

# SECTION 6: RFP Terms

Defined terms are shown using capitals. You can find definitions at the end of this Section.

## Preparing and submitting a Proposal

### 6.1 Preparing a Proposal

#### a. Respondent obligations

The Respondent must:

- i. read the complete RFP and any additional information provided and referred to by the Buyer
- ii. respond using the RFP Response Form and Pricing Schedule provided and include all information the Buyer requests
- iii. consider the risks and contingencies relating to the delivery of the RFP requirements and outline how it will manage those risks and contingencies
- iv. include any assumptions, dependencies and/or qualifications in the Proposal, including anything that may limit its obligations or increase its quoted pricing or cost estimates
- v. quote prices in NZ\$, exclusive of GST
- vi. obtain independent advice before submitting a Proposal (if necessary)
- vii. make sure the Proposal is correct and the Proposal pricing is sustainable, i.e. covers the Whole-of-Life of the Contract, not just the initial term.

#### b. Process acceptance

By submitting a Proposal, the Respondent accepts the RFP-Terms.

#### c. No obligation, no penalty

Suppliers are not expected or required to submit a Proposal in order to remain on any prequalified or registered supplier list.

### 6.2 Offer Validity Period

The Proposal must remain open for the Offer Validity Period stated in Section 1 of the RFP.

### 6.3 Respondent questions

- a. The Respondent must make sure they understand the RFP.
- b. If the Respondent has any questions or needs clarification, they:
  - i. must submit questions before the Deadline for Questions (Section 1 of the RFP)
  - ii. must clearly indicate any commercially sensitive information in their questions

- iii. may withdraw their questions at any time.
- c. When the Buyer receives questions before the Deadline for Questions:
  - i. The Buyer will respond on or before the Deadline for Answers.
  - ii. The Buyer may provide details of both the questions and the answers to other Respondents. In these circumstances the Buyer will summarise the questions and will not disclose the Respondent's identity.
  - iii. Unless stated otherwise in the RFP, the Buyer will post both the questions and answers on GETS.
  - iv. The Buyer will not publish the Respondent's commercially sensitive information. However, if the Buyer considers the information to be significant for all Respondents, the Buyer may modify the question and publish both this and the answer. In that case the Buyer will first give the Respondent the opportunity to withdraw the question or remove any of their own commercially sensitive information.

## 6.4 Submitting a Proposal

- a. The Respondent must ensure the Buyer receives the Proposal at the correct address on or before the Deadline for Proposals.
- b. Where the RFP stipulates a 'two-envelope' process, the Respondent must ensure that all financial information and pricing components of the Proposal are contained either:
  - i. in a sealed envelope, separate from the rest of the Proposal and clearly marked 'Financial and Pricing Information', or
  - ii. in a separate digital file from the rest of the Proposal, clearly marked 'Financial and Pricing Information'.
- c. After the Deadline for Proposals, the Buyer will acknowledge receipt of the Proposal.
- d. The Respondent must ensure that all information they provide to the Buyer:
  - i. is true, accurate and complete
  - ii. is not misleading in any material respect
  - iii. does not contain material that infringes a third party's intellectual property rights
  - iv. is identical, if they supply both hard and soft copy Proposals.
- e. The Buyer may rely on the Proposal and all information provided by the Respondent during the RFP process (e.g. correspondence and negotiations).

# Assessing Proposals

## 6.5 Evaluation panel

The Buyer's evaluation panel will evaluate the Proposal. The Buyer may have different evaluation panel members for evaluating different aspects of the Proposal. The Buyer include independent advisors as evaluation panel members to evaluate some or all aspects of the Proposal.

## 6.6 Third party information

- a. The Buyer may request information from a third party where the Buyer considers the information may be relevant to the RFP process, excluding commercially sensitive information about pricing or contract terms.
- b. If this occurs, the Respondent:
  - i. authorises the Buyer to collect that information from the relevant third party (e.g. a referee or client), and authorises the third party to release it to the Buyer
  - ii. agrees the Buyer may use that information in its evaluation of the Proposal
  - iii. must ensure that all referees listed in the Proposal agree to provide a reference.

