

REQUEST FOR TENDERS

RFT: PWP-156-CON
File: AP_6/5/8/4
Date: 15 December, 2023
To: Interested consultants
From: PacWastePlus Finance and Procurement Officer

Subject: Request for tenders (RFT): Vanuatu legal assistance for a Product Stewardship Scheme (PSS)

1. Background

- 1.1. The Secretariat of the Pacific Regional Environment Programme (SPREP) is an intergovernmental organisation 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 consultants who can offer their services to provide legal assistance to Vanuatu in the development of a product stewardship scheme legislation and a beverage container product stewardship scheme regulation.
- 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://library.sprep.org/sites/default/files/sprep-organisational-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

3. Conditions: information for applicants

- 3.1. To be considered for this tender, interested contractors must meet the following conditions:
 - i. Submit a detailed Curriculum vitae detailing qualification and previous relevant experience for each proposed personnel;
 - ii. Provide three referees relevant to this tender submission, including the most recent work completed;

- iii. 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*).
Provide examples of past related work outputs
For the Technical and Financial proposals you may attach these separately.
 - iv. 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 contractor 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 – DO NOT refer us to your CV. Failure to do this will mean your application will **not** be considered*).
Provide examples of past related work outputs
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 15 January 2024. A summary of all questions received complete with an associated response posted on the SPREP website www.sprep.org/tender by 17 January 2024.
- 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.
- 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 – 70%

Criteria	Detail	Weighting
Experience	Demonstrated experience with waste management systems and legislation, with preference given to experience with Sustainable Financing system (Container Deposit / Advance Recovery Fee / Product Stewardship / Waste Levy etc) schemes or similar	15%

	Demonstrated experience in the development and implementation of effective legislative instruments (advantageous to detail Pacific experience)	15%
	Demonstrated experience in Small Island Developing States (SIDS) presenting complex topics in simplified way (particularly via remote platform) (advantageous to detail Pacific experience)	5%
	Examples provided of past works relevant to this activity (links to output reports or products that provide insight into research approach and writing style)	5%
Methodology	Detailed methodology to deliver the required project components and provide detail to the panel the value proposed by the tenderer.	25%
	Risk Plan (with mitigation measures) that will ensure the successful delivery of the project.	5%

II. Financial Score –30%

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:

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: 24 January 2024, midnight (Apia, Samoa local time).**
- 8.2. Late submissions will be returned unopened to the sender.
- 8.3. Please send all tenders clearly marked 'PWP-156-CON: **Vanuatu legal assistance for Product Stewardship Scheme (PSS)**

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,
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 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

Legal Assistance to Vanuatu in the development of:

- **Product Stewardship Scheme Legislation**
- **Beverage Container Product Stewardship Scheme Regulation**

1. BACKGROUND

The Secretariat of the Pacific Regional Environment Programme (SPREP) is working with the European Union's Delegation to the Pacific, and 14 Pacific Island Countries and Timor-Leste to undertake the PacWastePlus Programme (the Project) which seeks to improve and enhance waste management activities and the capacity of governments, industry, and communities to manage waste to reduce the impact on human health and the environment.

PacWastePlus seeks to generate improved economic, social, health and environmental benefits for Pacific Island Countries arising from stronger regional economic integration and the sustainable management of natural resources and the environment. The programme activities will be designed to assist Countries to ensure the safe and sustainable management of waste with due regard for the conservation of biodiversity, reduction of marine litter, health and well-being of Pacific Island communities, and climate change mitigation and adaptation requirements.

Activities for PacWaste Plus will focus on targeted priority waste streams which are: hazardous wastes (specifically **asbestos**, **e-waste** and **healthcare waste**), solid wastes (specifically **recyclables**, **organic waste**, **disaster waste and bulky waste**), and related aspects of **wastewater** (water impacted by solid waste).

2. INTRODUCTION TO PROJECT

Vanuatu is made up of 65 inhabited islands over six provinces, covering a land area of 12,189 km² and oceanic area of approximately 680,000 km². The capital of Vanuatu is Port Vila, home to 19% of the 272,459 population.

