

# Dunedin City Council

## Request for Proposal



### Micromobility Operators – Permit to Operate 9551

Tender released: 13 May 2021  
Deadline for Questions: 4pm on 21 May 2021  
Deadline for Tenders: 4pm on 31 May 2021

Dunedin City Council  
50 The Octagon  
Dunedin, 9016

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## THIS OPPORTUNITY IN A NUTSHELL

From 1 January 2021, rental share scheme operators (operators) require a permit to operate in Dunedin under the Trading in Public Places Bylaw (the Bylaw).

As advised in the recent (December 2020) Register of Interest (RoI) process; the Dunedin City Council (DCC) wants to partner with **one** micromobility (e-scooter) rental scheme operator to provide safe, efficient and sustainable e-scooter rental scheme for Dunedin from 1 July 2021.

## What we need

This Request for Proposal (RFP) is inviting e-scooter rental scheme operators that responded to the RoI to apply for the opportunity to be granted the **sole** permit to operate an e-scooter rental scheme in Dunedin for the duration of the contract.

The DCC will evaluate proposals and permit only one operator to operate in Dunedin with up to 500 e-scooters within specified operating hours.

It is proposed that fees will be applied to the operator permit, indicatively (GST exclusive) a \$500 administration fee charged annually and a 13 cent per ride fee charged monthly. The proposed fees are subject to approval by the Council, circa 1 July 2021.

## What we don't want

We are not interested in responses from operators that:

- mirrors responses already provided in response to the RoI,
- propose a continuation of the joint operating scheme currently in operation, or
- stipulate a change in the proposed fees.

## What's important to us

The safety of our community is paramount. Interested operators must clearly show their continued commitment to operating a safe e-scooter rental scheme, including engaging with their customers and the community to provide excellent customer service as well as creating pathways for the operator and the community to work together in improving the safety of Dunedin streets.

## Why you should bid

Interested operators will **not** be able to operate in Dunedin without the required permit.

This is your opportunity to obtain a permit to comply with the Bylaw and operate as the sole provider of an e-scooter rental scheme in Dunedin.

### A bit about us

The DCC is the local authority for the wider Dunedin area, which covers 3,340 square kilometres from north of Waikouaiti to the Taieri River in the South and inland to Hyde.

Infrastructure development, improvement, maintenance and renewal plays a key role in making Dunedin a sustainable, resilient city that supports a prosperous and diverse economy.

The DCC provides a range of facilities, including playgrounds, reserves, pools, libraries, an art gallery museum an internationally recognised botanic garden and the only authentic Chinese Scholar's Garden in the southern hemisphere. In addition to these facilities, the DCC owns a number of investment and social housing properties.

Dunedin is a liveable city, with a strong network of accessible and connected communities.

Dunedin has recently been officially designated as a medium-growth city, recognising our continued growth over recent years.

In addition to major Dunedin developments such as the hospital re-build; the DCC is embarking on its most ambitious programme of new capital projects which will transform Dunedin and contribute to the vision of Dunedin being "one of the world's great small cities".

## SECTION 1: KEY INFORMATION

### Context

- a) This Request for Proposal (RFP) is an invitation to suitably qualified suppliers to submit a Proposal for the 9551- Micromobility Operators - Permit to operate contract opportunity.
- b) This RFP is the second step in a two-step procurement process.
- c) Words and phrases that have a special meaning are shown by the use of capitals e.g. Respondent, which means '*a person, organisation, business or other entity that submits a Proposal in response to the RFP. The term Respondent includes its officers, employees, contractors, consultants, agents and representatives. The term Respondent differs from a supplier, which is any other business in the market place that does not submit a Proposal*'. Definitions are at the end of [Section 5](#).

### Our timeline

- a) Here is our timeline for this RFP.

#### Steps in RFP process:

#### Date:

Deadline for Questions from suppliers:

21 May 2021

Deadline for the Buyer to answer suppliers' questions:

26 May 2021

#### Deadline for Proposals:

**4pm on 31 May 2021**

Unsuccessful Respondents notified of award of Contract:

week starting 14 June 2021

Respondents' debriefs:

week starting 14 June 2021

Anticipated Contract start date:

1 July 2021

- b) All dates and times are dates and times in New Zealand.

### How to contact us

- a) All enquiries must be directed through GETS. We will manage all external communications through GETS.
- b) **Our Point of Contact**  
**Name:** Natalie Royle  
**Title/role:** Procurement Advisor

### Developing and submitting your Proposal

- a) This is an invited competitive tender process. The RFP sets out the step-by-step process and conditions that apply.
- b) Take time to read and understand the RFP. In particular:
  - i develop a strong understanding of our Requirements detailed in [Section 2](#).
  - ii in structuring your Proposal consider how it will be evaluated. [Section 3](#) describes our Evaluation Approach.
- c) For helpful hints on tendering and access to a supplier resource centre go to: [www.procurement.govt.nz / for suppliers](http://www.procurement.govt.nz/for-suppliers).
- d) If anything is unclear or you have a question, ask us to explain. Please do so before the Deadline for Questions, via GETS.
- e) In submitting your Proposal, you must use the Response Form provided on GETS. This is a Microsoft Word document that you can download.

