake, if our Proposal is accepted, to initiate the consulting services related to the assignment not later than the date indicated in the Data Sheet.

We understand you are not bound to accept any Proposal you receive.

Yours sincerely,

Authorized Signature (In full and initials): _____

Name and Title of Signatory: _____

Name of Firm/company/organisation: _____

Address: _____

4.2 Form Tech-2 Consultants Experience

(Using the format below, provide information on a maximum of 5 assignments for which your firm/company/organisation, and each associate for this assignment, was legally contracted either individually as a corporate entity or as one of the major companies within an association, for carrying out consulting services similar to the ones requested under this assignment.)

| | |
|--|---|
| Assignment name: | Approx. value of the contract (in NZD as applicable): |
| Country: Location within country: | Duration of assignment (months): |
| Name of Client: | Total N ^o of staff-months of the assignment: |
| Address: | Approx. value of the services provided by your firm under the contract (in NZD): |
| Start date (month/year): Completion date (month/year): | N ^o of professional staff-months provided by associated Consultants: |
| Name of associated Consultants, if any: | Name of senior professional staff of your firm involved and functions performed (indicate most significant profiles such as Project Director/Coordinator, Team Leader): |
| Narrative description of Project: | |
| Description of actual services provided by your staff within the assignment: | |

Firm/company/organisation's Name: _____

4.3 Form Tech-3 Description of Approach, Methodology and Work Plan for Performing the Assignment

(Technical approach, methodology and work plan are key components of the Technical Proposal. You are suggested to present your Technical Proposal divided into the following three chapters:

- a) Technical Approach and Methodology,*
- b) Work Plan, and*
- c) Organization and Staffing,*

Consultants are encouraged to respond directly to the TORs. Comments to the TORs may be provided in Form TECH 3.

*a) Technical Approach and Methodology. In this chapter you should explain your understanding of the objectives of the assignment, approach to the services, methodology for carrying out the activities, including transfer of knowledge, and obtaining the expected output, and the degree of detail of such output. You should highlight the problems being addressed and their importance, and explain the technical approach you would adopt to address them. You should also explain the methodologies you propose to adopt and highlight the compatibility of those methodologies with the proposed approach. **(Maximum four(4) pages – using Single Line Spacing, Arial 10 font)***

b) Work Plan. In this chapter you should propose the main activities of the assignment, their content and duration, phasing and interrelations, milestones (including interim approvals by the Principal), and delivery dates of the reports. The proposed work plan should be consistent with the technical approach and methodology, showing understanding of the TOR and ability to translate them into a feasible working plan. A list of the final documents, including reports, drawings, and tables to be delivered as final output, should be included here. The work plan should be consistent with the Work Schedule of Form TECH - 6 & 7.

c) Organization and Staffing. In this chapter you should propose the structure and composition of your team. You should list the main disciplines of the assignment, the key expert responsible, and proposed technical and support staff.)

4.4 Form Tech-4 Team Composition and Task Assignments

| Professional Staff | | | | |
|--------------------|-----------------------------|-------------------|-------------------|------------------|
| Name of Staff | Firm /company /organisation | Area of Expertise | Position Assigned | Task(s) Assigned |

4.5 Form Tech-5 Curriculum Vitae (CV) for Proposed Professional Staff

(Maximum Three (3) pages)

-
1. **Proposed Position** (only one candidate shall be nominated for each position): _____
 2. **Name of Firm/company/organisation** (Insert name of firm/company/organisation proposing the staff): _____
 3. **Name of Staff** (Insert full name): _____
 4. **Date of Birth:** _____ **Nationality:** _____
 5. **Education** (Indicate college/university and other specialized education of staff member, giving names of institutions, degrees obtained, and dates of obtainment): _____

 6. **Membership of Professional Associations:** _____

 7. **Other Training** (Indicate significant training since degrees under 5 - Education were obtained): _____
 8. **Countries of Work Experience:** (List countries where staff has worked in the last ten years): _____

 9. **Languages** (For each language indicate proficiency: good, fair, or poor in speaking, reading, and writing): _____

 10. **Employment Record** (Starting with present position, list in reverse order every employment held by staff member since graduation, giving for each employment (see format here below): dates of employment, name of employing organization, positions held.):

From (Year): _____ To (Year): _____
Employer: _____
Positions held: _____

11. Detailed Tasks Assigned

(List all tasks to be performed under this assignment)

12. Work Undertaken that Best Illustrates Capability to Handle the Tasks Assigned

(Among the assignments in which the staff has been involved, indicate the following information for those assignments that best illustrate staff capability to handle the tasks listed under point 11.)

Name of assignment or project: _____

Year: _____

Location: _____

Client: _____

Main project features: _____

Positions held: _____

Activities performed: _____

13. Certification:

I, the undersigned, certify that to the best of my knowledge and belief, this CV correctly describes myself, my qualifications, and my experience. I understand that any wilful misstatement described herein may lead to my disqualification or dismissal, if engaged.

Signature

Date

4.6 Form Tech-6 Staff Schedule¹

| N° | Name of Staff | Staff input (in the form of a bar chart) ² | | | | | | | | | | | | Total staff-week input | | | | |
|----------------|---------------|---|---|---|---|---|---|---|---|---|----|-----------------|----|------------------------|------|--------------------|-------|--|
| | | 1 | 2 | 3 | 4 | 5 | 6 | 7 | 8 | 9 | 10 | 11 | 12 | n | Home | Field ³ | Total | |
| Foreign | | | | | | | | | | | | | | | | | | |
| 1 | | <i>(Home)</i> | | | | | | | | | | | | | | | | |
| | | <i>(Field)</i> | | | | | | | | | | | | | | | | |
| 2 | | | | | | | | | | | | | | | | | | |
| | | | | | | | | | | | | | | | | | | |
| 3 | | | | | | | | | | | | | | | | | | |
| | | | | | | | | | | | | | | | | | | |
| n | | | | | | | | | | | | | | | | | | |
| | | | | | | | | | | | | | | | | | | |
| | | | | | | | | | | | | Subtotal | | | | | | |
| Local | | | | | | | | | | | | | | | | | | |
| 1 | | <i>(Home)</i> | | | | | | | | | | | | | | | | |
| | | <i>(Field)</i> | | | | | | | | | | | | | | | | |
| 2 | | | | | | | | | | | | | | | | | | |
| | | | | | | | | | | | | | | | | | | |
| n | | | | | | | | | | | | | | | | | | |
| | | | | | | | | | | | | | | | | | | |
| | | | | | | | | | | | | Subtotal | | | | | | |
| | | | | | | | | | | | | Total | | | | | | |

n,

4.8 Form Tech-8 Statutory Declaration Child Protection

I, _____ of _____
your full legal name *your address*

your address cont.

your job title / profession

do solemnly and sincerely declare on behalf of

(the Entity)

full legal name of entity

that:

- neither the Entity nor its parent company nor any related entity (if any) are currently, nor have been at any time, the subject of an Investigation into alleged, attempted, suspected or detected Abuse or Exploitation of Children.

Or

- the Entity, its parent company or a related entity (if any) is currently, or has been, the subject of an Investigation into alleged, attempted, suspected or detected Abuse or Exploitation of Children and I will provide CIG/MFAT with any details of the Investigation that CIG/MFAT may request, including details of the outcome of the Investigation (if known).

And

Should CIG/MFAT provide funding to or engage the Entity, it will:

- upon request, provide to CIG/MFAT evidence that it has in place policies and procedures relating to the protection of Children, including training for all staff working directly with Children in recognising and responding to suspected Child Abuse and Exploitation;
- abide by laws relating to the protection of Children (including labour laws) in the jurisdiction(s) relevant to the Entity and the Funded Activity or (if separate to the Entity) the Funded Organisation;
- act in accordance with any relevant professional and ethical standards and codes of conduct;
- comply with any CIG/MFAT policies that are made available to the Entity and CIG/MFAT's reasonable directions concerning the mitigation of any risk of Child Abuse and Exploitation that may be inherent in or arise during the course of the Funded Activity or the activities of the Funded Organisation;
- document and immediately report to CIG/MFAT any case of alleged, attempted, suspected or detected Child Abuse and Exploitation that arise during the Entity's involvement in the Funded Activity or with the Funded Organisation and take measures to address the situation in accordance with CIG/MFAT's reasonable instructions (including reporting the situation to relevant authorities); and
- provide reasonable assistance to CIG/MFAT in any investigation into alleged,

attempted, suspected or detected Child Abuse and Exploitation relating to the Funded Activity or Funded Organisation.

