**Request for Tender**



**Supply of Emergency Safety Equipment for the Ministry of Marine Resources**

**Reference No.: 141541**

**Date of Release: 24 June 2015**

**Ministry of Finance and Economic Management**

**Development Coordination Division**

**Glossary and Definitions**

|  |  |
| --- | --- |
| **Term** | **Explanation** |
| 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 |
| MMR | Ministry of Marine Resources |

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**Introduction**

The New Zealand Government has agreed to provide funding to the Cook Islands Government as part of the Pacific Maritime Safety Programme. One of the agreed outputs is the provision of emergency safety equipment, also known as “grab bags”.

Under the proposed arrangement, the Development Coordination Division (DCD) of the Ministry of Finance and Economic Management (MFEM) will coordinate the project with the implementing agency, the Ministry of Marine Resources (MMR).

**Summary of Requirement**

Through this Request for Tender (RFT), the Development Co-ordination Division of the Ministry of Finance and Economic Management wishes to implement a programme of development assistance funded by the New Zealand Government. This RFT is for the supply of emergency safety equipment and requires that the equipment be delivered to the Ministry of Marine Resources in Rarotonga.

**Submission of Tender/Offer**

Original hard copy tenders shall be in a sealed envelope marked “Confidential” and addressed to:

Supply of Emergency Safety Equipment Tender 2015

**Reference No:**

Peter Tierney, Manager,

Development Coordination Division

P.O. Box 120

Rarotonga, Cook Islands

Telefax and electronic proposal will not be accepted. Tenders must be submitted by the due date in the format specified in Appendix A. If tenders do not comply with the format contained in Appendix A, they will not be accepted. All proposals and related documentation in respect of this RFT must be in the English language.

The envelope must have the name of the tenderer, the contact person and the contact details clearly visible on the back. The envelope should be delivered by deposit into the Tender Box located at the Development Co-ordination Division, Rarotonga, Cook Islands

Tenders close at 3 p.m. on Thursday the 9th of July 2015. 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.

**Joint Proposals**

Any joint proposal must:

* identify all of the parties to the proposal;
* state the nature of the relationship between the parties for the purpose of the joint proposal;
* specify which requirements each party will be responsible for delivering;
* identify the structure and systems that support joint governance, accountability and financial and contract management;
* and be signed by all parties.

If there is more than one party comprising the Tenderer, each such party acknowledges and agrees that if its tender is accepted, its obligations to DCD comprised in the tender bid shall be owed by all parties comprising the Tenderer jointly and by each such party severally.

In this RFT, a reference to a Tenderer shall include each party comprising the Tenderer, if there is more than one party.

**Non-Resident Tenderers**

If the Tenderer is a foreign company or the tender includes a foreign company, an application for approval to carry out business in the Cook Islands must be sought from the Business Trade and Investment Board (BTIB). Any fees associated with the registration are to be covered by the bidder.

**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 circulated to all those who have registered their interest.

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

Name of Person: Boyd Ellison   
Title: Tender Manager   
Address: Vaimaanga   
Phone: +682 22226 mob +682 54221  
E-mail: boyd@akairoconsulting.com

**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. Failure to comply with the standard conditions will result in immediate exclusion from the Evaluation process.

Evaluation of the responses to this RFT will be in accordance with the Evaluation Criteria described in Appendix C.

**Notification of Acceptance**

Tenders shall remain open for acceptance and shall not be withdrawn for a period of sixty (60) working days from the Closing Date of the tender. Unsuccessful tenderers shall be notified in writing by the Principal or their representative within 10 working days of acceptance of the successful tender.

If no tender is accepted by the Principal within twenty (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.

If there are no successful tenders, the Principal will notify the Tenderers that no tender has been accepted and may do any of the following:

* Invite all Tenderers to provide additional information;
* Re-advertise the tender extending the closing date for submissions;
* Tenderers may either re-tender or provide additional information to support their existing tender already received but not accepted by the Principal.

The Principal shall not be bound to accept the lowest priced tender or the highest scored tender or any tender. When the preferred tender has been identified by the Tender Team, the Principal will invite the Tenderer to enter into negotiations based on the draft contract at Appendix D 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.

The Principals decision shall be final and no correspondence will be entered into. Subject to the provisions of the Official Information Act, Tenderers will not be entitled to see evaluation documents. Complaints may be lodged under section 41-43 of the Purchase and Sale of Goods and Services policy.