- f) You must also complete and sign the [declaration](#) at the end of the Response Form.
- g) You must not make any changes to the format of the pricing template beyond completing the pricing and any other information requested.
- h) You must submit your proposal through GETS, only proposals submitted through GETS will be considered.
- i) Check you have provided all information requested, and in the format and order asked for. Having done the work don't be late – please submit your Proposal through GETS before the [Deadline](#) for Proposals!

#### Address for submitting your Proposal

- a) Proposals must be submitted via GETS.
- b) Proposals sent by post or fax, or hard copy delivered to our office, will not be accepted.

#### Our RFP Process, Terms and Conditions

- a) **Offer Validity Period:** In submitting a Proposal the Respondent agrees that their offer will remain open for acceptance by the Buyer for three calendar months from the Deadline for Proposals.
- b) The RFP is subject to the RFP Process, Terms and Conditions (shortened to RFP-Terms) described in [Section 5](#). For DCC purposes, we have made the following variation/s to the RFP-Terms:
  - 6.13 Buyer's Point of Contact – paragraph (e)
  - 6.16 Anti-collusion and bid rigging – paragraph (a, b, c)
  - 6.20 Joint Ventures or Consortia ("Joint Proposal") (a)
  - 6.21 Respondents to inform themselves (a)
  - 6.23 No binding legal relations (d, e)
  - 6.25 Attempts to influence RFP outcome (a)
  - 6.26 Buyer's additional rights (b: v, vii, xi, xii, xiv, xv)
  - 6.28 Disclaimer (b).

#### Later changes to the RFP or RFP process

- a) If, after publishing the RFP, we need to change anything about the RFP, or RFP process, or want to provide suppliers with additional information we will let all suppliers know by placing a notice on GETS <https://www.gets.govt.nz>
- b) If you downloaded the RFP from GETS you will automatically be sent notifications of any changes through GETS by email.

## SECTION 2: OUR REQUIREMENTS

### 2.1 Background and purpose

Under the Bylaw, from 1 January 2021 rental share scheme operators require a permit to operate in Dunedin.

In December 2020 a temporary permit was awarded to two e-scooter rental scheme operators to operate up to 250 e-scooters (per provider) in the Dunedin area, without incurring DCC fees or charges, to 30 June 2021.

We are now looking to partner with **one** e-scooter rental scheme operator to operate up to 500 scooters from 1 July 2021.

### 2.2 What we require:

In operating a safe, efficient and sustainable e-scooter rental share scheme we require the permitted operator to:

- Adhere to the Trading in Public Places Bylaw and Code of Practice for Rental Scheme Operators.
- Operate a maximum of 500 e-scooters on Dunedin streets at any one time.
- Adhere to specified hours of operation; 5am to 11pm daily and ensure e-scooters are disabled or removed from Dunedin streets outside of these hours.
- Provide correct data to the DCC through a robust reporting framework to enable accurate monthly invoicing of fees.
- Provide excellent customer service and communication with the DCC and other stakeholders.
- Pro-actively engage with the DCC and the Dunedin community on e-scooter safety concerns and benefit the community through their rental scheme.
- Be responsive to customer complaints or safety issues. E.g. toppled e-scooters.

### 2.3 Contract term

We anticipate that the Contract will commence 1 July 2021. The anticipated Contract term and options to extend are:

Description	Years
Initial term of the Contract	Two years
Options to extend the Contract	Up to one (1) extension of one (1) year (i.e. 2+1)
Maximum term of the Contract	Three years

### 2.4 Key outcomes

The following are the key outcomes that are to be delivered.

Description	Indicative date for delivery
Deliver a safe, efficient, responsive and sustainable rental scheme	Ongoing from commencement
Provide accurate reporting to enable precise charging of fees	Ongoing from commencement

## 2.5 Other tender documents

In addition to this RFP we refer to the following documents. These have been uploaded on GETS and are available for all interested suppliers. These documents form part of this RFP.

- a) RPF Response Form
- b) Trading in Public Places Bylaw
- c) Code of Practice for rental scheme operators
- d) Draft e-scooter rental scheme agreement and permit



## SECTION 3: OUR EVALUATION APPROACH

### 3.1 Evaluation model

The evaluation model that will be used is weighted attribute (weighted criteria).

Price is not a weighted criterion.

This means that Proposals that are capable of full delivery on time will be shortlisted by score and an overall assessment of best value-for-money over the whole-of-life of the Contract.

### 3.2 Evaluation criteria

Proposals will be evaluated on their merits according to the following evaluation criteria and weightings.

Note: Failure to answer minimum standard questions or supply supporting information required may preclude the response from further consideration.

