



COOK ISLANDS GOVERNMENT

REQUEST FOR PROPOSAL

I s s u e d o n

23 October 2015

F o r

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

MATERIALS FOR THE INSTALLATION OF WATER METERS

FOR THE TE MATO VAI PROJECT

RFP Reference No: TMV-RFP.003/2015

October 2015

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Letter of Invitation

Reference No: TMV-RFP.003/2015

23 October 2015

To All Tender Parties,

1. The Ministry of Finance Economic Management, (hereinafter called the “Principal”), intends to procure materials for the **“SUPPLY OF WATER METERS FOR THE TE MATO VAI PROJECT”** (the “Procurement of Goods”).
2. The successful Contractor will be selected and engaged in accordance with the Cook Islands Government Financial Policies and Procedures Manual (2 December 2014), which is available online on the Cook Islands Government Procurement website <http://www.procurement.gov.ck/> and the Request for Proposals for the procurement of goods (“RFP”).
3. The RFP includes the following documents that may be downloaded via: WATSAN website www.watsan.gov.ck/waterpartnership, New Zealand Government Electronic Tenders Service <http://www.gets.govt.nz/>, Te Mato Vai website <http://www.tematovai.com> and Pacific Water and Wastes Association website <http://www.pwwa.ws/>
 - i. This Letter of Invitation
 - ii. Instructions to Contractors, Data Sheet and Evaluation Criteria
 - iii. Proposal Standard Forms
 - iv. Background Information and Terms of Reference
 - v. Draft Contractual Agreement
4. We would like to stress that Contractors submitting proposals must fully comply with all aspects of the “Instructions to Contractors”. Any proposal submitted that fails to contain a complete set of all required documents and forms, in the correct language, and other relevant documents will be rejected prior to the evaluation.
5. You are requested to acknowledge to the undersigned by email to russell@kew.com.ws receipt of this Letter of Invitation with a clear indication whether you intend to submit a proposal to procure the goods.

Sincerely,

Richard Neves
Financial Secretary
Ministry of Finance Economic Management

1 INSTRUCTIONS TO CONTRACTORS

1.1 Introduction

1.1.1 General

- i. The Government of the Cook Islands (hereafter the Principal) named in the Data Sheet wishes to select a contracting firm/company/organisation to supply goods described in the Data Sheet following evaluation of proposals submitted in accordance with the method of selection specified in the Data Sheet.
- ii. It is the tenderer's responsibility to carry out any site visits necessary.
- iii. Contractors submitting proposals to supply materials for the installation of water meters for the Te Mato Vai Project (referred to in these Instructions to Contractors as "Contractors" or "Bidders" or in reference to the singular of each "Contractor" or "Bidder") should familiarise themselves with local conditions and take them into account in preparing their proposals. To obtain first-hand information on the assignment and local conditions.
- iv. It is the tenderer's responsibility to ensure the proposal reaches the designated venue by the specified time and date.
- v. Contractors shall bear all costs associated with the preparation and submission of their proposals. Costs might include site visit, collection of information; and if selected, attendance at contract negotiations.
- vi. The Principal is not bound to accept any proposal and reserves the right to annul the selection process at any time prior to contract award, without thereby incurring any liability to the Contractors.
- vii. In preparing their proposals, Contractors are expected to examine in detail the documents comprising the Request for Proposal ("RFP"), which documents are listed in the Letter of Invitation. Material deficiencies in providing the information requested by the RFP will result in rejection of a proposal.
- viii. This RFP was prepared by the Te Mato Vai Project Management Unit reviewed and endorsed by the Cook Islands Government Tender Committee.

1.1.2 Conflict of Interest

- i. Contractors must provide professional, objective, and impartial advice and at all times hold the Principal's interests paramount, without any consideration for future work. In providing advice, they must avoid conflicts with other assignments and their own individual or corporate interests. Contractors shall not be recruited for any assignment that would be in conflict with their prior or current obligations to other clients, or that may place them in a position of not being able to carry out the assignment in the best interest of the Principal. Without limitation on the generality of the foregoing, Contractors, and any of their associates shall be considered to have a conflict of interest and shall not be recruited under any of the circumstances set forth below;
 - a. A firm/company/organisation that has been engaged by the Principal to supply goods, works, or non-contracting services for a project, and each of its affiliates, shall be disqualified from providing contracting services related to those goods, works or services. Conversely, a firm/company/organisation hired to provide contracting services for the preparation of the terms of reference, and its affiliates, shall be disqualified from subsequently providing goods, works or non-contracting

services resulting from or directly related to the firm/company/organisation's contracting services for such preparation or implementation.

- b. Contractors (including the personnel and sub-contractors of contracting firms) that have a business or family relationship with a Government employee who is directly involved in preparation of the terms of reference for a contract. The selection process for such contract, or supervision of such contract will not be awarded the contract unless the conflict stemming from this relationship has been resolved in advance in a manner acceptable to the Principal throughout the selection process and the execution of the contract.

1.1.3 Proposal Validity

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

1.1.4 Eligibility of Contractors

- i. Contractors must meet the following general eligibility requirements:
 - a. Possess a valid business license to carry out business in the Cook Islands through Business Trade Industry Board (BTIB) if applicable;
 - b. Be free from insolvency, bankruptcy, or similar status;
 - c. Have legal capacity to enter into contract;
 - d. Have an adequate record of business integrity and ethics, and
 - e. The firm/company/organisation and or any of its principals have not been convicted within the last year of, or currently under investigation for, a criminal offence involving corruption or other misconduct reflecting a lack of suitability to participate in procurement.
 - f. Any individual or organisation (including, as the Cook Islands Government deems relevant, an organisation's named personnel, directors or equivalent) which meets any one of the following criteria will be ineligible to provide proposals or act as a subcontractor for this opportunity:

Inclusion on the Asian Development Bank and World Bank "Listing of Ineligible Firms and Individuals". See

<http://web.worldbank.org/external/default/main?theSitePK=84266&contentMDK=64069844&menuPK=116730&pagePK=64148989&piPK=64148984>

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.

