**Request for Tender**



Recruitment of a Maritime Technical Advisor for the Ministry of Transport

Reference No.: 151601

Date of Release: 22 July 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 |
| GFA | Grant Funding Arrangement |
| IMO | International Maritime Organisation |
| Manual | The Cook Islands Government Financial Policies and Procedures manual |
| MoT | Ministry of Transport |
| Principal | The Manager, Development Co-ordination Division, Ministry of Finance and Economic Management |
| PMSP | Pacific Maritime Safety Programme |
| VAT | Value Added Tax |

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## Introduction

As part of the Pacific Maritime Safety Programme, the New Zealand Ministry of Foreign Affairs and Trade (MFAT), through a Grant Funding Arrangement with the Cook Islands Government, is providing funding to recruit a technical advisor to work in the Ministry of Transport’s Marine Division. The Development Coordination Division (DCD) of the Ministry of Finance and Economic Management (MFEM) will coordinate the Request for Tender, alongside the implementing agency, the Ministry of Transport (MoT).

## Summary of Requirement

This RFT is for the recruitment of a maritime technical advisor. The adviser will provide technical support to the Secretary and Director of Marine of the MoT for the implementation of the Cook Islands National Maritime Transport Policy and strategic plan 2015 – 2020. The services will be completed by a full time, country based (Avarua, Rarotonga), Maritime Technical Adviser with appropriate education, training and experience in the administration of a national maritime sector. The appointment will be for an 18 month period. The scope of services includes:

* Lead International Maritime Organisation (IMO) audit findings implementation and responses including policy and legislative reviews and changes as necessary
* Providing professional advice to the Secretary for Transport and Director of Maritime concerning the efficient and effective routine operation and administration of the maritime sector
* Assist the Director of Maritime with maritime strategic plan implementation and management.
* Mentoring and capacity development for any existing or new Maritime Division staff to improve their operational capability including their knowledge and understanding of their roles with respect to new rules and regulations, effectiveness of planning and regulatory functions, and interaction with stakeholders in the maritime sector.

## Submission of Tender/Offer

Tenders will be accepted in hard copy and electronically.

**Hard Copy Proposals**

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

Recruitment of Maritime Technical Advisor Tender 2015

Reference No: 151601

Peter Tierney

Manager

Development Coordination Division

P.O. Box 120

Rarotonga, Cook Islands

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 13th of August 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.

**Electronic Proposals**

Tenders must be emailed as a pdf file to [**tenders@cookislands.gov.ck**](mailto:tenders@cookislands.gov.ck) with the subject line*“Maritime Technical Advisor for the Ministry of Transport, Reference 151601”*. Tenders must be received to the inbox of tenders@cookislands.gov.ck in the form specified in Appendix A 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 confirmation of receipt for the purposes of ensuring the tender submitted is within time limit.

**NOTE:** Telefax 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 assessed on whether they have conformed to the required criteria contained in the Tender Format documents. Failure to comply with these 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.

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 Technical Advisor with the required experience
* Achieve the outputs attached in the Tender Specifications

As well as carrying out the above activities, the Contractor will also be expected to provide a Completion Report at the end of the appointment. The Report will include an assessment of the delivery of the outputs as listed in the Tender Specifications.

## 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. Tender is completed in the format contained in Appendix A of the RFT. |
| 1. Tenders must be submitted in a seal envelope and deposited 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 services specified in the RFT. |
| 1. Tenders may be presented in hard copy format or electronically. Telefax proposals will not be accepted |
| 1. All prices must be in NZ dollars. |

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.

## Assignment Schedule

The tenderer is required to submit, on placement of the tender application, a proposed schedule outlining the time required for the recruitment of the technical advisor; the date that the technical advisor will begin the assignment at the Ministry of Transport and the duration considered necessary to complete the contract work. This will be from the time of execution of the contract to the contract completion, including submission of the Completion Report.

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

The work schedule costs must be for all the costs related to the delivery of the outputs specified in the tender documents and/or any amendments to the 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 assignment 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. 151601** dated 22 July 2015, released by the Development Coordination Division, we submit the following offer.

We offer to complete the assignment as outlined in the 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 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 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 Assignment Schedule
* 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 providing technical advice in the maritime sector. | |
| b). Describe how the services will be provided to a high standard. Include on separate page a work plan, timelines and proposed 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 outputs to be delivered.

