

18 April 2011



REQUEST FOR PROPOSALS

TE VAKA MOANA – PROGRAMME CO-ORDINATION AND MANAGEMENT FACILITY

The New Zealand Aid Programme, acting for and on behalf of the Secretary of Foreign Affairs and Trade (MFAT), and for the participants to the Te Vaka Moana Arrangement, are inviting submissions of responses from suitably qualified and experienced persons to drive forward the advisory, co-ordination and management tasks required for carrying out the planned activities within the Te Vaka Moana Development Programme.

The Heads of the Fisheries Administrations of Cook Islands, New Zealand, Niue, Samoa, Tokelau and Tonga signed the Te Vaka Moana Arrangement (TVMA) in January 2010. TVMA seeks to 'secure, protect and enhance long-term economic benefits able to be derived from Polynesian fisheries and protect their important contribution to food security of the communities'. New Zealand's Aid Programme is seeking to support the implementation of TVMA through the establishment of the Te Vaka Moana Development Programme.

TVM participants have specifically requested an advisory, co-ordination and management body be established to support the implementation of activities and facilitate co-ordination across donors and regional agencies. A **Programme Co-ordination and Management Facility** is proposed to fulfill this function and would be contracted by New Zealand's Aid Programme but work to the Governing Council of Te Vaka Moana. Initially this is envisaged to be a single consultant, with sub-contracted technical support.

Details of the work and the skills required are contained in *Attachment One: Terms of Reference*.

The proposed timeframes are set out below:

Deadline for submission of questions:	<u>12 noon (NZ Time) Friday 6th May 2011</u>
Deadline for submission of Responses:	<u>12 noon (NZ Time) Monday 9th May 2011</u>
Assessment Panel:	Week of 16 th May 2011
Interviews / Presentations (if required):	Week of 16 th May 2011
Notification to preferred Applicant(s):	Week of 23 rd May 2011
Contract and budget negotiations:	From 23 rd May 2011

Please note that this timeframe is indicative only and may be subject to change.

Conditions of RFP

1 Contents of this RFP

- a This RFP consists of:
 - i *Conditions of RFP*
 - ii Attachment One: *Terms of Reference (including 1 through 6 of Annexes as a separate document)*
 - iii Attachment Two: *Assessment Criteria*
 - iv Attachment Three: *Budget Template*
 - v Attachment Four: *Response Statement*
 - vi Attachment Five: *Standard Terms and Conditions of Contract*
- b All amendments to this RFP will be issued on the New Zealand Government Electronic Tendering Services (GETS) website (www.gets.govt.nz) and on issue will become part of this RFP.

2 Communications Regarding this RFP

- a All correspondence and questions relating to this RFP must be in English and in writing and directed to the Official Liaison Officer:

Erica Doust
Tenders Advisor
Contracting Policy and Systems Team
Ministry of Foreign Affairs and Trade

Email Addresses

submissions@mfat.govt.nz

- b During the RFP period Applicants must not contact any MFAT staff member, or any other person associated with the RFP, other than the Official Liaison Officer. Contact with any other MFAT staff member or any other person associated with the RFP other than the Official Liaison Officer, may invalidate Applicants from the RFP process.
- c Questions relating to this RFP must be received in English and in writing to the Official Liaison Officer by:

12 noon (NZ Time) Friday 6th May 2011
- d MFAT may choose to issue an Explanatory Notice in response to questions received relating to this RFP. Any Explanatory Notice will be issued on the GETS website (www.gets.govt.nz) as soon as practicable following the deadline for questions.

3 Content of Responses

- a Responses must comprise the following documents:
 - i A signed and completed **Response Statement** as per the template attached (Attachment Four). Note that the contact person may be questioned during examination of the Tender, or asked to provide additional information.
 - ii A **Capability Statement** (no longer than four A4 pages):
 - Providing evidence as to why the Applicant would be suitable to deliver the Assignment set out in Attachment One: *Terms of Reference*, giving details of any similar experience and summarising the outcomes achieved.

- Addressing each of the assessment criteria set out in Attachment Two: *Assessment Criteria*, including how the consultant would go about approaching and conducting the responsibilities.
- Outlining the Applicants availability in relation to the assignment and Attachment One: *Terms of Reference* including details of where the applicant will be based and expectations of travel to complete the assignment successfully.

iii A **Curriculum Vitae** (no longer than two A4 pages) including two referees and contact details.

iv A **Proposal Price** as per the template attached (*Attachment Three*) for the duration of the contract, including proposed monthly fees which must allow for all the Applicant's obligations and costs in providing the services detailed in Attachment One: *Terms of Reference*. Expenses and per diems (see www.aid.govt.nz for current per diem rates) will be negotiated separately once the first year work plan for the PCMF is agreed.
Note that the Tender Price is to be submitted in a separate electronic file in accordance with clause 4 and is to be realistic and comparable to current market rates.

- b Should any page limits stated above be exceeded, the additional pages may be removed from the response by MFAT. Font size should be a minimum of 11 point.
- c The response is to be signed by a duly authorised officer, for and on behalf of the Applicant.
- d All responses shall be firm offers and may not be withdrawn for a period of 90 calendar days following the deadline for submissions to this RFP.
- e MFAT requests that all responses conform to these *Conditions of RFP*, and reserves the right to reject any non-conforming submission.

4 **Submission of Responses**

a Responses must be received by the following deadline, or may not be considered:

12 noon (NZ Time) Monday 9th May 2011

- b Responses must be submitted in electronic form only, as detailed below.
 - i An electronic copy of the completed response **must** be emailed to the Official Liaison Officer **as a single file in .pdf format** (or otherwise in a format compatible with Microsoft Office 2003) with the subject line:

PROPOSAL FOR: TE VAKA MOANA – PROGRAMME CO-ORDINATION AND MANAGEMENT FACILITY
 - ii An electronic copy of the Proposal Price **must** be emailed to the Official Liaison Officer **as a separate file or attachment in .pdf format** (or otherwise in a format compatible with Microsoft Office 2003) with the subject line:

PRICE PROPOSAL FOR: TE VAKA MOANA – PROGRAMME CO-ORDINATION AND MANAGEMENT FACILITY

Please ensure that the above is adhered to and only one (1) pdf file is submitted containing the response to the RFP.

- c Should exceptional circumstances arise and electronic submission is not possible, requests to submit hard copy responses are to be made in advance of the deadline for submission to the RFP to the Official Liaison Officer. Approval will be granted at MFAT's discretion. Electronic copies of your response will still need to be received.
- d Please ensure that the total size of the required documents and your email is **under 5 megabytes (MB)**. Any email exceeding the 5MB limit will not be accepted by our mail server and will be rejected.
- e The Official Liaison Officer will send a confirmation of receipt email in response to your electronic submission. If you do not receive a confirmation of receipt email within two working days from the Official Liaison Officer your Response has **not** been received. MFAT bears no responsibility for and make no guarantees as to the successful receipt of your response. In all circumstances it is your responsibility to ensure that your response has been received.
- f Contact the Official Liaison Officer in advance of deadline for submissions to the RFP if you are unable to reduce the total file size of your application under the 5MB limit.
- g Responses submitted by fax will **not** be accepted in any circumstances.

5 Confidentiality

Applicants are advised that MFAT is subject to the Official Information Act ("OIA") 1982. Applicants should mark their responses "*Commercial - In Confidence*" if they wish to protect specific information. MFAT will treat all responses in the strictest confidence. MFAT cannot, however, guarantee that information marked as such can be protected if MFAT receives a request for information under the OIA Act.

6 The RFP Process

- a Each Applicant shall examine, or be deemed to have examined, the *Conditions of RFP, Terms of Reference, RFP Assessment Criteria* and *Standard Terms and Conditions* and any other information supplied by MFAT in writing.
- b In submitting a response to this RFP, the Applicant accepts and agrees to be bound by MFAT's *Conditions of RFP*.
- c The cost of preparing and submitting the response shall be borne by the Applicant.
- d MFAT reserves the right to change, suspend, cancel or readvertise this RFP, or the contents of the RFP documentation at any time.
- e MFAT shall have no liability for any information they provide, or for any cost or loss to any Applicant, in the event that this RFP is cancelled, suspended, changed or readvertised.
- f MFAT reserves the right to negotiate without restriction with Applicants after the close of the RFP on any matter contained in the RFP, without disclosing this to any other person.

- g MFAT reserves the right to accept or reject any, or all responses, and to cancel the RFP process, at any time, thereby rejecting all responses, prior to any contract being awarded.
- h MFAT reserves the right to limit or extend the list of potential Applicants beyond those who respond to this call for RFP.

7 Assessment of Responses

- a Responses will be assessed by an assessment panel, convened by MFAT, against the criteria outlined in the attached Attachment Two: *Assessment Criteria*.
- b MFAT reserves the right to clarify or request additional information from any Applicant before accepting any RFP and to implement additional processes to evaluate the RFPs.
- c MFAT will not necessarily shortlist any responses.
- d Each Applicant shall be notified in writing of the shortlisting or rejection of its response as soon as possible. No response shall be deemed to be shortlisted unless and until the Applicant has been notified by MFAT in writing.
- e MFAT reserves its absolute discretion in the evaluation and selection process.

