

## **RFx Process Terms and Conditions**

### **(Conditions of Tendering)**

#### **1. Interpretation**

- a. These RFx Process Terms and Conditions are the process terms and conditions apply to all DCC or DCC related RFx
- b. For Contract Works, the provisions of clause 1 of NZS 3910:2013 (as amended by the Special Conditions of Contract) shall apply to this RFx Process Terms and Conditions.
- c. For the avoidance of doubt for Contract Works, the terms and conditions set out in these RFx Process Terms and Conditions override the conditions of Tendering section of the NZS 3910:2013 (in its entirety).

#### **2. Principal's Point of Contact**

- a. All enquiries regarding the RFx must be directed to the Principal's Point of Contact either through the GETS question/answer function for ROI, RFT or RFP or, for RFQ; via the email address detailed in the RFQ. Tenderers must not directly or indirectly approach any representative of the Principal, or any other person to solicit information concerning any aspect of the RFx.
- b. Only the Point of Contact is authorised to communicate with Tenderers regarding any aspect of the RFx. The Principal will not be bound by any statement made by any person, including the Point of Contact, unless that statement is subsequently expressly incorporated in the Contract.
- c. The Principal may change the Point of Contact at any time. The Principal will notify Tenderers of any such change. This notification may be posted on GETS or sent by email.

#### **3. Deadline for Questions**

- a. Each Tenderer should satisfy itself as to the interpretation of the RFx. If there is any perceived ambiguity or uncertainty in the RFx documents, Tenderers should seek clarification before the Deadline for Questions.
- b. All requests for clarification must be made either:
  - i. ROI/RFT/RFP: through the GETS question/answer function ([www.gets.govt.nz](http://www.gets.govt.nz))
  - ii. RFQ: via the email address detailed in the RFQ.
- c. If the Principal considers a request to be of sufficient importance to all Tenderers, it may provide details of the question and answer to other Tenderers. In doing so the Principal may summarise the Tenderer's question and will not disclose the Tenderer's identity. The question and answer may be posted on GETS and/or emailed to participating Tenderers. A Tenderer may withdraw a request for clarification at any time.
- d. In submitting a request for clarification, a Tenderer is to indicate, in its request, any information that is commercially sensitive. The Principal may modify a request to eliminate such commercially sensitive information and publish this and the answer where the Principal considers it of general significance to all Tenderers. In this case, however, the Tenderer will be given an opportunity to withdraw the request or remove the commercially sensitive information.

#### **4. Confidential Information**

- a. The Principal and Tenderer will each take reasonable steps to protect Confidential Information and, subject to 4.4.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 Principal and Tenderer may each disclose Confidential Information to any person who is directly involved in the RFx 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 RFx.
- c. Tenderers acknowledge that the Principal's obligations under paragraph 4.4.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 Principal will not be in breach of its obligations if Confidential Information is disclosed by the Principal to the appropriate authority because of suspected collusive or anti-competitive Tendering behaviour. Where the Principal receives an OIA request that relates to a Tenderer's Confidential Information the Principal will consult with the Tenderer and may ask the Tenderer to explain why the information is considered by the Tenderer to be confidential or commercially sensitive.
- d. The Principal may, at its discretion request any Tenderer to sign a confidentiality deed before releasing any confidential or commercially sensitive information to the Tenderer.

## 5. Information from Principal

Any information provided by the Principal to Tenderers has been provided to assist Tenderers in preparing the Tender and in carrying out the Contract Works. The Principal does not represent or warrant the completeness or accuracy of such information. Tenderers shall rely on the information provided by the Principal at their own risk and are responsible for the interpretation of the information.

## 6. Preparing a Tender

- a. Tenders shall be prepared in the form required by the Form of Tender and include all information requested by the Principal in relation to the RFx.
- b. Each Tenderer will be deemed to have inspected the Site (when required), examined the documents issued with the RFx and any other information supplied in writing, 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 reasonably practicable for an experienced contractor before Tendering as to the correctness and sufficiency of its Tender for the Contract Works and the prices stated in its Tender.
- c. Tenderers who wish to respond to this RFx shall:
  - i. examine the RFx and any documents referenced in the RFx and any other information provided by the Principal;
  - ii. consider all risks, contingencies and other circumstances relating to the delivery of the Contract Works and include adequate provision in its Tender to manage such risks and contingencies;
  - iii. document in the Form of Tender all assumptions and qualifications made about carrying out the Contract Works, including any assumption that the Principal or a third party will deliver any aspect of the Contract Works or incur any cost related to the delivery of the Contract Works;
  - iv. ensure that pricing information is quoted in NZ\$ exclusive of GST;
  - v. satisfy itself as to the correctness and sufficiency of its Tender, including the Tendered Contract Price and the sustainability of the pricing making up the Tendered Contract Price; and
  - vi. inspect the Site when required in the presence of the Principal's nominated representative.
- d. There is no expectation or obligation for Tenderers to submit Tenders in response to the RFx solely to remain on any prequalified or registered supplier list.