## 6.7 Clarification of Proposal

- a. The Buyer may ask the Respondent for more information or clarification on the Proposal at any time during the RFP process.
- b. The Buyer need not ask all Respondents for the same clarification.
- c. The Respondent agrees to provide the information or clarification as soon as possible, in the format requested by the Buyer.
- d. If the Respondent does not provide adequate information or clarification within a reasonable time (as determined by the Buyer), the Buyer may remove the Proposal from its evaluation process.

## 6.8 Evaluation and shortlisting of Proposal

- a. The Buyer will evaluate the Proposal according to the Evaluation Approach (Section 3 of the RFP).
- b. The Buyer may adjust its evaluation after considering additional information or clarification, as described in Sections 6.6 and 6.7 above.

## 6.9 Negotiations

- a. The Buyer may invite one or more Respondents to enter into negotiations with a view to forming a contract.

- b. During negotiations, the Buyer may:
  - i. discontinue negotiations with one Respondent and then initiate negotiations with another Respondent
  - ii. negotiate concurrently with more than one Respondent.
- c. If negotiating concurrently with more than one Respondent, the Buyer must:
  - i. treat each Respondent fairly
  - ii. prepare a separate plan for each negotiation
  - iii. hold a separate negotiation meeting with each Respondent
  - iv. advise each relevant Respondent that concurrent negotiations will be carried out.
- d. Unless the Buyer agrees otherwise, the Respondent agrees that any legally binding contract that may result from the negotiations will be essentially in the form in Section 5 of the RFP (Proposed Contract).

## **6.10 Respondent debrief**

- a. At the end of the RFP process, the Buyer will offer to debrief the Respondent. This debrief may be by letter, email, phone or a meeting.
- b. The Respondent has 10 Business Days from the date of the Buyer's offer to accept a debrief.
- c. The Buyer will provide the debrief within 30 Business Days from either the date of the Respondent's acceptance of a debrief, or the date the Contract is signed, whichever is later.
- d. The debrief will:
  - i. explain why the Proposal was successful or not successful
  - ii. explain how the Proposal performed against the pre-conditions (if applicable) and the evaluation criteria
  - iii. indicate the Proposal's relative strengths and weaknesses
  - iv. explain, in general terms, the relative advantages of the successful Proposal
  - v. seek to address any concerns or questions from the Respondent
  - vi. seek feedback from the Respondent on the RFP and RFP process.

## **6.11 Notification of outcome**

During the 30 Business Days after the Contract has been signed, the Buyer:

- a. will let all unsuccessful Respondents know the name of the Successful Respondents, if any
- b. may make public the name of the Successful Respondents (if any) and any unsuccessful Respondents
- c. will publish a Contract Award Notice on GETS, where applicable.

## 6.12 Issues and complaints

- a. The Respondent may, in good faith, raise with the Buyer any issue or complaint about the RFP or RFP process at any time.
- b. When this occurs:
  - i. the Buyer will consider and respond promptly and impartially to the Respondent's issue or complaint
  - ii. both the Respondent and the Buyer must do their best to resolve the issue or complaint
  - iii. the Buyer must not allow the issue or complaint to prejudice the Respondent's participation in the RFP process, or limit or affect the Respondent's future procurement opportunities.

## Standard RFP conditions

### 6.13 Buyer's Point of Contact

- a. The Respondent must direct all RFP enquiries to the Buyer's Point of Contact in Section 1 of the RFP.
- b. The Respondent must not approach any other employee or other representative of the Buyer, directly or indirectly, for information on any aspect of the RFP.
- c. Only the Point of Contact, or a person authorised by the Buyer, may communicate with the Respondent on any aspect of the RFP. The Buyer will not be bound by any statement made by any other person.
- d. The Buyer may change its Point of Contact at any time. The Buyer will notify the Respondent of any change by email or posting a notification on GETS.
- e. If the Respondent has an existing contract with the Buyer, the Respondent must not use its business-as-usual communications to contact the Buyer regarding the RFP.