I make this solemn declaration conscientiously believing the same to be true and by virtue of the Oaths and Declarations Act 1957.

Declared at:

_____ *City and country in which declaration is made*

This

_____ day of _____

day

month

year

_____ *your signature*

_____ *Witness signature*

4.9 Tech Form-9 Declaration on Fraud and Corruption

I, _____ of _____
your full legal name *your address*

your address cont. *your job title / profession*

do solemnly and sincerely declare on behalf of

(the Entity)

full legal name of entity

that:

- neither the Entity nor its parent company or any related entity (if any) are currently, nor have been at any time during the last five years, the subject of a Fraud Related Investigation.

Or

- the Entity, its parent company or a related entity (if any) is currently, or has been during the last five years, the subject of a Fraud Related Investigation and I will provide CIG/MFAT with any details of the investigation that CIG/MFAT may request, including details of the outcome of the investigation (if known).

And

Should CIG/MFAT provide funding to or engage the Entity, it will:

- use reasonable endeavours to mitigate the risk of Fraud occurring in the activities and projects that it is involved in;
- take reasonable steps to avoid real or apparent conflicts of interest in the activities and projects that it is involved in;
- abide by laws relating to Fraud in the jurisdiction(s) relevant to the Entity or funded activity or engagement;
- require its personnel to act in accordance with any relevant professional and ethical standards and codes of conduct;
- immediately report to CIG/MFAT any case of alleged, attempted, suspected or detected Fraud which arises during the term of the CIG/MFAT funding or engagement and relates to the Entity or activity or engagement and take measures to address the situation in accordance with CIG/MFAT's reasonable instructions (including reporting the situation or relevant authorities);
- provide reasonable assistance to CIG/MFAT in any investigation into alleged, attempted, suspected or detected Fraud relating to the Entity or activity or engagement; and
- not provide false or misleading information to CIG/MFAT or fail to provide

information when it has a legal obligation to do so.

I make this solemn declaration conscientiously believing the same to be true and by virtue of the Oaths and Declarations Act 1957.

Declared at:

_____ *City and country in which declaration is made*

This

_____ day of _____

Day

month

year

_____ *your signature*

_____ *Witness signature*

5 ANNEX 3 - FINANCIAL PROPOSAL STANDARD FORMS

- FIN-1 Financial Proposal Submission Form
- FIN-2 Summary of Prices
- FIN-3 Breakdown of Expenses by Activity
- FIN-4 Breakdown of Remuneration
- FIN-5 Breakdown of Expenses (Reimbursable)

5.2 Form Fin-1 Financial Proposal Submission Form

(Location, Date)

To: ___ (Name and address of (Principal))

Dear Sir/Madam:

We, the undersigned, offer to provide the consulting services for _____ (Insert title of assignment) in accordance with your Request for Proposal dated _____ (Insert Date) and our Technical Proposal. Our attached Financial Proposal is for the sum of _____ (Insert amount(s) in words and figures¹).

Our Financial Proposal shall be binding upon us subject to the modifications resulting from Contract negotiations, up to expiration of the validity period of the Proposal, as indicated in the Data Sheet.

We understand you are not bound to accept any Proposal you receive.

Yours sincerely,

Authorized Signature (In full and initials): _____

Name and Title of Signatory: _____

Name of Firm/company/organisation: _____

Address: _____

1 Amounts must coincide with the ones indicated under Total Price of Financial Proposal in Form FIN-2.

5.3 Form Fin-2 Summary of Prices

| Item | Prices |
|--|------------------------------------|
| | <i>Total in New Zealand Dollar</i> |
| Total Price of Financial Proposal ¹ | |

1 Indicate the total price to be paid by the Principal in NZD. Such total prices must coincide with the sum of the relevant Subtotals indicated in all Forms FIN-3 provided with the Proposal.

Price must include all taxes and the Provisional Sum

5.4 Form Fin-3 Breakdown of Expenses by Activity

| | |
|---|--|
| Activities²: _____ | Description³: _____ |
| <i>Price Components</i> | Expenses <i>(NZD)</i> |
| Consultant Fee / Remuneration ⁴ | |
| VAT on Consultant's Fee @ 15% | |
| Expenses ⁴ | |
| Sub total | |

- 1 For each currency, the sum of the relevant Subtotals of all Forms FIN-3 provided must coincide with the Total Prices of Financial Proposal indicated in Form FIN-2.
- 2 Names of activities should be the same as, or correspond to the ones indicated in the second column of Form TECH-7.
- 3 Short description of the activities whose price breakdown is provided in this Form.
- 4 For each currency, Remuneration and Expenses must respectively coincide with relevant Total Prices indicated in Forms FIN-4, and FIN-5.

5.5 Form Fin-4 Breakdown of Remuneration¹

(Information to be provided in this Form shall only be used to establish payments to the Consultant for possible additional services requested by the Principal throughout the duration of this contract and/or for the purpose of verification of the market reasonableness of the prices offered)

| Name ² | Position ³ | Staff-work day Rate ⁴ (in NZD) |
|-----------------------------------|-----------------------|---|
| Foreign/Non-resident Staff | | |
| | | <i>(Home)</i> |
| | | <i>(Field)</i> |
| | | |
| | | <i>(Home)</i> |
| | | <i>(Field)</i> |
| | | |
| | | |

- 1 Form FIN-4 shall be filled in for the same Professional and Support Staff listed in Form TECH-6.
- 2 Professional Staff should be indicated individually; Support Staff should be indicated per category (e.g.: draftsmen, clerical staff).
- 3 Positions of the Professional Staff shall coincide with the ones indicated in Form TECH-4.
- 4 Indicate separately staff-day rate and currency for home and field work.

5.6 Form Fin-5 Breakdown of Expenses (Reimbursable/Out-of-Pocket Expenditure)

Information to be provided in this Form shall only be used to establish payments (Reimbursable Expenses) to the Consultant for possible additional services requested by the Principal throughout the duration of this contract and/or for the purpose of verification of the market reasonableness of the prices offered)

The items in the list below are indicative. Consultants are requested to modify them to reflect the actual structure of their expenses.

| N° | Description ¹ | Unit | Unit Price in NZD |
|----|--|------|-------------------|
| | Per diem allowances | Day | |
| | International flights ² | Trip | |
| | Miscellaneous travel expenses | Trip | |
| | Communication expenses between <i>(Insert place)</i> and <i>(Insert place)</i> | | |
| | Drafting, reproduction of reports | | |
| | Equipment, instruments, materials, supplies, etc. | | |
| | Use of computers, software | | |
| | Laboratory tests. | | |
| | Subcontracts | | |
| | Local project transportation expense | | |
| | Office rent, clerical assistance | | |

¹ Delete items that are not applicable or add other items according to details in the Data Sheet.

² Indicate route of each flight, and if the trip is one- or two-ways, economy class only.

6 ANNEX 4 - TERMS OF REFERENCE

TMV-RFP.001/2015: Procurement of Services for the Administration and Implementation Management of Te Mato Vai Stage 2 Construction.

6.1 Introduction and Background

The Construction of the Cook Islands “Te Mato Vai” Water Upgrading Project is being delivered in two Stages. Stage 1 the “Ring Mains Upgrade” encompasses the replacement of the majority of the existing ring mains network which has commenced in April 2014. Stage 2 encompasses the remainder of water supply system upgrade. Rehabilitation of existing water catchment intakes (10 sites), construction of additional storage capacity, construction of water treatment plants, trunk mains replacement, ring mains interface connection works, required upgrade and replacement of distribution pipelines (ring mains and local) connections to existing consumers on the current water supply network. Stages 1 and 2 will run concurrently and have interface. Stage 2 detailed designs are now been completed and are currently undergoing peer review. Stage 2 Physical Works are planned to commence in March 2014. The Scope of Stage 2 assignment is to supply administration, contract management and contract supervision for the Te Mato Vai Stage 2 Physical Works Contract.

6.2 Rationale

To build a water supply system that is cost-effective, simple to operate, is low maintenance and adequate to meet the present and future water demand of the people of Rarotonga, Cook Islands.

Construction monitoring and supervision is of great importance to ensure that a project is completed on time and on budget, while meeting all relevant regulations and quality standards.

