



SPREP

Secretariat of the Pacific Regional
Environment Programme

REQUEST FOR TENDERS

RFT: 2023/008
File: AP_6/9/14/1
Date: 15 February, 2023
To: Interested consultants
From: Paul Irving, PacPlan Resilience Project Officer.

Subject: Request for tenders (RFT): Contracted Legal Adviser, as a consultant to undertake maritime legal analysis, provide advice, undertake legal drafting, and support implementation of international and national maritime legal instruments under the Pacific Islands Regional Marine Oil Spill Contingency Plan (PacPlan).

1. Background

- 1.1. The Secretariat of the Pacific Regional Environment Programme (SPREP) is an intergovernmental organization charged with promoting cooperation among Pacific islands countries and territories to protect and improve their environment and ensure sustainable development.
- 1.2. SPREP approaches the environmental challenges faced by the Pacific guided by four simple Values. These values guide all aspects of our work:
 - We value the Environment
 - We value our People
 - We value high quality and targeted Service Delivery
 - We value Integrity
- 1.3. For more information, see: www.sprep.org.

2. Specifications: statement of requirement

- 2.1. SPREP wishes to call for tenders from qualified and experienced legal consultants who can offer their services to undertake maritime legal analysis, provide advice, undertake legal drafting, and support implementation of international and national maritime legal instruments under the Pacific Islands Regional Marine Oil Spill Contingency Plan (PacPlan).
- 2.2. The Terms of Reference of the consultancy are set out in Annex A.
- 2.3. The successful consultant must supply the services to the extent applicable, in compliance with SPREP's Values and Code of Conduct: https://www.sprep.org/attachments/Publications/Corporate_Documents/spreporganisation-al-values-code-of-conduct.pdf. Including SPREP's policy on Child Protection, Environmental Social Safeguards, Fraud Prevention & Whistleblower Protection and Gender and Social Inclusion.
- 2.4. SPREP Standard Contract Terms and Conditions are non-negotiable.

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A resilient Pacific environment sustaining our livelihoods and natural heritage in harmony with our cultures.



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Secretariat of the Pacific Regional
Environment Programme

3. Conditions: information for applicants

- 3.1. To be considered for this tender, interested consultants must meet the following conditions:
- i. Submit a detailed Curriculum vitae detailing qualification and previous relevant experience for each proposed personnel;
 - ii. High level of written and spoken English;
 - iii. Provide three referees relevant to this tender submission, including the most recent work completed;
 - iv. Provide examples of past related work outputs;
 - v. Complete the **tender application form** provided (*Please note you are required to complete in full all areas requested in the Form, particularly the Statements to demonstrate you meet the selection criteria – DO NOT refer us to your CV. Failure to do this will mean your application will **not** be considered*).
For the Technical and Financial proposals you may attach these separately.
 - vi. Provide a copy of valid business registration/license.
- 3.2. Tenderers must declare any areas that may constitute conflict of interest related to this tender and sign the **conflict of interest form** provided.
- 3.3. Tenderer is deemed ineligible due to association with exclusion criteria, including bankruptcy, insolvency or winding up procedures, breach of obligations relating to the payment of taxes or social security contributions, fraudulent or negligent practice, violation of intellectual property rights, under a judgment by the court, grave professional misconduct including misrepresentation, corruption, participation in a criminal organisation, money laundering or terrorist financing, child labour and other trafficking in human beings, deficiency in capability in complying main obligations, creating a shell company, and being a shell company.
- 3.4. Tenderer must sign a declaration of **honour form** together with their application, certifying that they do not fall into any of the exclusion situations cited in 3.3 above and where applicable, that they have taken adequate measures to remedy the situation.

4. Submission guidelines

- 4.1. Tender documentation should demonstrate that the interested consultant satisfies the conditions stated above and in the Terms of Reference and is capable of meeting the specifications and timeframes. Documentation must also include supporting examples to address the evaluation criteria.
- 4.2. Tender documentation should be submitted in English and outline the interested consultant's complete proposal:
- a) **SPREP Tender Application form and conflict of interest form.** (*Please note you are required to complete in full all areas requested in the Form, particularly the Statements to demonstrate you meet the selection criteria –*



SPREP

Secretariat of the Pacific Regional
Environment Programme

*DO NOT refer us to your CV. Failure to do this will mean your application will **not** be considered).*

For the Technical and Financial proposals you may attach these separately.