Vanuatu is faced with the increasing issue of low-value recyclable materials filling dumpsites and building up in stockpiles. Consumer items are imported into Vanuatu but there are currently limited financially viable options for their management and export.

Countries in the Pacific are increasingly viewing Product Stewardship Systems (also known as Container Deposit, Advance Recovery Fees and Deposits, Buy-back schemes, Extended Producer/Importer Responsibility, Waste Levy, etc.) to provide a self-financing system to enable the collection, processing, and export of these items.

The Government of Vanuatu is currently developing a Product Stewardship Scheme (PSS) to manage beverage containers, with the possibility for other bulky and electronic items to be also included if the system proves to be economically self-sustaining. The Government of Vanuatu has been designing the Beverage Container PSS since 2017, with a feasibility study undertaken and Working Group established. To date, the Private Sector have been driving the initiative.

Vanuatu has a dedicated *Waste Management Act 2014*. Under this Act, Vanuatu has adopted regulations and orders relating to the control of single-use plastics, littering and licensing of waste operators. There are existing powers in the *Waste Management Act 2014* to institute advance deposit or disposal fees.

The Government of Vanuatu has requested PacWastePlus support to provide legal assistance in the development of drafting notes for the implementation of the Vanuatu PSS Scheme. Specifically, the Government of Vanuatu seeks to develop:

1. PSS Legislation (the principal Act to enable the operation of the Vanuatu PSS, and provide for the development of specific PSS Regulations)
2. Beverage Container PSS Regulation to provide for the collecting and management of Beverage Containers. Items targeted for initial inclusion in the Regulation are Aluminium cans and PET bottles

Five Pacific countries have a scheme currently in place and nine other countries are utilising PacWastePlus support to progress with design of their own schemes.

To guide Countries during Advance Recovery Fee and Deposit design and implementation, PacWastePlus has developed a 21-step pathway to provide clarity on the steps involved, from undertaking feasibility and obtaining political support, through consultation and legislative components, to the physical and community awareness components. The pathway was endorsed by Pacific leaders at the September 2021 SPREP meeting. The pathway can be found on the PacWastePlus website - <https://pacwasteplus.org/resources/pathway-for-a-sustainable-financing-mechanism/>

3. EXPECTED OUTCOMES

The PacWastePlus programme seeks to engage a consultant to work directly with the Vanuatu Government to develop drafting notes for the implementation of a PSS Legislation and Beverage Container PSS Regulation.

Specific tasks are expected to include:

- Host formal and informal consultation with the Vanuatu Department of Environment and Conservation (DEPC)
- Host formal and informal consultation with other stakeholders such as the Vanuatu Ministry of Finance, Vanuatu State Law, and other stakeholders as recommended by the DEPC
- Design a draft PSS scheme
- Develop a presentation that the Vanuatu DEPC and Vanuatu Ministry of Finance can present at government and stakeholder consultation
- Develop a Policy Note to summarise the proposed PSS Scheme for Government decision makers
- Identify required amendments / reforms / repeals to existing legislation to enable enactment of the proposed the Vanuatu PSS Legislation and Beverage Container PSS Regulation
- Develop draft Drafting Notes for the development of the Vanuatu PSS Legislation and Beverage Container PSS Regulation
- Provide assistance for the DEPC to liaise with State Law to finalise Drafting Notes for the Vanuatu PSS Legislation and Beverage Container PSS Regulation

The timeframe for project activities is expected to match the schedule of the Vanuatu Government as agreed at Project Inception. The consultant is expected to provide assistance on an on-going / as-needed manner, to achieve the stated outcomes over an approximate 4 month period.

