***Example* Financial and Commercial Due Diligence Submission Form**

** Instructions to Buyers** *– ensure you read this section carefully and remove before use*

 Before using this form the Buyer must consider:

 - its suitability for their specific project and seek appropriate legal and financial advice;
 - the amount of time and effort which will be required by Respondents to complete the form; and
 - the level information requested and depth of analysis to be undertaken relative to the value and risk profile of their specific project.

 Information collected should be reviewed by a commercial financial expert who understands financial statements from private businesses, and preferably the construction sector.

 This form is provided by the Ministry of Business, Innovation and Employment (MBIE) as an example of some of the types of information that a buyer may wish to consider when undertaking contractor financial and commercial due diligence. Before using this form, a buyer should independently verify its relevance for the buyer’s purposes. This form should not be used as a substitute for legal, financial or other professional advice. MBIE does not guarantee the suitability of the form for a specific project, nor does MBIE assume any liability for any losses arising from use of this form in part or in its entirety. While MBIE has taken all reasonable care in creating this form, it does not make any warranties as to its accuracy or content.

 **Instructions to Respondents** *– ensure you read this section carefully and remove before submission*

 This form gives the Buyer information about your organisation in a standardised format for use in undertaking financial and commercial due diligence. The Buyer reserves the right to seek clarification and request additional information.

 The information provided in this form will be treated as confidential and commercially sensitive. The Buyer may share the information provided with its personnel (including officers, employees, contractors, consultants, agents and representatives) for the purpose of undertaking due diligence on the Respondent in relation to the tender to which it relates.

 If you are submitting a joint or consortium tender complete a copy of this form for each Respondent.

## Respondent details

Respondent: **[Full legal name of tenderer]**

Buyer: **[Name of government agency]**

In relation to Tender: **[Name of tender and agency’s reference number- if any]**

Date of Tender: **[Insert date of this document]**

## Financial Statements

In addition to the information required in this form, in a clearly named separate file or files provide electronic copies of audited financial statements for the past three years. Where an interim (six monthly) report has been issued since the date of issue of the last annual report, this should also be provided.

* Financial statements should include P&L, balance sheet, fixed asset register, statement of cash flows and supporting notes.
* Where finalised statements are not available for the latest financial year, provide draft financial statements.

Please note that if financial statements are not provided, the Buyer will be unable to complete their due diligence of your bid and as a result the Buyer may deem your bid non-conforming.

## Financial and commercial questions

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| **Summary of Accounts** |
| In addition to the financial statements requested above, provide a summary of your organisation’s accounts over the last three financial years (all figures for the 12 month financial year, or as at year-end balance date, as applicable). |
|  | **[insert financial year]** | **[insert financial year]** | **[insert financial year]** |
| **External interest bearing debt** |  |  |  |
| Loans (excluding from parent or related entities) | [fill in table] |  |  |
| Overdrafts |  |  |  |
| Hire purchases |  |  |  |
| Asset finance |  |  |  |
| **Shareholders and parent/related entities** |  |  |  |
| Loans to/from parent entities |  |  |  |
| Shareholder current account |  |  |  |
| Loans/account receivable from related entities (excluding parent)  |  |  |  |
| Loans/account payable to related entities (excluding parent) |  |  |  |
| Shareholder remuneration (please provide details on the type of remuneration e.g. salaries, dividends) |  |  |  |
| **Retentions\*** |  |  |  |
| Retentions receivable |  |  |  |
| Retentions payable (contracts entered into pre-March 2017) |  |  |  |
| Retentions payable (contracts entered into post-March 2017) |  |  |  |
| Cash held for retentions (contracts entered into pre-March 2017) |  |  |  |
| Cash held for retentions (contracts entered into post-March 2017) |  |  |  |
| **Other** |  |  |  |
| Total bonds issued |  |  |  |
| Known contingent liabilities (excluding bonds) |  |  |  |
| Tax obligations owing to Inland Revenue  |  |  |  |
| Total available and unutilised third party funding facilities (including overdrafts) |  |  |  |

\* Please separately identify retention amounts from contracts entered into pre-March 2017 and post-March 2017 (that are subject to the Construction Contracts Amendment Act 2015).