- b) **Honour form**
 - c) **Curriculum Vitae** of the proposed personnel to demonstrate that they have the requisite skills and experience to carry out this contract successfully.
 - d) **Technical Proposal** which contains the details to achieve the tasks outlined in the Terms of Reference.
 - e) **Financial Proposal** –provide a detailed outline of the costs involved in successfully delivering this project submitted in United States Dollars (USD) and inclusive of all associated taxes.
- 4.3. Provide three referees relevant to this tender submission, including the most recent work completed.
- 4.4. Tenderers / bidders shall bear all costs associated with preparing and submitting a proposal, including cost relating to contract award; SPREP will, in no case, be responsible or liable for those costs, regardless of the conduct or outcome of the bidding process.
- 4.5. The tenderer / bidder might be requested to provide additional information relating to their submitted proposal, if the Tender Evaluation Committee requests further information for the purposes of tender evaluation. SPREP may shortlist one or more Tenderers and seek further information from them.
- 4.6. The submitted tender proposal must be for the entirety of the Terms of Reference and not divided into portions which a potential tenderer / bidder can provide services for.
- 4.7. The Proposal must remain valid for 90 days from date of submission.
- 4.8. Tenderers must insist on an acknowledgement of receipt of tender.

5. Tender Clarification

- 5.1.
- a. Any clarification questions from applicants must be submitted by email to procurement@sprep.org before 01 March 2023. A summary of all questions received complete with an associated response posted on the SPREP website www.sprep.org/tender by 03 March 2023.
 - b. The only point of contact for all matters relating to the RFT and the RFT process is the SPREP Procurement Officer.
 - c. SPREP will determine what, if any, response should be given to a Tenderer question. SPREP will circulate Tenderer questions and SPREP's response to those questions to all other Tenderers using the SPREP Tenders page (<https://www.sprep.org/tenders>) without disclosing the source of the questions or revealing any confidential information of a Tenderer.



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Secretariat of the Pacific Regional
Environment Programme

- d. Tenderers should identify in their question what, if any, information in the question the Tenderer considers is confidential.
- e. If a Tenderer believes they have found a discrepancy, error, ambiguity, inconsistency or omission in this RFT or any other information given or made available by SPREP, the Tenderer should promptly notify the Procurement Officer setting out the error in sufficient detail so that SPREP may take the corrective action, if any, it considers appropriate.

6. Evaluation criteria

- 6.1. SPREP will select a preferred consultant on the basis of SPREP's evaluation of the extent to which the documentation demonstrates that the tenderer offers the best value for money, and that the tender satisfies the following criteria:
- 6.2. A proposal will be rejected if it fails to achieve 70% or more in the technical criteria and its accompanying financial proposal shall not be evaluated.

I. Technical Score – 80%

Criterion	Detail	Weighting
Experience	The consultant / firm should have:	
	i. Appropriate legal qualifications, and at least 5 years' direct, practical experience in working in international and domestic maritime law, including international maritime conventions.	30%
	ii. A professional understanding of the implications of IMO Conventions and amendments on a State's international obligations and in the development and implementation of a State's maritime laws.	20%
	iii. Professional experience and/or qualifications in legal drafting.	10%
	iv. Professional experience and/or qualifications in policy development, regulatory, compliance and/or prosecutorial activities for a state maritime agency.	10%
v. Professional experience and/or qualifications in the development, implementation and operation of a State National Marine Oil Spill Contingency Plan	10%	

II. Financial Score – 20%

The following formula shall be used to calculate the financial score for ONLY the proposals which score 70% or more in the technical criteria:

$$\text{Financial Score} = a \times \frac{b}{c}$$

Where:



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Secretariat of the Pacific Regional
Environment Programme

- a = maximum number of points allocated for the Financial Score
b = Lowest bid amount
c = Total bidding amount of the proposal

7. Variation or Termination of the Request for Tender

- 7.1 a. SPREP may amend, suspend or terminate the RFT process at any time.
- b. In the event that SPREP amends the RFT or the conditions of tender, it will inform potential Tenderers using the SPREP Tenders page (<https://www.sprep.org/tenders>).
- c. Tenderers are responsible to regularly check the SPREP website Tenders page for any updates and downloading the relevant RFT documentation and addendum for the RFT if it is interested in providing a Tender Response.
- d. If SPREP determines that none of the Tenders submitted represents value for money, that it is otherwise in the public interest or SPREP's interest to do so, SPREP may terminate this RFT process at any time. In such cases SPREP will cancel the tender, issue a cancellation notice and inform unsuccessful bidders accordingly.

8. Deadline

- 8.1. **The due date for submission of the tender is: 15 March 2023, midnight (Apia, Samoa local time).**
- 8.2. Late submissions will be returned unopened to the sender.
- 8.3. Please send all tenders clearly marked 'RFT 2023/008: PacPlan Contract Legal Adviser Consultancy.'

Mail: SPREP
Attention: Procurement Officer
PO Box 240
Apia, SAMOA

Email: tenders@sprep.org (MOST PREFERRED OPTION)

Fax: 685 20231

Person: Submit by hand in the tenders' box at SPREP reception, Avele Rd, Vailima, Samoa.