8 Subject to Contract

- a Responses are submitted on the basis that no binding legal relations with MFAT are created unless and until a formal written contract is signed by both MFAT and the successful Applicant.
- b The acceptance by MFAT of any response, whether with or without negotiation, or the negotiation with an unsuccessful Applicant, shall not create binding legal relations between MFAT and the party whose response has been accepted or which is negotiating with MFAT.
- c MFAT reserves the right to accept only one or some of the nominated individuals, and to put together a team from all responses submitted and/or commission additional expertise if required.
- d If, in the opinion of MFAT, and at MFATs sole discretion, none of the responses submitted are acceptable, MFAT reserves the right to enter into negotiations with one or more of the Applicants for a satisfactory offer.
- e MFAT shall exercise the right outlined in clause 8d only after notification to all Applicants that their responses were unsuccessful.

9 Governing Law

This RFP is governed by New Zealand law, and the New Zealand courts have exclusive jurisdiction to all matters relating to this RFP.

10 Contract Negotiations

- a Both parties agree to negotiate in good faith, and on successful conclusion of negotiations the preferred Applicant will sign a formal contract MFAT.
- b A contract may be extended if additional work is required, at MFATs sole discretion.

11 Bids for Subsequent Work

MFAT will not consider bids for subsequent work on a project, for example project implementation or review that include consultants who participate in the design of a project.

MFAT looks forward to receiving your response for the above assignment.

Erica Doust
Tenders Advisor
for Secretary of Foreign Affairs and Trade, Government of New Zealand

ATTACHMENT ONE: Terms of Reference

Terms of Reference

Programme Co-ordination and Management Facility

Te Vaka Moana Development Programme

Background

Te Vaka Moana Arrangement

Sustainable development of the Polynesian countries' fisheries sectors, both domestic and high seas, is important to their economic well-being and food security. A well-run fisheries sector could be the economic 'engine room' for Polynesian countries to move toward self-sufficiency and prosperous communities.

The most economically valuable fish stocks are highly migratory and swim throughout the waters of the Pacific. The sustainable management and development of these fisheries depends on close co-operation and collaboration between Pacific Island countries and with distant water fishing nations.

Greater co-operation and collaboration between Pacific Island countries provides a means to exert greater influence on regional processes, create economies of scale and improve both the capacity and capability of individual administrations and the wider sector through the sharing of resources and expertise.

The Heads of Fisheries Administrations (HoFs) of Cook Islands, New Zealand, Niue, Samoa, Tokelau and Tonga have recognised that they are most likely to achieve their country's fisheries development aspirations by co-operating with one another to maximize the potential value that can be derived from sustainably managed fisheries resources and to ensure the food security of Polynesian communities.

In January 2010 these HoFs signed the Te Vaka Moana Arrangement (TVMA), which has the goal: 'to secure, protect and enhance associated long-term economic benefits able to be derived from (Polynesian) fisheries and protect their important contribution to the food security of the communities'. TVMA seeks to achieve this goal by 'furthering the shared interests of the participants within the Polynesia Sub-region including the sustainable use of domestic and high seas fisheries resources'.

TVMA participants have endorsed several high level objectives to achieve this goal:

1. Ongoing fisheries-related capacity development and the enhancement of sub-regional capability, through enabling the sharing of resources, including fisheries monitoring control, surveillance and enforcement (MCSE) resources
2. Promoting the sharing of information between the participants in fisheries policy, fisheries management, fisheries development, fishing industry related issues, fisheries science, MCSE, and other technical expertise in fisheries
3. Enhancing the ability of the TVMA participants to co-operate and promote the interests of the sub-region in regional organisations and international fora dealing with fisheries issues including, where appropriate, collaboration with the FFA and SPC
4. Promoting co-operation between the TVMA participants with regard to MCSE, both domestically and on the high seas, including in seeking to increase the value of fisheries through countering illegal, unregulated and unreported fishing and

5. Supporting and strengthening industry development initiatives, including *via* links between the fishing industry sectors.

These objectives are likely to evolve over time as the sub-regional landscape changes. There is also potential for the number of participants in TVMA to increase and for other donors to engage with TVMA.

Te Vaka Moana Development Programme

The Te Vaka Moana Development Programme ('TVMDP') has been established by New Zealand's Aid Programme as the means of supporting achievement of TVMA's goal and objectives. TVMDP provides the mechanism for access to the resources of New Zealand's Aid Programme.

The outcomes sought by the TVMDP, which will contribute to achieving the above TVMA goal and objectives, are:

1. Healthy and sustainable fisheries resources that provide maximum benefit to TVMA participants (economic benefits and food security), through the development and implementation of robust fisheries governance frameworks, systems and processes, over high seas and in-zone fisheries
2. A reduction in cases of IUU fishing, and protection of fisheries management frameworks, through strengthened levels of MCSE co-operation between TVMA participants
3. A profitable and sustainable fishing industry sector, through creating stability and certainty through governance and enabling environment arrangements
4. Greater co-operation, engagement and collaboration with industry stakeholders including through fisheries industry stakeholder groups at national and subregional levels
5. Te Vaka Moana is an effective and efficient grouping for addressing sub-regional issues successfully

The TVMDP activities should contribute to the achievement of these outcomes. The activities are organised into a work plan with four areas:

1. Monitoring, Control, Surveillance and Enforcement (MCSE)
2. Fisheries Management
3. Industry Development and
4. Governance

The TVMDP will employ several strategies when it carries out the work plan activities:

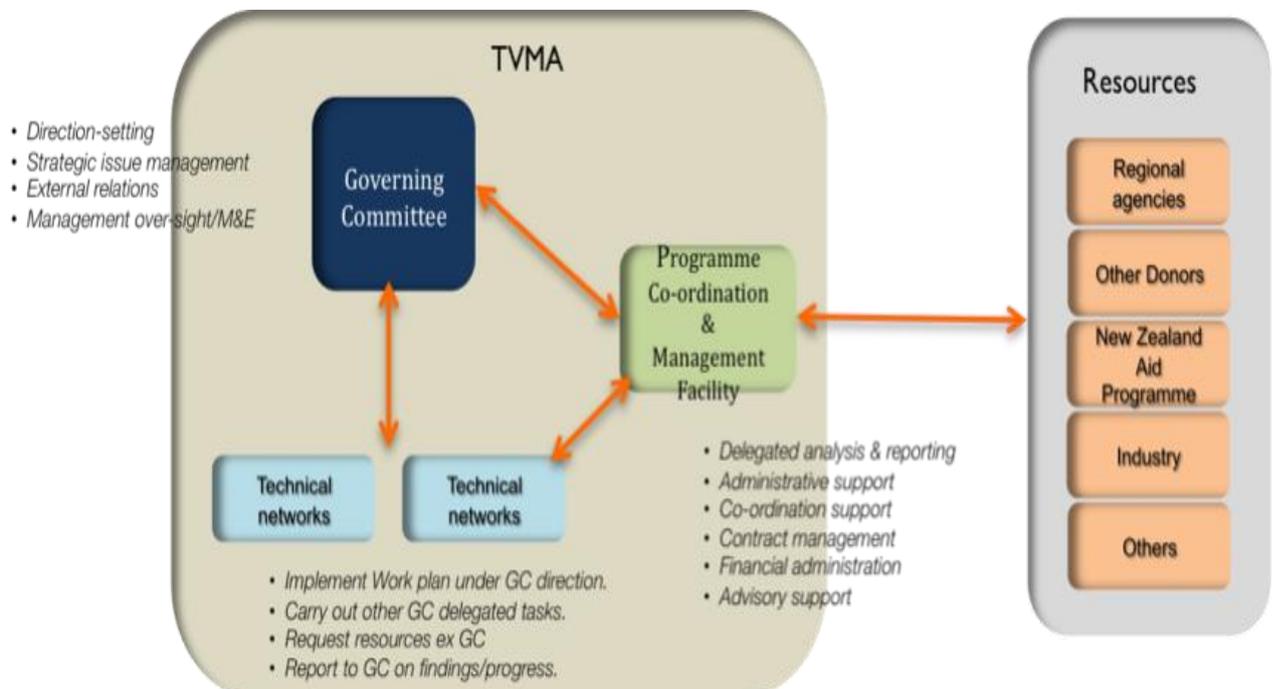
1. Supporting fisheries agencies to leverage their resources to address key sub-regional issues
2. Addressing urgent and immediate core issues and so gain early tangible results and traction, while also laying the ground work for further analysis and design of a subsequent work plan on medium/long term issues
3. Providing a means for engagement and support from other donors, organisations and experts working in the region so they can easily identify how they might co-ordinate support for TVMA participants

4. Promoting collaboration between the private sector and fisheries agencies to create an enabling environment for greater investment in the industry and
5. Ensuring any proposed assistance is complimentary to current assistance.