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| **Project Volumes** |
| Outline the number, size and value (in millions) of projects that your company has delivered, is currently contracted, or reasonably expects to be contracted as a result of a live procurement process, to deliver over the last three financial years and future years. For each year, give the number of projects that were, or will be, completed in that financial year in that construction value range.*Where contracts are delivered over a number of years, only include the contract once in the table below and note in the explanatory notes section the number of contracts and the number of years for delivery.**Where contracts are greater in size than $25m, please provide details of the contracts separately in the explanatory notes section.* |
| **Financial Year** | **Construction Contract Value** |
| **$500k - $1m** | **$1m -$2.5m** | **$2.5m - 5m** | **$5m - $10m** | **$10m- $15m** | **$15m - $25m** | **$25m+** |
|  | **No.** | **$** | **No.** | **$** | **No.** | **$** | **No.** | **$** | **No.** | **$** | **No.** | **$** | **No.** | **$** |
| Three financial years’ prior | [Year] | xx | $xxm |  |  |  |  |  |  |  |  |  |  |  |  |
| Two financial years’ prior | [Year] |  |  |  |  |  |  |  |  |  |  |  |  |  |  |
| One financial year prior | [Year] |  |  |  |  |  |  |  |  |  |  |  |  |  |  |
| Current financial year | [Year] |  |  |  |  |  |  |  |  |  |  |  |  |  |  |
| * Contracted
 |  |  |  |  |  |  |  |  |  |  |  |  |  |  |
| * Pipeline
 |  |  |  |  |  |  |  |  |  |  |  |  |  |  |
| Next financial year | [Year] |  |  |  |  |  |  |  |  |  |  |  |  |  |  |
| * Contracted
 |  |  |  |  |  |  |  |  |  |  |  |  |  |  |
| * Pipeline
 |  |  |  |  |  |  |  |  |  |  |  |  |  |  |
| **Explanatory notes:**[Insert response] |

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| **Subsequent Financial Events** |
| Provide details of any events (positive or negative) occurring between the date on which the latest set of financial statement was authorised for issue and the response date that have had a material impact on your balance sheet (e.g. significant loss, sale of assets, capital injection or raising of finance).If available, provide a current balance sheet for your business which shows the effect of the described financial events. |
| [Insert response] |

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| **One off Financial Impacts** |
| Provide details of any material one off events (positive or negative), which had an impact on your financial performance and/or position in the last three years, including the financial year the impact was incurred on your P&L and the quantum. An example would be a significant loss making contract.  |
| [Insert response] |

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| **In-Flight Contracts** |
| Provide details of any in-flight contracts which you anticipate will result in a loss. Include details of the estimated quantum of the loss, when it will be recorded in your financial statements and how you will fund the loss.  |
| [Insert response] |

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| **Ownership and Governance** |
| Provide details of current ownership and governance structure of the Respondent and any relevant related entities that are involved in the Proposal, including any proposed changes.Where the Respondent is a group, or part of the group, the group structure and details of any cross guarantees/obligations should be provided.If the Proposal involves any form of joint venture or special purpose vehicle include details of the ownership and governance arrangements. |
| [Insert response] |

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| **Structural Ownership Changes** |
| Please provide details of any recent (within the last three years) or anticipated changes to ownership or business structure (e.g. merger, sale, restructure), the rationale for these changes and their expected impact. |
| [Insert response] |

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| **Insolvency Proceedings** |
| Confirm that at present and in the last two years there are no unsatisfied statutory demands, actions relating to insolvency proceedings, actual or threatened (including voluntary administration) against your organisation, the directors of the organisation, its parent or associated entities. Describe any such actions if they exist. |
| [Insert response] |

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| **Legal Proceedings** |
| Please provide details of all litigation and claims against your organisation, the directors of the organisation, its parent company or associated entities in the last 5 years. This should include reasons for the litigation, amounts claimed and amounts settled. All outstanding litigation must be noted.Please declare specifically any current or past litigations in the last 5 years that relate to building weathertightness issues.In addition to the above please provide details of **all claims** that the Buyer has made, whether settled or outstanding against your organisation.Further, please provide details of any material actual, threatened or pending disputes with any other party. |
| [Insert response] |

