Request for Tender

Report on Cook Islands Banks Operating in the NZ Payments System

Reference No. 141528

Date of Release: 25 March 2015

Ministry of Finance and Economic Management



## Glossary and Definitions

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| Term | Explanation |
| BCI | Bank of the Cook Islands |
| ESAS | Exchange Settlement Account System |
| MFEM | Cook Islands Ministry of Finance and Economic Management |
| RBNZ | Reserve Bank of the New Zealand |
| RFT | Request for Tender |
| Tender Management Team | The team that is responsible for the management of this Tender, including the evaluation and administrative functions |
| Evaluation Committee | The group of people within the Tender Management Team that will evaluate this Tender |
| Manual | The Cook Islands Government Financial Policies and Procedures manual |

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## Introduction

### Summary of Requirement

Through this RFT, the Ministry of Finance and Economic Management wishes to get a better understanding of the requirements for Cook Islands banking institutions to join the New Zealand payments system. This RFT is to provide the Ministry with a report which outlines robustly whether the Bank of the Cook Islands (or any other bank operating in the Cook Islands domestic banking system) is able to join the New Zealand Payments system.

### Submission of Tender/Offer

Tenders shall be submitted either

**Hardcopy**

In two complete hard copies, packaged and labelled “CONFIDENTIAL” and have the following information clearly exhibited on the outside:

* Name of the Crown agency responsible for the RFT (Ministry of Finance and Economic Management).
* Name of the Contact Officer and contact details (Richard Neves).
* Name of tenderer, contact person and contact details.
* Tender title and Reference No.
* Tender closing time and date (15 April 2015).

Tenders must be placed in the Tender Box and submitted in the form specified in Appendix A by the due date. Failure to do so will result in the tender being disqualified.

**OR**

**Softcopy**: By emailing the tender bid as a pdf file to [**tenders@cookislands.gov.ck**](mailto:tenders@cookislands.gov.ck) with the subject line Report on Cook Islands Banks Operating. Tenders must be received to the inbox of tenders@cookislands.gov.ck in the form specified in Appendix A and B by the due date. Failure to do so will result in the tender being disqualified. The receipt time on the inbox will be used as the receipt time for the purposes of ensuring a tender is within the time limits.

### Tender/Offer Closing Time

Tenders close at 4 pm on 15 April 2015. The Tender Box is located at The Ministry of Finance and Economic Management (or submitted electronically to the email address detailed above) and tenders should be addressed to:

*Ministry of Finance and Economic Management  
Richard Neves   
PO Box 120 Rarotonga, Cook Islands.*

The tenderer is responsible for ensuring that the tender is placed in the Tender Box by the closing time.

**Late tenders will not be accepted.**

### Contact Officer

Negotiations will not be permitted between the Tender Team and any prospective tenderers during the tender advertising period. However, prospective tenderers may seek clarification of the tender documents prior to submitting their tenders. Any enquiries in relation to this tender should be directed to the Contact Officer identified below. Tenderers should note that to ensure no disadvantage to any tenderers, responses to questions pertaining to this RFT will be addressed by the Financial Secretary.

Any enquiries in relation to this tender should be directed to the Contact Officer at the address given below.

**Name of Person: Richard Neves**  
**Title: Financial Secretary – Ministry of Finance and Economic Management**  
**Address: PO Box 120, Rarotonga Cook Islands**  
**Phone: +682 22878**  
**E-mail: richard.neves@cookislands.gov.ck**

## Selection Process

All tenders deposited in the Tender Box by the closing time will be considered. Tenders submitted in the form specified in Appendix A to this RFT will then proceed to the evaluation stage.

Evaluation of the responses to this RFT will be in accordance with the evaluation criteria described in Appendix B. Failure to comply with the Standard Conditions will result in immediate exclusion from the evaluation process.

## Notification of Acceptance

Tenders shall remain open for acceptance and shall not be withdrawn for a period of 60 working days from the Closing Date of the tender. Unsuccessful tenderers shall be notified in writing by the Principal or their representative within ten working days of acceptance of the successful tender.

