

REQUEST FOR PROPOSALS (RFP)

TO: SUITABLY QUALIFIED FISHERIES CONSULTANTS

RFP No: 13/1617

DATE: 15 March 2017

SUBJECT: REVIEW OF THE TE VAKA TOA ARRANGEMENT

Proposals are sought from a suitably qualified and experienced Consultant to assist in a review of the Te Vaka Toa Arrangement.

To enable you to submit a Request for Proposal for this work, please find enclosed:

Annex I: Instructions to Bidders

Annex II: Terms of Reference, containing a description of FFA's requirements for which these services are being sought

Annex III: FFA Standard Conditions of Contract

This request is not to be construed in any way as an offer to contract any specific party.

James T. Movick

Director General

Annex I

INSTRUCTIONS TO BIDDERS

RFP No: CP13/1617

REVIEW OF THE TE VAKA TOA ARRANGEMENT

1. Submission of Proposals

1.1. All proposals submitted together with all correspondence and related documents shall be in English.

1.2. All prices in the proposals must be presented in United States Dollar (USD).

1.3. Any proposal received after the 7th of April 2017 will be rejected. FFA may, at its discretion, extend the deadline for the submission of proposals by notifying all prospective bidders in writing. The extension of the deadline may accompany a modification of the solicitation documents prepared by FFA on its own initiative or in response to a clarification requested by a prospective bidder.

1.4. In tendering a proposal, interested parties should demonstrate a clear understanding of the Terms of Reference (TOR) as set out, with appropriate explanatory comments, proposed methodology, work plan and timeline for completion of the entire scope of work. The FFA Standard Conditions for Contract are not negotiable.

1.5. The proposal should also include:

- i. A cover letter outlining proposed methodology and the time lines for undertaking the assignment as per the Terms of Reference (Annex II);
- ii. The CV of the consultant(s) proposed to complete the work, including background and relevant experience of the consultant(s) as well as a summary of any similar fisheries policy work;
- iii. A separate enclosed financial proposal providing a detailed cost summary for the implementation of the work which must include the daily fee rate(s) for the consultant(s).

2. Period of validity of proposals

2.1. Proposals shall remain valid for sixty (60) days after the date of Proposal submission prescribed by FFA, pursuant to the deadline clause. A Proposal valid for a shorter period may be rejected by FFA on the grounds that it is non-responsive.

2.2. In exceptional circumstances, FFA may solicit the bidder's consent to an extension of the period of validity. The request and the responses thereto shall be made in writing. A bidder granting the request will not be required nor permitted to modify their Proposal.

3. Outputs required

A suitably qualified and experienced consultant is expected to deliver the following outputs:

	Output
i	Prepare brief summary of the methodology for comment
ii	Prepare a draft overall report
iii	Submit final report

4. Evaluation Criteria

A two-stage procedure will be used in evaluating the proposals, with evaluation of the technical proposal being completed prior to any price proposal reviewed and compared. The financial proposal will only be reviewed for submissions that have passed the minimum technical score of 70% of the total obtainable score in the technical proposals.

The technical proposal is evaluated on the basis of its responsiveness to the competency requirements as detailed in the evaluation criteria matrix.

Competency Requirements	Score Weight (%)
1. An appropriate level of knowledge and experience in the area of Pacific fisheries monitoring, control, surveillance and enforcement (MCS&E)	30
2. A broad understanding of regional and national Pacific fisheries management.	30
3. A good understanding of challenges and constraints faced by small Pacific TVM Participant fisheries administrations.	20

4. Demonstrated skills in report writing and communication.	20
Total Score	100%
Qualification Score	70%

In the Second Stage, the financial proposal of all bidders, who have attained a minimum of 70% score in the technical evaluation, will be compared. The contract will be awarded to the bidder(s) offering the best value for money taking into account the cumulative scores of technical and financial evaluations. The overall evaluation weighting shall be 80% Technical and 20% Financial.

5. Financial Proposals

The financial proposal should be submitted as a separate document and not included as part of the technical proposal. Financial proposals should provide a budget for the project including professional fees, travel and accommodation and any others costs associated with the completion of this work. The estimated time required for the consultancy is around 25 consultancy days.