### 6.14 Conflict of Interest

- a. The Respondent must complete the Conflict of Interest declaration in the RFP Response Form. If a joint Proposal is being submitted, each party must complete the Conflict of Interest declaration separately.
- b. If a Conflict of Interest arises during the RFP process, the Respondent must inform the Buyer immediately.
- c. The Buyer may exclude a Respondent from the RFP process if a material Conflict of Interest arises.

### 6.15 Ethics

- a. The Respondent must not attempt to influence, reward or benefit any representative of the Buyer, nor offer any form of personal inducement, in relation to the RFP or the RFP process.
- b. The Respondent must comply with the Supplier Code of Conduct issued by the Procurement Functional Leader, and any other relevant codes of conduct listed in the RFP.

- c. The Buyer may exclude the Respondent from the RFP process for a breach of paragraphs 6.13b, 6.13e, 6.15a or 6.15b.
- d. To maintain a fair and ethical RFP process, the Buyer may require additional declarations or other evidence from the Respondent, or any other person, at any time.

## **6.16 Anti-collusion and bid rigging**

- a. By submitting the Proposal the Respondent warrants that:
  - i. the Proposal has not been prepared in collusion with a Competitor
  - ii. it will not engage in deceptive or improper conduct during the RFP process.
- b. The Buyer may exclude the Respondent from the RFP process if a breach of these warranties occurs.
- c. The Buyer reserves the right to report suspected collusion or anti-competitive behaviour to the appropriate authority, and to give that authority all relevant information, including the Proposal.

## **6.17 Confidential Information**

- a. Without limiting any other confidentiality agreement between them, the Buyer and the Respondent will both take reasonable steps to protect the other party's Confidential Information.
- b. Except as permitted by the other provisions of this Section 6.17, neither party will disclose the other party's Confidential Information to a third party without that other party's prior written consent.
- c. Each party may each disclose the other party's Confidential Information to anyone who is directly involved in the RFP process on that party's behalf, but only for the purpose of participating in the RFP. This could include (but is not limited to) officers, employees, consultants, contractors, professional advisors, evaluation panel members, partners, principals or directors. Where this occurs, the disclosing party must take reasonable steps to ensure the third party does not disclose the information to anyone else, and does not use the information for any purpose other than participating in the RFP process.
- d. The Respondent acknowledges that the Buyer's confidentiality obligations are subject to requirements imposed by the Official Information Act 1982 (OIA), the Privacy Act 2020, parliamentary and constitutional convention, and any other obligations imposed by law. Where the Buyer receives an OIA request that relates to a Respondent's Confidential Information, the Buyer will consult with the Respondent and may ask the Respondent to explain why the information is considered by the Respondent to be confidential or commercially sensitive.
- e. The Respondent may disclose the Buyer's Confidential Information to the extent strictly necessary to comply with law or the rules of any stock exchange on which the securities of the Respondent or any related entity are currently listed. Unless prohibited by law, the Respondent must consult with the Buyer before making such a disclosure.
- f. The Buyer will not be in breach of its obligations if it discloses Confidential Information to the appropriate authority because of suspected collusive or anti-competitive tendering behaviour.

## 6.18 Costs of participating in the RFP process

Except as otherwise stated in the RFP, the Respondent must meet their own costs associated with the preparation, presentation and negotiation of the Proposal.

## 6.19 Ownership of documents

- a. The RFP and its contents remain the property of the Buyer. All Intellectual Property rights in the RFP remain the property of the Buyer or its licensors.
- b. The Buyer may request the immediate return or destruction of any RFP documents and any copies, in which case the Respondent must comply in a timely manner.
- c. All documents forming part of the Proposal will, once they are delivered to the Buyer, become the property of the Buyer. The Proposal will not be returned to the Respondent.
- d. Intellectual Property rights in the Proposal remain the property of the Respondent or its licensors.
- e. The Respondent grants to the Buyer a licence to retain, use, copy and disclose information contained in the Proposal for any purpose related to the RFP process, including keeping appropriate records.