1.2 Clarifications and Amendments to RFP Documents

- i. Contractors may request a clarification of any of the RFP documents up to 5 days before the Deadline for submission of proposals date indicated in the Data Sheet. Any request for clarification must be sent in writing to the address indicated in the Data Sheet. The

Principal will respond in writing and will send written copies of the response, including an explanation of the query but without identifying the source of inquiry to all Contractors. Should the Principal deem it necessary to amend the RFP as a result of a clarification, it shall do so following the procedure under Sub-clause (iii)

- ii. There are no negotiations allowed between any Contractor and the Principal or its tender evaluation team during the advertising stage.
- iii. At any time before the Deadline for submission of proposals date, the Principal may, whether at its own initiative, or in response to a clarification requested by a Bidder, amend the RFP by issuing an addendum. The addendum shall be sent to all Bidders and will be binding on them. To give Contractors reasonable time in which to take an amendment into account in their proposals, the Principal may at its discretion, if the amendment is substantial, extend the Deadline for submission of proposals date.

1.3 Preparation of Proposal

- i. The Proposal, as well as all related correspondence exchanged by the Contractors and the Principal, shall be in English. All reports prepared by the contracted Contractor shall also be in English.
- ii. The Proposal should include a cover letter signed by a person(s) with full authorization to make legally binding contractual (including financial) commitments on behalf of the firm/company/organisation. The letter should specify all association arrangements, and certify that each Contractor associated to the firm/company/organisation will perform its designated tasks under the assignment if the lead firm/company/organisation is awarded the contract.
- iii. The Proposal shall clearly demonstrate the Contractor's understanding of the assignment requirements and capability and approach for carrying out the tasks set forth in the TOR.
- iv. The Contractor must tender to supply goods for the whole of the Contract Works.

1.4 Proposal

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

- i. A brief description of the organisation and outline of recent experience of the Contractor and each associate on at least 3 assignments of a similar nature is required in Form-2. For each assignment, the outline should indicate inter alia, the assignment, contract amount and the Contractor's involvement. Information should be provided only for those assignments for which the Contractor was legally contracted by the client as a corporate entity or as one of the major companies within an association. Assignments completed by individual experts working privately or through other contracting firms cannot be claimed as the experience of the Contractor, or that of the Contractor's associate(s), but can be claimed by the individuals themselves in their CVs. Contractors should be prepared to substantiate the claimed experience if so requested by the Principal.
- ii. A concise, complete, and logical description of how the Contractor's team will carry out the supply contract to meet the requirements of the TOR using Form-3.

- iii. A work schedule showing in graphical format the timing of major activities, anticipated coordination meetings, and deliverables such as reports required under the TOR using Form-4.
- iv. Comments, if any, on the terms of reference in the RFP to improve performance in carrying out the Contract or any part of it. Innovativeness will be appreciated, including workable suggestions that could improve the quality/effectiveness of the assignment. In this regard, unless the Contractor clearly states otherwise, it will be assumed by the Principal that work required to implement any such improvements.
- v. All information provided in the Contractors' Proposal will be treated as Confidential with the exception of the Contractor's total price which shall be read out during the opening of the Proposals. The Proposal must be submitted in hard copy using the format provided in Annex 2.
- vi. For the purpose of evaluation of the Proposals, the Principal will compute the NZ Dollar equivalent of the cost estimates submitted by the Contractors at the rate of exchange for the applicable currency determined as of the date of opening of the Proposals from the source indicated in the Data Sheet.
- vii. This Contract is subject to taxation in Cook Islands, namely VAT and Withholding Tax and the Contractor is responsible for ensuring that any bid fully complies with the taxation requirements in Cook Islands. The Principal reserves the right to forward the value of the tax charged by the Contractor on the Contractual Fee direct to its Revenue Management division. If this right is exercised by the Principal, the value of the tax charged by the Contractor on the Contractual Fee will not be included in payments made to the Contractor under the Contract. Withholding Tax is not payable if the Contractor is paying income tax in its country of residence but this is subject to a written exemption obtained by the Revenue Management division. The Contractor must quote rates excluding any taxes payable in Cook Islands.

1.5 Submission, Receipt, and Opening of Proposals

- i. The original Proposal shall contain no interlineations or overwriting, except as necessary to correct errors made by Contractors themselves. Any such corrections, interlineations or overwriting must be initialed by the authorized person(s) who signed the Proposal.
- ii. An authorized representative of the Contractor shall initial all pages of the original hard copy of the Proposal.
- iii. The Proposals shall be marked "ORIGINAL" or "COPY" as appropriate. All required copies of the Proposal as specified in the Data Sheet will be made from the original. If there are discrepancies between the original and the copies of the Proposal, the original governs.
- iv. The original and all copies of the Proposal to be sent to the Principal shall be placed in a sealed envelope clearly marked "**PROPOSAL**". The envelope shall bear the submission address, reference number and title of the Project and other information indicated on the Data Sheet.
- v. It is the tenderer's responsibility to ensure the proposal reaches the designated venue by the specified time and date.
- vi. Proposals must be delivered, submitted and in the slot of the locked tender box clearly marked "Tenders" at the indicated Principal submission address on or before the time and date stated in the Data Sheet or any new date established by the Principal in accordance with this RFP.