6.3 Description of the Assignment

The Consultant’s assignment is to administer and manage the implementation of all of Te Mato Vai Project Stage 2 construction with a high emphasis on Management and Surveillance of the Physical Works. We anticipate this will require but not limited to the following outputs:

- Supervision of Te Mato Vai Stage 2 Construction
- Supervision of Te Mato Vai Metering Installation
- Supervision of Te Mato Vai Cross Connection Installation

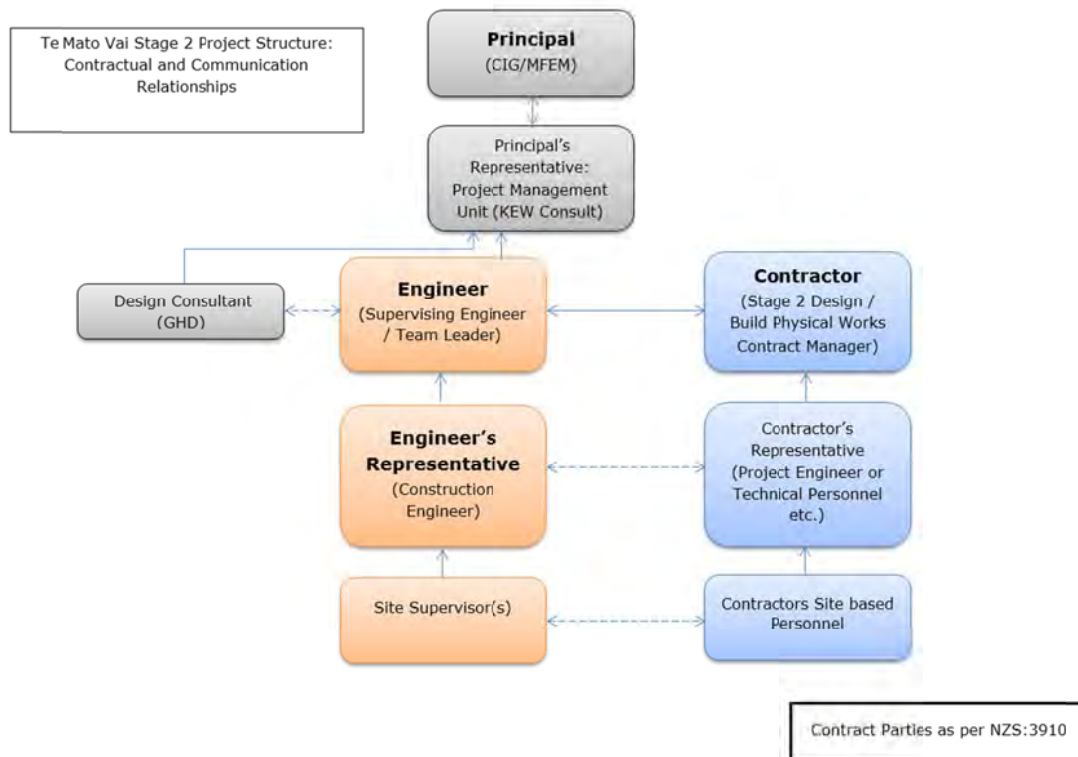
6.3.1 General

The Consultant shall manage and monitor the performance of the Physical Works by observing, verifying, and checking all aspects of the Physical Works for compliance with the contract documents. This shall include management of Design/Build components with in the Physical Works project.

The Consultant shall provide the level of service for construction, contract management and surveillance as defined in the Scope of Services.

Only suitably qualified and experienced staff with a record of effective performance shall be appointed to fulfil the roles of (Te Mato Vai Project Structure diagram):

- Supervising Engineer / Team Leader
- Construction engineer(s).
- Site Supervisor(s).



Te Mato Vai Stage 2 Project Structure Diagram

6.3.2 Contract Management and Administration

The Consultant shall be responsible for ensuring that (NB this list applies to the 3 contracts listed in 6.3):

1. Assistance is provided to the Project Management Unit (PMU) in contract negotiations with preferred construction contractor including the peer review of the design and build aspects of the Stage 2 works
2. Following award of construction tender, the contractor will be provided with a copy of the contract documents including the design drawings, notification of the date of possession of site and the contract completion date. Any change to the contract completion date shall be notified immediately to the works contractor;
3. All appropriate Utility Service Operators and Utility Service Providers will be advised of the award of the construction contract and make the necessary arrangements for services work to fit in with the construction programme.
4. All the Insurances required of the Contractor are effected and remain in full force

- over the contract period;
5. Ensure that all bonds required to be furnished are so furnished, and notice of release of any bond, or recoveries under any bond, are duly actioned;
 6. The Contractor fulfils the requirements of all current and relevant Acts, Regulations, and Bylaws, and that property agreements, consents, and permits are complied with in full. Without limitation this shall include any local relevant legislation as for the following:
 - Ministry of Public Health Act: 2004
 - Public Holidays Act 1999
 - Standards related to Occupational Health and Safety
 - Building Control and Standards Act: 1991
 - Ministry of Support Services Act: 1974
 - Rarotonga Water Works Ordinance: 1960
 - Environmental Act 2003
 - Cook Island Land Use Act 1969
 - Transport Act: 1995
 - Standards related to Traffic Management & Road Safety
 - Employment Relations Act 2012
 7. The Contractor complies with all relevant local Standards, Guidelines and Contractor Instructions;
 8. The Environmental Management Form (developed and implemented in accordance with NES guidelines) is robust and kept up-to-date. This form and its accuracy is a key component to the project documents and processes such as the Risk Management Plan and the Contractor's Social and Environmental Management Plan etc. This also forms the basis for monitoring the stipulated consent conditions in accordance with the PMU's Consent
 8. Where the Contractor has discretion of choice regarding the purchase of safety devices to be used on the project, the Contractor must notify the Consultant of the selected device type to ensure the specific details of the installation are incorporated in the final design. The contractor must have approval in writing from the consultant before any purchases are made or actioned ;
 9. The Contractor will complete and deliver to the Consultant any installation checklists provided by the contractor with the packaged components;
 10. Price variations are requested from the Contractor where necessary and then evaluated and discussed with the PMU prior to additional work being instructed, any variations will only be considered as valid when written consent is provided;
 11. The Contractor's claims for payment are verified and certified in accordance with the Physical Works Conditions of Contract, and Principal procedures:
 - The General Conditions of Contract require the Principal to make payment to the Contractor within seven working days of the date of the certificate of the contractor's claim for payment. The Engineer must certify the progress payment within ten working days of the date of receipt of the Contractor's claim.
 - The Principal generally only makes payments on the twentieth day of each month. Claims for payment must be received by the Principal to allow at least five clear working days for processing before the payment date.

- It is the responsibility of Consultant to arrange the certification of all progress payments, and forward them to the PMU for preparation of payment vouchers and payment certificates, in such a manner as to avoid the possibility of claims for interest due to late payment. The Consultant must not certify payments that exceed the approved contract budget without previously obtaining the PMU approval. The request shall be detailed on the form ***Request for Extension of Contract Budget - Physical Works*** and forwarded to the PMU as soon as the Consultant is aware that the budget may be over-expended.
 - The Consultant shall provide certified payments attached to a Contractor's completed invoice cover sheet.
12. Assessments and recommended actions and responses in relation to all claims received from the Contractor are timely and thorough;
 13. Issues related to the handling of liquidated damages are actioned in accordance to relevant construction contract clauses
 14. Prepare the "snag" list in collaboration with the contractor, Principal and PMU
 15. Draft the practical project completion report for the 3 contracts listed in 6.3.

The Consultant is obliged to ensure that the workmanship of all Contractors engaged to deliver Stage 2 tasks meets or exceeds the engineers contracted construction standards. The Consultants supply role assumes the responsibility for the delivery of the rectification of all failures to deliver contracted construction standards within the defects liability period.

6.3.3 Programme Management

The Consultant shall be responsible for promoting progress of the works in accordance with the target completion date. This will include:

1. Reviewing and approving construction programmes submitted by the Contractor and updates thereto;
2. Timely and accurate monitoring of performance against the approved programmes in order to determine and manage slippage before it compromises project completion;
3. Where a measure and value contract is being utilised, work with the Contractor to deliver the best value for money engineering solutions, affirm payment claims and submit payment certificates to PMU for payment
4. Monitor and report monthly or sooner as requested on Stage 2 financial performance, particularly those aspects where cost overruns may materialise
5. Issuing appropriate instructions to direct improved performance and/or recovery; and
6. Prompt issue of information and instructions to the Contractor as may be necessary to ensure completion of the Physical Works within the contract period.

