

# SECTION 5: RFQ Terms

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

## Preparing and submitting a Quote

### 5.1 Preparing a Quote

#### a. Respondent obligations

The Respondent must:

- i. read the complete RFQ and any additional information provided and referred to by the Buyer
- ii. respond using the RFQ Response Form provided and include all information the Buyer requests
- iii. consider the risks and contingencies relating to the delivery of the RFQ requirements and outline how it will manage those risks and contingencies
- iv. include any assumptions, dependencies and/or qualifications in the Quote, 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 Quote (if necessary)
- vii. make sure the Quote is correct and the Quote pricing is sustainable, i.e. covers the Whole-of-Life of the Contract, not just the initial term.

#### b. Process acceptance

By submitting a Quote, the Respondent accepts the RFQ-Terms.

#### c. No obligation, no penalty

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

### 5.2 Offer Validity Period

The Quote must remain open for the Offer Validity Period stated in Section 1 of the RFQ.

### 5.3 Respondent questions

- a. The Respondent must make sure they understand the RFQ.
- b. If the Respondent has any questions or needs clarification, they:
  - i. must submit questions before the Deadline for Questions (Section 1 of the RFQ)
  - 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 RFQ, 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.

## 5.4 Submitting a Quote

- a. The Respondent must ensure the Buyer receives the Quote at the correct address on or before the Deadline for Quotes.
- b. Where the RFQ stipulates a 'two-envelope' process, the Respondent must ensure that all financial information and pricing components of the Quote are contained either:
  - i. in a sealed envelope, separate from the rest of the Quote and clearly marked 'Financial and Pricing Information', or
  - ii. in a separate digital file from the rest of the Quote, clearly marked 'Financial and Pricing Information'.
- c. After the Deadline for Quotes, the Buyer will acknowledge receipt of the Quote.
- 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 Quotes.
- e. The Buyer may rely on the Quote and all information provided by the Respondent during the RFQ process (e.g. correspondence and negotiations).

# Assessing Quotes

## 5.5 Evaluation panel

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

## 5.6 Third party information

- a. The Buyer may request information from a third party where the Buyer considers the information may be relevant to the RFQ 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 Quote
  - iii. must ensure that all referees listed in the Quote agree to provide a reference.

## 5.7 Clarification of Quote

- a. The Buyer may ask the Respondent for more information or clarification on the Quote at any time during the RFQ 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 Quote from its evaluation process.

## 5.8 Evaluation of Quote

- a. The Buyer will evaluate the Quote according to the Evaluation Approach (Section 3 of the RFQ).
- b. The Buyer may adjust its evaluation after considering additional information or clarification, as described in Sections 5.6 and 5.7 above.

## 5.9 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 4 of the RFQ (Proposed Contract).

## 5.10 Respondent debrief

- a. At the end of the RFQ 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 Quote was successful or not successful
  - ii. explain how the Quote performed against the pre-conditions (if applicable) and the evaluation criteria
  - iii. indicate the Quote's relative strengths and weaknesses
  - iv. explain, in general terms, the relative advantages of the successful Quote
  - v. seek to address any concerns or questions from the Respondent
  - vi. seek feedback from the Respondent on the RFQ and RFQ process.

## 5.11 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.

## 5.12 Issues and complaints

- a. The Respondent may, in good faith, raise with the Buyer any issue or complaint about the RFQ or RFQ 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 RFQ process, or limit or affect the Respondent's future procurement opportunities.

## Standard RFQ conditions

### 5.13 Buyer's Point of Contact

- a. The Respondent must direct all RFQ enquiries to the Buyer's Point of Contact in Section 1 of the RFQ.
- 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 RFQ.
- c. Only the Point of Contact, or a person authorised by the Buyer, may communicate with the Respondent on any aspect of the RFQ. 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 RFQ.

### 5.14 Conflict of Interest

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

### 5.15 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 RFQ or the RFQ 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 RFQ.

- c. The Buyer may exclude the Respondent from the RFQ process for a breach of paragraphs 5.13b, 5.13e, 5.15a or 5.15b.
- d. To maintain a fair and ethical RFQ process, the Buyer may require additional declarations or other evidence from the Respondent, or any other person, at any time.

## 5.16 Anti-collusion and bid rigging

- a. By submitting the Quote the Respondent warrants that:
  - i. the Quote has not been prepared in collusion with a Competitor
  - ii. it will not engage in deceptive or improper conduct during the RFQ process.
- b. The Buyer may exclude the Respondent from the RFQ 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 Quote.

## 5.17 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 5.17, 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 RFQ process on that party's behalf, but only for the purpose of participating in the RFQ. 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 RFQ 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.