- vii. Facsimile and electronic proposal will not be acceptable as original submissions due to confidentiality issues and to avoid allegations of document tampering. Electronic proposals will be requested by the PMU in addition to an original hard copy after the closing date for ease of analysis. No proposals shall be revealed to anyone, until the agreed day that the Tender box is to be opened

1.6 Proposal Evaluation

General

- i. From the Deadline to the time the Proposals are opened to the time the Contract is awarded, the Contractor should not contact the Principal on any matter related to its Proposal. Any effort by a Contractor to influence the Principal in examination, evaluation, ranking of Proposals or recommendation for award of contract will result in rejection of the Contractor's Proposal.
- ii. Bidders may request to see evaluation documents; this decision is at the discretion of the Principal.
- iii. That no gifts or entertainment of any nature will be permitted between any parties involved throughout the tender process.

Evaluation of Proposals

- i. The Principal's Evaluation Panel (PEP) will be responsible for evaluation and ranking of Proposals received.
- ii. The PEP evaluates and ranks the Proposals on the basis of Proposal's responsiveness to the TOR using the Evaluation Criteria and points system specified in the Data Sheet.
- iii. The PEP may need to contact the referees and previous clients of the bidder during the evaluation, so the Contractors are requested to ensure correct details are included in their tender proposal for further referencing.
- iv. A Proposal will not be considered for evaluation in any of the following cases:
 - a. The Contractor that submitted the Proposal or one of its associated Contractors does not meet the eligibility requirements described in Sub-Clause 1.1.4(i)a to 1.1.4(i)f;
 - b. The Contractor that submitted the Proposal or one of its associated Contractors was found not to be legally incorporated or established in their home country;
 - c. The Proposal and any other form was submitted in format which does not comply with the requirements in the Instructions;
 - d. The Proposal reached the Principal after the Deadline for the submission of proposals date specified in the Data Sheet.
- viii. A Proposal that does not meet the prescribed criteria in 1.6 considered for evaluation will be returned to the bidder together with the unopened Financial Proposal after contract award.
- ix. The detail and contents of each Proposal will be subsequently reviewed by the Principal. During the examination of the Proposals, the Principal's staff and any others involved in the evaluation process will not be permitted to seek clarification or additional information from any Contractor who has submitted a Proposal.

- x. The commercial terms in each Proposal will be checked for compliance with the requirements set forth in the Data Sheet and the validity period of the Contractors' Proposals must accord with the validity period set down in the Data Sheet.
- xi. Proposals will be checked for computational errors or material omissions, and prices will be corrected and adjusted as necessary. In the case of material omissions, the cost of the relevant Proposal will be increased by application of the highest unit cost and quantity of the omitted item as provided in the other submitted Financial Proposals.
- xii. The evaluated total price (ETP) for each Proposal will be determined. The ETP for each Proposal will be converted into New Zealand Dollars using the exchange rates stated by the Principal on the date of opening of Proposals.
- xiii. If a discount has been offered in any Proposal, such discount will be applied pro-rata against each currency cost item, i.e., each expert's remuneration and each out-of-pocket cost item. The Principal reserves the right to reject, at its sole discretion, any or all evaluated Proposals and if necessary, call for submission of new Financial Proposals.
- xiv. In order to allow comparison on a common basis, each Proposal will be carefully scrutinized in accordance with the procedure outlined in Clauses 1.6 (ix to xiii) and ETP in New Zealand Dollars will be determined.

1.7 Ranking of Proposals

Following completion of evaluation, the final ranking of the Proposals will be determined. After such final ranking, the first ranked Contractor will be invited for contract negotiations.

1.8 Negotiations

- i. Negotiations will be held at the date, time and address indicated in the Data Sheet. Normally, such negotiations commence not less than ten (10) days after issuance of the Principal's invitation to attend the negotiations. The invited Contractors will, as a prerequisite for attendance at the negotiations, confirm availability of all nominated experts and satisfy such other pre-negotiation requirements as the Principal may specify. Failure in satisfaction of such requirements may result in the Principal proceeding to negotiate with the next-ranked Contractor. Representatives conducting negotiations on behalf of the Contractor must have written authority to negotiate technical, financial, and other terms and conclude a legally binding agreement.
- ii. The negotiations cover review of the Contractor's Proposal, including the proposed approach and methodology, work plan, organizational arrangements, and any suggestions made by the Contractor or the Principal to improve the implementation of the assignment. Negotiations will not result in substantial modifications to either the Contractor's Proposal or the TOR.
- iii. The financial negotiations will generally fine-tune duration of experts' inputs and quantities of out-of-pocket expenditure items may be increased or decreased from the relevant quantities stated in the Proposal. Unless exceptional circumstances exist, the experts' remuneration and specified unit rates for out-of-pocket expenditures will not be subject to negotiations.
- iv. The Principal's Representative shall prepare minutes of the negotiations which will be signed by the Principal and the Contractor.
- v. If contract negotiations fail for any reason, the Principal will commence negotiations with the next ranked Contractor.

1.9 Confidentiality

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

1.10 Award of Contract

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

1.11 Contract Commencement Date

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

2 DATA SHEET

Project: Procurement of Materials for the Installation of Water Meters for the Te Mato Vai Project

Reference Number: TMV-RFP.003/2015

Clause Reference (ITC)		
1.1.1(i)	Principal	Ministry of Finance and Economic Management (MFEM)
	Method of Selection	Quality and cost based selection (QCBS)
	Contract	Supply of Materials for the Installation of Water Meters for the Te Mato Vai Project
	Contact Person(s) and Address of the Principal: Richard Neves Financial Secretary Ministry of Finance Economic Management Avarua, Rarotonga, Cook Islands richard.neves@cookislands.gov.ck Also attention: Garth Henderson, Client Side Representative garth.henderson@cookislands.gov.ck	
1.1.3	Validity of Proposal	60 (sixty) days from Deadline for submission of proposals date
1.1.1 (ii)	Name and Address of the Principal's Representative where correspondence concerning this Request for Proposal is to be sent: Russell Abrams Project Manager Te Mato Vai Project Management Unit PO Box 3286 TMV Compound Avarua Rarotonga, Cook Islands russell@kew.com.ws	
1.4(vi)	Reference exchange rate	ANZ Bank on the due date
1.4(vii)	Local Taxation	VAT
1.5	Contractors must submit an original, 4 copies and a soft copy of the Proposal to the Te Mato Vai Project Management Unit at the address below in 6.4	
	Contractors must submit the Proposal at the following address: Te Mato Vai Project Management Unit TMV Compound, Avarua P O Box 3286, Rarotonga, Cook Islands	
1.5(v) & 1.6.2(iv)(d)	Deadline for submission of proposals date (time and date)	12pm, 09 November 2015 (local CI time) <u>Please Note:</u> 1. No Extension Request allowed