6.3.4 Quality Management

The Consultant shall be responsible for ensuring that the completed works conform to the drawings, specifications and contractor instructions as issued, subject to

amendments approved thereto. This will include the following activities and responsibilities:

1. Issuing instructions and information to support the drawings, specifications and contractor instructions, as may reasonably be required by the Contractor.
2. Ensuring that designs take into account physical site constraints, so they do not compromise the performance attributes of the water assets installation.
3. Review and approvals of the Contractor's Quality Plan, and updates thereto, to ensure it complies with the relevant quality standards plus any specific requirements necessary in the particular local circumstances.
4. Preparation of a Consultant's Inspection and Test Plan covering the Consultant's separate Quality Assurance of the construction processes and deliverables. This should address as a minimum (without limiting its scope):
 - The Consultant's review of Contractors QA activities, including checking of the Contractor's work procedures and verification of QA records (including set out data, inspection checklists, installation checklists, test results, etc.);
 - The Consultant's performance of responsibilities under the Contractor's Quality Plan including inspection and witness activities;
 - Independent QA activities of in-process work as necessary in the circumstances to provide assurance of quality deliverables conforming to the drawings, specifications and contractor instructions;
 - Certify the relevant contractor's Hydraulic Pressure Testing programme and any ductile/brittle testing conducted in accordance to AS/NZS 4129:2008 and ISO 13954 guidelines and other relevant NZ/AS standards
 - Completing detailed inspections and testing of welded joints whether butt welding or electro fusion welding if deemed to be necessary.
 - Inspection, and testing including commissioning tests where relevant, of all completed deliverables;
 - A detailed inspection of the entire project with the PMU prior to the issue of the Certificate of Practical Completion and prior to expiry of the Period of Defects Liability. Particular attention shall be paid to:
 - Intake structure and serviceability
 - Water treatment facilities efficiency
 - Water storage facilities operation
 - Standard of Pipe line structure operation
 - Standard of Pipe line fittings, valves, meters, outlets
 - Access road formation and surface
 - Access road drainage and sediment run off and control facilities
 - Inspected water meters (All commercial and random selected domestic)
 - Assess overall Unaccounted for Water of the new constructed stage 2 water infrastructure.
5. Implementing the Consultant's Inspection and Test Plan.
6. Where inspection or review of QA records reveals non-compliance, advising the contractor/PMU on the need for additional visits, sampling and testing required to further check the Works. A recommend remedial action as necessary.
7. Advice to PMU and decisions in relation to non-conforming intermediate and final deliverables.
8. Providing as part of every inspection (when necessary) written instructions to the

Contractor indicating what action and repairs need to be taken, and providing a copy to the PMU.

9. Ensuring all visits are well documented and the documentation is kept available for viewing by the PMU.
10. Implementing a Random Verification Testing (RVT) Testing Programme.
 - Directly following the letting of the Physical Works contract, the Consultant shall prepare, and submit for PMU acceptance, a schedule of (RVT). The testing shall be designed and programmed specifically for the type of work being undertaken, the history/experience/previous performance of the Contractor involved, and to optimise the Principal's funding in this work. This testing programme relates to the testing of materials, not of general compliance testing such as checking tolerances, geotechnical compaction test, etc. The Consultant shall discuss the proposed RVT with the PMU and, on acceptance, implement it in accordance with the above requirements.
 - The Consultant shall carry out RVT sample taking for lab tests, sampling and testing during normal visits to the work site. All laboratory and specialist testing, where appropriate, shall be carried out by an IANZ registered laboratory or similar accredited laboratory any laboratory other the IANZ accredited shall be first approved in writing by the consultant.
11. Review the contractor's Social and Environmental Management Plan for the project in accordance with NES requirements.
12. Complete the system performance confirmation tests in collaboration with the Contractor and PMU.

6.3.5 Traffic Management and Site Safety

The Consultant shall ensure:

1. That traffic management is monitored on every relevant site visit. In addition to other site visits, random weekend visits (at least monthly) shall be made to observe traffic management;
2. That prompt instructions are issued to the Contractor as may be necessary to ensure the safety of road users and the public in general;
3. Confirm, monitor and report to PMU on Contractor's site safety management standards and plan, particularly in regards to the public safety standards.
4. The PMU is advised of the Engineer's Representative responsible for the acceptance and monitoring of the Contractor's Traffic Management Plan. Where the PMU notifies the Consultant on two separate occasions that the standard of traffic control or the condition of traffic ways do not meet the PMU's standards, the Consultant may be required to appoint a new Engineer's Representative, and
5. That on each site visit, site safety practices are monitored to ensure that:
 - The Contractor complies with the Health and Safety Method Statement.
 - Health and Safety systems observed in practice are appropriate in the circumstances.

The Consultant shall, where appropriate, issue Non-Compliance Notices to the Contractor in respect of unsatisfactory traffic management and site safety. Traffic notices should be also copied the appropriate government authority, i.e. Cook Islands Police Service.

6.3.6 Social and Environmental Management

The Consultant shall:

1. Ensure the Contractor takes all reasonable measures to meet the project Social and Environmental Management requirements by preparing, maintaining and implementing an ***Environmental Management Plan*** (EMP) in accordance with ***NES***; Cook Islands 2003 Environmental Act.
2. Make visits to the site to monitor and report on compliance with consents/authority conditions and other requirements contained within the EMP. The Consultant shall provide written evidence that clearly demonstrates the Contractor complies with all consent/authority conditions and other requirements in the EMP by way of the Consultant's Monthly Report.

6.3.7 Consultation/Liaison

The Consultant shall evaluate the consultation undertaken during the construction phase and recommend any amendments to communication Workstream. The Consultant shall be responsible for:

1. Liaising with the legal Workstream in regards to affected land owners/parties on matters relating to the Physical Works, ensuring that access to private property matters adequately meets the agreed standard;
2. Co-ordinating and facilitating the relocation of affected utility services, (including survey marks) so that location of those services complies with the current local infrastructure management and ensuring satisfactory liaison takes place with and between Utility Operators and service providers, including provision of consents where required; and
3. Liaising with the PMU during the contract period. Liaison will be required at least weekly and in some cases on a daily basis when specific issues of concern occur in order to allow the PMU to include the project in daily reports on water condition to national and local radio traffic information services. Liaison will include notification of the acceptance of the Physical Works contract tender, the exact location in terms of pipeline construction.
4. Confirm with the PMU the Contractor's Training Plans (and associated training resources) and monitor and assess skills transfer.
5. Ensuring all agreements/protocols agreed with Cook Islands is complied with.

6.3.8 Risk Management

1. Develop and maintain of the Stage 2 risk register and work with the Contractor and PMU to mitigate and manage risks as, when and where necessary.
2. The Consultant shall develop and update the risk management plan for all the Stage 2 construction phase and monitor analysis matrix.
3. The Consultant is responsible for ensuring Contractor participation in risk management to enable Consultant compliance with the approved ***Risk Management Plan as in (2)***.

6.4 Documentation

6.4.1 As-Built Drawings

1. Confirm the Contractor's "as built" drawings for all components constructed under Stage 2 works are accurate and available both electronically on approved software platforms and in three (3) high quality printed document sets. Drawings shall be clearly visible and detailed in A3 format but printed in A1.
2. Confirm the Contractor's documents, specifications and manuals are delivered (this includes warranties) as contracted to the PMU in hard bound folders and in printed in permanent materials. All manuals shall be scanned and provided in pdf format.

6.4.2 Stream Crossing Data System Update Sheets

The Consultant shall ensure any updates to stream crossing design are recorded in accordance with the project constructed works.

The Consultant shall develop the Asset Owner's Operational and Maintenance Manual for the Stage 2 construction project, in accordance with Contract specifications and Cook Island National Water Standards, and deliver it to the PMU in accordance with the Cook Island Investment Corporation (CIIC) Asset Management Capital Project Handover procedures.

6.5 Supervision Services to be provided – Detailed Design Stage 2, Metering and Cross Connections.

The specific components of the Stage 2 Physical Works (briefly listed below) will be managed, monitored and supervised by the Consultant. The Consultant will ensure all the components of the contracts are constructed by the nominated Contractor in accordance with contract documents, contract specifications and detail design for contract shall with any other relevant documents.

The following components are as follows:

- All Water Intakes (Weirs)
- All Settling Tanks / Chambers
- All Filtration Devices
- All Storage Tanks
- All connecting pipelines and required Fittings between headworks assets stated above.
- All required buildings, landscaping and finish works for all the headworks assets
- All associated trunk main pipelines and fittings linking the storage tanks and the inner ring main pipeline.
- All connection constructions between inner ring main and trunk mains.
- Construction of all the water metering installations both commercial and domestic. This will include all associated fittings and requirements for each installation to ensure they are complete and operational.
- Construction of all the associated access roads to the intakes and as per project requirements.
- Construction of new reservoir connections.