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 tenderer must confirm their acceptance of the terms of the contract for services attached at Appendix D. If the tenderer is unable to agree to any clause, it must set out in a table form the clause reference, reason why the tenderer cannot accept it and proposed alternative wording.

**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 Requirements**

The tenders should include information on how the tenderer will accomplish the following specific activities.

* Source the emergency safety equipment described in the Tender Specifications
* Deliver the equipment to Rarotonga before the required deadline of close of business on Friday the 7th of August.

As well as carrying out the above activities, the Contractor will also be expected to provide a Completion Report following full delivery of the equipment. The Report will include copies of the bills of lading, commercial invoices and any recommendations as to the storage and maintenance of the equipment.

**Conditions of Tendering**

Any offer that does not meet the terms specified in the Standard Conditions below is **non‑conforming** and will not be evaluated.

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 theSubmission of Tender Offer above.
3. All proposals and related documentation in respect of this RFT must be in the English language.
4. The tenderer must tender for the whole of the contract works as specified in Appendix B.
5. Tenders must be presented in hard copy format only and delivered in a sealed envelope to the location specified in Submission of Tender offer above. Telefax and electronic proposals will not be accepted.
6. All prices quoted must be inclusive of freight and insurance landed in Rarotonga.

The Principal may ask the Tenderer to provide a list of proposed subcontracts and subcontractors before accepting the tender.

The Principal may ask the Tenderer to provide additional information during the tender evaluation. The Tenderer must supply that information in the form and within the time stated in the Principal’s request.

It is the responsibility of the tenderer to carry out any site visits that are necessary.

**Tender to be Based on Documents**

The tender must be in the required format and must include all information asked for in the tender documents.

The Tenderer must prepare the tender in accordance with the tender documents which shall include notices sent to the Tenderer before the close of tenders.

The Tenderer must tender on a lump sum basis for the project. The amount tendered must be stated on the tender submission and on the trade summary if one is provided.

**Information supplied by Tenderer**

The Principal may contact the Tenderer’s referees, competitors, or customers to enquire about the previous performance of the Tenderer, and/or make any other enquiries about the Tenderer as the Principal deems necessary.

**Delivery Schedule**

The tenderer is required to submit, on placement of the tender application, a proposed delivery schedule outlining the days and the duration, considered necessary to complete the contract work from the time of execution of the contract to the contract completion including delivery of the equipment to the specified destination.

The Tenderer should identify any risks to completing the contract within their proposed timeline and measures to address those risks.

The delivery schedule costs must be for the consignment specified in the tender documents and/or any amendments to the consignment specifications issued in writing by the Principal prior to the closing date of the tender submission.

Upon awarding the contract, it is deemed that the Tenderer has assessed the tender requirements and that all costs both direct and indirect to complete the consignment have been included in the tendered price.

**APPENDICES**

**APPENDIX A**

**Form of Tender**

Peter Tierney, Manager,

Development Coordination Division

P.O. Box 120

Rarotonga, Cook Islands

Having examined the Tender Documents in relation to Tender Reference No. 141541dated 24 June 2015, released by the Development Coordination Division, 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 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 that 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.

|  |  |
| --- | --- |
| Signature: |  |
| Printed Name: |  |
| Position Held: |  |
| Tenderer: |  |
| Address: |  |
|  |  |
|  |  |
| Date: |  |
| E-mail: |  |
| Phone No.: |  |
| Facsimile No.: |  |

**General Information**

Please complete the following. Use additional pages if required.

|  |  |
| --- | --- |
| Company Legal Name: |  |
| Company Registration Number: |  |
| RMD Number: |  |
| Contact Person |  |
| Physical Address |  |
| Postal Address |  |
| Telephone Number |  |
| Fax Number |  |
| Email Address |  |
| Idemnity Insurance Details |  |
| Statement of Company’s General Expertise |  |
| a). Describe details of the company’s experience in supplying safety equipment and any relevant logistics experience | |
| b). Describe how the services will be provided to a high standard. Include on separate page a work plan, timelines and proposed delivery schedules to meet the specified deadlines in the Tender Documents. | |
| c).Describe any risks that could impede the contract and ways to address these. | |

**Schedule of Prices**

Please refer to the Tender Specifications for the performance details and specific requirements of the equipment to be supplied.