Governance and Management

There are three key elements for the governance and management structure for TVM:

- A **Governing Committee** comprising the Heads of the Fisheries Administrations of TVMA participating countries. Their geographical spread creates a clear challenge in the manageability of decision-making and co-ordination of effort and resources.
- **Technical Networks** to look at specific issues or complete specific tasks under the agreed work plans
- **Programme Co-ordination & Management Facility (PCMF)**. The role of the PCMF is to undertake all co-ordination and management-related tasks as directed by the Governing Committee to implement the TVMDP work plan.



THE PROGRAMME CO-ORDINATION AND MANAGEMENT FACILITY

The Governing Committee (GC) and Technical Networks (TNs) of the TVMA require substantial support to carry out the planned activities and to continue to develop potential areas of work. To respond to this A Programme Co-ordination and Management Facility is proposed to support the implementation of activities and facilitate co-ordination across donors and regional agencies. The PCMF would be contracted by New Zealand's Aid Programme but work to the GC and supporting TNs. Initially this is seen to be a single consultant, with the ability to sub-contract technical advice. The scope and performance of this role would be assessed after the first year of implementation.

Tasks

Key Tasks

The key tasks of the PCMF will be:

1. Being the primary point of contact within TVMA in the first instance.
2. Supervising and co-ordinating implementation of activities and development of the workprogramme.
3. Ensuring the financial resources of New Zealand's Aid Programme are used by TVMA as agreed in the TVMA work plan and budget and engaged efficiently into the TNs (or directly with the GC as requested by the GC)
4. Sub-contracting experts and manage those contracts, including the reporting back to the GC on their progress and value-for-money.

Detailed Tasks

The detailed tasks of the PCMF will be:

1. Overall Programme Delivery Support

- Supporting the delivery of the TVMDP in line with GC's strategic direction as expressed through the TVMA goal and outcomes and annual plans as agreed by the GC and New Zealand's Aid Programme.
- Supporting implementation of all GC programme implementation and activity management decisions and
- Any other direction by the GC related to achieving TVMDP outcomes.

2. Programme Management Support

- Supporting effective management of all GC requirements via implementation on time, within budget, and to a standard acceptable to the GC
- Maintaining accurate, up-to-date and accessible financial records for all programme activities and PCMF expenditure
- Maintaining accurate, up-to-date and accessible records for all GC-approved contracts and instructions to contractors and correspondence with key stakeholders
- Advising the GC of emerging and actual risks associated with programme implementation and resource contracting, and implementing GC directives to address these risks
- Establishing and maintaining effective collaborative working relationships with other donors and key stakeholders, including FFA and SPC, and updating the GC from time to time on the status of those relationships

- Supporting any briefing provided by the Chair of the GC to contracted Technical Advisers by providing additional information on contractual requirements, logistics and review teams (e.g. mid-term review, quality assurance panels, evaluation teams at project completion) and
- Providing, on the approval of the GC, any requested information and documentation to key stakeholders and other parties in a timely manner and ensuring that all briefings and information provided to the GC or relevant stakeholders are comprehensive, accurate and meet quality standards.

3. *Support to TVMA Planning*

- Supporting the GC by preparing a draft comprehensive and realistic planning documents (including detailed budgets that demonstrate value for money) to include:
 - a) TVMA annual work plan and budget
 - b) Annual implementation and resource schedule
 - c) Key performance indicators for annual work plans
 - d) Any updates to the TVMDP monitoring and evaluation framework, building on existing data as appropriate
- Supporting the GC in promoting the involvement and effective engagement of industry associations (e.g. PITIA¹) so as to maximise their contribution to, and ownership of, any TVMA-led planning processes and initiatives.
- Undertaking, with the direction of the GC, all reasonable efforts to encourage and maintain the involvement of key stakeholders in the TVMDP via e.g. attendance at TVMA-led planning workshops and timely input into TVMDP activities.
- Support the GC as directed in developing and implementing a communication strategy for the programme (based on the proposed TVMA website) where the media used should, as a minimum, include:
 - An update on current and future TVMA activities
 - A summary of the current TVMA activities
 - A summary of the latest developments in relevant issues to the TVMA participants and key stakeholders
 - Articles from TVMA participants where appropriate and value-adding to TVMA goal and objectives
 - Any other items in support of implementing the communications strategy in accordance with the direction of the GC
- Supporting, under direction from the GC, strategic programme planning that reflects the characteristics and capacity of TVMA participants working together in a sub-regional programme
- Supporting the GC in ensuring financial planning is realistic and provides cost-effectiveness and value for money in all purchases of goods and services, including travel and accommodation and
- Assisting the GC in ensuring all financial information and budgets are prepared in accordance with systems of good practice adopted by TVMA participating countries and New Zealand's Aid Programme.

4. *Procurement and Sub-contracting*

- Managing and co-ordinating the contracting and deployment of high quality technical assistance for all agreed activities (as per the annual work plan) where Terms of

¹ Pacific Islands Tuna Industry Association

Reference clearly set out, amongst other requirements, the deliverables and intended benefits from the assistance

- Assisting the GC in ensuring all contracted inputs are secured through formal written contracts for service including clear specification of tasks and agreed contract prices
- Managing and co-ordinating support in the purchase of such other goods and supplies as are required to implement TVMA activities in accordance with good practice in public sector procurement requirements and
- Providing support to the GC in approving funding arrangements and disbursements of funds on annual work plan-related activities in a uniform, transparent and accountable manner.

5. *Logistical Support*

- Arranging venue, travel, accommodation for all GC 6 monthly meetings
- Providing such other logistical support to the GC as is required in line with carrying out the GC's function in accordance with the GC Terms of Reference
- Arranging venues, accommodation, meal allowances (where applicable) and travel in relation to programmed activities and
- Ensuring costs associated with venue hire, travel, accommodation and meal allowances are in accordance with New Zealand's Aid Programme financial policy and represent value for money.

6. *Monitoring and Evaluation*

- Providing management and co-ordination support to the GC in the design of a TVMDP monitoring and evaluation system in consultation with key stakeholders.
- Supporting the GC in implementing and managing the monitoring and evaluation system.
- Ensuring, as directed by the GC, regular and uniform monitoring of sub-contractors and sub-contracted activities including financial performance
- Supporting, as directed by the GC, regular monitoring and reporting and review of TVMA activities and outputs including actual costs against budget
- Providing support to the GC in its monitoring and final evaluation of TVMA programme activities and outputs and
- Providing support to the GC's regular assessing of progress towards outcomes based on key performance indicators and use of feedback and broader collective lessons to improve future TVMA activities.

7. *Reporting*

- Preparing and presenting to the GC and New Zealand's Aid Programme comprehensive and timely reports on:
 - a) Quarterly, and annual, progress including financial reports on all activities of the PCMF during these periods
 - b) Any actual and/or emerging risks associated with TVMDP implementation as they relate to the PCMF's ability to contribute fully to TVMA annual work plans
 - c) Exception Reports, as required by the GC from time to time and
 - d) Results of ongoing monitoring and evaluation of the TVMDP.

Skills and Competencies

The PCMF will have the following skills and competencies:

Knowledge of the Fisheries Sector

- Extensive knowledge and experience in the fisheries sector, particularly areas that relate to issues affecting TVM fisheries resources.

Development Knowledge and Experience

- Knowledge and experience in programmes aimed at developing sustainable economic growth, particularly in the productive sectors.

Programme Management and Co-ordination

- Proven track record of project implementation and effective management commensurate with a sub-regional programme of this complexity.
- Demonstrated ability to analyse management, logistical and co-ordination-related problems and find workable solutions.
- An ability to provide management and co-ordination assistance in preparing realistic and comprehensive planning documents including annual work plans, budgets and resourcing schedules.
- Demonstrated experience in managing (if not actually setting up) internal controls and systems that effectively manage project expenditure, project implementation, sub-contractor procurement and management, and risk identification and management.
- Demonstrated experience in processes and contractual arrangements around engaging technical expertise inputs from across the sub-region and
- Demonstrated experience in ensuring resources are best utilised to achieve project outputs and desired outcomes.

Relationship Building and Communication

- Strong report writing skills and an ability to present comprehensive and concise reports with realistic recommendations.
- Highly developed communication and mediation skills for addressing professional differences, to effectively resolve administrative and/or co-ordination issues that may arise and maintain relationships with a wide and diverse range of stakeholders in the course of providing management, logistical and co-ordination support to managing a complex sub-regional programme of this nature.