## 7. Alternative, tagged and other non-conforming Tenders

- a. The Principal reserves the right to consider any alternative Tenders which fulfil the Principal's requirements. Alternative Tenders must be submitted as a separate Tender clearly identified as an alternative Tender. Tenderers may be required during the Tender evaluation period to submit additional information to facilitate the evaluation of the alternative.

Tenders submitted subject to Tags, may be considered as non-conforming Tenders. In respect of any Tags, the Principal may at its sole discretion:

- i. Evaluate or reject such Tenders;
  - ii. Assign a price premium to any Tag;
  - iii. request that the Tenderer withdraws or revises any Tag without any adjustment to the Tendered price;
  - iv. request that the Tenderer withdraws or revises any Tag with adjustment to the Tendered price, provided that the adjustment is for an amount that would have been reasonably expected if the Tender had been submitted without that Tag.
- b. All Tags must be detailed in the Tender. Any statement(s) in a Tender that has the general effect of being a Tag will not be considered as such if it has not been detailed as such in the Tender.
- c. The Principal will not be bound by any Tag unless such Tag has been:
- d. detailed in the Tender; and expressly agreed by the Principal and incorporated in the Contract other than in the Contractor's Tender.

## 8. Submitting a Tender

- a. Each Tenderer is responsible for ensuring that its Tender is submitted (uploaded to GETS or emailed to the email address detailed in the RFQ) before the Deadline for Tenders. Tenderers that submit a Tender through GETS will receive an automatically generated email acknowledgement of its receipt.
- b. The Principal intends to rely on the Tender and all information provided by the Tenderer in respect of this RFx (e.g. correspondence and negotiations). In submitting a Tender and communicating with the Principal, each Tenderer should check that all information it provides is:
  - i. true, accurate and complete, and not misleading in any material respect; and
  - ii. does not contain Intellectual Property that will breach a third party's rights.
- c. The Principal only allows Tenders to be delivered in soft copy format.
- d. Where the Principal stipulates an electronic two file RFx process, the following applies:
  - i. the Tenderer must ensure that all financial information and pricing components of its Tender are provided separately in a clearly marked file; and
  - ii. pricing information must be clearly marked to ensure that no pricing information can be viewed when Non-price tender/response is opened.
- e. Tenderers must include prices, rates and percentages as detailed in the Form of Tender. Items against which no rate, price or percentage are entered by the Tenderer will not be paid for by the Principal when the Contract is carried out and shall be deemed covered by other rates and prices detailed in the Tender.
- f. Unless otherwise provided in the Form of Tender, rates and prices detailed in the Form of Tender shall be deemed to be fully inclusive of all allowances for On-site Overheads and Off-site Overheads and Profit.

## 9. Third party information

- a. Each Tenderer authorises the Principal to collect additional information from any relevant third party (such as a referee or a previous or existing client) and to use that information as part of the RFx evaluation.
- b. Each Tenderer is to ensure that all referees listed in Form of Tender agree to provide a reference.
- c. To facilitate discussions between the Principal and third parties, each Tenderer waives any confidentiality obligations that would otherwise apply to information held by a third party, with the exception of commercially sensitive pricing information.
- d. Where indicated as required in the RFx, a letter from a bank registered in New Zealand (or from an alternative surety approved by the Principal) agreeing to execute a bond in the form and amount, and for the period required by the Conditions of Contract must be submitted with the Tender.

## 10. Conflict of Interest

Each Tenderer must complete the Conflict of Interest Declaration in the RFx Response Form and must immediately inform the Principal should a Conflict of Interest arise during the RFx process. A material Conflict of Interest may result in the Tenderer being disqualified from participating further in the RFx process.

## 11. Ethics

- a. Tenderers must not attempt to influence or provide any form of personal inducement, reward or benefit to any representative of the Principal.
- b. Any Tenderer who attempts to influence the outcome of the RFx may be disqualified from participating further in the RFx process.
- c. The Principal reserves the right to require additional declarations, or other evidence from a Tenderer, or any other person, throughout the RFx process to ensure probity of the RFx process.

