

## SECTION 4: ROI Terms

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

### Preparing and submitting a Registration

#### 4.1 Preparing a Registration

a. **Respondent obligations**

The Respondent must:

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

b. **Process acceptance**

By submitting a Registration, the Respondent accepts the ROI-Terms.

c. **No obligation, no penalty**

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

#### 4.2 Respondent questions

- a. The Respondent must make sure they understand the ROI.
- b. If the Respondent has any questions or needs clarification, they:
  - i. must submit questions before the Deadline for Questions (Section 1 of the ROI)
  - 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 ROI, the Buyer will post both the questions and answers onGETS.
- 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.

### **4.3 Submitting a Registration**

- a. The Respondent must ensure the Buyer receives the Registration at the correct address on or before the Deadline for Registrations.
- b. After the Deadline for Registrations, the Buyer will acknowledge receipt of the Registration.
- c. 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 propertyrights
  - iv. is identical, if they supply both hard and soft copyRegistrations.
- d. The Buyer may rely on the Registration and all information provided by the Respondent during the ROI process (e.g. correspondence and negotiations).

## **Assessing Registrations**

### **4.4 Evaluation panel**

The Buyer's panel will consider the Registration. The Buyer may have different panel members for considering different aspects of the Registration. The Buyer may include independent advisors as panel members to consider some or all aspects of the Registration.

### **4.5 Third party information**

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

## **4.6 Clarification of Registration**

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

## **4.7 Evaluation and shortlisting of Registration**

- a. The Buyer will initially evaluate the Registration based on the Respondent's submitted ROI Response Form.
- b. The Buyer may adjust its evaluation after considering additional information or clarification, as described in Sections 4.5 and 4.6 above.
- c. If a Registration is shortlisted this does not mean that the Buyer has accepted an offer or made any commitment. There is no obligation for the Buyer to enter negotiations with, or award a Contract to, any shortlisted Respondent.
- d. After the shortlisting of Respondents based on their Registrations, any further participation by a shortlisted Respondent in any subsequent stage of the procurement process that flows out of the ROI will be subject to the shortlisted Respondent accepting.
- e. If a Respondent is not shortlisted based on its Registration, the Buyer may exclude it from any further participation in any subsequent stage of the procurement process that flows out of the ROI.

## **4.8 Respondent debrief**

- a. At the end of the ROI 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 Registration was or was not shortlisted
  - ii. explain how the Registration performed against the pre-conditions (if applicable) and the evaluation criteria

- iii. indicate the Registration's relative strengths and weaknesses
- iv. explain, in general terms, the relative advantages of the shortlisted Registration(s), without necessarily identifying the relevant Respondents
- v. seek to address any concerns or questions from the Respondent
- vi. seek feedback from the Respondent on the ROI and ROI process.

## 4.9 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 and address of the Successful Respondents (if any) and any unsuccessful Respondents
- c. will publish a Contract Award Notice on GETS, where applicable. Contract Award Notices are available to view by the public on GETS. The Respondent may request that the Buyer withhold its address from the Contract Award Notice for privacy reasons. The Buyer may withhold the Respondent's address from the Contract Award Notice in a manner consistent with the Privacy Act 2020.

## 4.10 Issues and complaints

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

## Standard ROI conditions

### 4.11 Buyer's Point of Contact

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

## **4.12 Conflict of Interest**

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

## **4.13 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 ROI or the ROI 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 ROI.
- c. The Buyer may exclude the Respondent from the ROI process for a breach of paragraphs 4.11b, 4.11e, 4.13a or 4.13b.
- d. To maintain a fair and ethical ROI process, the Buyer may require additional declarations or other evidence from the Respondent, or any other person, at any time.

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

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

## **4.15 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 4.15, 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 ROI process on that party's behalf, but only for the purpose of participating in the ROI. 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 ROI 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.

## **4.16 Costs of participating in the ROI process**

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

## **4.17 Ownership of documents**

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

## **4.18 Limited rights and obligations**

- a. Except as stated otherwise in this Section 4.18, nothing in the ROI, these ROI Terms or the ROI 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 ROI Response Form).
  - ii. The Respondent's obligations under paragraphs 4.3c and 4.3d. Nothing in this Section 4.18 takes away from any rights or remedies the Buyer may have in relation to the Respondent's statements, representations or warranties in the Registration or in correspondence or negotiations with the Buyer.
  - iii. The standard ROI conditions in Sections 4.11 to 4.23.

- c. Section 4.15 and 4.17 are binding on the Buyer.
- d. All terms and other obligations that are binding on the Buyer are subject to the Buyer's additional rights in Section 4.20.

## 4.19 Exclusion from the ROI process

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

## 4.20 Buyer's additional rights

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

- 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 Registration**

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

d. **ROI Process**

- i. 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 ROI.
- iii. The Buyer may withhold information arising from questions about the ROI. 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 ROI process if the Buyer considers it appropriate or reasonable to do so.
- v. The Buyer may decide not to shortlist 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 Registration that can be delivered separately, unless the Registration specifically states that the Registration, or the relevant elements, must be taken collectively.

## 4.21 New Zealand law

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

## 4.22 Disclaimer

- a. Nothing contained or implied in the ROI, or ROI 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 ROI process, whether as a result of the Buyer exercising its rights under Section 4.20, the Buyer's negligence or



breach of these ROI 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 ROI 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 ROI.
- 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.

## 4.23 Precedence

- a. Any conflict or inconsistency in the ROI shall be resolved by giving precedence in the following descending order:
  - i. Section 1 of the ROI
  - ii. these ROI-Terms
  - iii. all other Sections of the ROI 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 ROI 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 ROI. An Advance Notice alerts the market to a contract opportunity. Where used, an Advance Notice forms part of the ROI.
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 ROI 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 ROI 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 ROI 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 ROI 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 ROI 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 ROI.
Deadline for Registrations	The deadline for delivering or submitting Registrations to the Buyer as stated in Section 1 of the ROI.
Deadline for Questions	The deadline for submitting questions to the Buyer as stated in Section 1 of the ROI.
Evaluation Approach	The approach used by the Buyer to evaluate Registrations as described in Section 3 of the ROI.
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.
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 ROI process. The Buyer's Point of Contact is identified in Section 1 of the ROI. The Respondent's Point of Contact is identified in its Registration.
Registration	The response a Respondent submits in reply to the ROI. It comprises the ROI Response Form, and all other information submitted by a Respondent.
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.
Call for Registrations (ROI)	The ROI comprises the Advance Notice (where used), the Call for Registrations of Interest (where used), the ROI document (including the ROI-Terms) and any other schedule, appendix or document attached to the ROI, 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 ROI.
Respondent	A person, company or organisation that submits a Registration in response to the ROI. The term Respondent includes each member of any consortium.
ROI Response Form	The form and declaration prescribed by the Buyer and used by a Respondent to respond to the ROI, duly completed and submitted by a Respondent as part of the Registration.
ROI-Terms	Means the ROI Terms as set out in Section 6 of the ROI, together with any additions or amendments to those ROI Terms specifically identified in Section 1 of the ROI.
Successful Respondent	Following the evaluation of Registrations and successful negotiations, any Respondent who is awarded a Contract to deliver all or part of the Requirements.

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