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| **Bonding and insurances** |
| Please confirm that your organisation can meet the bonding and insurance requirements of the Buyer.Please provide details of current bonding and insurance arrangements in place.Please advise as to your principal banker, and your principal bonding and insurance agents.  |
| [Insert response] |

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| **Retentions** |
| Please describe how your organisation is complying, and shall comply, with the retention requirements of the Construction Contracts Amendments Act 2015.Include details of how you recognises a contract is subject to the Act, recognising a retention payment associated to a payment claim, holds and processes retained money and how you report on money held. |
| [Insert response] |

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| **Additional Financial Capacity** |
| Provide details of additional guarantees or financial arrangements available to ensure the business has the financial capacity to meet future contractual obligations.In instances where the business has material amounts owing to/from related entities or where the business is balance sheet insolvent or where the business is reliant on guarantees of financial arrangements as noted above, provide evidence they are willing to provide the support (in writing) at that level and financial statements for the parent or related entities. |
| [Insert response] |

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| **Phoenix Organisations** |
| Confirm that your organisation is not a “phoenix” organisation or similar (an organisation which has an association with (e.g. common directors/shareholders) or that is used to take on the business of a failed organisation or an organisation considered to have a poor reputation).If unable to confirm, provide an explanation including the name of the organisation from which your organisation is a phoenix organisation.Further confirm that your organisation was not formed after the previous entity:was liquidated after a formal judgement was obtained against it by the Buyer or any another organisation and before the debt owed as a consequence of this judgement was paid, or was liquidated after the Buyer or any another organisation issued legal proceedings to recover costs associated with negligent workmanship and before a formal judgement was able to be obtained. |
| [Insert response] |

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| **Personnel** |
| Confirm that that no director, principal, Key Personnel within your organisation or other personnel that will be involved or will influence the management or delivery of works on behalf of the Buyer:* is the subject of any legal proceedings, investigation or the threat of investigation by any regulatory or investigative authority such as, but not limited to, the Commerce Commission, Serious Fraud Office or the Financial Markets Authority
* is the subject of any complaint or disciplinary procedure by the New Zealand Registered Architects Board or the Building Practitioners Board or other relevant disciplinary body
* has been convicted of a criminal offence related to business or professional conduct
* has been declared to be bankrupt, in receivership or liquidation
* has made a false declaration
* has had a serious performance issue in relation to previous Contract Works
* has been convicted of professional misconduct or any serious crime or offence (or has any pending)
* has performed an act or omission which has adversely reflected on the commercial integrity of your organisation
* has failed to pay taxes, duties or other levies
* has been declared a threat to national security or the confidentiality of sensitive government information
* is a person or organisation designated as a terrorist by New Zealand Police.

If unable to confirm, provide details and an explanation. |
| [Insert response] |

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| **Staffing** |
| Confirm the number of staff directly employed by your organisation. Provide details of annual turnover rates for the past three years and any forecast changes in staffing levels. |
| [Insert response] |

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| **Sub-contractor due diligence** |
| Provide details of your process for undertaking due diligence, including financial and commercial, on the sub-contractors you engage.Confirm you engagement of sub-contractors is not subject to bribery or corruption. |
| [Insert response] |

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| **Any other information** |
| If applicable, provide any further details, not already covered in this form or attached documents, which are relevant and should be considered as part of the Buyer undertaking financial and commercial due diligence on your organisation. For example, have bank covenants been breached in the past? |
| [Insert response] |

## Declaration

I/we declare that in submitting this form and this declaration:

* the information provided is true, accurate and complete and not misleading in any material respect,
* I/we have secured all appropriate authorisations to submit this information, and
* I/we give the Buyer permission to disclose the information provided to any person who is directly involved in the tender process, but only for the purpose of participating in the tender.

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| **Signature:** |  |
| **Full name:** |  |
| **Title / position:** |  |
| **Name of organisation:** |  |
| **Date:** |  |