If no tender is accepted by the Principal within 20 working days after the closing date, each tenderer will be notified in writing by the Principal or their representative whether their tender is still under consideration or is no longer being considered.

The Tender Team reserves the right to contact referees and/or customers regarding the performance of the tenderer as it may pertain to this RFT.

The Principal shall not be bound to accept the lowest priced tender or the highest scored tender or any tender. When the preferred supplier has been identified by the Tender Team, the Principal will invite the supplier to enter into negotiations based on the draft contract at Appendix C to this RFT. Only when the parties have agreed to the terms of the contract and executed the contract will the Principal issue to the successful tenderer a Letter of Acceptance.

## Probity

No gifts or entertainment of any nature will be permitted between any parties involved throughout the tender process, including: tenderers or potential tenderers, tender team members, evaluation team members, the Head of Ministry, or any other member or organisation that may have an involvement with any aspect of the tender process.

## Confidentiality

Drawings, specifications, schedules and written technical information supplied to Tenderers shall not be used for purposes other than the preparation of a Tender without the approval of the Principal. Information submitted by a Tenderer shall be regarded as confidential and shall not be disclosed to a third party except with the prior written agreement of the Tenderer.

## Statement of Requirement

An analysis needs to be undertaken and a report provided by 30 May 2015. The report should outline whether the Bank of the Cook Islands (BCI):

* Can obtain an Exchange Settlement Account System ("ESAS") account with the Reserve Bank of New Zealand, allowing for individual transactions between financial institutions to be settled electronically as the transactions happen (i.e. real time).
* Can (or should) become a registered New Zealand bank – which will be a requirement of undertaking any direct or indirect activity in New Zealand under the name "Bank of Cook Islands".

The report should cover in the case that the BCI cannot become a registered New Zealand bank whether it can access the New Zealand payment system. This would be either through agency arrangements with a New Zealand settlement bank; and/or through a nostro account with a New Zealand bank. The report will need to clarify what BCI's options to operate in New Zealand would be as a non-bank deposit taker and the legislative requirements that would need to be complied with (e.g. AML/CFT legislation and FATCA) in order to offer banking services to Cook Islanders living in New Zealand.

The report will need to

* Outline whether the BCI can join the New Zealand clearing and settlement system provided by Payments NZ Limited as a Settlement Before Interchange ("SBI") participant, in particular options for addressing BCI's lack of a current credit rating.
* If the BCI can become a SBI participant of Payments NZ, what its compliance obligations would be as a result of such membership.
* Whether BCI can obtain access to the New Zealand SWIFT closed user group.
* Whether amendments to current Cook Islands' legislation or the enactment of new Cook Islands' legislation would be required in order to:
  + ensure consistency with New Zealand legislation where appropriate and provide for the Cook Islands to undertake interchange and settlement in New Zealand;
  + compel Cook Islands' registered retail banks to settle through the New Zealand payment system (whether directly or through an agency arrangement with a New Zealand bank) by a prescribed date (e.g. June 2016); and
  + address any anti-money laundering and/or US Foreign Account Tax Compliance Act ("FATCA") requirements of New Zealand banks.

## Conditions of Tendering

## Standard Conditions

1. Tenders must be completed in the format contained in Appendix A of this RFT. If offers do not comply with this format, they will not be accepted.
2. Tenders must be deposited in the required form in the Tender Box by the closing time as specified in this RFT.
3. All proposals and related documentation in respect of this RFT must be in the English language.
4. Tenderers must tender to provide services or supply materials for the whole of the contract works as specified in Appendix B “Specifications”.
5. All prices quoted must be inclusive of freight landed in Rarotonga.
6. Any other item that is critical to the delivery of the requirement and cannot be compromised. For example, there might be pre-qualification conditions attached to the RFT and tenderers not meeting such requirements should be excluded.
7. It must be clearly stated that in order for foreign companies to carry on business in the Cook Islands, an application for approval must be sought from the Business Trade and Investment Board (BTIB). Any fees associated with the registration are to be covered by the bidder.