6.6 Required Outputs and Reporting

The Consultant is required to provide the following documents to the PMU in accordance to the template provided:

- Monthly Reports Consultants by the 10th of every month
- Project Quality Plan
- Risk Management Register
- Tender Evaluation reports
- Stream Crossing Data System Update Sheets
- Asset Owners Operations and Maintenance Manual
- Draft Practical Completion Reports

These requirements shall be in conjunction and in addition to the reporting requirements in the Consultants Project Quality Plan.

All reports, designs, drawings and training materials will be provided in electronic format with 2 hard copies of each document. Drawings / information should be compatible with AUTOCAD, H₂OMap and MapInfo as applicable.

6.7 Institutional Arrangements

The Ministry of Finance Economic Management (MFEM) is the designated Project Executing Agency, charged with the overall responsibility for the Project.

A Project Steering Group (PSG) has also been established comprising the Financial Secretary, Secretary of Infrastructure Cook Islands; CEO for the Cook Islands Investment Corporation, First Secretary New Zealand MFAT, Representative of China Civil Engineering Construction Corporation and Director of WATSAN. The Financial Secretary shall chair the PSG.

The Project Management Unit (PMU) has been established to assist the PSG by coordinating and managing project activities and monitoring overall project progress on behalf of the Cook Islands Government. The PMU has been charged with project management of the overarching Te Mato Vai Project. This management role is being provided by KEW Consult Ltd with direct support by MFEM/DCD and ICI/WATSAN. PMU supports and advises five (5) Workstreams responsible for various and relevant aspects for the overall project. Workstream's membership includes CIG key stakeholders and ministries.

The Workstreams are:

- Communication Workstream
- Legal Workstream
- Finance Workstream
- Design Workstream and
- Construction Workstream.

6.8 Timing & Expertise Required

The assignment is expected to be performed about 24 month period. **The following schedule of Consultant inputs is considered to be sufficient for undertaking the tasks required and should be used for completing the financial forms.**

Indicative Schedule of Consultant personnel

| CONSULTANT INPUTS | |
|------------------------------------|--|
| Supervising Engineer / Team Leader | |
| Construction Engineer | |
| Site Supervisors (4) | |

Note: Consultant home country remuneration costs should be based on a 5.5 day working week.

The Consultant may nominate a team of Consultants to be contracted to carry out the above listed scope of work. Consultants with background by way of expertise as listed below are highly recommended:

Supervising Engineer / Team Leader

Have a Civil or other relevant Engineering Degree, with at least 15 years of experience in the design, equipment installation and commissioning of water infrastructure network and treatment facilities and systems. The Consultant shall be fluent in English, and have excellent communication skills including an ability to communicate effectively with the local stakeholders. For all intents and purposes the Supervising Engineer shall be appointed to the position of "Engineer" as per NZS:3910. For the purpose of the consulting services, the Specialist will establish the working arrangements, take overall responsibility for team performance, monitoring and provide on-going support to the PMU and also implementing agencies. The Consultant will be responsible for the review and approval of all Design/Build components of the Contractors Physical Works contract.

Construction Engineer

Have an Engineering Degree majoring in water supply treatment or relevant qualification, with at least 8 years of experience in the supervision and equipment installation and commissioning of water treatment plants facilities and systems. For all intents and purposes the Construction Engineer shall be appointed to the position of "Engineer's Representative" as per NZS:3910. The consultant should also demonstrate experience on supervision in appropriate technology techniques that are relevant to island states where there is minimal access to electricity at potential water treatment plant sites. Should be fluent in English and have excellent communication skills.

Site Supervisors (4)

It is encouraged that the four (4) site supervisors should be Cook Islands nationals and have relevant technical qualifications, with at least 5 years of experience in the water system operation and maintenance as well as some exposure to new water developments.

Candidates should demonstrate experience on appropriate trades such as welding, metalwork, plumbing that is related to water and civil works development. Be familiar with conducting quality testing such as hydraulic pressure testing and others.

6.9 Provisional Sums

The following Provisional Sums are included in the consulting budget estimate:

| Item | Provisional Sum (NZ\$) |
|--|-------------------------------|
| 4 Wheel-Drive work truck to be purchased for the supervision (transfer to the appropriate government agency)after the project completion) | \$40,000 |
| 24 months office operation expenses | \$48,000 |
| Safety Tools and equipment expenses | \$12,000 |
| TOTAL | \$100,000 |

7 ANNEX 5 - TYPICAL STANDARD CONTRACT FOR CONSULTANCY SERVICES

CONTRACT FOR SERVICES (Contract)

Te Mato Vai Project - Supervision for Stage 2 Construction

between

Her Majesty the Queen acting through by and the Ministry of Finance, Economic Management (MFEM)

(Buyer)

and

[Contractor's Full Legal Name]

(Contractor)

Contract Number: []

The Contract

The Ministry of Finance, Economic Management (MFEM), wishes to engage the Contractor to undertake the Professional Engineering supervision of a number of construction contracts in Rarotonga Water Supply Upgrade Project. The Contractor agrees to provide the Services to the Government of the Cook Islands on the basis of the terms and conditions contained in this Contract.

Contract Documents

This Contract consists of:

pages 1 and 2;

the Contract Details and Description of Services at Schedule 1; and

the Standard Terms and Conditions at Schedule 2,

as amended from time to time in accordance with this Contract.

If there are any differences between the documents, Schedule 1 overrides Schedule 2.

Acceptance

**For and on behalf of the Ministry of Finance,
Economic Management**

For and on behalf of the Contractor

Signature

Signature

Full name

Full name

Position

Position

Date

Date

Schedule 1

Contract Details and Description of Services

1. Term of Contract

Reference Schedule 2 clause 1

| | |
|-------------------|--|
| Start Date | |
| End Date | |

2. Scope of Services

Description of the Services

[to complete]

3. Outputs

Outputs

[to complete]

4. Performance Standards

Reference Schedule 2 clause 2.3

[to complete]

5. Contractor's Approved Personnel

Reference Schedule 2 clause 2.7

| | |
|------------------------|--|
| Name: | |
| Position: | |
| Specialisation: | |

6. Fees

Reference Schedule 2 clause 3

[to complete]

7. Expenses

Reference Schedule 2 clause 3

[to complete]

8. Per Diems and Allowances

Reference Schedule 2 clause 3

[to complete]

9. Payment and Reporting

Reference Schedule 2 clauses 3 and 5

[Payment Schedule to be completed]

10. Contract Managers

Reference: Schedule 2 clause 4

| | MFEM's TMV Project Manager | Contractor's Contract Manager |
|--------------------------|-----------------------------------|--------------------------------------|
| Name: | | |
| Title/position: | | |
| Physical address: | | |
| Postal address: | | |
| Phone: | | |
| Fax: | | |
| Email: | | |

11. Addresses for Notices

Reference Schedule 2 clause 14

| | MFEM TMV Project Manager | Contractor's Contract Manager |
|------------------------------|---------------------------------|--------------------------------------|
| For the attention of: | | |
| c.c. | | |
| Delivery address: | | |
| Postal address: | | |
| Fax: | | |
| Email: | | |

12. Attachments

Reference 'Contract documents'

The following documents are attached to Schedule 1:

[to insert if relevant]

Schedule 2: Standard Terms and Conditions

1.0 Term of Contract

- 1.1 This Contract starts on the Start Date. Services must not be delivered before the Start Date.
- 1.2 This Contract ends on the End Date unless terminated earlier.

2.0 The Services

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 delivery of the Services, whenever necessary;
 - c. notify each other immediately of any actual or anticipated issues that could:
 - i. significantly impact on the Services;
 - ii. impact the cost of the Services;
 - iii. be the subject of a request for official information under the Official Information Act 2008 (CI) or a complaint to the Cook Islands Ombudsman under the Ombudsman Act 1984 (CI); or
 - iv. receive media attention.
 - d. not at any time do anything that is likely to adversely affect the reputation, good standing or goodwill of either Party; and
 - e. comply with all applicable laws, regulations and codes of conduct.

Buyer's obligations

- 2.2 The Buyer will:
 - a) provide the Contractor with any information it has reasonably requested to enable the delivery of the Services;
 - b) make decisions and give approvals reasonably required by the Contractor to enable delivery of the Services. All decisions and approvals are to be given within reasonable timeframes; and
 - c) pay the Contractor the Charges for the Services as long as the Contractor has achieved the relevant Milestone, including completing the Outputs required in relation to that Milestone, to the PMU's reasonable satisfaction and invoiced the Buyer in accordance with this Contract.