## 12. Anti-collusion and bid rigging

- a. Tenderers must not engage in collusive, deceptive or improper conduct in the preparation of their Tenders or other submissions or in any discussions or negotiations with the Principal. Such behaviour will result in the Tenderer being disqualified from participating further in the RFx process. In submitting a Tender, the Tenderer warrants that its Tender has not been prepared in collusion with a competitor.
- b. The Principal reserves the right, at its discretion, to report suspected collusive or anti-competitive conduct to the appropriate authority.

### 13. Evaluation Panel

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

### 14. Principal's clarification

- a. The Principal may, at any time, request from any Tenderer, clarification of its Tender as well as additional information about any aspect of its Tender. The Principal is not required to request the same clarification or information from each Tenderer.
- b. The Tenderer must provide the clarification or additional information in the format requested. Tenderers must endeavour to respond to requests in a timely manner. The Principal may take such clarification or additional information into account in evaluating the Tender.
- c. Where a Tenderer fails to respond adequately or within a reasonable time to a request for clarification or additional information, the Principal may cease evaluating the Tenderer's Tender and may eliminate that Tender from the RFX process.

### 15. Evaluation and selection of preferred Tenderer(s)

- a. The Principal will base its initial evaluation on the Tenders submitted in response to the RFX. The Principal may adjust its evaluation of a Tender following consideration of any clarification or additional information as described in Section 4, under 4.9 and 4.14.
- b. The Principal may make enquiries regarding any Tenderer. The Principal may consider relevant information it has in its possession or obtained from any source in the evaluation of Tenders. The Principal may verify with any third party any information included in the Tender or disclosed to the Principal in connection with the RFX process. The Principal may take into account any matter that materially impacts on the Principal's trust and confidence in the Tenderer.
- c. The Principal will advise Tenderers if they have been selected as preferred or not. Being selected as preferred does not constitute acceptance by the Principal of the Tenderer's Tender or imply or create any obligation on the Principal to enter into negotiations with or award a Contract for the Contract Works to any preferred Tenderer(s). At this stage in the RFX process, the Principal will not make public the names of any preferred Tenderers.

### 16. Negotiation with preferred Tenderer(s)

- a. The Principal may, at any time prior to acceptance of any Tender, negotiate with a preferred Tenderer(s). The Principal may invite a Tenderer to enter into negotiations with a view to finalising contractual arrangements.
- b. The Principal may, at any time without being liable to the preferred Tenderer, cease discussions with, and not award the Contract to that Tenderer.
- c. The Principal may initiate concurrent negotiations with more than one preferred Tenderer.

### 17. Elimination

The Principal may reject (exclude from further evaluation or selection) any Tender where:

- a. The Tenderer has failed to provide all information requested, or in the correct format, or materially breached a term or condition of the RFX.
- b. The Tender contains a material error, omission or inaccuracy.
- c. The Tenderer is in bankruptcy, receivership or liquidation.
- d. The Tenderer has made a false declaration.
- e. There is a serious performance issue in a historic or current contract delivered by the Tenderer.
- f. The Tenderer has been convicted of a serious crime or offence.
- g. There is professional misconduct or an act or omission on the part of the Tenderer which adversely reflects on the integrity of the Tenderer
- h. The Tenderer has offended against the DCC Code of Conduct
- i. The Tenderer has failed to pay taxes, duties or other levies
- j. The Tenderer represents a threat to national security or the confidentiality of sensitive government information
- k. The Tenderer is a person or organisation designated as terrorists by New Zealand Police
- l. There have been human rights violations by the Tenderer or in the Tenderer's supply chain
- m. Any matter arises that materially diminishes the Principal's trust and confidence in the Tenderer.

## 18. Principal's additional rights

- a. Despite any other provision in the RFX, the Principal may, on giving due notice to Tenderers:
  - i. amend, suspend, cancel and/or re-issue the RFX, or any part of the RFX;
  - ii. make any material change to the RFX (including any change to the timeline, Requirements or evaluation approach);
- b. Despite any other provision in the RFX, the Principal may:
  - i. accept a late Tender if it is the Principal's fault that it is received late;
  - ii. in exceptional circumstances, accept a late Tender where it considers that there is no material prejudice to other Tenderers;
  - iii. in exceptional circumstances, answer a question submitted after the Deadline for Questions, if applicable;
  - iv. accept or reject any Tender, or part of a Tender;
  - v. accept or reject any non-compliant, non-conforming or alternative Tender;
  - vi. at any time prior to acceptance of any Tender, withdraw the Proposed Contract from Tender;
  - vii. not accept the lowest priced or highest scoring or any Tender;
  - viii. decide not to enter into a Contract with any Tenderer;
  - ix. liaise or negotiate with any Tenderer without disclosing this to, or doing the same with, any other Tenderer;
  - x. provide or withhold from any Tenderer, information in relation to any question arising in relation to the RFX. Information will usually only be withheld if it is deemed unnecessary, is commercially sensitive to a Tenderer, is inappropriate to supply at the time of the request or cannot be released for legal reasons;
  - xi. amend the Proposed Contract at any time, including during negotiations with a Tenderer;
  - xii. waive irregularities or requirements in or during the RFX process where it considers it appropriate and reasonable to do so.