**Emergency Safety Equipment**

The submitted price should include freight, insurance, packaging, crating, customs duty and/or any other services in the delivery of the Product. The Supplier is not entitled to claim expenses, surcharges or margins or disbursements except if otherwise agreed in advance and in writing by the Government.

All costs should be exclusive of VAT.

MMR will be responsible for Customs clearances and transporting the equipment from the Rarotonga airport or wharf to the MMR Offices.

|  |  |  |  |
| --- | --- | --- | --- |
| **ITEM** | **QUANTITY** | **UNIT COST** | **TOTAL COST** |
| Lifejackets | 30 |  |  |
| Radio Transceiver | 10 |  |  |
| 406 MHZ EPIRB | 10 |  |  |
| Rescue Laser | 10 |  |  |
| Electronic Distress Flare (EDF) | 120 |  |  |
| Life Buoy | 10 |  |  |
| Bright coloured Duffel Bag | 10 |  |  |
| Heliograph | 10 |  |  |
| Combined Strobe/Torch with Batteries | 20 |  |  |
| First Aid Kit | 10 |  |  |
| Small Knife | 10 |  |  |
| Compass | 110 |  |  |
| Whistle | 10 |  |  |
| Rescue Streamer | 20 |  |  |
|  |  |  |  |
| Freight to landed in Rarotonga |  |  |  |
| Insurance |  |  |  |
|  |  |  |  |
| **TOTAL PROJECT COST** | | |  |

**Proposed Subcontractors**

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

**Preliminary Delivery Programme**

Please include a timeline to complete the project. Consideration should be given to potential impacts on the timeline such as the availability of equipment, delays in delivery or other external factors. The deadline for the delivery of the equipment to Rarotonga is Friday the 7th of August. The specified equipment should be consigned to:

Ben Ponia

C/O Ministry of Marine Resources

Rarotonga,

Cook Islands.

Ph: (682) 28721

**Referees who may be Contacted**

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

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

|  |  |
| --- | --- |
|  |  |
|  |  |
|  |  |

**APPENDIX B**

**Tender Specifications**

The consignment of emergency safety equipment will be utilised to make up 10 grab bags which will contain the items contained in the list below. The extra electronic distress flares and compasses will be utilised to top-up some existing grab bags which have already been distributed.

The Emergency Safety Equipment will need to be new and not second hand or refurbished in anyway. The tender bid should also:

* Specify the Warranty Period and follow up Services
* Provide a Delivery timetable, method and costs of equipment landed in Rarotonga.
* Indicate all costs in New Zealand Dollars or equivalent

**Consignment**

|  |  |
| --- | --- |
| **ITEM** | **QUANTITY** |
| Lifejackets | 30 |
| Radio Transceiver | 10 |
| 406 MHZ EPIRB | 10 |
| Rescue Laser | 10 |
| Electronic Distress Flare (EDF) | 120 |
| Life Buoy | 10 |
| Bright coloured Duffel Bag | 10 |
| Heliograph | 10 |
| Combined Strobe/Torch with Batteries | 20 |
| First Aid Kit | 10 |
| Small Knife | 10 |
| Compass | 110 |
| Whistle | 10 |
| Rescue Streamer | 20 |
|  |  |

**Equipment Descriptions**

Lifejackets – manually inflatable with light and whistle, must meet NZ Standard 5823:2005

Radio Transceiver- waterproof, hand-held, capable of transmitting on 2182 khz

406 MHZ EPIRB- fitted with GPS

Rescue Laser- visible day and night

Electronic Distress Flare (EDF)- waterproof to a depth of 10 metres, lightweight, minimum 6 hour battery life,

Life Buoy- fitted with light and line

Bright coloured Duffel Bag – waterproof, buoyant

Heliograph – compact and shatterproof

Combined Strobe/Torch with Batteries

First Aid Kit - Should contain enough supplies to cover minor accidents or injury as well as sun block.

Small Knife- with sheath

Compass- hand-held, robust

Whistle

Rescue Streamer- high visibility

**APPENDIX C**

**Evaluation Criteria**

In accordance with clause 24.5 of the Manual, Tenders that do not meet the Standard Conditions are deemed non‑compliant and will not be considered.

**Standard Conditions**

|  |  |
| --- | --- |
| 1. Tender is completed in the format contained in Appendix A 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. Tenders must be presented in hard copy format only. |  |
| 1. All prices must be in NZ dollars and inclusive of freight landed in Rarotonga. |  |

**Special Conditions**

The following is an overview of the awarding criteria to be used to determine the successful tender applicant.