Contractor's obligations

- 2.3 The Contractor must deliver the Services in accordance with the terms and conditions of this Contract including, but not limited to:
 - a) by the specified due dates and to the required standards or quality set out in Schedule 1;
 - b) within the amounts agreed as the Total Contract Price; and
 - c) diligently, effectively and to a high professional standard.

- 2.4 The Contractor warrants that:
- a) its Personnel have the necessary skills, experience, training and resources to successfully deliver the Services;
 - b) it will provide all equipment and resources necessary to deliver the Services;
 - c) it has all the regulatory licences, permits or other authorisations necessary to deliver the Services and carry out all other activities as contemplated by this Contract;
 - d) all information, statements and representations it disclosed or made to the Buyer in connection with itself and the Services, are true and correct, do not omit any material matter, and are not likely to mislead or deceive the Buyer as to any material matter;
 - e) neither the Contractor's performance of its obligations under this Contract nor the Contractor carrying out the Services infringes or will infringe any rights of third parties; and
 - f) reports produced by the Contractor shall be factually correct, accurate and truthful in every respect and shall not contain false information or be ambiguous or misleading.
- 2.5 The Contractor acknowledges that the Services are being paid for by public funds and undertakes to assist the Buyer by ensuring that transparent, efficient and effective financial and operational processes are used to manage the Contract.
- 2.6 The Contractor must use good procurement practice in letting any subcontract or the purchase of goods or services under this Contract. Good procurement practice means acting with integrity, being open, fair and accountable and achieving value for money.
- 2.7 The Contractor must use any Approved Personnel identified in Schedule 1 in delivering the Services.
- 2.8 If the Contractor is at the Buyer's premises, the Contractor must observe the Buyer's policies and procedures including those relating to health and safety, and security requirements. The Buyer must tell the Contractor what the relevant policies and procedures are, and either give the Contractor a copy of them, or provide an internet link.
- 2.9 If the nature of the Services requires it, the Contractor will deliver Services in a manner that:
- a. is culturally appropriate for Cook Islanders and other ethnic or indigenous groups; and
 - b. respects the personal privacy and dignity of all participants and stakeholders.

3.0 Invoicing and Payment

Invoicing

- 3.1 The Contractor must provide valid and accurate Tax Invoices for all Charges on the dates or at the times specified in Schedule 1.

Payment

- 3.2 Payment will normally be made within twenty Business Days of receipt of an accurate and valid Tax Invoice. The Buyer's obligation to pay is subject to clauses 3.3 and 11.7.
- 3.3 The Buyer may withhold payment of the Charges:
- a. if the Contractor fails to deliver the Services or to achieve the relevant Milestone and Outputs in Schedule 1 to the Buyer's reasonable satisfaction in accordance with this Contract;

- b. if the Buyer disputes a Tax Invoice, or any part of a Tax Invoice, until the dispute in relation to the Tax Invoice is resolved. The Buyer will pay any portion of a Tax Invoice that is not in dispute on receipt of an amended Tax Invoice and credit note;
 - c. to match any reduction in the level of Services where the Contractor has notified the Buyer of an Extraordinary Event;
 - d. where the Contractor has consistently failed to actively and positively participate and engage in communications and/or meetings with the Buyer, or fails to take direction from the Buyer; and
 - e. where the Contractor submits a report that does not conform with the requirements of this Contract.
- 3.4 A payment by the Buyer under this Contract is not evidence of:
- a. the Contractor's satisfactory performance of its obligations under this Contract;
 - b. acceptance of the Services by the Buyer; or
 - c. an admission of liability.
- 3.5 If, for any reason, the Buyer makes an overpayment to the Contractor for all or part of the Services, the Buyer may notify the Contractor in writing of the Buyer's intention to off-set the amount of the overpayment against any amount the Buyer owes the Contractor for the relevant Services or part of the Services under the Contract or any other contract the Buyer has with the Contractor. If there is no amount owed by the Buyer, then the Contractor will refund to the Buyer the amount paid in excess within ten (10) Business Days of the Buyer's request for a refund.

Per Diems and Allowances

- 3.6 The actual Allowance claimable by the Contractor may be adjusted to exclude any meals provided to the Contractor's Personnel during the provision of the Services or included as part of the actual accommodation cost. If Per Diems are payable these may also be adjusted if meals and/or accommodation are no longer required.
- 3.7 For the avoidance of doubt, if the Contractor negotiates an airfare and/or accommodation package representing an overall cost saving, the Buyer will reimburse the Contractor for the full cost of the package.

4.0 Contract Management

Changing the Contract Manager

- 4.1 If a Party changes their Contract Manager they must tell the other Party, in writing, the name and contact details of the replacement within five (5) Business Days of the change.

5.0 Records, Reports and Information

Keeping Records

- 5.1 Both Parties must keep and maintain full and accurate Records relating to this Contract and delivery of the Services. The Records must be easy to access and kept safe.
- 5.2 The Records must be accessible to the Buyer during the life of the Contract and for a minimum of seven (7) years after the End Date.

Reports

- 5.3 The Contractor must prepare and give to the Buyer the reports stated in Schedule 1. All reports must:
- a. be provided by the due dates stated in Schedule 1;
 - b. be in a format required by the Buyer in Schedule 1 and include any other information reasonably requested by the Buyer; and
 - c. be presented in a manner that allows the Buyer to easily and properly assess the Contractor's progress and the achievement of Outputs under this Contract.
- 5.4 The Buyer may from time to time request informal reports, updates or consultations on the Contract or Services.

Information

- 5.5 The Contractor must give to the Buyer any Records or other information reasonably requested.
- 5.6 All information provided by the Contractor must be in a format that is usable by the Buyer, and delivered within a reasonable time of the request.
- 5.7 The Contractor must co-operate with the Buyer to provide information immediately if the information is required by the Buyer to comply with an enquiry or the Buyer's statutory, parliamentary or other reporting obligations.

6.0 The Contractual Relationship

Permission to transfer rights or obligations

- 5.1 Except as provided for under clause 7.1(b), the Contractor 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.

No partnership, agency or employment

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

Neither Party can represent the other

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

7.0 Subcontractors

Rules about subcontracting

- 7.1 The Contractor may use Subcontractors to meet any of its obligations relating to the Services as follows:
- a. For Subcontractors who are to be included in Schedule 1 as Approved Personnel, the Contractor must seek the Buyer's written consent through a Variation to the Contract in accordance with clause 19 prior to a change or substitution taking place.
 - b. For all other Personnel, the Contractor is solely responsible for their appointment and, if required, may make changes or substitutions without the Buyer's consent.

The Contractor's responsibilities

- 7.2 The Contractor is responsible for ensuring the suitability of any Subcontractor and the Subcontractor's capability and capacity to deliver that aspect of the Services being subcontracted.
- 7.3 The Contractor must ensure that:
- a. each Subcontractor is fully aware of the Contractor's obligations under this Contract; and
 - b. any subcontract it enters into is on terms that are consistent with this Contract.
- 7.4 The Contractor continues to be responsible for delivering the Services under this Contract even if any aspects of the Services are subcontracted.

8.0 Insurance and Indemnity

Contractor to maintain insurance cover

- 8.1 The Contractor will maintain such insurance cover as is usual for entities undertaking operations in the nature of those undertaken by the Contractor in respect of the Services. Unless agreed otherwise by the Parties in writing, the Contractor must:
- a. take out and maintain that insurance cover for the duration of this Contract and for a period of three (3) years after the End Date; and
 - b. within ten (10) Business Days of a request from the Buyer provide a copy of the insurance policy, an explanation of the risks it covers, and a certificate proving that the policy is current.

Indemnity

- 8.2 The Contractor indemnifies and holds harmless the Buyer from and against all costs, claims, damages, losses, liabilities and expenses (including legal expenses on a solicitor-client basis) relating to this Contract that arise directly or indirectly from the negligent or wilful act or omission of, or breach of this Contract by, the Contractor or the Contractor's Personnel.

9.0 Conflict of Interest

Managing Conflicts of Interest

- 9.1 The Contractor warrants that as at the Start Date:
- a. it has no Conflict of Interest in providing the Services or entering into this Contract; or
 - b. Conflict of Interest has been declared and the Parties have discussed, agreed and recorded in writing how it will be managed (provided the Conflict of Interest is one that can be managed).
- 9.2 The Contractor must do its best to avoid situations that may lead to a Conflict of Interest arising.

Obligation to tell the Buyer

- 9.3 The Contractor must tell the Buyer immediately, and in writing, if any Conflict of Interest arises in relation to the Services or this Contract. If a Conflict of Interest does arise the Parties must discuss, agree and record in writing how it will be managed (provided the Conflict of Interest is one that can be managed). Each Party must pay their own costs in relation to managing a Conflict of Interest.