6. Request for further information

Queries or questions are to be emailed to the Director, Fisheries Development Division, FFA, email: mike.batty@ffa.int

7. Award of Contract

FFA reserves the right to accept or reject any Proposal, and to annul the solicitation process and reject all Proposals at any time prior to award of contract, without thereby incurring any liability to the affected Bidder(s) or any obligation to inform the affected bidder(s) of the grounds for such action.

8. FFA's right to vary requirements at time of award.

FFA reserves the right at the time of award of contract to vary the quantity of services and goods specified in the Request for Proposal (RFP) without any change in price or other terms and conditions.

9. Closing date for proposals

Proposals should be emailed to procurement@ffa.int with the subject line heading "Review of the Te Vaka Toa Arrangement".

All proposals must be received by FFA before 5.00pm (Local time), 7thApril 2017

10. Timing of the Study

FFA will ensure prompt selection of the consultant, who should be ready to mobilise by 14th April, and commence work by 17th April.

11. Notification

The names of winning bidders shall be advertised on the FFA website; www.ffa.int/employment/tenders/tender_results

Annex II

TERMS OF REFERENCE

RFP No: CP13/21617

REVIEW OF THE TE VAKA TOA ARRANGEMENT

INTRODUCTION

The Forum Fisheries Agency (FFA) has been requested to assist Te Vaka Moana (TVM) Participants Members in a review of the The Te Vaka Toa Arrangement (TVTA).

BACKGROUND

The TVTA is between the Cook Islands, New Zealand, Niue, Samoa, Tonga and Tokelau and is for the 'Cooperation in Fisheries Surveillance and Law Enforcement Subsidiary to the Niue Treaty on Cooperation in Fisheries Surveillance and Law Enforcement in the South Pacific Region of 9 July 1992'. It is a monitoring, control, surveillance and enforcement (MCS&E) arrangement between the participants of the Te Vaka Moana (TVM) Arrangement, being the heads of fisheries administrations of the Cook Islands, New Zealand, Niue, Samoa, Tonga and Tokelau. It was signed by all Participants on 21 May 2011.

The TVTA seeks to promote cooperation between the Participants in fisheries MCS&E activities in areas within zones and on the high seas. It is seen as a platform to support fisheries management and increase the value of fisheries for the Participants.

In order for the TVTA to come into effect after signature, the Arrangement also required notification to the 'Central Contact Point' from any two Participants. The Central Contact point for the Arrangement is New Zealand. The notification should indicate that the Participants have completed any internal process necessary for the Arrangement to come into effect for them. These would then be lodged on the secure part of the TVM website. An assessment of the status of the Arrangement reported at the 8 February 2016, showed that no notifications had been lodged. This remains unchanged to date.

A TVM Offshore Fisheries Management workshop held at Auckland New Zealand in February 2016 considered the status of the TVTA. The workshop recommended that a review of the TVTA should be undertaken as a priority and that it should include consideration of linkages to the Niue Treaty Subsidiary Agreement (NTSA). The workshop further recommended that options for the future of the TVTA should be provided to the TVM Governing Council (TVM GC).

In considering the Auckland workshop recommendation, the 2016 TVM GC meeting held in April that year, acknowledged that both the TVTA and the NTSA represented MCS&E platforms that served similar purposes for TVM Participants. However, it was noted that while the parts of TVTA had not been concluded, this has not prevented MCS&E collaboration between TVM Participants. The TVM GC saw value in TVTA as a less formal cooperative mechanism and supported maintaining the agreement. They considered it would be useful to conduct a review to see how best the TVTA can work alongside the NTSA.

At the time in which the TVTA was developed and agreed to by TVM Participants, the regional efforts to design a multilateral subsidiary agreement for the Niue Treaty (NTSA) was also in progress. In August 2015 reports from TVM Participants on the status of their notification processes internally revealed that for 3 Participants their internal processes were not completed, and in one instance required the development of policy compatibility with their Fisheries Act before notification could be provided. In addition, Samoa raised the question of need for TVTA given that all TVM Participants had since engaged in the NTSA. Essentially, the question posed by Samoa encapsulates the present quandary of having two forms of a subsidiary agreement and understanding their commonalities and their differences.