## 19. Notification of outcome

At any point after conclusion of negotiations, but no later than 30 Working Days after the date the Contract is signed, the Principal will inform all unsuccessful Tenderers of the name of the successful Tenderer (through the DCC's contract register), if any (ROI and RFT only). The Principal may make public the name of the successful Tenderer and any unsuccessful Tenderer(s). Where applicable, the Principal will publish a Contract Award Notice on GETS.

## 20. Tenderer's debrief

- a. Unsuccessful Tenderers will be notified in writing by the Principal. Each Tenderer will have 30 Working Days, from the date of this notification, to request a debrief (RFQ excluded). When a Tenderer requests a debrief, the Principal will provide the debrief within 30 Working Days of the date of the request, or of the date the contract is signed, whichever is later (RFQ excluded).
- b. A debrief may be provided by letter, email, phone or at a meeting. The debrief will:
  - i. provide the reasons why the Tender was or was not successful;
  - ii. explain how the Tender performed against pre-conditions (if applicable) and the evaluation criteria;
  - iii. indicate the Tender's relative strengths and weaknesses;
  - iv. explain, in general terms, the relative advantage(s) of the successful Tender;
  - v. seek to address any concerns or questions from the Tenderer; and
  - vi. seek feedback from the Tenderer on the RFX and the RFX process.

## 21. Issues and complaints

A Tenderer may, in good faith, raise with the Principal any issue or complaint about the RFX, or the RFX process at any time.

## 22. Costs of participating in the RFX process

Each Tenderer will meet its own costs associated with the preparation and presentation of its Tender and any negotiations.

## 23. Joint Ventures or Consortia ("Joint Proposal")

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.

## 24. Ownership of documents

- a. The RFX and its contents remain the property of the Principal. All Intellectual Property rights in the RFX remain the property of the Principal or its licensors. The Principal may request the immediate return or destruction of any or all Tender Documents and any copies. Tenderers shall comply with any such request in a timely manner.
- b. All documents forming the Tender will, when submitted to the Principal, become the property of the Principal. Tenders will not be returned to Tenderers at the end of the RFX process.
- c. Ownership of Intellectual Property rights in the Tender remain the property of the Tenderer or its licensors. However, the Tenderer grants to the Principal a nonexclusive, non-transferable, perpetual licence to retain, use, copy and disclose information contained in the Tender for any purpose related to the RFX process.

## 25. Tender validity period

The Tender Validity Period is stated in the RFX. The Principal and the Tenderer may agree to extend the Tender Validity Period. By submitting a Tender, Tenderers will be deemed to be representing that their Tender remains open for acceptance, and will not be withdrawn, for the duration of the Tender Validity Period.

## 26. No binding legal obligations

- a. No legal or other obligations shall arise between the Tenderer and the Principal in relation to the conduct or outcome of the RFX process unless and until a Contract is entered into between those parties.
- b. The Principal, its agents and advisors will not be liable in contract or in tort or in any other way for direct or indirect damage, loss or cost incurred by any Tenderer or other person in respect of the RFX process.

## 27. Media and Communications

- a. Before releasing any information regarding this RFP to the public or making any public statements (including social media posts) regarding this RFP, the Respondent will consult with the Buyer and will obtain the Buyer's prior written approval to any such release of information or statement.
- b. The Respondent must refer any enquiries from the media or any other person about the terms or performance of this RFP to the Buyer's Point of Contact, with a copy to [comms@oa.dcc.govt.nz](mailto:comms@oa.dcc.govt.nz)
- c. The Respondent does not have the right to enter into any commitment, contract or agreement on behalf of the Buyer, or to make any public statement or comment on behalf of the Buyer.
- d. For the purpose of this clause, any information or statements "regarding this RFP" shall (without limitation) include any discussions, negotiations or agreements relating to or arising from this RFP.