Outputs

The PCMF's outputs will be closely aligned to the TVMA work plan and directions of the GC. The outputs in year 1 will include:

1. Fisheries Management
 - a) Strategy paper on medium to long term direction of TVMA developed.
 - b) Strategy paper on influencing/controlling Polynesian fisheries developed.
 - c) Increased capacity of personnel in fisheries administrations on fisheries management issues.
2. Monitoring, Control and Surveillance and Enforcement
 - a) Te Vaka Toa Arrangement signed and implementation arrangements set up.
 - b) Secure Website for information exchange and MCSE purposes established.
 - c) Increased numbers of trained Observers and more effective data management systems developed.

- d) Increased capacity and capability of MCSE personal and units in fisheries administration.
3. Industry Development
- a) Study on 'Enhancing the returns from the Southern Long-Line and other fisheries' completed and areas for further work identified.
 - b) Approach agreed between PCMF, Industry associations and Heads of Fisheries on building more sustainable industry.
4. Governance
- a) A Programme Co-ordination and Management Facility is established and is enabling the effective functioning of TVM and TVMDP, including the development of a comprehensive strategy for TVM and work programme of activities.

ATTACHMENT TWO: Assessment Criteria

TE VAKA MOANA – PROGRAMME CO-ORDINATION AND FACILITY MANAGEMENT

#	ASSESSMENT CRITERIA	Weighting
1	<p>Knowledge of Fisheries sector Demonstrated extensive knowledge of both Domestic and High Seas Fisheries Sector, particularly in Polynesia.</p>	30
2	<p>Development Knowledge and Experience Knowledge and demonstrated experience in programmes aimed at developing sustainable economic growth, particularly in the productive sectors.</p>	10
3	<p>Programme Management and Co-ordination Proven track record of effective project management and implementation, including:</p> <ul style="list-style-type: none"> - sub-contractor procurement and management - managing project expenditure - outcomes based project planning and implementation - monitoring for results - risk identification and management - 	30
4	<p>Relationship Building and Communication Highly developed written and oral communication and mediation skills. Reputation for building strong relationships.</p>	20
5	<p>Value for Money A realistic proposal price (as per the Budget Template – Attachment Three of the Terms of Reference)</p>	10
	Total	100%

ATTACHMENT THREE – Budget Template

TE VAKA MOANA – PROGRAMME CO-ORDINATION AND FACILITY MANAGEMENT

1. Budget for Fees

Fees	No. of Months	Monthly Rate	Amount	GST (if applicable)
			\$	\$
			\$	\$
			\$	\$
			\$	\$
			\$	\$
Total GST				\$
TOTAL FEES (GST exclusive)				NZ\$

TOTAL BUDGET QUOTE / CONTRACT PRICE

1. Contractor's fees (GST exclusive)	\$
TOTAL CONTRACT PRICE (ex GST)	NZ\$

Note:

Budget for Expenses and Per Diems will be aligned to work plans as required upon successful contract negotiation. Fixed current per diem rates are available at www.aid.govt.nz

ATTACHMENT FOUR: RESPONSE Statement

TE VAKA MOANA – PROGRAMME CO-ORDINATION AND FACILITY MANAGEMENT

1. APPLICANT'S CONTACT DETAILS

Contact Person: _____

Full legal business and trading names: _____

Business postal address: _____

Business courier address: _____

Business phone number: _____

Business fax number: _____

Cellular phone number: _____

Email address: _____

Authorised contracting officer / contract signatory: _____

2. CHECKLIST OF ADDITIONAL DOCUMENTS TO BE PROVIDED

1. A Capability Statement (max. four A4 pages):	_____	<input type="checkbox"/>
2. Curriculum Vitae (max. two A4 pages) including referees and contact details	_____	<input type="checkbox"/>
3. Completed Budget Template	_____	<input type="checkbox"/>
4. Signed and completed RFP Statement	_____	<input type="checkbox"/>

3. APPLICANTS REFEREE DETAILS**Applicant Details**

Consultant's name:

Assignment Name:

Email Address:

Telephone number:

Mobile number:

First Referee

Full name:

Position:

Organisation:

Postal address:

Telephone number:

Email address:

Association to the consultant:

Second Referee

Full name:

Position:

Organisation:

Postal address:

Telephone number:

Email Address:

Association to the consultant:

4. APPLICANT'S DECLARATION

To be completed by authorised contracting officer / contract signatory

In submitting this response I make the following declarations:

- I confirm that I have read, understood and agree to be bound by the *Conditions of RFP*.
- I agree that MFAT may contact all nominated referees, and at MFAT's discretion, carry out reference checks in relation to any previous work which has been undertaken for MFAT, or any other development agency, such as AusAID, World Bank, UNDP, and that all references and reports obtained by MFAT will be confidential to MFAT.
- I confirm that the Applicant(s) would be available to deliver the services throughout the relevant contract period.
- If identified as the preferred Applicant(s), I am prepared to produce evidence justifying the proposed fee rate(s), if required to do so.
- I confirm that in submitting this information I am not aware of any situation or issue that would conflict with the interest of MFAT. Where an actual, potential or perceived conflict of interest does arise I undertake to report it to MFAT immediately.
- I acknowledge that MFAT is subject to the Official Information Act 1982 and that it cannot guarantee the protection of information supplied for the purpose of this RFP process.
- I confirm that I have read and understood the *Standard Terms and Conditions of Contract* attached to the RFP. If successful, I agree to sign a contract based on these terms.
- I have personally completed this Response Statement on behalf of the Applicant(s) and declare that the above particulars provided here and in the attached documents are true and correct. I understand that should I be successful then falsification of information, supply of misleading information or the suppression of material information will be grounds for termination of the contract.

Signed for and on behalf of the Applicant(s) by an authorised contracting officer / contract signatory:

Signature

Full name

Position

Date

Attachment Five: Standard Terms and Conditions of Contract

THE NEW ZEALAND AID PROGRAMME'S POLICY STATEMENT

1. Where appropriate the Contractor will provide Services that support and reflect MFAT's policies and operating guidelines in relation to the delivery of New Zealand's Official Development Assistance (NZODA), and its mission and values, which include the following:
 - a. The New Zealand Aid Programme's mission is to support sustainable development in developing countries, in order to reduce poverty and to contribute to a more secure, equitable and prosperous world.
 - b. The New Zealand Aid Programme's core focus is on sustainable development and on the Pacific.
 - c. The New Zealand Aid Programme's values are to:
 - i. place people at the heart of our activities.
 - ii. be responsive to peoples and communities in developing countries.
 - iii. act ethically, fairly and with respect to all partners.
 - iv. be practical, flexible and adaptable.
 - v. be strategic and long term in our approach.
 - vi. be focused on the effectiveness of New Zealand's development assistance.
 - vii. reflect MFAT's commitment to the partnership principles of the Treaty of Waitangi.
 - d. The New Zealand Aid Programme's operating principles are:
 - i. protecting and promoting human rights.
 - ii. strategic approach to poverty elimination.
 - iii. sustainability.
 - iv. equity.
 - v. partnerships.
 - vi. participation.
 - vii. coordination.
 - viii. access and accountability.
 - e. The New Zealand Aid Programme works strategically in the following ten areas of development impact:
 - i. Economic development.
 - ii. Education.
 - iii. Health.
 - iv. Sustainable livelihoods.
 - v. Environment.
 - vi. Human Rights.
 - vii. Leadership and Government.
 - viii. Peace building and conflict prevention.
 - ix. Humanitarian support.
 - x. Community safety.
 - f. In providing the Services the Contractor shall ensure, where appropriate, the following:
 - i. access, choice, diversity and efficiency in the effective use of public money.
 - ii. promote the concept of best practice as an ongoing quality assurance mechanism.
 - iii. provide Services that are necessary, appropriate, timely, and of the required quality.
 - iv. provide Services in such a way as to promote the concepts of equity and fairness.
 - v. provide Services that are culturally appropriate for Maori, Pacific and other ethnic and/or indigenous groups.
 - vi. provide Services in such a way as to respect the personal privacy and dignity of all stakeholders.
 - vii. deliver Services in a manner that respects, and is appropriate to, stakeholders' religious and cultural beliefs and practices, age, gender, sexual orientation, and disabilities.

CONTRACTOR'S OBLIGATIONS

2. The Contractor agrees to be bound by the following obligations:
 - a. To provide the Services specified in this Contract and fulfil its contractual obligations all in accordance with this Contract's Terms and Conditions.
 - b. In delivering Services to meet the agreed objectives, to undertake the agreed tasks, deliver the agreed outputs, and be accountable for the achievement of the desired results.
 - c. To manage the whole of the Services within the Contract price as agreed with MFAT.
 - d. To ensure the regular monitoring, evaluation and reporting of Services to MFAT.
 - e. To prepare all documentation required by MFAT to MFAT's satisfaction.
 - f. At all times to achieve or exceed the Service levels specified in this Contract.
 - g. To carry out the provision of Services to ensure that the effect of third party and other delays are minimised.
 - h. To ensure the delivery of quality outputs through effective coordination and cooperation between all key stakeholders in a fully participatory way, including relevant communities and recipients, MFAT, any High Commission/Embassy/Mission, and the Partner Government(s).
 - i. To accept full responsibility for the provision of the Services including risk management, risk assessment and the development and implementation of effective and strategic risk management solutions.
 - j. To have regard to, and operate in accordance with, the applicable laws of New Zealand and all applicable laws in country.
 - k. To act in good faith and consult with MFAT whenever and as often as may be appropriate on matters affecting the Contractor's obligations.
 - l. To respond, within five working days, to all inquiries from MFAT for information that MFAT may reasonably request in relation to this Contract.