Note: This TOR is released in combination with two other TORs seeking technical assistance to support the development of the Vanuatu PSS:

1. *Technical Assistance to Support the Operation of the Vanuatu PSS through the development of Standard Operation Procedure to determine and guide Managing Agency Activities*
2. *Economic Modelling of the PSS scheme to understand the likely Fee component to be placed on the items included in the scheme, and the staffing requirements to operate and administer the activities associated with the scheme.*

Results from the other two TORs will inform the development of the drafting notes for the implementation of a PSS Legislation and Beverage Container PSS Regulation. PacWastePlus will facilitate the sharing of information between consultancies.

4. SCOPE OF WORK

The expected delivery of this consultancy will be developed in stages and is described in the following table.

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Table 1: Scope of Work

Phase	Description	Documentation SPREP will provide	Consultant Output
Inception / development of Legislative Pathway Work Plan	<p>Lead an inception meeting with the PacWastePlus team and the Vanuatu DEPC, Vanuatu Ministry of Finance, and other government partners involved in the legislative development process, to discuss the delivery of the project, timeframes, and roles and responsibilities for the completion of the outcomes.</p> <p>Analyse previous work, and documents related to Vanuatu PSS development, and liaise with government partners, to determine an appropriate Project Workplan, including but not limited to:</p> <ul style="list-style-type: none"> • steps for hosting consultation necessary to design an appropriate PSS Scheme to achieve the goals of the DEPC • steps for the development and approval of the PSS Legislation and PSS Beverage Container PSS Regulation • determination of required amendments / reforms / repeals to existing legislation, and steps for the approval of the identified amendments / reforms / repeals • finalising Legislation and Regulation Drafting Notes <p>The Work Plan shall, upon execution, also ensure effective delivery of services under this contract, and contain at a minimum the following:</p> <ul style="list-style-type: none"> • Proposed time schedule and sequence of events that the Contractor shall use to meet the contract deliverables, including preparation stages, drafting and review, and consultations. 	Vanuatu PSS Feasibility Study and relevant documentation	<p>Inception Meeting</p> <p>Minutes of the inception meeting with confirmation of activities, and scope of work to be developed and agreed by meeting participants prior to commencement of any activities.</p> <p>Draft Work Plan</p> <p>Submit a draft Work Plan that complies with the stated requirements and provides a clear pathway for legislative steps required for the approval of the PSS.</p> <p>Final Work Plan</p> <p>Final Work Plan incorporating revisions and addressing all comments.</p>

Phase	Description	Documentation SPREP will provide	Consultant Output
	<ul style="list-style-type: none"> Comprehensive risk plan to ensure effective delivery of services. Detailed explanation of proposed costs including rates and time required for each item. Any further details and information as PacWastePlus may reasonably require. 		
Draft Vanuatu PSS Design	Host formal and informal consultation sessions with the Vanuatu DEPC, Vanuatu Ministry of Finance, Vanuatu State Law, and other stakeholders as recommended by the Government of Vanuatu, to finalise an appropriate design of the Vanuatu PSS	Nil	<p>Meeting Minutes of formal and informal consultation sessions</p> <p>Minutes of the meetings with summary of decisions to be meaningfully incorporate into system design and legislation</p> <p>Draft PSS Design</p> <p>Draft PSS System Design submitted for review by Government Stakeholders and PacWastePlus.</p> <p>Final PSS Design Presentation</p> <p>Final draft PSS design developed incorporating comments by DEPC and PacWastePlus.</p>
Vanuatu PSS Design Presentation	<p>Develop a presentation summarising the proposed Vanuatu PSS.</p> <p>Presentation will be used by the Vanuatu DEPC to present at government and stakeholder consultation to provide awareness and solicit feedback on the proposed PSS design.</p> <p>The consultant shall provide assistance to the Vanuatu DEPC with facilitation of consultation and engagement activities for PSS development.</p>	DEPC shall arrange and host necessary Working Group and Stakeholder Consultation sessions.	<p>Draft PSS Design Presentation</p> <p>Draft presentation on PSS System Design submitted for review by DEPC and PacWastePlus.</p> <p>Final PSS Design Presentation</p> <p>Final PSS design presentation developed incorporating comments by DEPC and PacWastePlus submitted. The DEPC and</p>