10.0 Resolving Disputes

Steps to resolving disputes

- 10.1 The Parties agree to use all reasonable endeavours 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 ten (10) Business Days of notification, they will refer it to the Parties' Senior Managers, or equivalent, for resolution;
 - d. If the Senior Managers, or equivalent, have not resolved the dispute within ten (10) Business Days of it being referred to them, the Parties will refer the dispute to mediation or some other form of alternative dispute resolution.
- 10.2 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, appointed by the Chief Justice of the High Court of the Cook Islands;
 - b. on the terms of the LEADR standard mediation agreement subject to any modification that might be agreed by the Parties; and
 - c. at a fee to be determined by the mediator, such fee to be paid by the Parties in equal shares.
- 10.3 Each Party will pay its own costs of mediation under clause 10.2 or alternative dispute resolution.

Obligations during a dispute

- 10.4 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

- 10.5 Each Party agrees not to start any court action in relation to a dispute until they have complied with the process described in clause 10.1 and 10.2, unless court action is necessary to preserve a Party's rights.

11.0 Ending this Contract

No fault termination

- 11.1 The Buyer may terminate this Contract:
- a. at any time by giving 20 Business Days' Notice to the Contractor; or
 - b. immediately by giving Notice to the Contractor if the termination is due to a change in Cook Islands Government policy or a change in Cook Islands Government appropriation.

Immediate termination

- 11.2 The Buyer may terminate this Contract immediately, by giving Notice, if the Contractor:
- a. becomes bankrupt or insolvent;
 - b. has an administrator, receiver, liquidator, statutory manager, mortgagee's or chargee's agent appointed or otherwise becomes subject to any form of external administration;
 - c. ceases for any reason to continue in business or to deliver the Services;

- d. is unable to deliver the Services for a period of 20 Business Days or more due to an Extraordinary Event;
- e. is in breach of any of its obligations under this Contract and the breach cannot be remedied in PMU's opinion;
- f. repeatedly fails to perform or comply with its obligations under this Contract whether those obligations are minor or significant;
- g. does something, or fails to do something, that, in the Buyer's opinion, results in damage to the Buyer's reputation or business, or the reputation or business of the Cook Islands Government;
- h. has a Conflict of Interest that in the Buyer's opinion is so material as to impact adversely on the delivery of the Services, the Buyer or the Cook Islands Government;
- i. provides information to the Buyer that is intentionally misleading or inaccurate in any material respect; or
- j. knowingly or unknowingly provides direct or indirect support or resources to organisations and/or individuals associated with terrorism, notwithstanding clause 17.

If a breach has not been remedied

- 11.3 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 a Notice (**Default Notice**) to the Defaulting Party.
- 11.4 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.
- 11.5 The period allowed to remedy the failure must be reasonable given the nature of the failure.
- 11.6 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.
- 11.7 If the Buyer gives a Default Notice to the Contractor the Buyer may also do one or both of the following things:
- a. withhold any payment of Fees 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 Fees due to reflect the reduced value of the Services to the Buyer.

Contractor's obligations

- 11.8 On giving or receiving a Notice of termination, the Contractor must:
- a. stop providing the Services;
 - b. comply with any conditions contained in the Notice; and
 - c. immediately do everything reasonably possible to reduce its costs and expenses.

Consequences of termination or expiry of this Contract

- 11.9 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 expiry.
- 11.10 If this Contract is terminated the Buyer will only be liable to pay Charges that were due for Services delivered before the effective date of termination.

Handing over the Services

- 11.11 The Contractor will, within ten (10) Business Days of receiving Notice of termination, provide all reasonable assistance and cooperation necessary to facilitate a smooth handover of the Services to the Buyer, or any person appointed by the Buyer.
- 11.12 If the Parties agree the Contractor will provide additional assistance to support any replacement contractor to deliver the Services. This support may be for a period of up to three (3) months from the date of termination and at a reasonable fee to be agreed between the Parties, based on the Fees and Expenses provided for in this Contract.

12.0 Intellectual Property Rights

Ownership of Intellectual Property Rights

- 12.1 Pre-existing Intellectual Property Rights remain the property of their current owner.
- 12.2 New Intellectual Property Rights in the Outputs become the Buyer's property when they are created, unless otherwise agreed.
- 12.3 The Contractor grants to the Buyer a perpetual, non-exclusive, transferable, worldwide and royalty-free licence to use, for any purpose, any Pre-existing Intellectual Property Rights in the Outputs. This licence includes the right to:
- a. use;
 - b. copy;
 - c. modify; and
 - d. distribute;
- any materials to which the licence relates.
- 12.4 The Contractor acknowledges that PMU may grant a licence in relation to any Pre-existing Intellectual Property Rights in the Outputs on the same terms as set out in clause 12.3 to a Cook Islands Public Service agency, or third party (including a partner government). Where appropriate, PMU may acknowledge the owner of any Pre-existing Intellectual Property Rights when granting a licence.

Contractor indemnity

- 12.5 The Contractor warrants that it is legally entitled to do the things stated in clause 12 with the Intellectual Property Rights in the Outputs.
- 12.6 The Contractor indemnifies the Buyer in respect of any expenses, damage or liability incurred by the Buyer in connection with any third party claim that the delivery of the Services or Outputs to the Buyer, or the Buyer's use of the Outputs, infringes a third party's rights. This indemnity is not subject to any limitation or cap on liability that may be stated elsewhere in this Contract.

13.0 Confidential Information

Permission to release Confidential Information

- 13.1 Each Party undertakes not to use or disclose the other Party's Confidential Information to any person or organisation other than:

- a. to the extent that use or disclosure is necessary for the purposes of providing the Services;
- 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 2008 (OI)) or parliamentary convention; or
- d. 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 their 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.

14.0 Notices

Delivery of Notices

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

14.2 Notices must be signed 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 it is delivered by hand, on the date it is delivered;
- b. if it is sent by post within Cook Islands, on the third (3rd) Business Day after the date it was sent;
- c. if it is sent by post internationally, on the tenth (10th) Business Day after the date it was sent;
- d. if it is sent by courier, on the date it is delivered;
- e. if it is sent by fax, on the sender receiving a fax machine report that it has been successfully sent; or
- f. if it is sent by e-mail, at the time the e-mail enters the recipient's information system.

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.

15.0 Extraordinary Events

No fault if failure to deliver

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 remedy, or reduce the impact of the Extraordinary Event on the delivery of Services.

Alternative arrangements

- 15.3 The Buyer may, after consulting with the Contractor, make alternative arrangements to ensure performance of the Services during the period affected by the Extraordinary Event, including engaging alternative contractors. If the Buyer makes alternative arrangements, it does so at its own cost.

16.0 Anti-Corruption

- 16.1 Both Parties warrant that they shall not make, cause to be made, nor receive any offer, gift (over the value of NZ\$100), payment, consideration, inducement, reward or benefit of any kind, which would, or could be construed as an illegal, unethical, or Fraudulent practice. Any such conduct may be grounds for immediate termination of this Contract, or the taking of such corrective action as the other Party deems appropriate.
- 16.2 Where either Party, or a Party's Personnel, is investigated for Fraud, or where there is a finding of Fraud against either Party or a Party's Personnel, or where a Party's Personnel is convicted of a serious criminal offence that brings that Party, or the Buyer into disrepute, or the nature of the conviction is incompatible with the objective(s) of the Contract and Services, this event may be grounds for the other Party to immediately terminate this Contract by giving notice in writing to the other Party.
- 16.3 The Contractor undertakes to report to the Buyer within five (5) Business Days all suspected or detected Fraud and consult the Buyer before the matter is referred to police. The Buyer reserves the right to investigate cases of suspected or detected Fraud.

17.0 Anti-Terrorism

- 17.1 The Contractor must use its best endeavours to ensure that payments made under this Contract do not provide direct or indirect support or resources to organisations and/or individuals associated with terrorism. If the Contractor discovers any link whatsoever with any organisation or individual associated with terrorism it must inform the Buyer immediately.

18.0 Variations

Variations to this Contract

- 18.1 Any change to this Contract must be made in accordance with clause 19, unless it is considered by the Buyer in discussion with the Contractor to have no material effect on the cost or nature of the Services.
- 18.2 Where the Buyer, in discussion with the Contractor, determines that the nature of the change is minor, the Variation may be completed through an exchange of emails between the Buyer and the Contractor. The email exchange must be completed prior to the Contract expiring and before the change is intended to take effect. The email must clearly state:
 - a. what the Variation is and any other consequential amendments;
 - b. the reason for the Variation; and
 - c. any other information the Buyer reasonably requires.