**Provision of Consultancy Services**

The submitted price should include travel, insurance, housing, transportation, customs duty and/or any other expenses to be incurred in the delivery of the Services. The consultant must have their own equipment to provide the services such as a laptop and cell phone. The Contractor 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.

MoT will be responsible for provision of a working space with a desk and chair, power and landline phone while in the office.

|  |  |  |
| --- | --- | --- |
| **Items** | **Rate (NZD)** | **Total (NZD)** |
| a) Remuneration | $XXXX per calendar month |  |
| b) Reimbursable  International Airfares  Mobilisation and Demobilisation Allowance  Living Allowance in Cook Islands, Rarotonga | Home location to Cook Islands return  Baggage allowance |  |

**Proposed Subcontractors**

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

Preliminary Assignment Schedule

Please include a timeline to complete the project. Consideration should be given to any potential impacts on the timeline such as the availability of the consultant, delays in placement or other external factors. The prefered date for the consultant to be onsite in Rarotonga is Monday the 14th of September.

**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

## Background

The goal of the Activity is to enhance the effectiveness and performance of the Ministry of Transport’s, Maritime Division through the implementation of a Cook Islands National Maritime Transport Policy (the Policy) and Strategic Plan (the Plan). The Maritime Technical Adviser will provide technical assistance to the Secretary of Transport and Director of Maritime for the implementation of the Policy and Plan.

As signatory to International Maritime Organisation conventions, the Cook Islands Government has an obligation to comply with convention requirements of coastal, port and flag state control of its maritime sector. The Maritime Division of the Government’s Ministry of Transport is in need of developing and strengthening its regulatory functions across the maritime sector so that these requirements can be met.

The need has been addressed initially with the development of a Cook Islands National Maritime Transport Policy and a related strategic plan to achieve the goals and objectives of the Policy covering the period 2015 – 2020. Both the Policy and Plan have been developed in consultation with the Secretary of Transport and the Director of Maritime.

The services will be completed by a full time, country based (Avarua, Rarotonga), Maritime Technical Adviser with appropriate education, training and experience in the administration of a national maritime sector. The appointment will be for an 18 month period.

The scope of services to be provided includes the following activities:

* Lead International Maritime Organisation (IMO) audit findings implementation and responses including policy and legislative reviews and changes as necessary
* Providing professional advice to the Secretary for Transport and Director of Maritime concerning the efficient and effective routine operation and administration of the maritime sector
* Assist the Director of Maritime with maritime strategic plan implementation and management.
* Mentoring and capacity development for any existing or new Maritime Division staff to improve their operational capability including their knowledge and understanding of their roles with respect to new rules and regulations, effectiveness of planning and regulatory functions, and interaction with stakeholders in the maritime sector.

The Maritime Technical Adviser will be directly responsible to the Secretary for Transport through the Director of Maritime, reporting to them as directed. The Maritime Technical Adviser will also report implementation progress against the Plan monthly to the Development Manager Transport, Sustainable Economic Development Division, New Zealand Ministry of Foreign Affairs and Trade. This report will be made in consultation with the Secretary for Transport and Director of Maritime.

The Maritime Technical Adviser will be required to be flexible in responding to changes in plan progress and implementation.

Short stays on the outer islands are likely in the delivery of this assignment.

## Outputs

The Maritime Technical Adviser will achieve the following outputs during the course of appointment:

| No. | Output | Inputs/tasks |
| --- | --- | --- |
| 1 | Technical assistance to the Secretary of Transport and the Director of Maritime. | Assist the Secretary of Transport and Director of Maritime in the delivery of the functions of the Ministry of Transport Maritime Division through policy advice, |
| 2 | Facilitate the implementation of the Maritime Strategic Plan | Develop and cost the work programme for the delivery of the strategic plan including;  Communications strategy  Legislation Regulation and rules reviews and coordination of amendments as necessary  Development of capacity building programme  Development of job descriptions for positions identified  Develop QMS and train staff in their use. |
| 3 | Preparation and coordination of voluntary IMO audit | Response plan following Audit findings. |
| 4 | Coordinate and report on all MFAT Grant Funded Maritime Safety Project Activities in the Cook Islands | Reporting as per GFA milestones  Assist other GFA stakeholders in achieving the delivery of their specific objectives |
| 5 | Develop a work plan for delivery to MoT. This work plan may include the following items (a-g): | Submit a work plan to MoT for approval within one month of commencement in position. |
|  | (a) Qualified and experienced Maritime Officer | In consultation with the Director of Maritime, draft a job description and recruit a qualified mariner as a Maritime Officer. Establish a theoretical and practical training regime for Flag State inspections in conjunction with Maritime New Zealand |
|  | (b) Domestic vessel for Pa Enua | In consultation with the Director of Maritime and Maritime New Zealand, provide advice to the Government and facilitate the provision of expert maritime advice with regard to suitable ships |
|  | (c) Develop and implement monitoring and oversight procedures and processes in the MoT Maritime Division and establish MCI reporting requirements | In consultation with the Director of Maritime |
|  | (d) Tokyo Memorandum of Understanding | Apply to Tokyo MoU Committee for Observer status in consultation with Secretary of Transport |
|  | (e) Review of Coastal State obligations. | Peer reviews to be carried out by Maritime New Zealand specialist, prior to mandatory IMO audits of coastal state responsibilities. PMSP funding. |
|  | (f) Coastal State service agreements. | Review to be carried out by Maritime New Zealand specialist prior to mandatory IMO audit of coastal state responsibilities. |
|  | (g) Expert advice | Provide and/or ensure access to expert regulatory and administrative advice.  Review and recommend action on other maritime-related conventions considering the obligations for the State. |

## Performance Standards

The Maritime Technical Adviser will have the following essential and desirable qualifications and experience:

Essential

* Tertiary qualifications in either deck officer or marine engineering, administration or other relevant discipline from a recognised institution.
* Extensive experience in management and administration of maritime services, particularly planning and regulatory functions.
* Experience in public sector capacity development.
* Demonstrated ability to conduct audits.
* Excellent communication skills in English, including well developed report writing skills.
* Demonstrated experience in the maritime sector of developing countries.

Desirable

* Experience with donor funded projects
* Demonstrated work experience in the Cook Islands or the Pacific Islands region
* Experience with the administration of contracts, government or donor.

Plan implementation progress and output quality shall be to the satisfaction of the Secretary for Transport and the Director of Maritime.

### Relevant reports/documentation

The following documents are relevant to the services:

* Cook Islands National Maritime Transport Policy paper. 9 May 2014.
* Ministry of Transport Maritime Division Strategic Plan 2015 – 2020. June 2014.
* Final Report – Captain John MANSELL, Senior Adviser, Maritime New Zealand Temporary Attachment to the Cook Islands Ministry of Transport March – May 2014.

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 submitted in a seal envelope and deposited 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 services specified in the RFT. |  |
| 1. Tenders may be presented in hard copy format or electronically. Telefax proposals will not be accepted |  |
| 1. All prices must be in NZ dollars. |  |

#### 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/individual | 5 |
| Cook Islands work experience | 5 |
| Relevant technical experience | 30 |
| **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

**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, thieft 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.

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**Schedule**

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

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

Name:

Position:

Date:

**Consultant**: [Insert Consultant details]

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

Name:

Position:

Date:

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**Project:** Recruitment of a Technical Advisor for the Ministry of Transport

**Location:** Ministry of Transport, Avatiu, Rarotonga, Cook Islands.

**Scope and Nature of the Services:** Provision of technical advice to the Secretary of Transport and the Director of Maritime

**Programme for the Services:** To be confirmed

**Fees and Timing of Payments:** To be confirmed

**Insurance:**

The Consultant shall

1. take out and maintain at its own cost but on terms and conditions approved by the Government, personal liability insurance**,** and
2. at the Governments request, shall provide evidence showing that such insurance has been taken out and maintained and that the current premiums therefore have been paid. The Consultant shall ensure that such insurance is in place prior to commencing the Services.

**Contact Person**:

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

Supplier Contact: To be confirmed

**Special Conditions:**

1. The Consultant is responsible for all their tax liabilities arising out of the agreement.
2. For the avoidance of doubt the Consultant is not an employee of the Government of the Cook Islands.