- m. To ensure that in providing the Services the Contractor does so to a standard which will promote New Zealand's international reputation and standing in the field of development. The Contractor shall avoid any course of action or conduct that would reflect adversely on the New Zealand Government, or MFAT.
- n. To perform the Services in a manner, which at all times seeks to continuously improve the Services.
- o. To build upon the experiences that many key stakeholders have had through previous involvement in the delivery of development programmes to enhance the Service outputs and outcomes.
- p. To provide MFAT with a copy of financial statements when requested and within the timeframes specified in this Contract.
- q. To maintain a copy of all reports, and related financial documentation for a period of seven years after completion of the contracted Services.
- r. To ensure that records and documentation are kept in accordance with the Privacy Act and in a manner that is current, detailed, and organised, and enables the effective provision of Services and the effective administration and financial audit of this Contract.
- s. To comply, in a timely manner, with all reasonable written instructions and directions of MFAT.

CONTRACTOR'S STANDARDS

- 3 The Contractor warrants that:
- a. it will perform the Services with the intention of ensuring that the aims and objectives of the Services are achieved.
 - b. it will comply with all legal requirements including safety standards in respect of the Services.
 - c. it has and will continue to have, the skills, qualification(s) and experience to provide the Services in an efficient and controlled manner with a high degree of quality and responsiveness and to a standard that at a minimum complies with this Contract. MFAT relies wholly and exclusively on the Contractor's skills, knowledge, experience and necessary ability to provide the Services in terms of this Contract.
 - d. it has the right or consent of all relevant owners or licensors of Intellectual Property rights, or any other property, or other rights, needed for the provision of the Services.
 - e. it will take all reasonable measures to ensure that no computer virus or similar item is introduced into the supply of its Services.
 - f. in providing the Services, it will be responsive to the changing needs of MFAT and all key stakeholders, and the changing environment encountered in development work.
 - g. it will ensure that all reports contain all the information required under this Contract and are accurate and not misleading in any respect.
 - h. it will comply with the terms and conditions of this Contract.
 - i. it will, at all times, act in good faith in carrying out any and all of the Services in respect of this Contract.

MFAT'S OBLIGATIONS

4. MFAT agrees to be bound by the following obligations:
- a. to pay the Contractor for the Services such sums as are due in terms of Schedule 2, subject to clauses 7 to 23 inclusive of this Schedule.
 - b. to act in good faith and consult with the Contractor whenever and as often as may be appropriate on matters affecting MFAT's obligations.

EACH PARTY'S OBLIGATIONS

5. Each party will comply with all law applicable to it, and in particular, the Privacy Act 1993, the Health and Safety in Employment Act 1992, the Employment Relations Act 2000, and the Building Act 1991, as amended. The Contractor recognises MFAT's obligations to comply with the Public Finance Act 1989 and the Official Information Act 1982 (as amended), requests from the Ombudsman's Office, and Parliamentary convention and scrutiny.
6. Nothing in this Contract shall affect the statutory obligations of either party to do, or refrain from doing, anything in a manner, which is not consistent with the law.

APPROVAL OF PAYMENT

7. Prior to approving payment, MFAT must be satisfied that the Services, tasks, outputs, and/or milestones have been delivered:
- a. on time, and
 - b. within the agreed price (Schedule 2), and
 - c. are of sufficient quantity and quality to successfully achieve the requirements of the Scope of Services (Schedule 1), reporting (Schedule 3), and all other terms and conditions of this Contract.
8. Where MFAT is not satisfied as to any aspects of delivery under clause 7, it may, at its sole discretion, withhold payment in full or in part of any sums due. Payment may be withheld in the following circumstances:
- a. where MFAT has suffered loss or damage as a result of the Contractor's failure, it may reduce the amount due to cover such loss or damage, or
 - b. where the Contractor has failed to deliver the Services, or any part of the Services, and MFAT has lost confidence in the Contractor's ability to deliver the Services, it may withhold payment in full, or reduce the amount due to reflect the reduced level of Services rendered and bring the Contract to an end, or
 - c. where MFAT requires the Contractor to remedy any deficiencies in its delivery of Services, it may advise the Contractor of the deficiencies, detail the reasons why payment cannot be approved, and set out what steps need to be taken by the Contractor to obtain approval. After these steps have been taken and completed to MFAT's satisfaction, payment will be made within fifteen (15) working days of approval to pay being granted.

BASIS OF PAYMENT

9. Payments shall normally be made within twenty (20) working days of presentation of a correctly rendered GST invoice at the dates specified in Schedule 2, subject to clauses 7 and 8 above and the following:
- a. all recoverable expenses claimed have, in the opinion of MFAT been reasonably incurred.

- b. all recoverable expenses claimed have been paid by the Contractor prior to the date of the invoice, as substantiated by the Contractor.
 - c. the amount claimed in the invoice is due for payment and correctly calculated in accordance with this Contract.
 - d. the invoice specifically identifies any item(s) that has been approved as a Contingency Provision under clause 53.
 - e. a senior executive of the Contractor, acceptable to MFAT, has certified that the invoice:
 - i. has been correctly calculated, and
 - ii. that the Services included in it have been performed in accordance with this Contract.
 - f. the invoice is properly addressed for the attention of the Payments Officer, Development Finance Team, MFAT.
an appropriation by Parliament, of sufficient funding for the types of Services the Contractor is providing under this Contract.
10. If an invoice is found to have been rendered incorrectly, any underpayment or over payment will be recoverable by or from the Contractor, as the case may be, and, without limiting recourse to other available remedies, may be offset against any amount subsequently due by MFAT to the Contractor.
11. A payment made by MFAT is not:
- a. evidence of the Contractor's satisfactory performance under or compliance with this Contract, or
 - b. an admission of liability, or
 - c. acceptance by MFAT of the Services delivered.
12. MFAT need not pay an amount that is disputed in good faith by MFAT until the dispute is resolved.
13. MFAT may review any payments made to the Contractor at any time and:
- a. if the total of the amount paid to the Contractor is greater than MFAT determines by review to be payable under this Contract, then MFAT must notify the Contractor in writing of the amount of refund it has determined to be repayable.
 - b. the Contractor must within twenty (20) working days after receipt of MFAT's notification either refund the excess to MFAT, or provide MFAT with evidence supporting the Contractor's opinion concerning the amount of the refund.
 - c. failure by the Contractor to provide evidence as required in sub-clause 13.b will, in the absence of payment in full of the refund claimed, be deemed to be evidence of the Contractor's acceptance that the amount of refund is correct and payable to MFAT on demand or deductible from subsequent payments due under this Contract.
 - d. MFAT must within twenty (20) working days of receipt of the Contractor's evidence supporting its opinion concerning the amount of the refund, consider the Contractor's evidence and give the Contractor written notice either:
 - i calling for payment within twenty (20) working days of the refund as determined or re-determined by MFAT, or
 - ii of MFAT's agreement that there is no refund payable.
 - e. If the Contractor fails within the relevant time to make a refund to MFAT of an overpayment determined under clause 13.a the amount of the refund is deemed to be a debt due by the Contractor and recoverable by MFAT in any court of competent jurisdiction.
 - f. where MFAT deducts the amount of a debt or payment from any other sums due to the Contractor it must advise the Contractor in writing that it has done so.

PER DIEMS

14. Where the Contractor is required to travel overseas, MFAT agrees to pay a daily *per diem* for each day the Contractor's personnel spends out of their own country of residence. The *per diem* covers meals, accommodation and laundry at MFAT's applicable New Zealand Aid Programme rate. MFAT's New Zealand Aid Programme *per diem* rates are published on the New Zealand Aid Programme website and updated quarterly. The applicable rate is the published rate at the commencement of the trip. No receipts are required for *per diem* expenses.
15. The Contractor agrees to pay each employee or sub-contractor the full *per diem* payment applicable to their travel to that country or area.
16. Where the Contractor negotiates an airfare/accommodation package, or an accommodation package, or a special rate, then MFAT will reimburse the Contractor for the full costs of the package and pay, instead of a *per diem* amount, a Daily Allowance to cover meals, laundry, and incidentals.