Phase	Description	Documentation SPREP will provide	Consultant Output
	Incorporate feedback from consultation activities into the draft PSS design and Drafting Notes for the PSS Legislation and Beverage Container PSS Regulation		Ministry of Finance will present Scheme Design at government and stakeholder consultation to solicit feedback.
Policy Note for PSS Legislation and Beverage Container PSS Regulation	Utilising outcomes and findings from previous stages, develop a Policy Note to summarise the proposed PSS Scheme, including proposed Legislation and Regulation, for submission to Government decision makers Policy note should clearly Identify required amendments / re-forms / repeals to existing legislation to enable enactment of the proposed the Vanuatu PSS Legislation and Beverage Container PSS Regulation		Draft PSS Policy Note Draft PSS Policy Note (Legislation and Regulation) submitted for review by DEPC and PacWastePlus. Final PSS Policy Note Final PSS Policy Note (Legislation and Regulation) incorporating comments by DEPC and PacWastePlus.
2x Legislative Drafting Notes: - PSS Legislation Beverage Container PSS Regulation	Utilising outcomes and findings from previous stages, develop two Legislative Drafting Notes providing detailed information to enable the Vanuatu State Law Office to draft the Proposed: <ul style="list-style-type: none"> - PSS Legislation - Beverage Container PSS Regulation DEPC will coordinate with the State Law to finalise the Policy Drafting Notes. The consultant shall provide assistance to the DEPC to liaise with State Law to finalise the Drafting Notes.	Nil	Draft Drafting Notes Draft PSS Drafting Notes (Legislation and Regulation) submitted for review by DEPC and PacWastePlus. Final Draft Drafting Notes Final Draft Drafting Notes (Legislation and Regulation) incorporating comments by DEPC and PacWastePlus.

6. INSTITUTIONAL ARRANGEMENTS

Consultants outside of Vanuatu are asked to submit a quote for travel, but preference will be given to Vanuatu-based consultants to provide active support to DEPC, and to ensure an up-to-date understanding of Vanuatu legislative processes.

The successful consultant will work directly with the Vanuatu Director of Environmental Protection and Conservation who will assist with various components such as coordinating and hosting required Working Group meetings, consultation sessions, and other meetings.

Consultant Responsibilities

The consultant will be responsible for scheduling meetings with stakeholders and SPREP, taking minutes, and distributing draft documents for comment prior to finalising.

7. PROPOSED SCHEDULE OF WORK

The activities are to be completed no later than **20 weeks** after contract signing, with a preference for the activities to be completed much earlier matching the schedule of the Vanuatu Government.

Expected project activity is detailed below, it is expected that tenderers will detail how and when each of these steps will be delivered.

Table 2: Project Schedule

Activity	Timeline
1. Draft Workplan	1 day prior to Inception Meeting
2. Inception Meeting	No later than 1 week from date of Contract Execution
3. Finalised Workplan	No later than 2 weeks from date of Contract Execution
4. Draft Vanuatu PSS Design	No later than 6 weeks from date of Contract Execution
5. Draft Vanuatu PSS Design Presentation	No later than 10 weeks from date of Contract Execution
6. Policy Note for PSS Legislation and Beverage Container PSS Regulation	No later than 14 weeks from date of Contract Execution
7. 2x Final Draft Drafting Notes (Legislation and Regulation)	No later than 20 weeks from date of Contract Execution

8. BUDGET

Submissions are required to itemise all financial elements of their proposal in **USD**, including, but not limited to, the following:

- Salary costs (hourly rate)
- All applicable taxes

Submissions must include an annotated budget listing for each task.

Proposals above \$30,000 USD may not be considered.

SPREP reserves the right to withdraw this tender at any time, to accept or reject any or all bids and to waive any formal defects or irregularities in this bid, when deemed to be in the interest of SPREP.

9. OTHER INFORMATION

The successful consultant will be provided with any relevant project documentation.

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/sprep-organisational-values-code-of-conduct.pdf