Criterion	Weighting
<b>Stakeholder Engagement and Communication</b>	<b>50%</b>
<b>Minimum Standard:</b> Respondents must:	
<ul style="list-style-type: none"> <li>■ Demonstrate how they have managed stakeholder engagement since 1 January 2021, including information on: <ul style="list-style-type: none"> <li>- Number of complaints or queries received and actual response timeframes.</li> <li>- Actual timeframes for correcting toppled e-scooters.</li> <li>- Meetings held with community organisations.</li> <li>- Customer communication and education on safety (including safe use and maintaining pedestrian access in public places).</li> </ul> </li> <li>■ Provide any plans for improving any areas of customer service and communication for the proposed contract.</li> </ul>	
<b>Note:</b> In scoring this section, the evaluators will place high value on:	
<ul style="list-style-type: none"> <li>■ Evidence of a comprehensive and deliverable stakeholder engagement strategy showing a proactive approach to improving customer service with a specified target framework, and examples of where this has been applied elsewhere.</li> </ul>	
<b>Scheme Operation Methodology</b>	<b>40%</b>
<b>Minimum Standard:</b> Respondents must:	
<ul style="list-style-type: none"> <li>■ Describe how they plan to manage their operations as a sole permit holder for e-scooter rental scheme in Dunedin, including information on: <ul style="list-style-type: none"> <li>- Number of e-scooters that will be in operation at any one time (minimum and maximum).</li> <li>- Safety promotion.</li> <li>- Customer pricing structures.</li> <li>- Timeframe for bringing in additional e-scooters and the types of e-scooters that will be used.</li> </ul> </li> </ul>	
<b>Note:</b> In scoring this section, the evaluators will place high value on:	
<ul style="list-style-type: none"> <li>■ Evidence of a compelling high-quality operating strategy.</li> </ul>	

Sustainability	10%
<p><b>Minimum Standard:</b> Respondents must:</p> <ul style="list-style-type: none"> <li>■ Provide evidence of how you have managed waste reduction/minimisation and carbon emission impacts in Dunedin since 1 January 2021.</li> <li>■ Describe waste minimisation and management strategies for the proposed contract, including designing out waste and details of whole-of-life environmental cost for e-scooters and batteries.</li> <li>■ Describe disposal methodology for e-scooters and batteries deployed within the proposed contract, including forecast quantities for the contract.</li> <li>■ Demonstrate experience working with local communities on social projects or incentive programs for e-scooters as a sustainable transport option.</li> <li>■ Demonstrate how as an organisation you ensure or support equality, diversity and inclusion.</li> </ul> <p><b>Note:</b> In scoring this section, the evaluators will place high value on:</p> <ul style="list-style-type: none"> <li>■ Evidence of a comprehensive waste minimisation plan that aligns with DCC's Net Carbon Zero 2030 goal.</li> <li>■ Evidence of living wage accreditation.</li> <li>■ Evidence of comprehensive plans to deliver social projects or incentive programs in Dunedin through the proposed contract.</li> </ul>	
Total weightings	100%

### 3.3 Scoring

The following scoring scale will be used in evaluating Proposals. Scores by individual panel members may be modified through a moderation process across the whole evaluation panel.

Score	Definition
<b>90, 95 or 100</b>	<b>EXCEPTIONAL</b> Significantly exceeds the criterion. Proposal identifies added value, with supporting evidence.
<b>75, 80 or 85</b>	<b>MINOR BENEFITS</b> Exceeds the criterion in some respects and requirements are fully covered in all respects; with supporting evidence.
<b>60, 65 or 70</b>	<b>ACCEPTABLE</b> Meets the criterion in full; requirements are adequately covered; with supporting evidence.
<b>45, 50 or 55</b>	<b>MINOR RESERVATIONS – Adequate</b> Adequately Satisfies the criterion with minor reservations, deficiencies or no supporting evidence.
<b>30, 35 or 40</b>	<b>MAJOR RESERVATIONS – Barely Adequate</b> Significant issues that need to be addressed or little or no supporting evidence.
<b>15, 20 or 25</b>	<b>SERIOUS RESERVATIONS – Not Adequate</b> Does not meet the criterion but suggests potential ability to improve/deliver. Does not comply and/or insufficient information provided to meet the criterion.
<b>0, 5 or 10</b>	<b>UNACCEPTABLE – Total Non-Compliance</b> Does not meet the criterion. Does not comply and/or insufficient information provided to meet the criterion.

Note that this scoring scale will be supplemented by **fact-based definitions FOR EACH ATTRIBUTE** which correspond to the criteria described in Section 3.3 above.

### 3.4 Evaluation process and due diligence

In addition to the above, we may undertake any or all of the following process and due diligence in relation to shortlisted Respondents.

The findings will be considered in the evaluation process.

1. Interview Respondents
2. Request Respondents make a presentation
3. Test products

## SECTION 4: OUR PROPOSED CONTRACT

### 5.1 Proposed Contract

The Proposed Contract that we intend to use for the purchase and delivery of the Requirements is E-Scooter Rental Scheme Agreement.

In submitting your Proposal, you must let us know if you wish to question and/or negotiate any of the terms or conditions in the Proposed Contract or wish to negotiate new terms and/or conditions.

The Response Form contains a section for you to state your position. If you do not state your position you will be deemed to have accepted the terms and conditions in the Proposed Contract in full.

## SECTION 5: RFP PROCESS, TERMS AND CONDITIONS

### Note to suppliers and Respondents

- In managing this procurement, the Buyer will endeavour to act fairly and reasonably in all of its dealings with interested suppliers and Respondents, and to follow due process which is open and transparent.
- This section contains the government's standard RFP Process, Terms and Conditions (shortened to RFP-Terms) which apply to this procurement. Any variation to the RFP-Terms are be recorded in Section 1, [paragraph 1.6](#). Check to see if any changes have been made for this RFP.
- Words and phrases that have a special meaning, are shown using capitals e.g. Respondent, which means '*a person, organisation, business or other entity that submits a Proposal in response to the RFP. The term Respondent includes its officers, employees, contractors, consultants, agents and representatives. The term Respondent differs from a supplier, which is any other business in the market place that does not submit a Proposal.*' [Definitions](#) are at the end of this section.
- If you have any questions about the RFP-Terms please contact our [Point of Contact through GETS](#).