Note: Submissions made to the incorrect portal will not be considered by SPREP. If SPREP is made aware of the error in submission prior to the deadline, the applicant will be advised to resubmit their application to the correct portal. However, if SPREP is not made aware of the error in submission until after the deadline, then the application is considered late and will be returned unopened to the sender.

SPREP reserves the right to reject any or all tenders and the lowest or any tender will not necessarily be accepted.



SPREP

Secretariat of the Pacific Regional
Environment Programme

SPREP reserves the right to enter into negotiation with respect to one or more proposals prior to the award of a contract, split an award / awards and to consider localised award / awards between any proposers in any combination, as it may deem appropriate without prior written acceptance of the proposers.

A binding contract is in effect, once signed by both SPREP and the successful tenderer. Any contractual discussion/work carried out/goods supplied prior to a contract being signed does not constitute a binding contract.

**For any complaints regarding the Secretariat's tenders please refer to the
Complaints section on the SPREP website**

<http://www.sprep.org/accountability/complaints>



Annex A: Terms of Reference

Contract Legal Adviser : a consultant to undertake maritime legal analysis, provide advice, undertake legal drafting, and support implementation of international and national maritime legal instruments under the Pacific Islands Regional Marine Oil Spill Contingency Plan (PacPlan).

1. BACKGROUND

The Secretariat is the administrator of a project funded by the Australian Department of Foreign Affairs and Trade (DFAT) to improve Maritime Oil and Chemical Spill Response capability and resilience within the PNG, Vanuatu, Solomons Islands, Nauru, Tuvalu and Kiribati, and across the regional more generally.

The overall objective of the PacPlan Project is to:

“... to support Pacific Island countries to improve their response capabilities and preparedness to respond to oil spill disasters, in accordance with commitments under the regionally agreed Pacific Islands Regional Marine Spill Contingency Plan (PACPLAN).”

Outcome 1: Pacific Island Countries reduce their financial risks in the event of oil spills through direct access to ship owners and their insurers, and an avenue to seek compensation through IMO conventions.

- Output 1.1: PICs accede to relevant international and regional conventions that will strengthen their ability to enforce and seek redress from polluters.
- Output 1.2: PICs have domestic legislation (and systems) in place to give effect to their obligations under international liability conventions, allowing them to pursue compensation against polluters and enable access to international liability funds.

To support these outputs, the indicative budget specifically identified funding for a consultant to assist and support in-country legal resources.

Following on from the regional workshop on the Ratification and effective implementation of Conventions relating to oil spill response, liability, and compensation for the Pacific Island Region, there is now a clear need to undertake country-specific work.

2. PURPOSE

The purpose of the consultancy is to provide legal support to improve the national domestic capability within each of the six countries, to assist them prepare for, plan for, respond to and recover from marine oil spills and other maritime incidents, through ratification of the relevant international conventions, enacting suitable domestic maritime legislation and regulations, developing policy, creating administration, and implementing operational capability. This will be done in close collaboration with each country, through the national maritime agency and equivalent of their Attorney General's office.



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Secretariat of the Pacific Regional
Environment Programme

3. SCOPE OF WORK

The contractor will be responsible for collaborating with relevant maritime and legislative officials from the 6 countries under the PacPlan Resilience Project (PNG, Solomon Islands, Vanuatu, Nauru, Tuvalu, and Kiribati), to review, evaluate and advise on five significant areas (details to be finalised over coming weeks), for in consultation with relevant officials within those country administrations.

1. Provide technical legal support to PICs which have not yet ratified relevant international maritime conventions about why and how they should complete the ratification process.
2. Review PICs national domestic legislation giving effect to both current and proposed international obligations, and for pursuing insurance/compensation from polluters.
3. Develop/update model legislation to satisfy requirements for international conventions and enable compensation claims from polluters, including through an update of the regional model Marine Pollution Prevention Act.
4. Provide technical legal analysis and support to PICs to identify where their national domestic legislation underpinning their international obligations is or is not fit for purpose, including assistance with legal drafting of relevant legislative amendments.
5. Provide technical legal support to PICs national domestic (and regional) administrative systems designed to give effect to their international and national obligations.

Each country will be asked to assist with a stocktake of required international conventions and treaties (not just Maritime), a stocktake and assessment of their national domestic law, and receive advice on how they can improve both to minimise risk and liability that costs for response and compensation for impacts and restoration will not be paid.