DAILY ALLOWANCE

17. Where the Contractor is required to travel within their country of residence, MFAT agrees to pay a Daily Allowance for each day the Contractor spends away from home, together with agreed accommodation costs on an actual and reasonable basis. The Daily Allowance covers meals, laundry, and incidentals and will be paid at the MFAT staff rate. The applicable rate shall be specified in Schedule 2.
18. Contractors travelling to New Zealand, where New Zealand is not their normal place of residence, will be entitled to a Daily Allowance and actual and reasonable accommodation costs.
19. The Contractor will be required to produce receipts for actual and reasonable accommodation. No receipts are required for the Daily Allowance expenses.
20. The Contractor agrees to pay each employee or sub-contractor the full Daily Allowance applicable to their travel.

RECOVERABLE EXPENSES

21. MFAT will refund the Contractor such recoverable expenses as detailed in Schedule 2. Expenses are recoverable on an actual and reasonable basis.

22. MFAT will refund the Contractor the cost of airfares for agreed travel. Generally air fares are recoverable on the basis of an economy class fare for the most direct, or cheapest route. However, where one leg of the route is nine hours or more, the Contractor may travel business class. The class of travel must be stated in Schedule 2, otherwise economy class will be deemed to apply. The Contractor will attempt, wherever possible, to make savings by purchasing special rates or discounted fares. A travel Agent's invoice or electronic ticket and boarding pass stub will be required by MFAT before reimbursement will be made.
23. Where the Contractor sub-contracts Services to another contractor then, prior to engaging the sub-contractor, the Contractor will submit to MFAT, for agreement and approval, the actual daily rate to be paid to the sub-contractor. The Contractor undertakes to pay the agreed rate to the sub-contractor. In certain circumstances MFAT may agree to pay to the Contractor a margin on top of the sub-contractor's daily rate to cover the Contractor's overheads in administering the sub-contractor. Such margin will be clearly identified and agreed between the parties in Schedule 2.

ACCOUNTS AND RECORDS

24. The Contractor must, at all times, maintain full, true and up-to-date accounts and records in relation to the fees, Services, recoverable expenses and procurements under this Contract. Such accounts and records must:
- a. include appropriate audit trails and be complete and up-to-date.
 - b. record all receipts and recoverable expenses in relation to the Services.
 - c. be kept in a manner that permits them to be conveniently and properly audited.
 - d. be drawn in accordance with applicable generally accepted accounting practice.
 - e. enable the extraction of all information relevant to this Contract.
 - f. establish and maintain a Register of Assets to record all non-consumable capital items, valued at NZ\$500 or more, purchased by the Contractor using MFAT funds. This record shall provide the following information: identify the individual asset, purchase price, date of purchase and location held. The Contractor acknowledges that all assets purchased using MFAT belong to, and are the property of MFAT. The disposal of such assets is to be determined by MFAT at the end of the Contract. This Register may be subject to audit by MFAT or its representative. The Contractor is also responsible for ensuring that all such assets are properly insured against loss or damage.

REPORTS

25. The Contractor must provide reports as required in accordance with Schedule 3.
26. All reports must:
- a. be provided within the time specified.
 - b. include the level of detail specified.
 - c. be presented in a manner that allows MFAT to easily and properly assess progress under this Contract.
 - d. be presented in a format and in the media approved or requested by MFAT.
 - e. not incorporate MFAT or New Zealand Aid Programme logo or any other representation or mark, which may indicate that the Contractor is in any way related to, or connected with, MFAT.
27. MFAT may reject any report prepared by the Contractor that does not conform to the requirements in this Contract and withhold payment until the Contractor rectifies the report.
28. The Contractor is responsible for any extra costs occasioned by any discrepancies, errors or omissions in report(s) provided to MFAT, or other information supplied in writing by the Contractor, provided such discrepancies, errors or omissions are not due to inaccurate information supplied in writing to the Contractor by MFAT.
29. The Contractor must provide additional information as reasonably requested by MFAT on reports provided in accordance with this Contract, at no additional cost to MFAT.

AUDIT

30. The Contractor is expected to conduct internal audits of its policies and procedures as part of a continuous quality improvement plan.
31. MFAT reserves the right, at any time, to audit the Services, processes and financial management that are provided under this Contract.
32. For the purpose of ensuring that this Contract is being properly managed and performed, MFAT, or any person authorised by MFAT, shall have the right to audit any aspect of this Contract, inspect any location where Services are being delivered, and to be provided with free access to premises and all information.
33. The Contractor agrees to cooperate fully in any such audit undertaken by MFAT. In addition the Contractor agrees to respond in writing to any draft audit report within ten working days of receipt by the Contractor.
34. Examples of audits that may be performed are: operational practices and procedures, risk management, efficiency and effectiveness of the Contractor's operations, sub-contractor arrangements, accuracy of invoices and reports, compliance with confidentiality and privacy obligations, user satisfaction, the standard and quality of Services achieved, information technology systems and processes and financial management practices and procedures.
35. The requirement for, and participation in, audits does not in any way reduce the Contractor's responsibility to perform its obligations in accordance with this Contract.

ACCESS TO PREMISES, DATA AND RECORDS

36. The Contractor must grant to MFAT, or its nominee(s), access to the Contractor's premises, data, records, accounts and other financial material, or material relevant to the Services or sub-contracts, however, and wherever stored, in the Contractor's (or its sub-contractors') custody, possession or control for inspection and copying.

37. Such access must be made available during normal business hours and at no additional extra charge to MFAT. Except in the case of breach of contract, access is subject to reasonable prior notice.
38. Where documents or records are stored on a medium other than hard copy, the Contractor must make available, on request, such facilities as may be reasonably necessary to enable a legible reproduction to be created at no additional cost to MFAT.
39. The Contractor must ensure that any sub-contract contains an equivalent clause granting the rights specified above for access to the sub-contractor's premises, data and records.
40. This clause applies for the term of this Contract and for a period of seven years from the date of its expiry or termination.

CONFLICT OF INTEREST

41. The Contractor warrants that it has no actual, or perceived, or potential conflict of interest which will, or which may affect, the Contractor's performance of Services in terms of this Contract.
42. The Contractor must notify MFAT, in writing, immediately if:
 - a. the Contractor becomes an owner of, or has any other material interest in, any other stakeholder organisation, or
 - b. the Contractor becomes aware that any of its employees, Contractor's or sub-contractors is, or has become, an owner of, or has any other material interest in, any other stakeholder organisation, or
 - c. the Contractor becomes aware of anything else, which might give rise to a conflict between its responsibilities under this Contract, and any other responsibility or business or professional interest it may have.

RELATIONSHIP OF THE PARTIES

43. The Contractor is an independent contractor contracted by MFAT to provide the Services described in this Contract. Nothing contained or implied in this Contract shall be construed as creating, and neither party shall state, imply or do anything to suggest, that this Contract creates an employer/employee or principal/agent or partnership relationship between MFAT and the Contractor or any of its proprietors, officers, employees or sub-contractors.
44. The Contractor is responsible for the liability of its employees, Contractors and agents for all taxes and ACC or insurance premiums, or such other costs that are attributable to its employment or engagement of its employees, sub-contractors and agents.

NON-EXCLUSIVE SERVICES

45. The Contractor may not be the exclusive provider of Services to MFAT similar to those provided under this Contract. The Contractor must, within the fees, cooperate with any other service provider appointed by MFAT to ensure the integrated and efficient carrying on of the Services and must provide such reasonable assistance to other service providers as MFAT may request.

PROCUREMENT AND CONTRACTING

46. In the event that the Contractor is required under this Contract to procure goods, works, or services the sole responsibility for doing so rests with the Contractor. However, MFAT has an obligation to ensure that MFAT funds are used with due attention to economy and efficiency. The Contractor may follow its own procurement policy and procedures in securing the supply of goods, works, or services so long as the policy, procedures and practice reflect the Government's Mandatory Rules for Procurement [endorsed by Cabinet 18 April 2006] and appropriate standards of good procurement practice as required by the government and adhere to the principles of openness, transparency, fairness, accountability, value for money, due diligence, efficiency and economy.

PUBLIC MONEY

47. The Contractor acknowledges that these Services are being paid for by public funds, and undertakes to apply all money received for the purpose(s) for which it was given. The Contractor acknowledges MFAT's obligation to be accountable for the effective use of public funds, and undertakes to assist MFAT by ensuring that transparent, efficient and effective financial and operational processes are used under this Contract.

ASSIGNMENT AND SUB-CONTRACTING

48. The Contractor shall not assign, transfer, sub-contract or otherwise dispose of all or any benefits, or rights, liabilities or obligations under this Contract or any part of this Contract without the prior written consent of MFAT. Such consent will not to be unreasonably withheld. A change of ownership of the Contractor that alters the effective control of the Contractor is deemed to be a disposition in terms of this clause.
49. The Contractor may have sub-contractors meet any of its responsibilities relating to the provision of any of the types of Service covered by this Contract, but the Contractor must first obtain the written approval of MFAT regarding the prospective sub-contractors, proposed mode of selection and the Services to be sub-contracted. Such approval will not be arbitrarily or unreasonably withheld. The Contractor will remain liable for ensuring that all responsibilities, objectives and outputs under this Contract are met.
50. A sub-contract may not be renewed or extended unless MFAT's written prior approval is first obtained.