The scoring of each tender application will be determined by an Evaluation Committee which shall be established at the start of the selection process. Scores will be based on the information provided in the submitted Tender.

|  |  |
| --- | --- |
| Award Criterion | Weight |
| Locally established company/Locally supplied resources (labour and/or materials) | 5 |
| Quality of Equipment-proven history of usage | 20 |
| Relevant logistical experience | 5 |
| Ability to meet deadlines | 10 |
| **Total Non-Price Elements** | **40** |
| Price | 60 |
| **Total Weighted Scores** | **100** |

A weighted criteria methodology will apply to the evaluation of this RFT. Applications will be scored for each component above on a 0 to 5 scale as follows;

5 Exceeds Requirements

4 Satisfactory

3 Meets Requirements with one minor “area of concern”

2 Meets Requirements with several minor “areas of concern”

1 Meets Requirements with major “areas of concern”

0 Unsatisfactory

The tenderer may provide additional documents or information to support their application

**Risk**

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 the ability of the tenderer to address the potential risks in order to meet the terms of the contract. The mitigated risk will be determined to form an overall measure of the risk represented by each Tender.

The Risk Mitigation Strategy may result in 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.

**APPENDIX D**

**Draft Contract**

Please indicate whether any amendments are required to the contract terms attached to this tender. If no amendments are suggested Tenderers will be expected to enter into the agreement without amendment. Any proposed amendments will be form part of the assessment criteria.



**PURCHASE ORDER**

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

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

Name:

Position:

Date:

Supplier: [Insert Supplier details]

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

Name:

Position:

Date:

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

**Product and Services:** The supply of emergency safety equipment to the Ministry of Marine Resources for onward distribution to Cook Islands fishermen and fisherwomen.

Delivery: To the office of the Ministry of Marine Resources, Avarua, Rarotonga by the 7th of August

Price: [insert details of the amount to be paid, including if it is as a lump sum or by instalments]

Insurance: [insert details of any insurance requirements, i.e. type of cover and cover levels]

Contact Person:

Government Contact: Peter Tierney, Manager, Development Co-ordination Division, MFEM.

Supplier Contact: [insert details]

Additional Terms: [insert any special requirements that are not already covered in this Purchase Order or the agreement terms. These may include details of inspection requirements, standards which need to be complied with, whether product can be used or must be new or any other terms that you may require. Please do not hesitate to contact Crown Law with assistance as to whether further terms are required and how they should be worded.]

**TERMS AND CONDITIONS FOR SUPPLY OF PRODUCT AND SERVICES**

The Supplier agrees to supply the Product and Services described and detailed in the Purchase Order issued by the Government of the Cook Islands (the “Government”) on the following terms and conditions:

1. **APPLICATION**

These terms and conditions apply to all purchases of Product and Services except where the Government agrees in writing that they be varied or do not apply. These terms and conditions supersede any contrary provisions in the Supplier’s terms and conditions of supply including those terms that the Supplier normally uses. No right under these terms and conditions 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 terms and conditions are declared invalid by an order, decree or judgment of any Court of competent jurisdiction, these terms and conditions will be read as if such provision had not been inserted.

**2. PRICES**

2.1. The prices stated on the Government’s Purchase Order 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.

2.2. The price includes the Services, freight, insurance, packaging, crating, local cartage, customs duty and/or any other services in the delivery of the Product.

2.3. The price shall be in New Zealand dollars unless otherwise specified in the Purchase Order. 2.4. The price is exclusive of VAT.

2.5. The Supplier is not entitled to claim expenses, surcharges or margins or disbursements except if otherwise agreed in advance and in writing by the Government.

**3. DELIVERY**

3.1. The time of delivery and performance of the Product and Services is a fundamental element of these terms and conditions.

3.2. The Product and Services shall be delivered and rendered in a prompt and timely manner on or within the delivery dates specified in the purchase order. All Product and Services must be delivered and performed within the Government business hours (normal business hours are 8:00 am to 4:00 pm, Monday to Friday), unless otherwise specified in the Purchase Order.

3.3. The Supplier shall notify the Government in writing immediately when the Supplier becomes aware there may be a delay in the delivery of Product or rendering of Services to the Government.