### Standard RFP process

#### Preparing and submitting a proposal

##### 6.1 Preparing a Proposal

- Respondents are to use the Response Form provided and include all information requested by the Buyer in relation to the RFP.
- By submitting a Proposal, the Respondent accepts that it is bound by the RFP Process, Terms and Conditions (RFP-Terms) contained in Section 5 (as varied by Section 1, paragraph 1.6, if applicable).
- Each Respondent will:
  - examine the RFP and any documents referenced in the RFP and any other information provided by the Buyer
  - consider all risks, contingencies and other circumstances relating to the delivery of the Requirements and include adequate provision in its Proposal to manage such risks and contingencies
  - document in its Proposal all assumptions and qualifications made about the delivery of the Requirements, including any assumption that the Buyer or a third party will deliver any aspect of the Requirements or incur any cost related to the delivery of the Requirements
  - ensure that pricing information is quoted in NZ\$ exclusive of GST
  - if appropriate, obtain independent advice before submitting a Proposal
  - satisfy itself as to the correctness and sufficiency of its Proposal, including the proposed pricing and the sustainability of the pricing.
- There is no expectation or obligation for Respondents to submit Proposals in response to the RFP solely to remain on any prequalified or registered supplier list. Any Respondent on such a list will not be penalised for failure to submit a Proposal.

##### 6.2 Offer Validity Period

Proposals are to remain valid and open for acceptance by the Buyer for the Offer Validity Period.

##### 6.3 Respondents' Deadline for Questions

- Each Respondent should satisfy itself as to the interpretation of the RFP. If there is any perceived ambiguity or uncertainty in the RFP document/s Respondents should seek clarification before the Deadline for Questions.
- All requests for clarification must be made to the Buyer's Point of Contact, via GETS. The Buyer will endeavour to respond to requests in a timely manner, but not later than the deadline for the Buyer to answer Respondents' questions in Section 1, paragraph 1.2.a, if applicable.

- c) If the Buyer considers a request to be of sufficient importance to all Respondents it may provide details of the question and answer to other Respondents. In doing so the Buyer may summarise the Respondent's question and will not disclose the Respondent's identity. The question and answer may be posted on GETS and/or emailed to participating Respondents. A Respondent may withdraw a request at any time.
- d) In submitting a request for clarification, a Respondent is to indicate, in its request, any information that is commercially sensitive. The Buyer will not publish such commercially sensitive information. However, the Buyer may modify a request to eliminate such commercially sensitive information and publish this and the answer where the Buyer considers it of general significance to all Respondents. In this case, however, the Respondent will be given an opportunity to withdraw the request or remove the commercially sensitive information.

#### **6.4 Submitting a Proposal**

- a) Each Respondent is responsible for ensuring that its Proposal is received by the Buyer at the correct address on or before the Deadline for Proposals. The Buyer will acknowledge receipt of each Proposal.
- b) The Buyer intends to rely on the Respondent's Proposal and all information provided by the Respondent (e.g. correspondence and negotiations). In submitting a Proposal and communicating with the Buyer each Respondent should check that all information it provides to the Buyer is:
  - c) true, accurate and complete, and not misleading in any material respect
  - d) does not contain Intellectual Property that will breach a third party's rights.
- e) Where the Buyer requires the Proposal to be delivered in hard and soft copies, the Respondent is responsible for ensuring that both the hard and soft copies are identical.
- f) Where the Buyer stipulates a two envelope RFP process the following applies:
  - i each Respondent must ensure that all financial information and pricing components of its Proposal are provided separately from the remainder of its Proposal
  - ii financial information and pricing must be contained in a separate soft copy file the pricing information must be clearly marked 'Financial and Pricing Information.' This is to ensure that the pricing information cannot be viewed when the package containing the other elements of the Proposal is opened.

### **Assessing Proposals**

#### **6.5 Evaluation panel**

- a) The Buyer will convene an evaluation panel comprising members chosen for their relevant expertise and experience. In addition, the Buyer may invite independent advisors to evaluate any Proposal, or any aspect of any Proposal.

#### **6.6 Third party information**

- a) Each Respondent authorises the Buyer to collect additional information, except commercially sensitive pricing information, from any relevant third party (such as a referee or a previous or existing client) and to use that information as part of its evaluation of the Respondent's Proposal.
- b) Each Respondent is to ensure that all referees listed in support of its Proposal agree to provide a reference.
- c) To facilitate discussions between the Buyer and third parties each Respondent waives any confidentiality obligations that would otherwise apply to information held by a third party, with the exception of commercially sensitive pricing information.

#### **6.7 Buyer's clarification**

- a) The Buyer may, at any time, request from any Respondent clarification of its Proposal as well as additional information about any aspect of its Proposal. The Buyer is not required to request the same clarification or information from each Respondent.

- b) The Respondent must provide the clarification or additional information in the format requested. Respondents will endeavour to respond to requests in a timely manner. The Buyer may take such clarification or additional information into account in evaluating the Proposal.
- c) Where a Respondent fails to respond adequately or within a reasonable time to a request for clarification or additional information, the Buyer may cease evaluating the Respondent's Proposal and may eliminate the Proposal from the RFP process.