VARIATION

51. No variation of this Contract shall be effective, unless it is agreed in writing by both parties, normally in the form of a Letter of Variation, or by electronic email Variation under clauses 52 or 53.
52. No cost variation: MFAT recognises that events or other variables, not foreseen at the commencement of the Contract and beyond the control of the Contractor, may give rise for the need to extend the length of the contract term, or to agree to changes to aspects of activities/tasks or use of savings.. Where the variation is fiscally neutral (i.e. the changes do not result in a change to total costs), and/or if an extension is required for a period of less than 6 months, the variation may be agreed and evidenced by an exchange of e-mails between a MFAT officer with

appropriate delegation and the Contractor stating the reasons justifying the variation. This e-mail exchange must be completed prior to the Contract expiring and/or before the change that the variation gives affect to occurs.

53. **Contingency Provision:** MFAT recognises that events or other variables, not foreseen at the commencement of the Contract, may give rise to the need for a variation to the Scope of Services. To the extent that the cost of such variation does not exceed 10% of the total contract price, or NZ\$20,000 whichever is less, the variation may be agreed to in writing (e-mail exchange sufficient) between the Contractor and a MFAT officer with appropriate delegation. Where this is likely to occur the Contractor must, prior to incurring additional time or expense, email a MFAT officer with appropriate delegation responsible for the programme advising them of the nature of the additional cost (it may be fees or expenses¹), provide evidence that the amount is reasonable (e.g. a quote for travel) and provide reasons justifying its charge under this contract. To be valid the Contractor must obtain prior written approval from MFAT (email is sufficient) before it can incur additional cost(s). Where a proposed cost increase (or series of increases) exceeds the amount of 10% of the contract price, or \$20,000 whichever is less, a formal Letter of Variation to the contract will be required. For Outputs based contracts no additional fees or expenses are allowable in respect of delivery against the original specification as the contract is a fixed price lump sum paid on delivery. Additional fees or expenses may only be claimed where MFAT has specifically instructed, in advance, additional tasks. For Hybrid based contracts no additional fees are allowable in respect of delivery against the original specification as the fees are a fixed price lump sum paid on delivery. With a Hybrid contract additional fees may only be claimed where MFAT has specifically instructed, in advance, additional tasks
54. The exception to clause 51 is where a change is made to give effect to any directive from a Minister of the Crown, and both parties have been unable to agree on the action to give effect to the directive. Where a Minister of the Crown gives such a directive to MFAT, and that directive relates in any way to the rights or obligations of either party under this Contract, then both parties shall negotiate in good faith to agree the action to be taken that will permit both parties to continue performing this Contract. That action may include agreeing to any changes that may be needed to this Contract.
55. If both parties are unable to agree on an action to continue the performance of this Contract, MFAT may change this Contract after giving the Contractor thirty calendar day's written notice of any such change. MFAT shall not be liable for any loss or additional costs suffered or incurred by the Contractor as a result of MFAT effecting such a change. If, as a result of that change, the Contractor's operational financial viability is materially prejudiced, the Contractor may terminate this Contract on thirty calendar day's written notice to MFAT.

CONFIDENTIALITY

56. All information marked by either party as 'confidential', 'restricted', or 'commercial in confidence' and acquired or received by the other in the course of, or under this Contract, shall be held as confidential and shall not be divulged in any way to any other person without the prior written approval of the party who so marked the information.
57. Clause 56 is subject to the proviso that either party may disclose information in accordance with the Privacy Act 1993 where:
- they are required to do so to any outside Professional upon obtaining a similar undertaking of confidentiality from that Professional, or
 - to the extent that the same is publicly available information, or
 - to the extent that such person is required to disclose the same pursuant to the Official Information Act 1982, or
 - it is required by law to do so.
58. The Contractor acknowledges that MFAT has the right, at its discretion, to divulge documents or information and details relating to this Contract in the course of examination by the Audit Office, through Parliamentary convention or scrutiny, or under the Official Information or Privacy Acts.
59. The Contractor shall ensure that any of its employees, Contractors, agents and sub-contractors who are at any time in possession of confidential information do not disclose or permit the disclosure of that information.
60. MFAT is entitled to release information to the extent that it is necessary and reasonable for MFAT to disclose certain information (such as the name and address and contact details of the Contractor and/or the Contractor's key personnel) through any communication medium including the website, to the extent necessary to publicise the Service, or to facilitate the efficient operation of this Contract.
61. Within the scope of providing these Services the Contractor may have access to MFAT files and data. Such files and data may contain confidential, restricted and/or commercially sensitive material. Access and use of such information shall be for the sole purpose of carrying out and completing this Contract.
62. The Contractor hereby agrees to the following:
- other than for the purpose of this Contract, the Contractor shall treat as confidential all information acquired by it in the course of performing the Services, whether such information relates to MFAT, MFAT employees, agents, or any other third party. All information shall remain confidential until otherwise notified in writing by MFAT.
 - The Contractor undertakes not to disclose or permit the disclosure of confidential information to any third party.
 - The Contractor will exercise due skill and care in the handling and storage of Confidential information.

RISK MANAGEMENT

63. The Contractor will report immediately to MFAT on any actual, perceived or anticipated problems that significantly affects the Services or cost of Services. The Contractor will recommend to MFAT steps that may be taken to prevent or mitigate the impact of the issue on the Services.
64. Where high profile issues arise in relation to any aspect of this Contract or Services under this Contract then:

- b. the Contractor will immediately advise MFAT if it becomes aware of any issue about the operation or management of this Contract that is or may have media or public interest.
- c. the Contractor will not make or issue to the media or any member of the public, or third party, any oral or written statement or comment concerning MFAT or the operation or management of this Contract, without prior consultation with MFAT.
- d. each party will promptly advise the other if it is required to provide information to the Ombudsman or any Commissioner in relation to any aspect of, or incident connected with the Service, or professional disciplinary body, or other person under the Official Information Act 1982, or is subject to a complaint, concerning, the Services, MFAT, or the operation or management of this Contract.

TERMINATION

65. If either party fails to meet its obligations under this Contract and, in the other party's opinion, that failure can be remedied, then the other party will give the party who has failed to perform written notice specifying the nature of the failure and requiring it to be remedied within a specified timeframe which is reasonable having regard to the nature of the failure.
66. MFAT may terminate this Contract immediately by giving notice in writing to the Contractor, if the Contractor:
- a. becomes bankrupt or insolvent.
 - b. is dissolved, or wound up by the court, or a receiver is appointed in respect of its affairs.
 - c. makes an assignment of its estate for the benefit of creditors, or enters into any arrangement or composition with creditors.
 - d. goes into liquidation or passes a resolution to go into liquidation.
 - e. suffers any execution against its assets having an adverse effect on its ability to perform this Contract.
 - f. ceases for any reason to supply the Services under this Contract.
 - g. fails to meet its obligations under this Contract and that failure cannot, in MFAT's opinion, be remedied.
 - h. commits any breach of clause 3 (Contractor's Standards), 36 to 40 (Access), 47 (Public money), or 56 to 62 (Confidentiality), 99 to 101 (Anti Corruption) and 102 (Anti Terrorism).
 - i. fails to remedy any breach of its obligation in accordance with a notice to do so under clause 65.
67. The Contractor may terminate this Contract immediately by giving notice in writing to MFAT if MFAT:
- a. fails to meet its obligations under this Contract and that failure cannot, in the Contractor's opinion, be remedied, or
 - b. fails to remedy any breach of its obligation in accordance with a notice to do so under clause 65.
68. MFAT may terminate this Contract, at any time, in whole or in part, by notifying the Contractor in writing that this Contract, or a part of this Contract, is terminated from the date specified in the notice (which must not be earlier than the date of the notice) and, in that event, MFAT may give the Contractor such directions as it thinks fit in relation to subsequent performance of this Contract.
69. Where notice of termination is given in terms of clauses 65, 66, 67 or 68 the Contractor must comply with any directions given under that clause by MFAT. The Contractor must do everything possible to mitigate its losses arising in consequence of such termination of this Contract.
70. Termination of this Contract shall be without prejudice to other rights and remedies of the parties arising out of any default that occurs before the termination.
71. If either party terminates this Contract MFAT will only pay the Contractor in respect of those Services, which have been actually completed before the date of termination. Where a Service has been commenced but not completed at the date of termination, MFAT will not be liable for any payment for that Service.

HANDOVER

72. The Contractor must, within one month before the expiry of the term of this Contract (if requested by MFAT), or within five working days upon receiving notice of termination, deliver to MFAT a Handover Plan providing for the handover of the assignment or Services to MFAT, or, at MFAT's request, to a third party or to a Partner Government.
73. In addition, the Contractor must provide all reasonable assistance and cooperation necessary to facilitate the handover of Services and cooperate with MFAT, or its nominee, in the transfer of documents, data, records and information to ensure the uninterrupted provision of Services.