3.4. The Government is entitled to cancel the Purchase Order or change its specification (without incurring additional charges) if the Product and/or Services are not rendered or supplied on the supply dates or times specified in the Purchase Order.

3.5. All Product and Services must be supplied to the address specified in the Purchase Order. The Supplier shall make itself aware of any special requirements when supplying the Product and Services to Government property.

3.6. When Product is delivered to the Government it shall be accompanied by a delivery docket that records the Purchase Order number, the description, quantity with the applicable units of measure, unit rates and dollar values of the Product and Services delivered. The delivery docket must be signed for and retained by a Government officer.

3.7. All Product shall be packaged in a manner to prevent damage or deterioration when being delivered to the Government.

3.8. The Government may use other suppliers for the supply of Product and Services, or product and services of the same nature as the Product and Services, at any time.

**4. IDENTIFICATION**

4.1. The Purchase Order number must be shown on all packages, invoices and correspondence relating to the Product and Services. Product supplied against an invalid Purchase Order or without a Purchase Order, will be returned to the Supplier at the Supplier's expense including the cost of packaging, transportation, insurance and handling of the Product and Services.

4.2. Where applicable, the Supplier grants the Government access to the Supplier’s premises, facilities and staff concerning the delivery and identification of the Product. The Government shall have the right to audit and inspect the Supplier’s records concerning delivery of the Product and rendering of the Services. These rights are for both the Government and any other party that has the use or benefit of the Product and Services.

**5. QUALITY, INSPECTION AND ACCEPTANCE**

It is a condition of these terms and conditions and the Supplier warrants that:

5.1. All Product and Services shall be in accordance with any requirements set out in these terms and conditions and/or in the Purchase Order and shall be free from defects in workmanship, materials and design. These obligations survive acceptance of the Product and Services and payment.

5.2. The Supplier 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 providing the Product and rendering the Services.

5.3. The Supplier 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 Product and rendering the Services.

5.4. Where the Supplier has the benefit of any warranties or covenants from a third party in respect of the Product and Services, the Supplier shall disclose and assign the benefit of the warranties and/or covenants to the Government.

5.5. The Product and any result or product of the rendering of the Services, its material and workmanship, shall be subject to inspection and testing at all reasonable times and places by the Government (or those parties to whom the Government supplies the Product) before, during or after delivery.

5.6. If inspection and testing is to be conducted on the premises of the Supplier or the Supplier’s sub-contractors, the Supplier shall provide (without additional charge) all reasonable facilities and assistance for the safe and convenient inspection and testing required by the Government's inspectors in the performance of their duty.

5.7. The Supplier acknowledges that the signing of a delivery note or similar on behalf of the Government does not constitute acceptance of any Product and/or Services. The Government may reject any Product and/or Services (as applicable), even after they have been accepted, that: (a) are not of merchantable quality; (b) are not fit for purpose as stipulated in the Purchase Order; (c) are in an unsatisfactory condition or not functioning in the way they are designed to function; or (d) do not otherwise meet the requirements (including requirements relating to delivery) of these terms and conditions, or in circumstances where the Services do not meet the requirements of clause 5.1("Rejected Product"/"Rejected Services").

5.8. For any Rejected Product or Rejected Services the Supplier will, within ten (10) business days of receiving notice of Government's rejection of the Rejected Product or Rejected Services, at the Government's sole and absolute discretion and at the Supplier's sole risk and expense: (a) repair the Rejected Product; (b) replace the Rejected Product; (c) request the re-performance of the Services (d) remove the Rejected Product for full credit or reimbursement; or (e) suspend or cancel the Services.

5.9. Title to the Rejected Product will pass back to the Supplier on the earlier of the replacement of the Rejected Product, or refund or credit of any amounts paid by the Government as specified in clause 5.8(c).

5.10. Clauses 5.7 and 5.8 do not limit or negate any other rights or remedies that the Government may have under these terms and conditions or at law.

5.11. A lack of Government inspection does not relieve the Supplier of any responsibility to perform its obligations according to these terms and conditions.

**6. OWNERSHIP AND RISK**

6.1. Subject to clauses 5.7 and 5.8:

a. title in the Product passes to the Government when the Product is delivered to the Government or when the Government completes payment for the Product, whichever is the earlier date;

b. the Product remains at the Supplier’s risk until the Product is delivered to the Government and is declared by the Government as not being Rejected Product or Rejected Services.