		<i>2. Section 1.2 deadline for clarification requests.</i>
1.6.2(ii)	Evaluation Criteria	Refer to Annex 1 - Data Evaluation Sheet
1.6.1	Expected date, time and place of Opening of Proposals	2pm, 09 November 2015 at Te Mato Vai Project Management Unit Office
1.9(i)	Expected Date and time to start contract negotiations at this address Time – 10am Venue – Project Management Unit Office, Te Mato Vai Compound Date – 04 December 2015	
1.12	Expected date for commencement of the contract	At the date of contract award

3 ANNEX 1 - DATA SHEET EVALUATION

Evaluation Criteria			Maximum Weight	COMPANY 1		COMPANY 2		COMPANY 3	
				Rating	Score	Rating	Score	Rating	Score
I	Contractor Information		100						
	a	Provide contractor information	50						
	b	Supply certified copy of current business licence for the company	50						
II	Qualification of the Firm/company/organisation		100						
	a	Experience in similar works	50						
	b	Experience in similar geographical areas and familiarity of the Pacific water utilities operations and management	50						
III	Approach and Methodology		150						
	a	Understanding of the objectives	50						
	b	Quality of the methodology	50						
	c	Innovativeness	25						
	d	Use of local resources	25						
IV	Work Plan		150						
	a	Logical planning of outputs for completion	150						
V	Contract Price		500						
	a	Price	500						
TOTAL			1000						

4 ANNEX 2 - PROPOSAL STANDARD FORMS

FORM-1	Proposal Submission Form
FORM-2	Contractor Information
FORM-3	Contractor Firm/company/organisation's Experience
FORM-4	Description of the Approach, Methodology and Work Plan for Performing the Assignment
FORM-5	Work Schedule
FORM-6	Financial Proposal Submission Form
FORM-7	Summary of Prices

4.1 Form-1 Proposal Submission Form

(Location, Date)

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

Dear Sir or Madam:

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

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

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

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

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

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

Yours sincerely,

Authorized Signature (In full and initials): _____

Name and Title of Signatory: _____

Name of Firm/company/organisation: _____

Address: _____

4.2 Form-2 Contractor Information

(Using the format below to provide information about your company.)

Company name:	Company business address:
Name of authorised representative for your company:	Contact details for authorised representative including telephone number, email address, fax number and postal address:
Description of your business: (max 50 words):	

Attach to this form a certified copy of current business licence for the company.

4.3 Form-3 Contractors Experience

(Using the format below, provide information on a maximum of 3 assignments for which your firm/company/organisation, and each associate for this assignment, was legally contracted either individually as a corporate entity or as one of the major companies within an association, for carrying out the supply of goods similar to the ones requested under this assignment.)

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

4.4 Form-4 Description of Approach, Methodology and Work Plan

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

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

Contractors are encouraged to respond directly to the TORs. Comments to the TORs may be provided in Form-4.

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

b) Work Plan. In this chapter you should propose the main activities of the assignment, their content and duration, phasing and interrelations, milestones (including interim approvals by the Principal), and delivery dates of the reports. The proposed work plan should be consistent with the approach and methodology, showing understanding of the TOR and ability to translate them into a feasible working plan. A list of the final documents, including reports, drawings, and tables to be delivered as final output, should be included here. The work plan should be consistent with the Work Schedule of Form-5.

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

4.5 Form-5 Work Schedule

N°	Activity	Weeks												
		1	2	3	4	5	6	7	8	9	10	11	12	n
1														
2														
3														
4														
5														
N														

4.6 Form-6 Financial Submission Form

(Location, Date)

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

Dear Sir/Madam:

We, the undersigned, offer to supply goods for ____ (Insert title of assignment) in accordance with your Request for Proposal dated ____ (Insert Date) and our Proposal. Our attached Proposal is for the sum of ____ (Insert amount(s) in words and figures¹).

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

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

Yours sincerely,

Authorized Signature (In full and initials): _____

Name and Title of Signatory: _____

Name of Firm/company/organisation: _____

Address: _____

1 Amounts must coincide with the ones indicated under Total Price of Proposal in Form-7.

4.7 Form-7 Summary of Prices

Shipment 1

Item	Description	Unit	Quantity	Rate	Total
1	Supply Domestic Meter DN20	no	1500		
2	Supply Commercial Meter DN50	no	40		
3	Supply stop valves DN20	no	1500		
4	Supply stop valves DN50	no	40		
5	Supply data logger DN20	no	1500		
6	Supply data logger DN50	no	40		
7	Supply hardware and software	no	1		
8	Supply domestic meters boxes	no	1500		
9	Supply commercial meter boxes	no	40		
10	Supply PE pipe DN20	m	400		
11	Supply MDPE pipe joint fittings male threaded DN20	no	6000		
12	Supply MDPE pipe joint fittings male threaded DN50	no	160		
13	Freight to Rarotonga	no	1		
14	Insurance and documentation	no	1		
15	Delivery to area designated by the Principal	no	1		
16	Contract Total (VAT Exclusive)	no	1		