APPENDICES

APPENDIX A

Form of Tender

**Richard Neves**

**Po Box 120**

**Rarotonga COOK ISLANDS**

Having examined the Tender Documents in relation to Tender Reference No. \_\_\_\_\_\_\_\_ and dated \_\_/\_\_/201, released by the Ministry of Economic and Financial Management, we submit the following offer.

We offer to complete, handover to the Principal and remedy defects in the whole of the said Tender Specifications in conformity with these Tender Documents for the sum of [insert the price offered in text with the value in numbers thus (NZD\_\_\_\_\_\_\_\_\_\_.\_\_)] stated exclusive of Value Added Tax, together with such other sums as may be ascertained in accordance with the Contract.

We undertake to complete and handover the whole of the Contract Works/Goods/Services within the period stated in the Conditions of Tendering.

We agree to abide by this Tender for a period of sixty (60) days from the date fixed for receiving the same and it shall remain binding upon us and may be accepted by you at any time before the expiry of that period.

Unless and until a Contract Agreement is prepared and executed, this Tender together with your written acceptance thereof, shall constitute a binding contract between us.

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

We understand that no contract shall come into existence, and no legal or other obligations shall arise between us and you (or between us and any other agent of the Principal) in relation to the conduct, outcome or otherwise of the Tender process, prior to and apart from your acceptance of our Tender.

We understand that you may contact the referees nominated by us in this offer and make whatever enquiries you deem necessary regarding our financial health and ability to deliver the Contract Works/Goods/Services. Further, during the assessment stage we understand and agree that you may request specific information from all tenderers in order to assist your assessment. We acknowledge that a failure to provide such information may result in disqualification from the process.

We provide the following information required to be submitted with this Tender:

* Completed Schedule of Prices
* Proposed Subcontractors *(if relevant)*
* Preliminary Delivery Programme
* List of Referees you may contact in relation to this offer.

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| **Signature:** | \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |
| **Printed Name:** | \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |
| **Position Held:** | \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |
| **Tenderer:** | \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |
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| **E-mail Address:** | \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |
| **Phone No.:** | \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |
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Schedule of Prices

Please provide details of pricing if necessary.

Proposed Subcontractors

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| --- | --- |
| **Name:** | \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |
| **Company:** | \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |
| **Address:** | \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |
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| **E-mail Address:** | \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |
| **Phone No.:** | \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |
| **Facsimile No.:** | \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |
| **Works/Skills to be performed.** | \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |
| **Educational/Technical Qualifications:** | \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |
| **Work Experience:** | \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |

Preliminary Delivery Programme

The consultant would be required to provide a report to the Government of the Cook Islands by 30 May 2015 and be available for subsequent discussion around the points raised in the report

Referees who may be contacted

|  |  |
| --- | --- |
| **Name:** | \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |
| **Company:** | \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |
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| **E-mail Address:** | \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |
| **Phone No.:** | \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |
| **Facsimile No.:** | \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |
| **Nature of Relationship with Tenderer:** | \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |

APPENDIX B

Tender Specifications

Specifications

A report is to be provided which outlines the following whether the Bank of the Cook Islands (BCI):

* can obtain an Exchange Settlement Account System ("ESAS") account with the Reserve Bank of New Zealand. (ESAS is the Reserve Bank of New Zealand’s Exchange Settlement Account System and along with Real-Time Gross Settlement (RTGS) allows individual transactions between financial institutions to be settled electronically as the transactions happen.); or
* can (or should) become a registered New Zealand bank – which will be a requirement of undertaking any direct or indirect activity in New Zealand under the name "Bank of Cook Islands", including what would fall within "direct or indirect activity" (e.g. will BCI need to be a registered bank solely as a result of operating an ESAS account).