## 6.20 Limited rights and obligations

- a. Except as stated otherwise in this Section 6.20, nothing in the RFP, these RFP Terms or the RFP process creates a contract or any other legal relationship between the Buyer and Respondent, unless and until they enter into a Contract.
- b. The following are binding on the Respondent:
  - i. The Respondent's signed declaration (contained in the RFP Response Form).
  - ii. The Respondent's obligation under Section 6.2 to ensure the Proposal remains open for the Offer Validity Period.
  - iii. The Respondent's obligations under paragraphs 6.4d and 6.4e. Nothing in this Section 6.20 takes away from any rights or remedies the Buyer may have in relation to the Respondent's statements, representations or warranties in the Proposal or in correspondence or negotiations with the Buyer.
  - iv. The standard RFP conditions in Sections 6.13 to 6.25.
- c. Sections 6.17 and 6.19 are binding on the Buyer.
- d. Where applicable, the Buyer and each Respondent are bound by any other obligation expressly identified in Section 1 of the RFP as being binding.
- e. All terms and other obligations that are binding on the Buyer are subject to the Buyer's additional rights in Section 6.22.

## 6.21 Exclusion from the RFP process

- a. The Buyer may exclude the Respondent from the RFP process if the Respondent:
  - i. has not provided requested information in the correct format
  - ii. has breached the RFP-Terms and the Buyer considers the impact of the breach is more than trivial (this applies whether or not the provision in question is itself legally binding on the Recipient)
  - iii. included a material error, omission or inaccuracy in the Proposal
  - iv. is in bankruptcy, receivership or liquidation
  - v. has made a false declaration
  - vi. has a conviction for a serious crime or offence
  - vii. has failed to pay taxes, duties or other levies
  - viii. represents a threat to national security or to confidentiality of government information, and/or
  - ix. is a person or organisation designated as a terrorist by New Zealand Police.
- b. The Buyer may exclude the Respondent from the RFP process if:
  - i. there was a serious performance issue in a previous, or current, contract delivered by the Respondent
  - ii. the Buyer considers the integrity of the Respondent is in doubt due to the Respondent's professional misconduct or an act or omission contrary to the Supplier Code of Conduct, and/or
  - iii. the Buyer becomes aware of any other matter that materially diminishes the Buyer's trust in the Respondent.

## 6.22 Buyer's additional rights

- a. **Changes to the RFP**
  - i. The Buyer may amend, suspend, cancel or re-issue the RFP, or any part of it, so long as it notifies the Respondent.
  - ii. The Buyer may change material aspects of the RFP, such as the timeline, Requirements or Evaluation Approach, provided it gives the Respondent time to respond to update its Proposal in relation to the changes.
- b. **Timeline**
  - i. The Buyer may accept a late Proposal if it is the Buyer's fault it is late, or if the Buyer considers there is no material prejudice to other Respondents in accepting a late Proposal.
  - ii. The Buyer may answer a question submitted after the Deadline for Questions, and notify all Respondents about the submission of the question and the answer.



c. **The Proposal**

- i. The Buyer may accept or reject any Proposal, or part of a Proposal. This includes any non-compliant, non-conforming or alternative Proposal.
- ii. The Buyer may decide not to accept the lowest price conforming Proposal, unless stated otherwise in the Evaluation Approach.

d. **RFP Process**

- i. Subject to paragraph 6.9c, the Buyer may liaise or negotiate with any Respondent without informing, or doing the same, with any other Respondent.
- ii. The Buyer may provide Respondents with information arising from questions about the RFP.
- iii. The Buyer may withhold information arising from questions about the RFP. This may be the case if the information is unnecessary, is commercially sensitive, is inappropriate to supply at the time of the request or cannot be released for legal reasons.
- iv. The Buyer may waive requirements or irregularities around the RFP process if the Buyer considers it appropriate or reasonable to do so.
- v. The Buyer may amend the Proposed Contract at any time, including during negotiations with a Respondent.
- vi. The Buyer may decide not to enter into a Contract with any Respondent.

e. **Consortia and unbundling**

The Buyer may make its selection conditional on the Respondent agreeing to:

- i. the Buyer selecting the Respondent to deliver the Requirements as a joint venture or consortium with another Respondent selected by the Buyer, and/or
- ii. the Buyer selecting individual elements of the Proposal that can be delivered separately, unless the Proposal specifically states that the Proposal, or the relevant elements, must be taken collectively.