Shipment 2

Item	Description	Unit	Quantity	Rate	Total
1	Supply Domestic Meter DN20	no	1000		
2	Supply Commercial Meter DN50	no	20		
3	Supply stop valves DN20	no	1000		
4	Supply stop valves DN50	no	20		
5	Supply data logger DN20	no	1000		
6	Supply data logger DN50	no	20		
7	Supply domestic meters boxes	no	1000		
8	Supply commercial meter boxes	no	20		
9	Supply PE pipe DN20	m	200		
10	Supply MDPE pipe joint fittings male threaded DN20	no	4000		
11	Supply MDPE pipe joint fittings male threaded DN50	no	80		
12	Freight to Rarotonga	no	1		
13	Insurance and documentation	no	1		
14	Delivery to area designated by the Principal	no	1		
15	Exchange rate adjustment	no	1		

Item	Description	Unit	Quantity	Rate	Total
16	Contract Total (VAT Exclusive)	no	1		

Shipment 3

Item	Description	Unit	Quantity	Rate	Total
1	Supply Domestic Meter DN20	no	800		
2	Supply Commercial Meter DN50	no	20		
3	Supply stop valves DN20	no	800		
4	Supply stop valves DN50	no	20		
5	Supply data logger DN20	no	800		
6	Supply data logger DN50	no	20		
7	Supply domestic meters boxes	no	800		
8	Supply commercial meter boxes	no	20		
9	Supply PE pipe DN20	m	200		
10	Supply MDPE pipe joint fittings male threaded DN20	no	3200		
11	Supply MDPE pipe joint fittings male threaded DN50	no	80		
12	Freight to Rarotonga	no	1		
13	Insurance and documentation	no	1		
14	Delivery to area designated by the Principal	no	1		
15	Exchange rate adjustment	no	1		
16	Contract Total (VAT Exclusive)	no	1		

The exchange rate adjustment amount will be calculated by the successful bidder using the following formula:

$$\text{Adjustment} = \text{FCC} \times \text{Qty} \times (i_1 - i_0) / i_0$$

where formula variables correspond to:

FCC Foreign Currency Component (per unit)

i_0 initial exchange rate (NZ\$ per unit of foreign currency [e.g. US\$1])

i_1 exchange rate for adjustment (NZ\$ per unit of foreign currency [e.g. US\$1])

Qty quantity of units

This calculation will be done for each line item and the sum of adjustments shown as a single line item on the invoice.

5 ANNEX 3 - TERMS OF REFERENCE

TMV-RFP.003/2015: Project: Procurement of Materials for the Installation of Water Meters for the Te Mato Vai Project

5.1 Introduction and Background

The Construction of the Cook Islands “Te Mato Vai” Water Upgrade Project is being delivered in two Stages. Stage 1 the “Ring Mains Upgrade” encompasses the replacement of the majority of the existing ring mains network which has commenced in April 2014. Stage 2 encompasses the remainder of water supply system upgrade. Rehabilitation of existing water intakes (10 sites), construction of additional storage capacity, construction of water treatment plants and trunk main replacement. Stage 2 Physical Works are planned to commence in March 2016.

5.2 Scope of Works

Under this contract, the Principal wishes to arrange for the purchase and supply of fittings and materials for the Installation of Water Meters for the Te Mato Vai Project.

The scope of works under this supply contract involves the purchase or manufacture, secure storage pre-delivery, consolidation, packaging, marking and delivery of a range of fittings and materials into the care of the Principal or its representative covered in the schedules of this contract. The offer shall remain open for acceptance for a period of sixty (60) working days from the acceptance of this tender.

The materials to be supplied under this contract shall be new, and not second-hand or refurbished in any way.

It is envisaged that the Contractor will deliver the materials to the area designated by the Principal or its representative. The Contractor will be expected to insure the materials being supplied are free from any damage or loss during their transport from source safely to the Principal. The items are to be secured and protected from the elements. Due to the unconfirmed numbers of water connections on Rarotonga, the materials shall be delivered in stages as per Form-7. The first batch of materials shall be ordered upon signing of the contract, the next batch shall be ordered approximately 3 months after the signing of the contract, and the final batch will be ordered approximately 6 months after the signing of the contract upon confirmation of the final numbers required.

The Contractor will be expected to liaise directly with the Principal or its representative regarding the timing for the delivery of the materials, and to provide copies of the shipping documents, and a comprehensive list of what items of cargo are to be delivered and when. Each individual consignment or bundles of materials delivered are to be marked for ease of identification on arrival.

The Contractor will be responsible for arranging and paying all shipping costs, insurance, and any other delivery costs in relation to the supply of the materials to the area designated by the Principal or its representative.

5.3 Meter and Fittings Supply

5.3.1 General

Following contract signing the contractor will submit to the Employer a detailed program of work associated with the provision of documentation required, the ordering, manufacturing/supply, shipping inspection, acceptance and delivery to Government Store of all materials to be supplied in accordance with this contract.

All products supplied shall be in 100 % compliance with contract requirements including all documentation requirements. It shall be the responsibility of the Contractor to demonstrate in the documents provided that conformance with the specified requirements has been achieved to the satisfaction of the Engineer.

5.3.2 Service Life and Warranty

All meters and related equipment supplied under this contract are to be designed and manufactured to perform as specified for a minimum service life, before replacement or service is required, as follows:

Domestic Water Meters	10 years
Isolating valves	50 years
Pressure reducing valves	50 years
Pipe work and related fittings	50 years

5.3.3 Inspection, Acceptance and Transport

All material supplied under this contract will be subject to an inspection by the Engineer following shipping and prior to transportation to the designated storage area. This inspection shall include an inspection of all documentation provided by the manufacturer as required under the contract, a compliance check on quantities and model/ manufacturer identification, a compliance check with the manufacturers packaging requirements and inspections for damage from shipping. Material that does not have sufficient documentation, or varies from the type and quantity stated in the contract or on the shipping documents, or with any of the manufacturers requirements will be rejected and shall be replaced by the contractor and their own expense.