Additionally, the report should cover in the case that the BCI cannot become a registered New Zealand bank:

* Whether the BCI could access the New Zealand payment system through:
  + agency arrangements with a New Zealand settlement bank; and/or
  + through a nostro account with a New Zealand bank (a nostro account is where a bank holds an account in another country for the particular purpose of settlements); and
  + what BCI's options to operate in New Zealand would be as a non-bank deposit taker and the legislative requirements that would need to be complied with (e.g. AML/CFT legislation and FATCA) in order to offer banking services to Cook Islanders living in New Zealand.
* The BCI can join the New Zealand clearing and settlement system provided by Payments NZ Limited as a Settlement Before Interchange ("SBI") participant, in particular options for addressing BCI's lack of a current credit rating.
* If the BCI can become a SBI participant of Payments NZ, what its compliance obligations would be as a result of such membership.
* Whether BCI can obtain access to the New Zealand SWIFT closed user group.
* Whether amendments to current Cook Islands' legislation or the enactment of new Cook Islands' legislation would be required in order to:
  + ensure consistency with New Zealand legislation where appropriate and provide for the Cook Islands to undertake interchange and settlement in New Zealand;
  + compel Cook Islands' registered retail banks to settle through the New Zealand payment system (whether directly or through an agency arrangement with a New Zealand bank) by a prescribed date (e.g. June 2016); and
  + address any anti-money laundering and/or US Foreign Account Tax Compliance Act ("FATCA") requirements of New Zealand banks.

APPENDIX C

**TERMS AND CONDITIONS FOR THE ENGAGEMENT OF A CONSULTANT**

Her Majesty the Queen acting by and through the Government of the Cook Islands (the “Government”) agrees to engage the Consultant and the Consultant agrees to provide the Services described in the Schedule on the following conditions:

1. **Application**: These terms and conditions supersede any contrary provisions in any previous agreements between parties, written or otherwise. No right under these terms shall be deemed to be waived except by notice in writing by each party. In the event that any one or more of the provisions contained in these conditions are declared invalid by order, decree or judgment of any Court of competent jurisdiction, these conditions are to be read as if such provision had not been inserted.
2. **Services**: The Consultant shall perform the Services as described in the attached Schedule in accordance with any requirements set out in these terms and conditions and/or in the Schedule. The time of performance of the Services is a fundamental element of these terms and conditions. The Consultant shall notify the Government in writing immediately when the Consultant becomes aware there may be a delay in the delivery of the Services. The Government is entitled to cancel these terms and conditions or change its specification (without incurring additional charges) if the Services are not supplied on the supply dates or times specified in the Schedule. Where the Consultant has the benefit of any warranties or covenants from a third party in respect of the Services, the Consultant shall disclose and assign the benefit of the warranties and/or covenants to the Government.
3. **Skill**: The Consultant shall use the highest reasonable standard of skill, care and quality and employ techniques, methods, procedures and materials of a high quality and standard in accordance with best professional practice in rendering the Services. The Consultant will comply with all relevant (a) Cook Island standards and international standards (if not in conflict) (both general and industry-specific); (b) statutes; (c) regulations; (d) by-laws; (e) ordinances; and (f) Government policies, applicable in respect of the supply of the Services.
4. **Independent Judgment**: Where the Services require the Consultant to certify, decide or use discretion under a contract between the Government and a third party, the Consultant must act independently, and with professional skill and judgment, and according to the terms of the contract between the Government and the third party.
5. **Delay**: If at any time the Consultant’s performance falls behind the programme set out in the Schedule then the Consultant shall notify the Government and, where the delays are due to matters within the control of the Consultant, shall take all practicable steps to remedy such delay.
6. **Variations**: The Government may order variations to the Services in writing or may request the Consultant to submit proposals for variation to the Services. Where the Consultant considers a direction from the Government or any other circumstance is or may give rise to a variation the Consultant shall notify the Government as soon as practicable.
7. **Payment**: The Government shall pay the Consultant for the Services the fees and expenses at the times and in the manner set out in the Schedule. The prices stated in the Schedule are fixed unless there is a written agreement stipulating the price may be varied, when it may be varied and how the price is to be determined. The price is exclusive of VAT. The Consultant is not entitled to claim expenses, surcharges, margins or disbursements except if otherwise agreed in advance and in writing by the Government.
8. **Liability**: Where the Consultant breaches these terms and conditions, the Consultant is liable to the Government for reasonably foreseeable claims, damages, liabilities, losses or expenses caused directly by the breach. The Consultant shall not be entitled to anticipatory profits or to special (including multiple or punitive), incidental or consequential damages or losses.
9. **Contribution to Loss**: If either Party is found liable to the other (whether in contract, tort or otherwise), and the claiming Party and/or a Third Party has contributed to the loss or damage, the liable Party shall only be liable to the proportional extent of its own contribution.
10. **Indemnity**: The Consultant indemnifies the Government in respect of all costs (including legal costs), claims, liabilities, losses, damage and expenses suffered or incurred by the Government and any other person claiming through the Government as a direct or indirect consequence of any unlawful, negligent, tortious, criminal, reckless or dishonest errors, acts or omission of the Consultant in the performance of its obligations under these terms and conditions. This indemnity survives the termination of these terms and conditions.
11. **Insurance**: The Consultant shall take out and maintain at its own cost, at all times during the continuance of these terms and conditions, such insurances as specified in the Schedule. All such insurance shall be on such terms and with such insurers as the Government may reasonably require. The Consultant shall, if requested by the Government, provide the Government with written evidence that all insurances are in force and shall produce, whenever reasonably required by the Government, the relevant policies and evidence of payment of the current premiums. If the Consultant fails to provide such evidence the Government may, after notifying the Consultant in writing, arrange or keep in force that insurance and may, for the purpose of doing so, pay the relevant premiums and deduct a corresponding amount from any moneys payable by Government to the Consultant under these terms and conditions.
12. **Intellectual Property**: “Intellectual Property” includes copyright, designs, drawings, specifications, reports, data and documentation. All Intellectual Property arising from the provision of the Services (“New IP”) is owned by the Government and the Consultant shall co-operate with the Government (including by signing documents) to help the Government protect its rights in the New IP. To the extent that New IP incorporates or requires Intellectual Property arising outside of the provision of the Services (“Pre-existing IP”), the Consultant licences, or shall procure the licence to the Pre-existing IP for the Government on a perpetual, royalty-free basis. The Consultant warrants and represents to the Government that the New IP and the Pre-existing IP will not infringe the Intellectual Property rights of any third party.
13. **Termination**: The Government may, at its convenience, terminate all or part of the Services by 10 days’ written notice to the Consultant who shall immediately make arrangements to stop the Services and minimise further expenditure. The Consultant may, in the event the Government is in material default, terminate these terms and conditions by 10 days’ written notice to the Government. Any suspension or termination shall not prejudice or affect the accrued rights or claims and liabilities of the parties. Further, the Government may terminate these terms and conditions immediately where, in the opinion of the Government, there has been serious misconduct by the Consultant. Serious misconduct includes, but is not limited to: bringing the Government into disrepute, where the Consultant, in the judgment of the Government, has engaged in corrupt or fraudulent practices in competing for or executing these terms and conditions, theft of property, offensive behaviour towards Government personnel, members of the public or contractors.
14. **Confidentiality**: The Consultant must keep confidential all information provided by the Government in relation to these terms and conditions and the provisions of the Services and not disclose the same without the written consent of the Government.
15. **Public Statements**: The Consultant must not make any public statements about the Services or these terms and conditions without the Government’s written approval.
16. **General Warranties**: The Consultant represents, warrants and undertakes that:
    1. it has full power, capacity and authority to execute, deliver and perform its obligations under these terms and conditions;
    2. it has and will continue to have, all necessary consents, permissions, licences and rights to enter into and perform its obligations under these terms and conditions;
    3. there are no existing agreements, undertakings or arrangements which prevent it from entering into these terms and conditions or which would impede the performance of its obligations under these terms and conditions;
    4. it has not offered any inducement in connection with the entering into or negotiation of these terms and conditions; and
    5. it has not (nor is any of its representative directors or employees) a party to any litigation, proceedings or disputes which could adversely affect its ability to perform its obligations under these terms and conditions.
17. **Conflict**: The Consultant confirms it has no knowledge of any conflict of interest in providing the Services. If any conflict arises or has the potential to arise during the supply of the Services, the Consultant shall immediately inform the Government in writing and the Government will decide on the appropriate steps to be followed in such event, which may include the right of the Government to terminate these terms and conditions with immediate effect.
18. **Key Personnel**: The Key Personnel for the provision of the Services are as listed in the Schedule. Any change to the Key Personnel requires the written consent of the Government.
19. **Assignment**: The Consultant must not assign, transfer or subcontract all or part of its rights or obligations under these terms and conditions without the prior written consent of the Government’s, such consent to be provided at the Government’s absolute discretion.
20. **Law**: These terms and conditions are governed by the laws of the Cook Islands. The parties agree to submit to the exclusive jurisdiction of the High Court of the Cook Islands.