## 6.23 New Zealand law

The laws of New Zealand govern the RFP. Each Respondent agrees New Zealand courts have non-exclusive jurisdiction to rule in any dispute concerning the RFP or the RFP process. The Respondent agrees that it cannot bring any claim in relation to the RFP except in a New Zealand court.

## 6.24 Disclaimer

- a. Nothing contained or implied in the RFP, or RFP process, or any other communication by the Buyer to the Respondent is to be construed as legal, financial or other advice.
- b. The Buyer will endeavour to provide accurate information in any communication, but the Respondent accepts this information is not independently verified and may not be up-to-date.
- c. The Buyer will not be liable in contract, tort, equity, or in any other way for any direct or indirect damage, loss or cost incurred by the Respondent or any other person in respect of the RFP process, whether as a result of the Buyer exercising its rights under Section 6.22, the Buyer's negligence or

breach of these RFP Terms, the Buyer failing to select the Respondent as the Successful Respondent, or any other cause.

- d. To the extent that liability cannot be excluded, the maximum aggregate liability of the Buyer, its agents and advisors in connection with the RFP process, to all Respondents combined, is NZ\$5,000 or (if known and greater than \$5,000) 5% of the estimated value of the proposed Contract as determined by the Buyer prior to the release of the RFP.
- e. The limitations and exclusions in paragraphs c and d above do not apply to any liability the Buyer may have for breach of confidentiality or infringement of the Respondent's intellectual property rights.

## 6.25 Precedence

- a. Any conflict or inconsistency in the RFP shall be resolved by giving precedence in the following descending order:
  - i. Section 1 of the RFP
  - ii. these RFP-Terms
  - iii. all other Sections of the RFP document
  - iv. any additional information or document provided by the Buyer to Respondents through the Buyer's Point of Contact or GETS.
- b. If there is any conflict or inconsistency between information or documents having the same level of precedence the more recent information or document will prevail.

## Definitions

In relation to the RFP the following words and expressions have the meanings described below.

Advance Notice	A notice published by the Buyer on GETS in advance of publishing the RFP. An Advance Notice alerts the market to a contract opportunity. Where used, an Advance Notice forms part of the RFP.
Business Day	Any week day in New Zealand, excluding Saturdays, Sundays, New Zealand (national) public holidays and all days from Boxing Day up to and including the day after New Year's Day.
Buyer	The government agency that has issued the RFP with the intent of purchasing the goods or services described in the Requirements.
Competitors	Any other business that is in competition with a Respondent either in relation to the goods or services sought under the RFP or in general.