The return email must clearly provide the Contractor's unconditional acceptance of the Variation.

18.3 Where the Buyer, in discussion with the Contractor, determines that the nature of the change is significant, the Variation must be set out in a letter signed by both Parties. Where practicable, the first Party to sign will scan the letter and email it to the other Party, who will print the letter, sign it, re-scan it and return it by email so that both Parties have a counter-signed copy for their records. Where it is not practicable to exchange the letter as a scanned image, the first Party will sign two originals and deliver them by courier, post, facsimile or by hand to the other Party for signature. The other Party will sign both copies and return one to the first Party so that both have one counter-signed original for their records.

19.0 General

This is the entire Contract

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

Waiver

19.2 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.

Enforceability

19.3 If any provision in this Contract is lawfully held to be illegal, unenforceable or invalid, that provision will be deemed to be deleted and will not affect the legality, enforceability or validity of the rest of this Contract.

No intention to confer benefits on other people

19.4 Nothing in this Contract is intended to confer any enforceable rights or benefits on any person accessing Services provided under this Contract, or anyone other than the Buyer and Contractor, except as provided in clause 12 (Intellectual Property Rights).

Jurisdiction

19.5 This Contract will be governed and interpreted in accordance with the laws of Cook Islands and subject to the exclusive jurisdiction of Cook Islands courts. Dates and times are Cook Islands time.

Publication of information about this Contract

19.6 The Contractor 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.

19.7 Each Party undertakes not to post on websites, social networking sites or publicly display objectionable or derogatory comments about the Services, this Contract, each other, or any of their Personnel and to ensure that their Personnel do not do so.

Clauses that remain in force

19.8 The clauses that by their nature should remain in force on expiry or termination of this Contract do so, including clauses 5 (Records, Reports and Information), 8 (Insurance and Indemnity), 10 (Resolving Disputes), 11 (Ending this Contract), 12 (Intellectual Property Rights), 13 (Confidential Information), 17 (Anti-Terrorism), 19 (General) and 20 (Definitions).

20.0 Definitions

Allowance An amount payable to the Contractor to cover living expenses for the Contractor's Personnel required to travel and stay overnight within their own country of residence, or within another country, if and as provided for in Schedule 1. No receipts are required for Allowances. An Allowance is similar to a Per Diem. A meal allowance is a form of Allowance.

Approved Personnel A person who is engaged by the Contractor to deliver the Services and is named in Schedule 1. The Contractor must use this person in the delivery of the Services and cannot change or add them without a Variation in accordance with clause 19. Substitution of Approved Personnel by a person with a higher or similar qualification(s) and experience must be done at the previously agreed Fee rate for that position. Where the person has lower qualifications and/or experience the Buyer may negotiate a reduction in the Fee rate.

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

Charges Charges is the collective term for the Fees, Expenses, Per Diems and Allowances provided for in Schedule 1. Charges are payable on successful delivery of the Services and otherwise in accordance with this Contract, provided a valid and accurate Tax Invoice has been submitted to PMU.

Confidential Information that:

- i. is by its nature confidential;
- ii. is marked by either Party as 'confidential', 'in confidence', 'restricted' or 'commercial in confidence';
- iii. is provided by either Party, or a third party 'in confidence';
- iv. either Party knows or reasonably ought to know is confidential or commercially sensitive.

Conflict of Interest A conflict of interest happens if a person's (including the Contractor's) personal interests or obligations conflict with the responsibilities of their job or position (including as a Party to this Contract). It means that their independence, objectivity or

impartiality can be called into question. While conflicts of interest should be avoided wherever possible, conflicts often happen without anyone being at fault. It is not necessarily the emergence of a conflict of interest which is an issue, it is how it is managed that matters more. A conflict of interest may be:

- i. actual: where the conflict currently exists;
- ii. potential: where the conflict is about to happen, or could happen; or
- iii. perceived: where other people may reasonably think that a person is compromised.

Contract Manager The person named in Schedule 1 as the Contract Manager who is responsible for managing this Contract on behalf of one of the Parties. The Contract Managers are the day to day contacts for routine communications regarding this Contract and the Services. They are responsible for:

- i. managing the relationship between the Parties;
- ii. overseeing the effective implementation of this Contract; and
- iii. acting as a first point of contact for any issues that arise.

Daily Fee Rate If the contractor's fee rate is expressed as a daily rate this is the fee payable for each day worked in the delivery of Services. One day's work is defined as a minimum of eight hours. If the contractor's Personnel work for more than eight hours in a 24 hour period. The contractor will be paid for travel time in such manner as is agreed by the Parties, other than normal commuting time.

If the contractor works less than a full day the Fee will be calculated based on the time worked at the agreed daily rate $\div 8 \times$ hours worked.

End Date The date this Contract is due to end as stated in Schedule 1.

Expenses Any actual and reasonable out-of-pocket costs incurred by the contractor in the delivery of the Services and agreed to in Schedule 1.

Extraordinary Event An event that is beyond the reasonable control of the Party immediately affected by the event. 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:

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

Fee(s) The amount payable to the contractor for the time spent in delivery of the Services calculated on the basis stated in Schedule 1, excluding any Expenses, Per Diems and Allowances.

Fraud means a deliberate deceit by Personnel, undertaken in order to obtain a benefit for themselves and/or someone else. This includes such acts as theft, conspiracy, bribery, corruption, misappropriation, falsification of documents, non-authorised release of information, collusion and influencing decisions that will result in a personal benefit.

Fraudulent practice has a corresponding meaning.

Hourly Fee Rate If the contractor's fee rate is expressed as an hourly rate this is the fee payable for each hour spent in the delivery of Services.

Intellectual Property Rights An intangible asset that consists of human knowledge or ideas. Some examples are patents, copyrights, trademarks, design, software and similar industrial, commercial or artistic property. It can include modifications, upgrades and versions.

Milestone A phase or stage in the delivery of the Outputs that upon the TVM PMU assessment of satisfactory completion may result in the payment of some or all of the Fees.

Notice A formal or legal communication from one Party to the other. It must be in writing and meet the requirements of the appropriate clause.

Outputs All products (including reports), tasks and key requirements that the contractor must perform or deliver under this Contract as set out in Schedule 1 and any costed work plan.

Parties The Parties to this Contract are MFEM and the contractor.

Per Diems An amount payable for each night's accommodation, meals and incidentals for the contractor's Personnel whilst working in the Cook Islands, if and as provided for in Schedule 1.

No receipts are required for Per Diems.

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

Pre-existing Intellectual Property Rights Intellectual Property Rights developed before the date of this Contract or outside the scope of this Contract. It does not cover later modifications, adaptations or additions.

Public Service agency Any Cook Islands Government department or agency.

Records All information and data necessary for the management of this Contract and the delivery of Services. It includes reports, invoices, letters, e-mails, notes of meetings, photographs and other media recordings. Records can be hard copies or soft copies stored electronically.

Start Date The date specified in Schedule 1 being the date this Contract starts.

Subcontractor A person, business, company or organisation contracted by the contractor to deliver or perform part of the Contractor's obligations under this Contract.

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

Tax Invoice The contractor must invoice the Buyer for the Services. The invoice must be a valid Tax Invoice which means it must:

- i. clearly show all VAT due;
- ii. be clearly marked 'Tax Invoice';
- iii. include the contractors name and VAT number, if the Contractor has one;
- iv. include the Buyer's name and address and marked for the attention of the Buyer's Contract Manager, or such other person stated in Schedule 1;
- v. state the date the invoice was issued; and
- vi. name this Contract and a description of the Services supplied including the amount of time spent in the delivery of the Services if payment is based on an Hourly Fee Rate or Daily Fee Rate.

The invoice must also:

- i. include the Buyer's purchase order number if there is one;
- ii. correctly calculate the Charges due; and
- iii. be supported by receipts (or VAT receipts where applicable) if Expenses are claimed and any other verifying documentation reasonably requested by the Buyer.

Total Contract Price The maximum price payable , as stated in Schedule 1.

Variation A written agreement between the Parties in accordance with clause 19 of Schedule 2 that changes any material aspect of this Contract. A change to a material aspect of this Contract is a change that creates an obligation of sufficient importance to the delivery of the Services that failure to meet it would result in a dispute and which, if unable to be enforced, has the potential to prejudice the delivery of the Services or the reputation of one of the Parties.

VAT The value added tax payable in accordance with the Value Added Tax Act 1997 (CI).