#### **6.8 Evaluation and shortlisting**

- a) The Buyer will base its initial evaluation on the Proposals submitted in response to the RFP. The Buyer may adjust its evaluation of a Proposal following consideration of any clarification or additional information as described in paragraphs 6.6 and 6.7.
- b) In deciding which Respondent/s to shortlist the Buyer will consider the results of the evaluations of each Proposal and the following additional information:
  - i each Respondent's understanding of the Requirements, capability to fully deliver the Requirements and willingness to meet the terms and conditions of the Proposed Contract
  - ii except where the price is the only criterion, the best value-for-money over the whole-of-life of the goods or services.
  - iii In deciding which Respondent/s, to shortlist the Buyer may consider any of the following additional information:
  - iv the results from reference checks, site visits, product testing and any other due diligence
  - v the ease of contracting with a Respondent based on that Respondent's feedback on the Proposed Contract (where these do not form part of the weighted criteria)
  - vi any matter that materially impacts on the Buyer's trust and confidence in the Respondent
  - vii any other relevant information that the Buyer may have in its possession.
- c) The Buyer will advise Respondents if they have been shortlisted or not. Being shortlisted does not constitute acceptance by the Buyer of the Respondent's Proposal, or imply or create any obligation on the Buyer to enter into negotiations with, or award a Contract for delivery of the Requirements to any shortlisted Respondent/s. At this stage in the RFP process the Buyer will not make public the names of the shortlisted Respondents.

#### **6.9 Negotiations**

- a) The Buyer may invite a Respondent to enter into negotiations with a view to contract. Where the outcome is unsatisfactory the Buyer may discontinue negotiations with a Respondent and may then initiate negotiations with another Respondent.
- b) The Buyer may initiate concurrent negotiations with more than one Respondent. In concurrent negotiations the Buyer will treat each Respondent fairly, and:
  - i prepare a negotiation plan for each negotiation
  - ii advise each Respondent, that it wishes to negotiate with, that concurrent negotiations will be carried out
  - iii hold separate negotiation meetings with each Respondent.
- c) Each Respondent agrees that any legally binding contract entered into between the Successful Respondent and the Buyer will be essentially in the form set out in Section 5, the Proposed Contract.
- d) The Buyer reserves the right to negotiate changes in scope, time, price, quality or any other aspect of the Proposed Contract with a Respondent.

#### **6.10 Respondent's debrief**

- a) At any time after shortlisting Respondents the Buyer will offer all Respondents who have not been shortlisted a debrief. Each Respondent will have 30 Business Days, from the date of offer, to request a debrief. When a Respondent requests a debrief, the Buyer will provide the debrief within 30 Business Days of the date of the request, or of the date the Contract is signed, whichever is later.
- b) The debrief may be provided by letter, email, phone or at a meeting. The debrief will:

- i provide the reasons why the Proposal was or was 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 advantage/s 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 the RFP process.

#### **6.11 Notification of outcome**

- a) At any point after conclusion of negotiations, but no later than 30 Business Days after the date the Contract is signed, the Buyer will inform all unsuccessful Respondents of the name of the Successful Respondent, if any. The Buyer may make public the name of the Successful Respondent and any unsuccessful Respondent. Where applicable, the Buyer will publish a Contract Award Notice on GETS.

#### **6.12 Issues and complaints**

- a) A Respondent may, in good faith, raise with the Buyer any issue or complaint about the RFP, or the RFP process at any time.
- b) The Buyer will consider and respond promptly and impartially to the Respondent's issue or complaint.
- c) Both the Buyer and Respondent agree to act in good faith and use their best endeavours to resolve any issue or complaint that may arise in relation to the RFP.
- d) The fact that a Respondent has raised an issue or complaint is not to be used by the Buyer to unfairly prejudice the Respondent's ongoing participation in the RFP process or future contract opportunities.

#### **Standard RFP Conditions**

##### **6.13 Buyer's Point of Contact**

- a) All enquiries regarding the RFP must be directed by email to the Buyer's Point of Contact and submitted through GETS. Respondents must not directly or indirectly approach any representative of the Buyer, or any other person, to solicit information concerning any aspect of the RFP.
- b) Only the Point of Contact, and any authorised person of the Buyer, are authorised to communicate with Respondents regarding any aspect of the RFP. The Buyer will not be bound by any statement made by any other person.
- c) The Buyer may change the Point of Contact at any time. The Buyer will notify Respondents of any such change. This notification may be posted on GETS.
- d) Where a Respondent has an existing contract with the Buyer then business as usual communications, for the purpose of managing delivery of that contract, will continue using the usual contacts. Respondents must not use business as usual contacts to lobby the Buyer, solicit information or discuss aspects of the RFP.
- e) The Buyer's Point of Contact may be contacted with any questions in relation to this RFP. Unless the question is considered by the Buyer to be "commercial in confidence", responses will be issued to all respondents at the Buyer's discretion. The Buyer will not be bound by any statement, written or verbal, made by any person including the Buyer's Point of Contact unless that statement is subsequently expressly incorporated in the Contract.

##### **6.14 Conflict of Interest**

- a) Each Respondent must complete the Conflict of Interest declaration in the Response Form and must immediately inform the Buyer should a Conflict of Interest arise during the RFP process. A material Conflict of Interest may result in the Respondent being disqualified from participating further in the RFP.