Advance Notice	A notice published by the Buyer on GETS in advance of publishing the RFP. An Advance Notice alerts the market to a contract opportunity. Where used, an Advance Notice forms part of the RFP.
Confidential Information	<p>Confidential Information of a party (Provider) means information acquired by the other party (Recipient) from the Provider in connection with the RFP process, where that information:</p> <ol style="list-style-type: none"> <li>is by its nature confidential</li> <li>is marked at the time of disclosure to the Recipient as ‘confidential’, ‘in confidence’, ‘restricted’, ‘sensitive’, ‘secret’ or ‘top secret’, and/or</li> <li>the Recipient knows, or ought to know, is confidential to the Provider or a third party who supplied it to the Provider.</li> </ol> <p>However, this does not include information that is publicly available through no fault of the Recipient, or that the Recipient acquired entirely independently of the Provider.</p>
Conflict of Interest	<p>A Conflict of Interest arises if personal or business interests, relationships or obligations of the Respondent or any of its personnel do, could, or could be perceived to:</p> <ol style="list-style-type: none"> <li>conflict with the Respondent’s obligations to the Buyer under the RFP or in the provision of the goods or services, and/or</li> <li>call into question the independence, objectivity or impartiality of any person involved in the RFP process on behalf of the Buyer.</li> </ol> <p>A Conflict of Interest may be:</p> <ol style="list-style-type: none"> <li>actual: where the conflict currently exists</li> <li>potential: where the conflict is about to happen or could happen, or</li> <li>perceived: where other people may reasonably think that a person is compromised.</li> </ol>
Contract	Any written Contract entered into by the Buyer and a Successful Respondent for the delivery of the Requirements.
Contract Award Notice	A notice on GETS which a Buyer is required to publish under Rule 48 of the Government Procurement Rules, when it has awarded a contract that is subject to those Procurement Rules.
Deadline for Answers	The deadline for the Buyer to respond to questions submitted by a Respondent stated in Section 1.2 of the RFP.
Deadline for Proposals	The deadline for delivering or submitting Proposals to the Buyer as stated in Section 1 of the RFP.
Deadline for Questions	The deadline for submitting questions to the Buyer as stated in Section 1 of the RFP.

Advance Notice	A notice published by the Buyer on GETS in advance of publishing the RFP. An Advance Notice alerts the market to a contract opportunity. Where used, an Advance Notice forms part of the RFP.
Evaluation Approach	The approach used by the Buyer to evaluate Proposals as described in Section 3 of the RFP.
GETS	Government Electronic Tenders Service available at <a href="http://www.gets.govt.nz">www.gets.govt.nz</a> .
Intellectual Property	All industrial and intellectual property rights whether conferred by statute, at common law or in equity, including (but not limited to) copyright, trademarks, designs and patents.
Offer Validity Period	The period of time when a Proposal is held open by the Respondent for acceptance by the Buyer as stated in Section 1 of the RFP.
Pricing Schedule	The form prescribed by the Buyer and used by a Respondent to submit its pricing for the RFP, duly completed and submitted by a Respondent as part of the Proposal.
Point of Contact	The Buyer and each Respondent are required to appoint a Point of Contact. This is the channel to be used for all communications during the RFP process. The Buyer's Point of Contact is identified in Section 1 of the RFP. The Respondent's Point of Contact is identified in its Proposal.
Proposal	The response a Respondent submits in reply to the RFP. It comprises the RFP Response Form, the Pricing Schedule and all other information submitted by a Respondent.
Proposed Contract	The contract terms and conditions proposed by the Buyer for the delivery of the Requirements as described in Section 5 of the RFP.
Registration of Interest	A formal request by a Buyer asking potential Respondents to register their interest in a procurement. It is the first step in a multi-step tender process.
Request for Proposals (RFP)	The RFP comprises the Advance Notice (where used), the Registration of Interest (where used), the RFP document (including the RFP-Terms) and any other schedule, appendix or document attached to the RFP, and any subsequent information provided by the Buyer to Respondents through the Buyer's Point of Contact or GETS.
Requirements	The Buyer's requirements for goods and/or services as described in Section 2 of the RFP.
Respondent	A person, company or organisation that submits a Proposal in response to the RFP. The term Respondent includes each member of any consortium.
RFP Response Form	The form and declaration prescribed by the Buyer and used by a Respondent to respond to the RFP, duly completed and submitted by a Respondent as part of the Proposal.

Advance Notice	A notice published by the Buyer on GETS in advance of publishing the RFP. An Advance Notice alerts the market to a contract opportunity. Where used, an Advance Notice forms part of the RFP.
RFP-Terms	Means the RFP Terms as set out in Section 6 of the RFP, together with any additions or amendments to those RFP Terms specifically identified in Section 1 of the RFP.
Successful Respondent	Following the evaluation of Proposals and successful negotiations, any Respondent who is awarded a Contract to deliver all or part of the Requirements.

For more definitions, click [HERE](#).