The NTSA entered into force in July 2014 with 6 ratifications seeking to enhance the participation in the Niue Treaty. All TVM Participants have signed the NTSA, and the Cook Islands and Samoa have ratified the Agreement. Similar to the TVTA, the NTSA has a notification process for the parties involving the requirement to lodge with the Administrator (the Director General of the Pacific Island's Forum Fisheries Agency – FFA) a series of standard forms appended to the Agreement (Annex C). These forms populate the Agreement's information management system, otherwise referred to as the 'Niue Treaty Information System' (NTIS).

OBJECTIVE

The objective of this consultancy is to provide a complete review of the Te Vaka Toa Arrangement. The review is expected to analyse the role and value of the TVTA, taking into account the TVM Participants membership in the multilateral regional subsidiary Niue Treaty Agreement. This study should provide a comparative analysis of the TVTA and NTSA with opinions on the advantages and disadvantages of being party to the two. Lastly, the review should provide options and recommendation for the TVM Governing Council to consider concerning the future of the TVTA.

ACTIVITIES

The activities that are expected of the Consultant specifically shall include, but need not be limited to:

- i) Describe briefly the preferred methodology and time frame to conduct the review of the TVTA and present this to a coordinating team comprised of the TVM Coordinator, FFA and one other to review and comment making any mutually agreed changes as required before work is commenced.

- ii) Conduct a desktop review of firstly, the TVTA describing and analysing its structure and then its relevance to the current fisheries regional MCS&E environment in which it is expected to be applicable, including regional and international Convention obligations. Consideration should also be given to the capacity of the TVM fisheries and other related administrations to operate or implement MCS&E arrangements. The review should then provide a comparative analysis between the TVTA and the NTSA and conclude with recommendations for the future of the TVTA.
- iii) Prepare a professional report of the outcomes of the review and recommendation/s.
- iv) Any other associated tasks as mutually agreed between the consultant and FFA.

APPROACH

The consultant will have the responsibility for the following:

- Undertake a desk top review that includes:
 - a critique of the structure of the TVTA and how it is administered;
 - , its performance to date;
 - a comparative analysis of the TVTA with the NTSA to fully understand the differences and similarities between the two arrangements; and
 - a list of recommendations for TVM Participants on the relevance of TVTA, including its future application,
- In support of the review, the consultant must prepare a method of surveying and collecting information from TVM Participants and others. This can include but is not limited to:
 - phone, skype (or other communication methods), interviews with relevant TVM officials, staff of regional organisations or regional MCS or fisheries legal experts;
 - questionnaire survey (electronic or paper); and

face to face contact in the margins of the Annual FFC Meeting to be held in Canberra from 8 to 12 May 2017.

TIMING

The total period of consultancy time estimated as being required for this assignment is 25 days.

TRAVEL

Travel will be required to Canberra Australia to conduct interviews with TVM Participants on the margins of the Annual FFC meeting scheduled from 8 to 12 May 2017.

REPORTING REQUIREMENT AND WORKING RELATIONSHIPS

The consultant will report to the Pacific Islands Forum Fisheries Agency (FFA), via the Director, Fisheries Development Mr Mike Batty (Mike.Batty@ffa.int) and Fisheries Development Adviser Len Rodwell (Leonard.Rodwell@ffa.int) who will be responsible for travel arrangements and payments and to the TVM Coordinator Ms Barbara Hanchard (barbara@hanchard.net).

Correspondence will normally be copied to all three of the above.

PERSON SPECIFICATIONS

The consultant should have the appropriate level of knowledge and experience in the area of Pacific fisheries MCS&E. A broad understanding of regional and national Pacific fisheries management, and the nature of challenges and constraints faced by small Pacific TVM Participant fisheries administrations will also be required.

The consultant must also have the ability to design an efficient and cost effective methodology with which to undertake a review and assessment of the TVTA comparative to the NTSA for TVM Participants.

The consultant should be able to prepare an outcomes report of a professional standard and meet all specified deadlines.