5.3.4 Documentation Requirements

Manufacture

The contractor shall provide to the Employer all certification and other manufacturing documentation that describe the manufacturing and quality controls systems that have been applied to material supplied under this contract. This documentation shall include details of factory quality control process in manufacture, details on factory testing and inspection processes, certification and compliance standards, warranties and any other manufacturer's requirements for handling, packaging and delivery to the designated storage area.

Packaging, Shipping, Inspection and Acceptance

The contractor shall provide to the Engineer documentation and schedules that quantify and identify the materials that have been shipped, along with any packaging recommendations

provided by the manufacturer to third parties who may have packaged, shipped or transported the materials.

Summary Documentation Requirements

As a minimum, all material supplied under the contract shall be supplied with the following documentation.

Documentation	Content
Manufacturing Certificates	To include date and place of manufacture, batch numbers.
Test Certificates, information	Relevant test certificates, quality certification standards that apply, test process description.
Manufacturers packaging , transport requirements	Description of recommended packaging to ensure material is delivered in factory condition
Installation requirements	Installation instructions, manuals, testing and commissioning requirements
Performance certificates / specifications/ standards	Performance details and specification of the products
Warranties	Full conditions of warranty for replacement , contact and claim processes
Storage requirements	Suppliers requirements for storage
Installation requirements	Suppliers recommendation for installation
Operation and servicing requirements	Relevant operation and servicing manuals

5.3.5 Meter types

All meters and products supplied to the Cook Island Government are to conform to the NMI R49-1, Australian/New Zealand Standard AS/NZS 3565 and AS/NZS 3855, including the “Standards Mark”.

The Cook Island Government requires a meter manufacturer’s warranty and that is a continuing warranty which survive termination or expiry of the supply agreement, save that the warranty referred continue for a period of seven (7) years from the date of installation of the applicable meter or for a cumulative registered volume of water of an agreed amount, whichever equates to the longer period. (The metrological and technical requirements of R49 must be strictly adhered to in all respects)

Meter supply contractors will be requested to warrant this within the “Manufacturer’s Warranty” document using the following:

- Without limiting any other warranty by statute law;
- If a defect (fair wear and tear excepted) appears in the goods within a warranty period the Supplier shall promptly remedy such defect by either repairing or replacing the defect goods without cost to Cook Islands Government.

Domestic meters shall be of a volumetric type with integral double check valves with the provision for later fitting of pulse sensors/ emitters for remote readings.

Domestic meters are to be supplied to DN 20 and PN16.

Commercial meters shall be of a volumetric type with integral double check valves and with the provision for later fitting of pulse sensors/emitters for remote readings (smart meters).

Commercial meters to be supplied to DN 50, DN 80 and PN16

The managing agency for the water supply proposes to systematically upgrade each of the meters to have “smart technology” within the next 5 years. The meters supplied are expected to have features that enable this to be carried out without any changes to the base meter.

5.3.6 Pipes and Fittings

All pipes and pipe fittings shall comply with the relevant clauses of the following CI /NZ/Australian Standards:

- Infrastructure Cook Islands Technical Standards (ICITS) for Water Supply latest version
- New Zealand Pipe Inspection Manual 3rd Edition (May 2006)
- AS ISO 1000 – units of measurement
- AS/NZS 3500:1.2003 Section 5.2 – Plumbing and Drainage - Water Services Cold Water Supply
- AS/NZS 4129:2008 – Fittings for polyethylene (PE) pipes for pressure applications
- AS/NZS 4130:2009 – Polyethylene (PE) pipes for pressure applications

5.3.7 Valves

All valves shall comply with the relevant clauses of the following CI/NZ/Australian Standards:

- Infrastructure Cook Islands Technical Standards (ICITS) for Water Supply latest version
- New Zealand Pipe Inspection Manual 3rd Edition (May 2006)
- AS ISO 1000 – units of measurement
- AS/NZS 3500:1.2003 Section 5.2 – Plumbing and Drainage - Water Services Cold Water Supply
- BS 5154: 1991 Specification for alloy globe, globe stop and check , check and gate valves
- AS/NZS 2845.1: 2010 Water Supply – Back Flow prevention devices – Part 1 Materials, design and performance requirements
- AS 1628 – 1999 Water Supply - Metallic gate, Globe and non- return valves

5.3.8 Meter Boxes

Meter boxes shall be in ground types specifically designed and sized for use for water meter purposes. They shall be constructed from permanent rust proof materials that are long lasting, damage resistant such as polypropylene or cast metal.

6 ANNEX 4 - TYPICAL STANDARD CONTRACT FOR THE SUPPLY OF GOODS

CONTRACT FOR THE SUPPLY OF GOODS (Contract)

Procurement of Materials for the Commissioning of the Ring Main for the Te Mato Vai Project Stage 1

between

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

and

[Contractor's Full Legal Name]
(Contractor)

Contract Number: []

The Contract

The Ministry of Finance, Economic Management (MFEM), wishes to engage the Contractor to undertake the **[insert Project Name]**. The Contractor agrees to supply goods to the Government of the Cook Islands on the basis of the terms and conditions contained in this Contract.