## 5.18 Costs of participating in the RFQ process

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

## 5.19 Ownership of documents

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

## 5.20 Limited rights and obligations

- a. Except as stated otherwise in this Section 5.20, nothing in the RFQ, these RFQ Terms or the RFQ 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 RFQ Response Form).
  - ii. The Respondent's obligation under Section 5.2 to ensure the Quote remains open for the Offer Validity Period.
  - iii. The Respondent's obligations under paragraphs 5.4d and 5.4e. Nothing in this Section 5.20 takes away from any rights or remedies the Buyer may have in relation to the Respondent's statements, representations or warranties in the Quote or in correspondence or negotiations with the Buyer.
  - iv. The standard RFQ conditions in Sections 5.13 to 5.25.
- c. Sections 5.17 and 5.19 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 RFQ 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 5.22.

## 5.21 Exclusion from the RFQ process

- a. The Buyer may exclude the Respondent from the RFQ process if the Respondent:
  - i. has not provided requested information in the correct format
  - ii. has breached the RFQ-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 Quote
  - 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 RFQ 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.

## 5.22 Buyer's additional rights

- a. **Changes to the RFQ**
  - i. The Buyer may amend, suspend, cancel or re-issue the RFQ, or any part of it, so long as it notifies the Respondent.
  - ii. The Buyer may change material aspects of the RFQ, such as the timeline, Requirements or Evaluation Approach, provided it gives the Respondent time to respond to update its Quote in relation to the changes.
- b. **Timeline**
  - i. The Buyer may accept a late Quote 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 Quote.
  - 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 Quote**

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

d. **RFQ Process**

- i. Subject to paragraph 5.9c, 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 RFQ.
- iii. The Buyer may withhold information arising from questions about the RFQ. 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 RFQ 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. **Unbundling**

The Buyer may make its selection conditional on the Respondent agreeing to the Buyer selecting individual elements of the Quote that can be delivered separately, unless the Quote specifically states that the Quote, or the relevant elements, must be taken collectively.

## 5.23 New Zealand law

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

## 5.24 Disclaimer

- a. Nothing contained or implied in the RFQ, or RFQ 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 RFQ process, whether as a result of the Buyer exercising its rights under Section 5.22, the Buyer's negligence or breach of these RFQ 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 RFQ 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 RFQ.
- 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.

## 5.25 Precedence

- a. Any conflict or inconsistency in the RFQ shall be resolved by giving precedence in the following descending order:
  - i. these RFQ-Terms
  - ii. all other Sections of the RFQ document
  - iii. 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 RFQ 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 RFQ. An Advance Notice alerts the market to a contract opportunity. Where used, an Advance Notice forms part of the RFQ.
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 RFQ 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 RFQ or in general.
Confidential Information	<p>Confidential Information of a party (Provider) means information acquired by the other party (Recipient) from the Provider in connection with the RFQ 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 RFQ 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 RFQ 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.

Advance Notice	A notice published by the Buyer on GETS in advance of publishing the RFQ. An Advance Notice alerts the market to a contract opportunity. Where used, an Advance Notice forms part of the RFQ.
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 RFQ.
Deadline for Quotes	The deadline for delivering or submitting Quotes to the Buyer as stated in Section 1 of the RFQ.
Deadline for Questions	The deadline for submitting questions to the Buyer as stated in Section 1 of the RFQ.
Evaluation Approach	The approach used by the Buyer to evaluate Quotes as described in Section 3 of the RFQ.
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 Quote is held open by the Respondent for acceptance by the Buyer as stated in Section 1 of the RFQ.
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 RFQ process. The Buyer's Point of Contact is identified in Section 1 of the RFQ. The Respondent's Point of Contact is identified in its Quote.
Proposed Contract	The contract terms and conditions proposed by the Buyer for the delivery of the Requirements as described in Section 4 of the RFQ.
Quote	The response a Respondent submits in reply to the RFQ. It comprises the RFQ Response Form, the Respondent's bid, financial and pricing information and all other information submitted by a Respondent.
Request for Quotes (RFQ)	The RFQ comprises the Advance Notice (where used), the Registration of Interest (where used), the RFQ document (including the RFQ-Terms) and any other schedule, appendix or document attached to the RFQ, and any subsequent information provided by the Buyer to Respondents through the Buyer's Point of Contact or GETS.

Advance Notice	A notice published by the Buyer on GETS in advance of publishing the RFQ. An Advance Notice alerts the market to a contract opportunity. Where used, an Advance Notice forms part of the RFQ.
Requirements	The Buyer's requirements for goods and/or services as described in Section 2 of the RFQ.
Respondent	A person, company or organisation that submits a Quote in response to the RFQ. The term Respondent includes each member of any consortium.
RFQ Response Form	The form and declaration prescribed by the Buyer and used by a Respondent to respond to the RFQ, duly completed and submitted by a Respondent as part of the Quote.
RFQ-Terms	Means the RFQ Terms as set out in Section 5 of the RFQ.
Successful Respondent	Following the evaluation of Quotes and successful negotiations, any Respondent who is awarded a Contract to deliver all or part of the Requirements.

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