OUTPUTS/MILESTONES

The Consultant shall prepare the following:

Timing	Deliverables
19 April	Prepare brief summary of the methodology for comment
21 April	Commence desk top review of the TVTA
5 May	Interview and survey process
8-12 May	Interview in the margins of the annual FFC meeting in Canberra, Australia
26 May	Prepare a draft overall report
2 June	Submit final report

Annex III

FFA STANDARD CONDITIONS OF CONTRACT

1. Definitions

1.1 In this Contract:

- (a) "Consultancy Services" means the Consultancy Services described in Schedule A;
- (b) "Memorandum of Agreement" means the agreement executed by and between FFA and the Consultants in which these Conditions have been incorporated by reference;
- (c) "FFA" means the South Pacific Forum Fisheries Agency, based in Honiara, Solomon Islands;
- (d) "Contract" means the Memorandum of Agreement together with these Conditions and all other schedules and documents, if any, annexed to the Memorandum of Agreement or incorporated therein and intended to form part of the contractual relationship between the parties;
- (e) "Confidential Information" means information that:
 - (i) is by its nature confidential;
 - (ii) is designated by FFA as confidential;
 - (iii) the Consultant knows or ought to know is confidential;but does not include information which:
 - is or becomes public knowledge other than by breach of this Contract;
 - is in the possession of the Consultant without restriction in relation to disclosure before the date of receipt from FFA;
 - has been independently developed or acquired by the Consultant.
- (f) "Usual Place of Residence" means the place of residence of the Consultants during the duration of the consultancy, as designated in the Memorandum of Agreement;
- (g) "Term of Engagement" means the entire period during which the Consultants will be expected to perform the Consultancy Services.

1.2 Words importing a gender include any other gender.

1.3 Words in the singular number include the plural and words in the plural number include the singular.

1.4 Clause headings in this Contract are for convenient reference only and have no effect in limiting or extending the language of the provisions to which they refer.

1.5 A reference to a Schedule is a reference to a Schedule to this Contract and includes such Schedule as amended or replaced from time to time by agreement in writing between the parties.

2. Fees

2.1 FFA shall pay fees to the Consultants in respect of the Consultancy Services at the rate and in the currency specified in Schedule B to the Memorandum of Agreement on the basis of time spent by the Consultants in performing the Consultancy Services. For the purpose of determining the amount of such fees:

- (a) Where the fees are expressed in terms of a daily rate the time spent in performing the Consultancy Services shall be determined solely on the basis of the number of days actually worked by the Consultant in performing the Consultancy Services, including travel time.
- 2.2 Except as otherwise agreed between FFA and the Consultant, no fees will be paid in respect of work performed other than during the Term of Engagement.

3. Expenses

- 3.1 In addition to the fees specified in clause 2, FFA shall pay to or reimburse the Consultants for the following allowances, costs and expenses:
- (a) A daily subsistence allowance (DSA) at standard FFA rates for every day during the term of engagement during which the Consultant shall be absent from the Usual Place of Residence for the purpose of performing the Consultancy Services; provided that DSA will be paid for the day of departure from the Usual Place of Residence but not for the day of return thereto. The DSA covers all accommodation charges, including government taxes (where applicable), meals, laundry and incidental expenses.
 - (b) All transportation costs properly and reasonably incurred by the Consultant in travelling for the purposes of the Consultancy Services whether within the Country of Assignment or elsewhere, including the cost of transportation by an appropriate means of public transport between the Usual Place of Residence and the nearest convenient international airport and the cost of economy class air travel.
 - (c) All other reasonable out-of-pocket expenses of the Consultants arising directly out of the performance of the Consultancy Services, including communications charges, airport and departure taxes, visa fees, taxi fares, and photocopying charges.

4. Payment of Fees, Costs and Expenses

- 4.1 The consultancy fees payable under the Contract will be paid to the consultants in accordance with Schedule B and to the satisfaction of the FFA.
- 4.2 Where the Consultancy Services have not been performed to the satisfaction of FFA, FFA may withhold the balance of the fees in whole or in part and may:
- (a) require the Consultant to carry out whatever additional work is required to complete the Consultancy Services to the satisfaction of FFA; or
 - (b) terminate the Contract forthwith without prejudice to any right of action or remedy which has accrued or which may accrue in favour of FFA.
- 4.3 The travel costs and DSA (other than those paid in advance by FFA under Schedule B) shall be paid by FFA upon written application made by the Consultant to FFA, supported by such receipts or other evidence as FFA may reasonably require to establish that the Consultant was absent for the purpose of the Consultancy Services from the Usual Place of Residence. Where

an advance of DSA has been made, FFA shall require the Consultant to complete a reconciliation of advance against actual entitlement.