Contract Documents

This Contract consists of:

pages 1 and 2;

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

the Standard Terms and Conditions at Schedule 2,

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

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

Acceptance

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

For and on behalf of the Contractor

Signature

Signature

Full name

Full name

Position

Position

Date

Date

6.1 Schedule 1 Contract Details and Description of Supply Contract

1. Term of Contract

Reference Schedule 2 clause 1

Start Date	
End Date	

2. Contract Managers

Reference: Schedule 2 clause 4

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

3. Addresses for Notices

Reference Schedule 2 clause 14

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

	MFEM's TMV Project Manager	Contractor's Contract Manager
Fax:		
Email:		

4. Scope of Works

Description of the Supply Contract

[to complete]

5. Delivery Timeframe

Outputs

[to complete]

6. Description of Goods

Reference Schedule 2 clause 2.3

[to complete]

7. Charges

Reference Schedule 2 clause 3

[to complete]

8. Insurance

Reference Schedule 2 clauses 8

[Payment Schedule to be completed]

9. Attachments

Reference 'Contract documents'

The following documents are attached to Schedule 1:

[to insert if relevant]

6.2 Schedule 2 Standard Terms and Conditions

1. Term of Contract

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

2. The Supply Contract

Both Parties' obligations

- 2.1 Both Parties agree to:
 - a. act in good faith and demonstrate honesty, integrity, openness, and accountability in their dealings with each other;
 - b. discuss matters affecting this Contract or the delivery of the goods, whenever necessary;
 - c. notify each other immediately of any actual or anticipated issues that could:
 - i. significantly impact on the supply of goods;
 - ii. impact the cost of the supply of goods;
 - iii. be the subject of a request for official information under the Official Information Act 2008 (CI) or a complaint to the Cook Islands Ombudsman under the Ombudsman Act 1984 (CI); or
 - iv. receive media attention.
 - d. not at any time do anything that is likely to adversely affect the reputation, good standing or goodwill of either Party; and
 - e. comply with all applicable laws, regulations and codes of conduct.

Buyer's obligations

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

Contractor's obligations

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

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

3. Invoicing and Payment

Invoicing

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

Payment

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

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

4. Contract Management

Contract Manager

- 4.1 The persons named in Schedule 1 as the Contract Managers are responsible for managing the Contract, including:
 - a. managing the relationship between the Parties
 - b. overseeing the effective implementation of this Contract, and
 - c. acting as a first point of contact for any issues that arise.

Changing the Contract Manager

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

5. Records, Reports and Information

Keeping Records

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

Reports

- 5.3 The Contractor must prepare and give to the Buyer the reports stated in Schedule 1. All reports must:
 - a. be provided by the due dates stated in Schedule 1;

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

Information

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

6. The Contractual Relationship

Permission to transfer rights or obligations

- 6.1 Except as provided for under clause 7.1(b), the Contractor may transfer any of its rights or obligations under this Contract only if it has the Buyer's prior written approval. The Buyer will not unreasonably withhold its approval.

No partnership, agency or employment

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

Neither Party can represent the other

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

7. Subcontractors

Rules about subcontracting

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

The Contractor's responsibilities

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

8. Insurance and Indemnity

Contractor to maintain insurance cover

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

Indemnity

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

9. Conflict of Interest

Managing Conflicts of Interest

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

Obligation to tell the Buyer

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

10. Resolving Disputes

Steps to resolving disputes

- 10.1 The Parties agree to use all reasonable endeavours to resolve any dispute or difference that may arise under this Contract. The following process will apply to disputes:
- a. A Party must notify the other if it considers a matter is in dispute.
 - b. The Contract Managers will attempt to resolve the dispute through direct negotiation.
 - c. If the Contract Managers have not resolved the dispute within ten (10) Business Days of notification, they will refer it to the Parties' Senior Managers, or equivalent, for resolution;
 - d. If the Senior Managers, or equivalent, have not resolved the dispute within ten (10) Business Days of it being referred to them, the Parties will refer the dispute to mediation or some other form of alternative dispute resolution.
- 10.2 If a dispute is referred to mediation, the mediation will be conducted:
- a. by a single mediator agreed by the Parties, or if they cannot agree, appointed by the Chief Justice of the High Court of the Cook Islands;
 - b. on the terms of the LEADR standard mediation agreement subject to any modification that might be agreed by the Parties; and
 - c. at a fee to be determined by the mediator, such fee to be paid by the Parties in equal shares.
- 10.3 Each Party will pay its own costs of mediation under clause 10.2 or alternative dispute resolution.

Obligations during a dispute

- 10.4 If there is a dispute, each Party will continue to perform its obligations under this Contract as far as practical given the nature of the dispute.

Taking court action

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

11. Ending this Contract

No fault termination

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

Immediate termination

- 11.2 The Buyer may terminate this Contract immediately, by giving Notice, if the Contractor:
- a. becomes bankrupt or insolvent;
 - b. has an administrator, receiver, liquidator, statutory manager, mortgagee's or chargee's agent appointed or otherwise becomes subject to any form of external administration;
 - c. ceases for any reason to continue in business or to deliver the goods;
 - d. is unable to deliver the goods for a period of 20 Business Days or more due to an Extraordinary Event;
 - e. is in breach of any of its obligations under this Contract and the breach cannot be remedied in PMU's opinion;

- f. repeatedly fails to perform or comply with its obligations under this Contract whether those obligations are minor or significant;
- g. does something, or fails to do something, that, in the Buyer's opinion, results in damage to the Buyer's reputation or business, or the reputation or business of the Cook Islands Government;
- h. has a Conflict of Interest that in the Buyer's opinion is so material as to impact adversely on the delivery of the goods, the Buyer or the Cook Islands Government;
- i. provides information to the Buyer that is intentionally misleading or inaccurate in any material respect; or
- j. knowingly or unknowingly provides direct or indirect support or resources to organisations and/or individuals associated with terrorism, notwithstanding clause 17.

If a breach has not been remedied

- 11.3 If a Party fails to meet the requirements of this Contract (**Defaulting Party**) and the other Party (**Non-defaulting Party**) reasonably believes that the failure can be remedied, the Non-defaulting Party must give a Notice (**Default Notice**) to the Defaulting Party.
- 11.4 A Default Notice must state:
- a. the nature of the failure;
 - b. what is required to remedy it; and
 - c. the time and date by which it must be remedied.
- 11.5 The period allowed to remedy the failure must be reasonable given the nature of the failure.
- 11.6 If the Defaulting Party does not remedy the failure as required by the Default Notice, the Non-defaulting Party may terminate this Contract immediately by giving a further Notice.
- 11.7 If the Buyer gives a Default Notice to the Contractor the Buyer may also do one or both of the following things:
- a. withhold any payment of Fees due until the failure is remedied as required by the Default Notice; and/or
 - b. if the failure is not remedied as required by the Default Notice, deduct a reasonable amount from any Fees due to reflect the reduced value of the goods to the Buyer.