3.1 Mode of Delivery

With the intent of Outcome 1 of the overall PacPlan Resilience Project in mind, to limit countries costs, losses, and liabilities when responding to and recovering from a maritime incident (including wrecks and spills), the consultant will:

The International Conventions:

- a. Be familiar with and report on the *Pacific Islands Regional Marine Oil Spill Contingency Plan (PacPlan)*, and the obligations and expectations of the parties, including Member countries, and in particular those arising from the agreed goals, objectives, roles and responsibilities. This analysis will inform the expectations components of the country reports.

The generic model legislation:

- b. Be familiar with the SPREP/SPC generic *Model Marine Pollution Prevention Act* that many of the countries have used to develop their maritime and marine pollution legislation. Identify and report on the powers, obligations, authorities, roles and responsibilities it enables and how these implement the International Maritime Conventions, and identify any inconsistencies and omissions.

The specific country domestic legislation:

- c. Be familiar with each countries list of ratified conventions, and analyse and report on how these have been implemented in domestic law, identifying any omission and inconsistencies in the domestic legislation.



Be prepared to offer advice on legislative improvements:

- d. About which further conventions a country would benefit from ratifying, why and how, for the purposes of Ministerial or Cabinet level advice, including both benefits and constraints or costs.
- e. About amending gaps or other issues with domestic legislation arising either from limited implementation of existing ratified conventions, or from the needs of the extended ratification of further conventions.

Be prepared to support and assist new legislation in each country:

- f. Be prepared to assist with writing drafting instructions for new or amended domestic legislation.

3.2 Project Schedule

The project will start with the appointment of the successful consultant, and run for up to 18 months, or until end December 2024, depending on workload, reporting requirements and country collaboration.

- i. The analysis and assessment of the regional ratification of the relevant IMO and other international conventions and treaties, to create an ideal list would be the first priority.
- ii. Second, would be the assessment, analysis and report on the generic *Model Marine Pollution Prevention Act*, and its gaps, deficiencies updates needs, as this will be the standard against which other domestic legislation will be assessed.
- iii. Of the countries, there is a natural order of priority, depending on their ability to support and collaborate with the project, with Papua New Guinea, Solomon Islands and Vanuatu to be completed first, and the others to follow.
- iv. Clearly analysis and reporting needs to be completed before advice can be offered. Depending on the readiness of the countries to transition from assessment of needs to agreement in principle to undertake changes and amendments, this will determine the order of priority for Cabinet submission support and drafting instructions support across the countries.

3.3 Milestones / Deliverables

From the project schedule above, the following hard milestones are proposed:

- i. Analysis of the Conventions applicable and their ratification across the countries reported within two weeks of the contract beginning.
- ii. Analysis and first draft report on the generic *Model Marine Pollution Prevention Act*, to be completed within 6 weeks of the contract beginning, as this will be an iterative process, throughout the life of the project, whereby lessons and learnings from each country will be assessed and incorporated as uncovered as the project progresses.



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Secretariat of the Pacific Regional
Environment Programme

- iii. Draft reports on the findings of the legislative and regulatory analysis, and recommendations for amendments, for PNG, Solomon Islands and Vanuatu, by 15 November 2023, with the same for Tuvalu, Nauru and Kiribati by 13 March 2024. Each report to contain analysis what international and domestic law is missing or incomplete, and what needs to be done to correct this, and why, with reference to PacPlan obligations. A draft ministerial or cabinet submissions should accompany each report.
- iv. Drafting instruction support will require each country to make their own decisions about what, when and how they wish to make amendments. This will evolve as the contract proceeds.

3.4 Budget

The consultant or contractor will be contracted on a full-time basis. Payments will be made upon submission of monthly progress reports, and in accordance with an agreed workplan and schedule of payments.

The Consultant will be responsible for:

- a) payment of applicable taxes, superannuation and the like;
- b) all insurance cover such as medical, travel and professional liability.

Any costs associated with travel from the contractor's home base to SPREP in Samoa or to the participating countries will be separately provided for under the PacPlan Resilience Project.

4. OTHER INFORMATION

The successful consultant will be provided with all relevant and appropriate documents to complete the work.

The consultant will report to the Project Officer, PacPlan Resilience Project. As this is a multi-country and multi-agency project very dependent on the goodwill and support of the countries and agencies and staff involved, the PacPlan Resilience Project Officer will also provide introductions to and make connections with all other relevant agencies and parties, to facilitate the successful work of the consultant.

This will be a largely consultant-driven project. Draft reporting and peer-review will be expected during the project to ensure quality.

The successful consultant must supply the services to the extent possible, in compliance with SPREP's Values and Code of Conduct, which are available through the website link:

[sprep-organisational-values-code-of-conduct.pdf](#)

and including SPREP's policies on Child Protection, Environmental and Social Safeguards, Fraud Prevention and Whistle-blower Protection, and Gender and Social Inclusion.

These can be found on the SPREP Website.

<https://www.sprep.org/>