- 4.4 Printing and distribution costs and reimbursable costs and expenses referred to in clause 3 shall be paid by FFA upon written application made by the Consultant to FFA, supported by such receipts or other evidence as FFA may reasonably require to establish that that the expenditure was incurred in the amount and currency and in the manner claimed.
- 4.5 Unless otherwise agreed between the 'Consultants; and FFA, the fees shall be paid in the currency specified in Schedule B. All travel costs, allowances, and out-of-pocket expenses shall be paid either in the currency in which the same were incurred or in US dollars or partly in one currency and partly in the other, as FFA shall reasonably determine in consultation with the 'Consultants'.
- 4.6 Whenever it shall be necessary to determine the equivalent of an amount in one currency in terms of another, the conversion shall be made at the rate which FFA shall determine was applicable at the time and place when the Consultants incurred the expenditure or converted currency into the currency of expenditure, whichever first occurred.

5. Medical and Insurance

All medical insurance costs shall be borne by the Consultant and FFA shall be under no liability in respect of medical expenses of the Consultants.

6. Indemnity

- 6.1 Subject to the provisions of this Contract, the Consultants shall at all times indemnify and hold harmless FFA, its officers, employees and agents (in this clause referred to as "those indemnified") from and against any loss (including legal costs and expenses on a solicitor/own client basis), or liability, reasonably incurred or suffered by any of those indemnified arising from any claim, suit, demand, action or proceeding by any person against any of those indemnified where such loss or liability was caused by any wilful, unlawful or negligent act or omission of the Consultants in connection with this Contract.
- 6.2 The Consultants' liability to indemnify FFA under clause 6.1 shall be reduced proportionately to the extent that any act or omission of FFA or its officers, employees or agents contributed to the loss or liability.
- 6.3 The indemnity referred to in clause 6.1 shall survive the expiration or termination of this Contract.

7. General Covenants

- 7.1 The Consultants covenant and agree that:

- (a) During the Term of Engagement they shall devote the whole of their time and attention to the performance of the Consultancy Services and shall at all times act with due diligence and efficiency and in accordance with the Terms of Reference. They shall make or assist in making all such reports and recommendations as may be contemplated by the Terms of Reference and shall at all times cooperate with FFA, its employees and agents. After the termination of the engagement they shall continue to cooperate with FFA to such reasonable extent as may be necessary to clarify or explain any reports or recommendations made by them.
- (b) At all times they shall act with appropriate propriety and in particular, refrain from making any public statement concerning the Consultancy Services without the prior approval of FFA.
- (c) They shall have no authority to commit FFA in any way whatsoever and shall make this clear as circumstances warrant.
- (d) They shall report immediately to FFA any circumstances or events which might reasonably be expected to hinder or prejudice the performance of the Consultancy Services, including circumstances and events relating to his transportation and accommodation.
- (e) All reports, notes, drawings, specifications, statistics, plans and other documents and data compiled or made by the Consultants while performing the Consultancy Services shall be the property of FFA and upon termination of the engagement shall be disposed of as FFA may direct. The Consultants may retain copies of such documents and data but shall not use the same for purposes unrelated to the Consultancy Services without the prior approval of FFA.

8. Conflict of Interest

- 8.1 The Consultants warrants that, to the best of their knowledge, at the date of signing this Contract, no conflict of interest exists or is likely to arise in the performance of his obligations under this Contract.
- 8.2 If during the Term of Engagement a conflict of interest arises, or appears likely to arise, the Consultants undertake to notify FFA immediately in writing and to take such steps as FFA may reasonably require to resolve or otherwise deal with the conflict. If the Consultants fail to notify FFA or are unable or unwilling to resolve or deal with the conflict as required, FFA may terminate this Contract in accordance with the provisions of clause 10.
- 8.3 The Consultants shall not engage in any activity or obtain any interest during the Term of Engagement that is likely to conflict with or restrict the Consultants in providing the Consultancy Services to FFA fairly and independently.