#### **6.15 Ethics**

- a) Respondents must not attempt to influence or provide any form of personal inducement, reward or benefit to any representative of the Buyer in relation to the RFP.
- b) A Respondent who attempts to do anything prohibited by paragraphs 6.13.a. and d. and 6.15.a. may be disqualified from participating further in the RFP process.
- c) The Buyer reserves the right to require additional declarations, or other evidence from a Respondent, or any other person, throughout the RFP process to ensure probity of the RFP process.

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

- a) Respondents acknowledge that they have not and shall not engage in unfair, anti-competitive, deceptive, improper or unethical practices, in particular Respondents must not without the Buyer's prior written consent, consult, communicate or agree with any other Respondents in connection with any Proposal, and shall not make any attempt to influence any other Respondent to submit or not submit a Proposal or to alter the proposed content of that Respondent's Proposal. The Buyer reserves the right, at its discretion, to report suspected unfair, anti-competitive, deceptive, exploitative, improper or unethical practices by Respondents to an appropriate authority and to give that authority all relevant information including Proposals.
- b) Where a Respondent has an existing contract with the Buyer then business as usual communications, for the purpose of managing delivery of that contract, will continue using the usual contacts. Respondents must not use business as usual contacts to lobby the Buyer, solicit information or discuss aspects of this RFP process.
- c) The Buyer reserves the right, at its discretion, to report suspected collusive or anti-competitive conduct by Respondents to the appropriate authority and to give that authority all relevant information including a Respondent's Proposal.

#### **6.17 Confidential Information**

- a) The Buyer and Respondent will each take reasonable steps to protect Confidential Information and, subject to paragraph 6.17.c. and without limiting any confidentiality undertaking agreed between them, will not disclose Confidential Information to a third party without the other's prior written consent.
- b) The Buyer and Respondent may each disclose Confidential Information to any person who is directly involved in the RFP process on its behalf, such as officers, employees, consultants, contractors, professional advisors, evaluation panel members, partners, principals or directors, but only for the purpose of participating in the RFP.
- c) Respondents acknowledge that the Buyer's obligations under paragraph 6.17.a. are subject to requirements imposed by the Official Information Act 1982 (OIA), the Privacy Act 1993, parliamentary and constitutional convention and any other obligations imposed by law. The Buyer will not be in breach of its obligations if Confidential Information is disclosed by the Buyer to the appropriate authority because of suspected collusive or anti-competitive tendering behaviour. 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.

#### **6.18 Confidentiality of RFP information**

- a) For the duration of the RFP, to the date of the announcement of the Successful Respondent, or the end of the RFP process, the Respondent agrees to keep the RFP strictly confidential and not make any public statement to any third party in relation to any aspect of the RFP, the RFP process or the award of any Contract without the Buyer's prior written consent.
- b) A Respondent may disclose RFP information to any person described in paragraph 6.17.b. but only for the purpose of participating in the RFP. The Respondent must take reasonable steps to ensure that such recipients do not disclose Confidential Information to any other person or use Confidential Information for any purpose other than responding to the RFP.

#### **6.19 Costs of participating in the RFP process**

- a) Each Respondent will meet its own costs associated with the preparation and presentation of its Proposal and any negotiations.

#### **6.20 Joint Ventures or Consortia ("Joint Proposal")**

- a) Proposals may be submitted by joint ventures or consortia ("Joint Proposal"). All parties to a Joint Proposal will be jointly and severally liable to discharge the duties, obligations and responsibilities under the awarded Contract. One of the participants to the Joint Proposal must be identified as the contact point for all communications with the Buyer relating to the Joint Proposal.

#### **6.21 Respondents to inform themselves**

- a) Each Respondent shall be deemed to have inspected the sites, examined all documents and any other information supplied by the Buyer in relation to the RFP, undertaken all reasonable and practicable investigations and measurements, familiarised itself with the requirements of all relevant authorities, and to have satisfied itself as far as is practicable for an experienced supplier before tendering as to the correctness and sufficiency of its Proposal for the Services and of the prices stated in its Proposal.

#### **6.22 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. The Buyer may request the immediate return or destruction of any or all RFP documents and any copies. Respondents must comply with any such request in a timely manner.
- b) All documents forming the Proposal will, when delivered to the Buyer, become the property of the Buyer. Proposals will not be returned to Respondents at the end of the RFP process.
- c) Ownership of Intellectual Property rights in the Proposal remain the property of the Respondent or its licensors. However, the Respondent grants to the Buyer a non-exclusive, non-transferable, perpetual licence to retain, use, copy and disclose information contained in the Proposal for any purpose related to the RFP process.

#### **6.23 No binding legal relations**

- a) Neither the RFP, nor the RFP process, creates a process contract or any legal relationship between the Buyer and any Respondent, except in respect of:
  - i the Respondent's declaration in its Proposal
  - ii the Offer Validity Period
  - iii the Respondent's statements, representations and/or warranties in its Proposal and in its correspondence and negotiations with the Buyer
  - iv the Evaluation Approach to be used by the Buyer to assess Proposals as set out in Section 3 and in the RFP-Terms (as varied by Section 1, paragraph 1.6, if applicable)
  - v the standard RFP conditions set out in paragraphs 6.13 to 6.26
  - vi any other matters expressly described as binding obligations in Section 1, paragraph 1.6.
- b) Each exception in paragraph 6.21.a. is subject only to the Buyer's reserved rights in paragraph 6.23.
- c) Except for the legal obligations set out in paragraph 6.21.a. no legal relationship is formed between the Buyer and any Respondent unless and until a Contract is entered into between those parties.
- d) If a Respondent is selected as 'preferred Respondent' then such selection does not constitute an acceptance by the Buyer of the Respondent's Proposal or imply or create any obligation on the Buyer to award the Contract to that Respondent.
- e) The Buyer may, at any time without being liable to the preferred Respondent, cease discussions with any preferred Respondent and not award the Contract to that party.