****

**Schedule**

**Government**: Her Majesty the Queen acting by and though the Ministry of Economic and Financial Management

Signed: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Name: Richard Neves

Position: Financial Secretary

Date:

**Consultant**: [Insert Consultant details]

Signed: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Name:

Position:

Date:

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**Project:** An analysis of the feasibility of joining the New Zealand Payments system as described in the attached tender document.

**Location:** Rarotonga

**Scope and Nature of the Services:** A written report to be provided by 30 May 2015.

**Programme for the Services:** Delivery on or before 30 May 2015.

**Fees and Timing of Payments:**

**Insurance:**

**Contact Person**:

Government Contact: Richard Neves, richard.neves@cookislands.gov.ck

Supplier Contact: [insert details]

**Key Personnel:**

APPENDIX D

Evaluation Criteria

The Evaluation Criteria has been drawn from the Statement of Requirements, Standard Conditions and Special Conditions as articulated in the RFT. In accordance with clause 24.5 of the Manual, Tenders that did not meet the Standard Conditions are deemed non‑compliant.

#### Standard Conditions

|  |  |
| --- | --- |
| Criterion | Complies Yes or No |
| 1. Tender is completed in the format contained in Appendix B of the RFT. |  |
| 1. Tenders must be deposited in the required form in the Tender Box by the closing time specified in the RFT |  |
| 1. Proposal and related documentation must be in the English language. |  |
| 1. Tenderers must tender to provide the whole of the works/goods/services specified in the RFT. |  |
| 1. All prices must be in NZ dollars and inclusive of freight landed in Rarotonga. |  |

#### Special Conditions

A Weighted Criteria methodology will apply to the evaluation of the Special Conditions of this RFT.

|  |  |
| --- | --- |
| Criteria | Weight % |
| **Non-Price Criteria** |  |
| 1. Compliance with contract terms | 5 |
| 1. Relevant skills | 15 |
| 1. Past Performance | 10 |
| 1. Technical Skills | 15 |
| 1. Management Skills | 5 |
| **Total Non-Price Elements** | **50** |
| Price | 50 |
| **TOTAL WEIGHTING** | **100** |

The Evaluation Committee will conduct a risk assessment for each Tender submitted. This will identify the most significant risks presented by the Tender and consider the likelihood of the risk occurring; the consequence of that risk; and a risk mitigation strategy. In conclusion, the mitigated risk will be determined to form an overall measure of the risk represented by each Tender.

The Risk Mitigation Strategy may include the inclusion of specific clauses in the executed contract. Therefore, a Tender considered to be High Risk might still be selected subject to the Tenderer’s willingness to accept the proposed contract amendments.