INSURANCE AND INDEMNITY

74. The Contractor shall indemnify MFAT against all actions, claims, demands, liabilities, damages, loss, costs and expense arising from, or in respect of personal injury to, or the death of any person, or loss of, or damage to property caused by the Contractor in carrying out the Services, or which arises from the performance of the Services.
75. The Contractor shall be responsible for sufficient insurance cover, including where appropriate travel insurance, for itself and its employees, sub-contractors and agents in carrying out these Services against loss of life, or accident, however caused, and for general sickness, medical treatment, medical evacuation, and loss or damage to, or theft of, personal effects, including tools and equipment.
76. The Contractor shall indemnify MFAT from and against any action, claim, liability, damages, costs and recoverable expenses which MFAT may suffer or incur or be put to as the direct or indirect result of or arising from the negligence of, or non-performance of, or breach of this Contract by the Contractor or any of its employees, sub-contractors, or agents involved in providing the Services.

DISPUTES

77. The parties agree to use their best endeavours to resolve any dispute that may arise under this Contract through good faith negotiations. A dispute that cannot be resolved at an operational level will be referred to the Chief

Executive/Director (or equivalent) of each party for the purpose of endeavouring to resolve the dispute on mutually acceptable terms.

78. Where a dispute cannot be settled by negotiation between the parties, or their respective representatives, it shall be submitted to mediation before commencing any litigation. Either party may initiate mediation by giving written notice to the other party.
79. If the parties cannot agree on a mediator within two working days of the notice, then the mediator will be selected by the President for the time being of LEADR New Zealand (Lawyers Engaged in Alternative Dispute Resolution), or its successor.
80. Both parties agree not to commence any court action relating to any dispute arising out of this Contract, until they have both complied with the requirements of clauses 77, 78 and 79 above, unless proceedings are necessary for preserving the rights of either party.
81. The parties shall continue to perform their obligations under this Contract as far as possible as if no dispute had arisen pending the final settlement of the matter referred to mediation.

RIGHT TO RECOVER MONEY

82. Without limiting MFAT's rights under any provision of this Contract, any payment or debt owed by the Contractor to MFAT may be deducted by MFAT from any amount of money or any claim or monies due to the Contractor under this Contract.

NOTIFICATION OF NON-COMPLIANCE

83. The Contractor must advise MFAT if, at any time, the Contractor, the Contractor's employees, sub-contractors, consultants or agents are unable, for any reason, to meet any of the requirements of this Contract.

EXTRAORDINARY EVENTS

84. Neither party shall be liable for any failure to perform or any delay in performing this Contract to the extent that the cause of such failure or delay is beyond that party's reasonable control, (force majeure), providing notice claiming suspension of its obligations is given under clause 85 below.
85. A party claiming suspension of its obligations shall, within three working days after the party first becomes aware of the cause, and its supervening effects in respect of which suspension of its obligations is claimed, give notice of the cause, furnish all available information detailing the cause, and give an estimate of the period of time required to remedy the cause (if such remedy is deemed practicable), to the other party.
86. Any suspension of the obligations of a party shall be limited to the period during which the cause continues to exist.
87. If the Contractor is not able to perform any Service(s) for more than thirty calendar days because of any cause under clause 84 MFAT may terminate this Contract with immediate effect.

INTELLECTUAL PROPERTY

88. The Contractor agrees that copyright in all work produced under this Contract shall remain the property of MFAT. MFAT agrees that any work produced by the Contractor prior to this Contract remain the property of the Contractor. Where the Contractor incorporates prior material into work produced under this Contract it hereby grants to MFAT a permanent irrevocable, royalty-free, worldwide non-exclusive licence to use, reproduce or adapt such material.
89. MFAT acknowledges, and the Contractor warrants that the Contractor owns, or is licensed to use all intellectual property rights in the Services.
90. The Contractor shall indemnify MFAT against any loss, demands or liability arising out of any claim by a third party alleging infringement of intellectual property rights in material used by MFAT and provided by the Contractor.

NO EXPECTATION REGARDING FURTHER OR OTHER CONTRACTS

91. Neither this Contract, nor the fact that the Contractor provides Services to MFAT, gives the Contractor any expectation that MFAT will enter into any further Contract or any other arrangement with the Contractor.

PERFORMANCE

92. The Contractor agrees that MFAT may use any information in relation to the quality of the Contractor's performance under any aspect of this Contract to inform all future MFAT evaluation(s) of the Contractor's abilities, and in particular, to take into account the quality of performance when assessing future bids or tenders by the Contractor.

USE OF NAME

93. Neither party may use the other's name, logo design, or branding nor seek to rely on the fact that there is a business relationship between the parties for advertising or other promotional purposes, without first obtaining the other's written consent.

NO INTENTION TO CONFER BENEFITS ON OTHER PEOPLE

94. Nothing in this Contract is intended to confer any enforceable rights or benefits on any person accessing Services provided under this Contract either under the Contracts (Privity) Act 1982 or otherwise.

COMPLETE CONTRACT

95. This Contract, including all Schedules, Appendix, and variation(s), represents the whole of this Contract between the parties, and any provisions in tenders, correspondence or other documents prior to the date hereof and all representations are hereby excluded.

STATUTORY OBLIGATIONS

96. Nothing in this Contract shall affect the statutory obligations of any party to any person or shall bind any party to do or refrain from doing anything in a manner, which is not consistent with the Law.

IF PART OF THE CONTRACT IS RULED INVALID

97. If any item of this Contract is ruled to be invalid or unenforceable, it will be deemed to be deleted and will not affect the validity or enforceability of the rest of this Contract.

WAIVER

98. No delay, or neglect by either party in enforcing any right or remedy under this Contract will be deemed a waiver of that or any other or subsequent right or remedy.

ANTI CORRUPTION

99. Consistent with both parties commitment to good governance, accountability, and transparency, each party reserves the right to investigate, directly or through its agents, any alleged corrupt, fraudulent, collusive, or coercive practices relating to the Contract or service provided under the Contract.
100. 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, corrupt or unethical practice. Any such conduct may be grounds for immediate termination of this Arrangement, or the taking of such corrective action as the other party deems appropriate.
101. Where either party, or any responsible officer of a party, is investigated for fraud, corruption, embezzlement, dishonesty or bribery, or where there is a finding of fraud, corruption, embezzlement, dishonesty or bribery against either party or any responsible officer, or where a responsible officer is convicted of a serious criminal offence that brings that party, or MFAT into disrepute, or the nature of the conviction is incompatible with the objective(s) of the Contract and services, this event may be grounds for the other party to immediately terminate this Contract by giving notice in writing to the other party.

ANTI-TERRORISM

102. The Contractor must use its best endeavours to ensure that funds provided under this Contract do not provide direct or indirect support or resources to organisations and/or individuals associated with terrorism. If, during the course of the Contract, the Contractor discovers any link whatsoever with any organisation or individual associated with terrorism it must inform MFAT immediately.

NOTICES

103. All notices and other communications provided for or permitted under this Contract shall be sent by mail or be hand delivered, or by facsimile as shown in the addresses for notices (Schedule 4) or to such other address or person as that party may specify by notice in writing to the other.
104. All such notices shall be deemed to have been duly given or made:
- four days after being deposited in the mail by the sender, or
 - on delivery when delivered by hand, or
 - if sent by facsimile, when a completed transmission report is received by the sender unless a verifiable query as to material illegibility is promptly raised.
105. Delivery by hand or transmission by facsimile prior to 5.00pm on a working day shall be deemed effective delivery on the date of delivery or transmission. Delivery or transmission after 5.00pm on a working day shall be deemed effective delivery on the next working day.

GOVERNING LAW

106. This Contract shall be governed by, and construed in accordance with the laws of New Zealand.

SURVIVAL OF OBLIGATIONS

107. The following clauses will remain in full force and effect following the expiry or termination of this Contract:
- | | |
|--------------------------------------|-------------------|
| a. Contractor's Standards | Clause 3 |
| b. Basis of Payment | Clause 9 |
| c. Audit | Clauses 30 to 35 |
| d. Access | Clauses 36 to 40 |
| e. Public Money | Clause 47 |
| f. Confidentiality | Clauses 56 to 62 |
| g. Termination | Clause 65 to 71 |
| h. Insurance and Indemnity | Clause 74 to 76 |
| i. Disputes | Clause 77 to 81 |
| j. Right to Recover Money | Clause 82 |
| k. Extraordinary Events | Clause 84 to 87 |
| l. Intellectual Property | Clause 88 to 90 |
| m. No intention to confer benefits | Clause 94 |
| n. Complete contract | Clause 95 |
| o. If part of Contract ruled invalid | Clause 97 |
| p. Anticorruption | Clauses 99 to 101 |
| q. Antiterrorism | Clause 102 |
| r. Notices | Clause 103 to 105 |
| s. Governing Law | Clause 106 |