#### **6.24 Elimination**

- a) The Buyer may exclude a Respondent from participating in the RFP if the Buyer has evidence of any of the following, and is considered by the Buyer to be material to the RFP:

- i the Respondent has failed to provide all information requested, or in the correct format, or materially breached a term or condition of the RFP
- ii the Proposal contains a material error, omission or inaccuracy
- iii the Respondent is in bankruptcy, receivership or liquidation
- iv the Respondent has made a false declaration
- v there is a serious performance issue in a historic or current contract delivered by the Respondent
- vi the Respondent has been convicted of a serious crime or offence
- vii there is professional misconduct or an act or omission on the part of the Respondent which adversely reflects on the integrity of the Respondent
- viii the Respondent has failed to pay taxes, duties or other levies
- ix the Respondent represents a threat to national security or the confidentiality of sensitive government information the Respondent is a person or organisation designated as a terrorist by New Zealand Police.

#### **6.25 Attempts to influence RFP outcome**

- a) Any attempt made by a Respondent to influence the outcome of the RFP process by canvassing, lobbying or otherwise seeking support of DCC officers or advisors, evaluation team members, Probity Auditor or elected representatives of DCC shall be deemed valid grounds for the exclusion of that Proposal from the evaluation process.

#### **6.26 Buyer's additional rights**

- a) Despite any other provision in the RFP the Buyer may, on giving due notice to Respondents:
  - i amend, suspend, cancel and/or re-issue the RFP, or any part of the RFP
  - ii make any material change to the RFP (including any change to the timeline, Requirements or Evaluation Approach) on the condition that Respondents are given a reasonable time within which to respond to the change.
  - iii Despite any other provision in the RFP the Buyer may:
  - iv accept a late Proposal if it is the Buyer's fault that it is received late
  - v in exceptional circumstances, accept a late Proposal where it considers that there is no material prejudice to other Respondents. The Buyer will not accept a late Proposal if it considers that there is risk of collusion on the part of a Respondent, or the Respondent may have knowledge of the content of any other Proposal
  - vi in exceptional circumstances, answer a question submitted after the Deadline for Questions, if applicable
  - vii accept or reject any Proposal, or part of a Proposal
  - viii accept or reject any non-compliant, non-conforming or alternative Proposal
  - ix accept any Proposal, notwithstanding that any other Proposal may propose a lower cost method of achieving the Buyer's obligations
  - x decide not to enter into a Contract with any Respondent
  - xi liaise or negotiate with any Respondent without disclosing this to, or doing the same with, any other Respondent
  - xii provide or withhold from any Respondent information in relation to any question arising in relation to the RFP. Information will usually only be withheld if it is deemed unnecessary, is commercially sensitive to a Respondent, is inappropriate to supply at the time of the request or cannot be released for legal reasons
  - xiii amend the Proposed Contract at any time, including during negotiations with a shortlisted Respondent
  - xiv enter into discussions and/or negotiations with any one or more Respondent(s) relating to the matters dealt with in the RFP
  - xv re-advertise for additional Proposals
  - xvi waive irregularities or requirements in or during the RFP process where it considers it appropriate and reasonable to do so.

- xvii take any combination of the above actions; and/or
- xviii suspend or cancel all or part of this RFP process at any time.
- xix The Buyer may request that a Respondent/s agrees to the Buyer:
- xx selecting any individual element/s of the Requirements that is offered in a Proposal and capable of being delivered separately, unless the Proposal specifically states that the Proposal, or elements of the Proposal, are to be taken collectively selecting two or more Respondents to deliver the Requirements as a joint venture or consortium.

#### **6.27 New Zealand law**

- a) The laws of New Zealand shall govern the RFP and each Respondent agrees to submit to the exclusive jurisdiction of the New Zealand courts in respect of any dispute concerning the RFP or the RFP process.

#### **6.28 Disclaimer**

- a) The Buyer will not be liable in contract, tort, equity, or in any other way whatsoever for any direct or indirect damage, loss or cost incurred by any Respondent or any other person in respect of the RFP process.
- b) Any information whatsoever provided by or on behalf of the Buyer to Respondents in relation to this RFP has been provided to assist Respondents in preparing Proposals and understanding the scope and nature of Services to be supplied under the Contract. Whilst the Buyer seeks to ensure that such information is accurate, the Buyer makes no warranty, whether expressed or implied, as to the completeness, correctness or accuracy of such information. The Respondent is to make its own enquires as it considers necessary before relying on any information provided by the Buyer and before submitting its Proposal.
- c) Nothing contained or implied in the RFP, or RFP process, or any other communication by the Buyer to any Respondent shall be construed as legal, financial or other advice. The Buyer has endeavoured to ensure the integrity of such information. However, it has not been independently verified and may not be updated.
- d) To the extent that liability cannot be excluded, the maximum aggregate liability of the Buyer, its agents and advisors is \$1.