## 26. Glossary

In relation to the RFX, 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 RFT. An Advance Notice alerts the market to a potential contract opportunity. Where used, an Advance Notice forms part of the RFT.
<b>Business Day</b>	Any weekday 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 RFT 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 Tenderer or Respondent either in relation to the goods or services sought under the RFT or in general.
<b>Confidential Information</b>	Information that: <ul style="list-style-type: none"> <li>a. is by its nature confidential</li> <li>b. is marked by either the Principal or a Tenderer as 'confidential', 'commercially sensitive', 'sensitive', 'in confidence', 'top secret', 'secret', classified' and/or 'restricted'</li> <li>c. is provided by the Principal, a Tenderer, or a third party in confidence</li> <li>d. the Principal or a Tenderer knows, or ought to know, is confidential</li> </ul> Confidential Information does not cover information that is in the public domain through no fault of either the Principal or a Tenderer
<b>Conflict of Interest</b>	A situation where the Tenderer's personal or business interests or obligations do, could, or may be perceived to, conflict with its obligations to the Principal under the RFX, or under the Proposed Contract. A Conflict of Interest may be: <ul style="list-style-type: none"> <li>a. actual: where the conflict currently exists;</li> <li>b. potential: where the conflict is about to happen or could happen; or</li> <li>c. perceived: where other people may reasonably believe that a conflict exists</li> </ul>
<b>Contract Award Notice</b>	A Contract Award Notice published on GETS and/or the DCC's contract register.
<b>Deadline for Tenders</b>	The deadline that Tenders are to be delivered or submitted to the Principal as stated in the RFX
<b>Deadline for Questions</b>	The deadline for Tenderers to submit questions to the Principal as stated in the RFX
<b>DCC</b>	Dunedin City Council
<b>Evaluation Approach</b>	The approach used by the Buyer to evaluate Tenders as described in Section 3 of the RFX.
<b>Form of Tender</b>	The form to be used by the Tenderer to respond to the RFX: <ul style="list-style-type: none"> <li>• for an RFQ: the RFQ Response form (unless by Email)</li> <li>• for an ROI: the ROI Response form</li> <li>• for an RFT: the RFT Response form</li> </ul> Note: Includes "RFP Response form"
<b>GETS</b>	Government Electronic Tenders Service ( <a href="http://www.gets.govt.nz">www.gets.govt.nz</a> ).
<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>Key Person/Personnel</b>	Persons specifically nominated by Tenderer to perform key roles identified in the RFX and who will be named in the Contract
<b>Point of Contact</b>	The Principal's Point of Contact is identified in the RFX. The Tenderer's Point of Contact is identified in its Tender
<b>Price</b>	The total amount, including all costs, fees, expenses and charges, to be charged by the Successful Tenderer or Respondent for the full delivery of the Requirements. Each Tender must include its Price.
<b>Principal</b>	The buyer (e.g. The DCC). The party that will be the principal to the contract resulting from the Contract
<b>Proposed Contract</b>	The Contract terms and conditions proposed by the Principal for the carrying out of the Contract Works, as described in the RFX



<b>RFQ</b>	Request for Quote
<b>RFP</b>	Request for Proposal
<b>RFT</b>	Request for Tender
<b>RFx</b>	Generic term for either a RFQ, ROI, RFT or RFP
<b>ROI</b>	Registration of Interest
<b>RFx-Terms</b>	The RFx Process Terms and Conditions as described herein
<b>Supplier</b>	The contractor (Contract Works), business, provider or consultant (professional services) engaged as a result of the procurement to deliver the Requirement
<b>Tag</b>	Anything identified in a Tender that departs from or clarifies items contained in the Tender documents including proposed changes (amendments, additions or exclusions), qualifications, assumptions or clarification to a Tender Document (including the Contract)
<b>Tender</b>	A written response to the RFx submitted by a Tenderer in the format of the Form of Tender including a Tender, Registration, Proposal or Quote
<b>Tenderer</b>	A person, organisation, business or other entity that may or does submit a Tender in response to the RFx, and includes the Tenderer's officers, employees, contractors, consultants, agents, representatives and, in the case of a joint venture, consortium or similar arrangement, the parties to that arrangement
<b>Tenderer's Declaration</b>	The declaration included in the Form of Tender used by a Tenderer to respond to the RFx
<b>Tender Notice</b>	The advertisement published on GETS for an ROI or RFT to which the ROI or RFT document and other Tender Documents have been attached
<b>Tender Notification</b>	A supplemental notice published against the Tender Notice in GETS informing Tenderers of additional information, clarifications and changes to an ROI or RFT and/or the Tender process
<b>Tender Validity Period</b>	The period of time when a Tender (offer) is held open by the Tenderer for acceptance by the Principal as stated in the RFx