9. Disclosure of Information

- 9.1 The Consultants shall not, without the prior written approval of FFA, disclose to any person other than FFA, any Confidential Information. In giving written approval, FFA may impose such terms and conditions as it thinks fit.
- 9.2 FFA may at any time require the Consultants to give a written undertaking, in a form required by FFA, relating to the non-disclosure of Confidential Information. The Consultants shall promptly arrange for all such undertakings to be given.
- 9.3 The obligation on the Consultants under this clause shall not be taken to have been breached where the information referred to is legally required to be disclosed.

10. Termination

- 10.1 FFA may, at any time by written notice, terminate this Contract in whole or in part. If this Contract is so terminated, FFA shall be liable only for:
- (a) payment under the payment provisions of this Contract for Consultancy Services rendered before the effective date of termination; and
 - (b) subject to clauses 10.3 and 10.4, any reasonable costs incurred by the Consultants and directly attributable to the termination or partial termination of this Contract.
- 1.2 Upon receipt of a notice of termination the Consultants shall:
- (a) stop work as specified in the notice;
 - (b) take all available steps to minimize loss resulting from that termination;
 - (c) continue work on any part of the Consultancy Services not affected by the notice.
- 10.3 In the event of partial termination FFA's liability to pay fees under Schedule B shall, in the absence of agreement to the contrary, abate proportionately to the reduction in the Consultancy Services.
- 10.4 FFA shall not be liable to pay compensation in an amount which would, in addition to any amounts paid or due, or becoming due, to the Consultants under this Contract, together exceed the total fees set out in Schedule B.

11. Default

- 11.1 If either party is in default under this Contract on account of the failure to perform or observe any obligation or undertaking to be performed or observed on its part under this Contract, the party not in default may terminate this Contract in whole or in part without

prejudice to any right of action or remedy which has accrued or which may accrue in favour of either party.

12. Waiver

12.1 A waiver by either party in respect of any breach of a condition or provision of this Contract shall not be deemed to be a waiver in respect of any continuing or subsequent breach of that provision, or breach of any other provision. The failure of either party to enforce at any time any of the provisions of this Contract shall in no way be interpreted as a waiver of such provision.

13. Notices

13.1 Any notice, request or other communication to be given or served pursuant to this Contract shall be in writing and dealt with as follows:

- (a) if given by the Consultants to FFA, addressed and forwarded to the Director-General, Forum Fisheries Agency, P.O. Box 629, Honiara, Solomon Islands. Fax: (+677) 23995.
- (b) if given by FFA to the Consultants, signed by the Director-General or Deputy Director-General and forwarded to the Consultants at the Usual Place of Residence.

13.2 Any such notice, request or other communication shall be delivered by hand or sent by pre-paid registered post, facsimile or telex to the address of the party to which it is sent.

13.3 Any notice, request or other communication will be deemed to be received:

- (a) if delivered personally, on the date of delivery;
- (b) if sent by pre-paid registered post, on the day that the acknowledgment of delivery is completed by the recipient; and
- (c) if sent by facsimile, on the business day next following the day of despatch providing that the sender receives an "OK" code in respect of the transmission and is not notified by the recipient by close of business of the next business day following the day of despatch that the transmission was illegible.

14. Entire Agreement and Variation

14.1 This Contract contains the entire agreement between the parties and supersedes all communications, negotiations, arrangements and agreements, whether oral or written, between the parties with respect to the subject matter of this Contract.

14.2 No agreement or understanding varying or extending this Contract, including in particular the scope of the Consultancy Services in Schedule A shall be legally binding upon either party unless in writing and signed by both parties.

15. Severability

15.1 Each provision of this Contract and each part thereof shall, unless the context otherwise necessarily requires it, be read and construed as a separate and severable provision or part. If any provision or part thereof is void or otherwise unenforceable for any reason then that

provision or part (as the case may be) shall be severed and the remainder shall be read and construed as if the severable provision or part had never existed.

16. Applicable Law

- 16.1 This Contract shall be governed by and construed in accordance with the laws of Solomon Islands and the parties agree, subject to the Contract, that the courts of Solomon Islands shall have jurisdiction to entertain any action in respect of, or arising out of, this Contract.