#### **6.29 Precedence**

- a) Any conflict or inconsistency in the RFP shall be resolved by giving precedence in the following descending order:
  - i Section 1, paragraph 1.6
  - ii Section 5 (RFP-Terms)
  - iii all other Sections of this 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 later information or document will prevail.

## DEFINITIONS

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

<b>Advance Notice</b>	A notice published by the buyer on GETS in advance of publishing the RFP. An Advance Notice alerts the market to a potential contract opportunity. Where used, an Advance Notice forms part of the RFP.
<b>Business Day</b>	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.
<b>Buyer</b>	The Buyer is the Dunedin City Council which has issued the RFP with the intent of purchasing the goods or services described in the Requirements. The term Buyer includes its officers, employees, contractors, consultants, agents and representatives.
<b>Competitors</b>	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.
<b>Confidential Information</b>	Information that: a) is by its nature confidential b) is marked by either the Buyer or a Respondent as 'confidential', 'commercially sensitive', 'sensitive', 'in confidence', 'top secret', 'secret', 'classified' and/or 'restricted' c) is provided by the Buyer, a Respondent, or a third party in confidence d) the Buyer or a Respondent knows, or ought to know, is confidential. Confidential information does not cover information that is in the public domain through no fault of either the Buyer or a Respondent.
<b>Conflict of Interest</b>	A Conflict of Interest arises if a Respondent's personal or business interests or obligations do, could, or be perceived to, conflict with its obligations to the Buyer under the RFP or in the provision of the goods or services. It means that the Respondent's independence, objectivity or impartiality can be called into question. A Conflict of Interest may be: a) actual: where the conflict currently exists b) potential: where the conflict is about to happen or could happen, or c) perceived: where other people may reasonably think that a person is compromised.
<b>Contract</b>	The written Contract/s entered into by the Buyer and Successful Respondent/s for the delivery of the Requirements.
<b>Contract Award Notice</b>	Government Rules of Sourcing, Rule 45 requires a Buyer to publish a Contract Award Notice on GETS when it has awarded a contract that is subject to the Rules.
<b>Deadline for Proposals</b>	The deadline that Proposals are to be delivered or submitted to the Buyer as stated in Section 1, paragraph 1.2.
<b>Deadline for Questions</b>	The deadline for suppliers to submit questions to the Buyer as stated in Section 1, paragraph 1.2, if applicable.
<b>Evaluation Approach</b>	The approach used by the Buyer to evaluate Proposals as described in Section 3 and in Section 5 (as varied by Section 1, paragraph 1.6, if applicable).
<b>GST</b>	The goods and services tax payable in accordance with the New Zealand Goods and Services Tax Act 1985.

<b>Intellectual Property</b>	All intellectual property rights and interests, including copyright, trademarks, designs, patents and other proprietary rights, recognised or protected by law.
<b>Offer Validity Period</b>	The period of time when a Proposal (offer) is held open by the Respondent for acceptance by the Buyer as stated in Section 1, paragraph 1.6.
<b>Point of Contact</b>	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, paragraph 1.3. The Respondent's Point of Contact is identified in its Proposal.
<b>Price</b>	The total amount, including all costs, fees, expenses and charges, to be charged by the Successful Respondent for the full delivery of the Requirements. Each Respondent's Proposal must include its Price.
<b>Proposal</b>	The response a Respondent submits in reply to the RFP. It comprises the Response Form, the Respondent's bid, financial and pricing information and all other information submitted by a Respondent.
<b>Proposed Contract</b>	The Contract terms and conditions proposed by the Buyer for the delivery of the Requirements as described in Section 5.
<b>RFP</b>	Means the Request for Proposal.
<b>Registration of Interest</b>	A formal request by a Buyer asking potential suppliers to register their interest in a procurement. It is the first step in a multi-step tender process.
<b>Request for Proposal (RFP)</b>	The RFP comprises the Advance Notice (where used), the Registration of Interest (where used), this RFP document (including the RFP-Terms) and any other schedule, appendix or document attached to this RFP, and any subsequent information provided by the Buyer to Respondents through the Buyer's Point of Contact or GETS.
<b>RFP-Terms</b>	Means the Request for Proposal - Process, Terms and Conditions as described in Section 5.
<b>RFP Process, Terms and Conditions (shortened to RFP-Terms)</b>	The government's standard process, terms and conditions that apply to RFPs as described in Section 5. These may be varied at the time of the release of the RFP by the Buyer in Section 1, paragraph 1.6. These may be varied subsequent to the release of the RFP by the Buyer on giving notice to Respondents.
<b>Requirements</b>	The goods and/or services described in Section 2 which the Buyer intends to purchase.
<b>Respondent</b>	A person, organisation, business or other entity that submits a Proposal in response to the RFP. The term Respondent includes its officers, employees, contractors, consultants, agents and representatives. The term Respondent differs from a supplier, which is any other business in the market place that does not submit a Proposal.
<b>Response Form</b>	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.
<b>Successful Respondent</b>	Following the evaluation of Proposals and successful negotiations, the Respondent/s who is awarded a Contract/s to deliver all or part of the Requirements.
<b>GETS</b>	Government Electronic Tenders Service page available at <a href="https://www.gets.govt.nz">https://www.gets.govt.nz</a>