Contractor's obligations

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

Consequences of termination or expiry of this Contract

- 11.9 The termination or expiry of this Contract does not affect those rights of each Party which:
- a. accrued prior to the time of termination or End Date; or
 - b. relate to any breach or failure to perform an obligation under this Contract that arose prior to the time of termination or expiry.
- 11.10 If this Contract is terminated the Buyer will only be liable to pay Charges that were due for goods delivered before the effective date of termination.

Handing over the Goods

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

12. Intellectual Property Rights

Ownership of Intellectual Property Rights

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

Contractor indemnity

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

13. Confidential Information

Permission to release Confidential Information

- 13.1 Each Party undertakes not to use or disclose the other Party's Confidential Information to any person or organisation other than:
 - a. to the extent that use or disclosure is necessary for the purposes of providing the goods;
 - b. if the other Party gives prior written approval to the use or disclosure;
 - c. if the use or disclosure is required by law (including under the Official Information Act 2008 (CI)) or parliamentary convention; or
 - d. if the information has already become public, other than through a breach of the obligation of confidentiality by one of the Parties.

Obligation to inform staff

- 13.2 Each Party will ensure that their Personnel:
- a. are aware of the confidentiality obligations in this Contract; and
 - b. do not use or disclose any of the other Party's Confidential Information except as allowed by this Contract.

14. Notices

Delivery of Notices

- 14.1 All Notices to a Party must be delivered by hand or sent by post, courier, fax or e-mail to that Party's address for Notices stated in Schedule 1.
- 14.2 Notices must be signed by the appropriate manager or person having authority to do so.

Receipt of Notices

- 14.3 A Notice will be considered to be received:
- a. if it is delivered by hand, on the date it is delivered;
 - b. if it is sent by post within Cook Islands, on the third (3rd) Business Day after the date it was sent;
 - c. if it is sent by post internationally, on the tenth (10th) Business Day after the date it was sent;
 - d. if it is sent by courier, on the date it is delivered;
 - e. if it is sent by fax, on the sender receiving a fax machine report that it has been successfully sent; or
 - f. if it is sent by e-mail, at the time the e-mail enters the recipient's information system.
- 14.4 A Notice received after 5pm on a Business Day, or on a day that is not a Business Day, will be considered to be received on the next Business Day.

15. Extraordinary Events

No fault if failure to deliver

- 15.1 Neither Party will be liable to the other for any failure to perform its obligations under this Contract where the failure is due to an Extraordinary Event.

Obligations of the affected Party

- 15.2 A Party who wishes to claim suspension of its obligations due to an Extraordinary Event must notify the other Party as soon as reasonably possible. The Notice must state:
- a. the nature of the circumstances giving rise to the Extraordinary Event;
 - b. the extent of that Party's inability to perform under this Contract;
 - c. the likely duration of that non-performance; and
 - d. what steps are being taken to remedy, or reduce the impact of the Extraordinary Event on the delivery of goods.

Alternative arrangements

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

16. Anti-Corruption

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

17. Anti-Terrorism

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

18. Variations

Variations to this Contract

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

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

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

signature. The other Party will sign both copies and return one to the first Party so that both have one counter-signed original for their records.

19. General

This is the entire Contract

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

Waiver

- 19.2 If a Party breaches this Contract and the other Party does not immediately enforce its rights resulting from the breach that:
- a. does not mean that the Party in breach is released or excused from its obligation to perform the obligation at the time or in the future; and
 - b. does not prevent the other Party from exercising its rights resulting from the breach at a later time.

Enforceability

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

No intention to confer benefits on other people

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

Jurisdiction

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

Publication of information about this Contract

- 19.6 The Contractor may disclose the existence of this Contract but must obtain the Buyer's prior written approval before making reference to the Buyer or this Contract in its publications, public statements, promotional material or promotional activities about this Contract.
- 19.7 Each Party undertakes not to post on websites, social networking sites or publicly display objectionable or derogatory comments about the goods, this Contract, each other, or any of their Personnel and to ensure that their Personnel do not do so.

Clauses that remain in force

- 19.8 The clauses that by their nature should remain in force on expiry or termination of this Contract do so, including clauses 5 (Records, Reports and Information), 8 (Insurance and Indemnity), 10 (Resolving Disputes), 11 (Ending this Contract), 12 (Intellectual Property

Rights), 13 (Confidential Information), 17 (Anti-Terrorism), 19 (General) and 20 (Definitions).

20. Definitions

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

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

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

Confidential Information that:

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

Conflict of Interest A conflict of interest happens if a person's (including the Contractor's) personal interests or obligations conflict with the responsibilities of their job or position (including as a Party to this Contract). It means that their independence, objectivity or impartiality can be called into question. While conflicts of interest should be avoided wherever possible, conflicts often happen without anyone being at fault. It is not necessarily the emergence of a conflict of interest which is an issue, it is how it is managed that matters more. A conflict of interest may be:

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

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

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

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

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

Extraordinary Event An event that is beyond the reasonable control of the Party immediately affected by the event. An Extraordinary Event does not include any risk or event that the Party claiming could have prevented or overcome by taking reasonable care. Examples include:

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

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

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

Fraudulent practice has a corresponding meaning.

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

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

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

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

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

Public Service agency Any Cook Islands Government department or agency.

Records All information and data necessary for the management of this Contract and the delivery of goods. It includes reports, invoices, letters, e-mails, notes of meetings,

photographs and other media recordings. Records can be hard copies or soft copies stored electronically.

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

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

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

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

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

The invoice must also:

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

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

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

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