6.2. Where the Product is delivered to the Government subject to the Services, the Product remains at the Supplier’s risk until the Government is satisfied with the complete rendering of the Services.

**7. PAYMENT**

7.1. The Supplier shall provide to the Government’s Contact Person, within five (5) business days of the end of the month following delivery of the Product or rendering of the Services, a VAT tax invoice for each delivery of the Product and rendering of the Services, stating Purchase Order number, date of delivery and full description of the Product and Services and quantity delivered. Invoices received without all of these details will be returned to the Supplier, unpaid.

7.2. If monthly charges are applicable, the Supplier shall supply to the Contact Person specified in the Purchase Order a monthly statement of that month’s deliveries not later than the tenth business day of the month following delivery.

7.3. Invoices and statements are to be addressed to the address specified in the Purchase Order.

7.4. Subject to clause 5, payment for Product delivered, once accepted, will be effected on the first Wednesday on or after the 20th of the month following the date of the Supplier’s VAT tax invoice or receipt of the delivery of the Product, whichever is the later.

7.5. Any invoices provided by the Supplier which have not met the requirements of this Payment clause will not be effected.

7.6. Payment will be effected by Electronic Funds Transfer (EFT) (direct credit).

**8. CONFLICT**

8.1. The Supplier confirms it has no knowledge of any conflict of interest in providing the Product and rendering the Services.

8.2. If any conflict arises or has the potential to arise during the supply of the Product and Services, the Supplier 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 the Purchase Order with immediate effect.

**9. INTELLECTUAL PROPERTY**

9.1. “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 Supplier shall co-operate with the Government (including by signing documents) to help the Government protect its rights in the New IP.

9.2. To the extent that New IP incorporates or requires Intellectual Property arising outside of the provision of the Services (“Pre-existing IP”), the Supplier licences, or shall procure the licence to the Pre-existing IP for the Government on a perpetual, royalty-free basis.

9.3. The Supplier 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.

**10. ASSIGNMENT**

The Supplier must not assign, transfer or sub-contract any rights or obligations applicable under these terms and conditions without the prior written consent of the Government, such consent to be given at the Government’s absolute discretion.

**11. NOTICES**

11.1. All correspondence shall include the Purchase Order number and addressed to the Government’s Contact Person named on the Purchase Order form.

11.2. All correspondence shall be in writing sent by email, mail with postage prepaid or by hand delivery to the address for notices as set out above or such other address as a party has notified in writing.

11.3. Subject to clause 11.4, notice given in person is deemed to be served upon delivery or by post three (3) business days after the date of posting. Any notice served on a nonbusiness day is deemed to have been served on the first business day after that day. Any notice by email shall be deemed to be received on the first business day after such email has reached the receiver’s designated information system for receiving emails or, in all other situations, when the email comes to the receiver’s attention.

11.4. The Government shall only be deemed to have received delivery of a notice upon the Government acknowledging in writing receipt of the notice.

**12. INDEMNITY**

The Supplier 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 Supplier in the performance of its obligations under these terms and conditions. This indemnity survives the termination of these terms and conditions.

**13. REMEDIES**

The Supplier shall not be entitled to anticipatory profits or to special (including multiple or punitive), incidental or consequential damages or losses.

**14. INSURANCES**

14.1. The Supplier 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 Purchase Order. All such insurance shall be on such terms and with such insurers as the Government may reasonably require.

14.2. The Supplier 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 Supplier fails to provide such evidence the Government may, after notifying the Supplier 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 Supplier under these terms and conditions.

**15. 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.

**16. TERMINATION FOR CONVENIENCE**

Notwithstanding anything to the contrary contained in these terms and conditions, the Government shall be entitled to cancel any applicable Purchase Order, at its convenience, on 10 days' written notice to the Supplier; provided the Government will pay for all Product and Services rendered delivered to the satisfaction of the Government in respect of any Purchase Order, prior to the date of notice of cancellation.

**17. GENERAL WARRANTIES**

The Supplier represents, warrants and undertakes that:

17.1. it has full power, capacity and authority to execute, deliver and perform its obligations under these terms and conditions or any Purchase Order;

17.2. 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 or any Purchase Order;

17.3. 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 or any Purchase Order;

17.4. it has not offered any inducement in connection with the entering into or negotiation of these terms and conditions or any Purchase Order and;

17.5. 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 or any Purchase Order.