

Request for Proposals



RFP New Terminal Retail Offerings

RFP released: 21/06/17

Deadline for Questions: 1700 30/06/17

Deadline for Proposals: 1700 17/07/17

Nelson Airport Limited
PO Box 1598
Nelson

Contents

This opportunity in a nutshell3

SECTION 1: Key information.....5

SECTION 2: Our Requirements7

SECTION 3: Our Evaluation Approach9

SECTION 4: Forecast Turnover and Proposed Lease.....12

SECTION 6: RFP Process, Terms and Conditions13



This opportunity in a nutshell

Nelson Airport Limited (NAL) is a regional airport experiencing significant growth and in the process of building a new vibrant terminal that serves as a modern gateway to the Nelson Tasman region. NAL is inviting proposals from experienced retail operators who are keen to add to the experience of all users of the airport, both customers and staff.

This RFP process is to ensure NAL is aware of all the offerings available in the market. The successful participants will be selected both on their experience and offering but also how the individual operators combine to better serve the customer's needs.

The RFP response is to be received no later than 5pm on Wednesday 31 May 2017 and shall be emailed to stephen@nelsonairport.co.nz. All RFP responses must be restricted to a maximum of 10 A4 pages.

What we need

The following is a table of the retail spaces available for proposals. Any submitted proposals need to use the reference to clearly identify which space and the type of retail activity that is being proposed. Each retail space available has a separate specifications sheet available for download at www.nelsonairport.co.nz/retail-tenders.

Reference	Lettable Area	Use	Lease Term	Comments
NAL-FB1	60 m ² Retail Pod 200 m ² Seating	Food & Beverage	6 Years	Food and beverages, café style
NAL-FB2	44 m ² Retail Pod 270 m ² Seating	Food & Beverage	6 Years	Food and beverages, bar style
NAL-RET1	80 m ²	Books, Magazines, travel goods and Grab 'n' Go selection.	6 Years	Travel goods, magazines, books, Grab 'n' Go, tourist gifts
NAL-RETK	10 m ² 40 m ² 40 m ²	Kiosk Seating Playground	3 Years	Light snack, coffee and grab and go options
NAL-INFO	15 m ²	Travel Information Point	3 Years	Information and bookings

What we don't want

We do not want responses from individuals that have no experience running a retail operation. The airport environment is challenging with peaks and troughs in demand and extended hours which requires considered resourcing and effective supply chain management. All successful candidates will have demonstrated their capacity and capability to excel within this environment.

What's important to us

NAL is looking for experienced retail providers that can enhance the retail experience within the new terminal. Successful candidates are likely to have established supply chain management, staff management and retail experience. Profitability is important to both parties as NAL is invested in the success of your business in partnership to ensure the best products are offered at all times.

A bit about us

NAL has seen strong growth in passenger numbers with the rolling annual total sitting at 992,000.

In response to increased travellers NAL has released its plans for a \$32m terminal redevelopment plus associated landside developments, which began in the middle of 2017. The project will take approximately 24 months to complete in a staged programme with over half of the new build able to occur on a green field site. The new terminal will cater for growth projections out to 2035, when 1.4m passengers a year are forecast to pass through the facility.

The new terminal will greatly enhance the customer experience with more space for seating, airline lounges, toilets, new retail spaces and increased car parking. It is thrilling that when the project is completed the region will have a new state of the art gateway constructed out of local timber processed at the Nelson Pine LVL factory.

Why should you bid?

These opportunities allow commercial operators to leverage off of an exciting new airport terminal which is evidencing unprecedented growth in both travelling public and their accompanying friends and family.

SECTION 1: Key information



1.1 Context

- a. This Request for Proposal (RFP) is an invitation to suitably qualified suppliers to submit a Proposal for the New Terminal Retail Offerings contract opportunity.
 - b. This RFP is a single-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 6](#).
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1.2 Our timeline

- a. Here is our timeline for this RFP.

Steps in RFP process:

Date:

Deadline for Questions from suppliers: 17:00 30/06/17

Deadline for the Buyer to answer suppliers' questions: 10/07/17

Deadline for Proposals: 17:00 17/07/17

Unsuccessful Respondents notified: TBA - Project Build Timings¹

Respondents' debriefs: TBA - Project Build Timings¹

Anticipated Contract start date: TBA - Project Build Timings¹

- b. All dates and times are dates and times in New Zealand.
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1.3 How to contact us

- a. All enquiries must be directed to our Point of Contact. We will manage all external communications through this Point of Contact.

b. Our Point of Contact

Name: Stephen Batt

Title/role: Commercial Manager, Nelson Airport Limited

Email address: stephen@nelsonairport.co.nz



1.4 Developing and submitting your Proposal

- a. This is an open, 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. Email our [Point of Contact](#).
 - e. In submitting your Proposal you must use the Response Form provided at www.nelsonairport.co.nz/retail-tenders/.
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¹ The retail offerings will become available as the different phases of the construction project complete. It is challenging to provide definitive timetables as respondents may be interested in more than one space.

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- f. You must also complete and sign the declaration at the end of the Response Form.
 - g. Check you have provided all information requested, and in the format and order asked for.
 - h. Having done the work don't be late – please ensure you get your Proposal to us before the Deadline for Proposals!
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1.5 Address for submitting your Registration

- a. Registrations must be submitted by email to the following address:
stephen@nelsonairportco.nz
 - a. Registrations sent by post or fax, or hard copy delivered to our office, will not be accepted.
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1.6 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 six 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 6](#). This tender process will not be run through GETS and all communication should be directed as per Section 1.3 and information through www.nelsonairport.co.nz/retail-tenders/.
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1.7 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 email to all supplied email addresses on the tender registration page provided under 1.4 (e) above.
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SECTION 2: Our Requirements

2.1 Background

This procurement relates to investigating the markets offerings for product mixture and services to add to the retail experience travellers through the new terminal will experience. NAL is open to work with partners that are interested in growing their business whilst ensuring the service to an increasing travelling public is of a very high standard.

2.2 What we are buying and why

This RFP relates to the retail offering within the new terminal, provided with a bare retail space, sufficient car parks, and a licence to occupy for retailing purposes with a turnover rental associated.

2.3 What we require: capacity and capability

The capability and capacity of the respondent's experience needs to sufficient to operate in the unique airport environment. All proposals should detail both previous experience and how that will assist with becoming a valuable operator in the new terminal. An understanding of the size and scale of previous and existing operations, management experience and the health and safety plans and historical track record will all be considered.

2.4 Contract term, form and key responsibilities

We anticipate that the contract commencement will be aligned with the completion of construction for each phase of the project.

The anticipated Contract term and options to extend are:

Description	NAL-FB1	NAL-FB2	NAL-RET1	NAL-RETK	NAL-Info
Initial term of the Contract	6 Years Minimum	6 Years Minimum	6 Years Minimum	3 Years Minimum	3 Years Minimum

The contract form is on the basis of a turnover rent, an estimated minimum annual rental and then a percentage of turnover. In this manner, NAL is invested in the success of each of the participants and ensures the offering of facilities, advertising, transport and parking all contribute to the retail experience.

The rental payable will be in three components:

Premises Rental – market rental based upon floor area with CPI reviews

Carpark Rental – market rental based upon the number of parks at a staff rate, with CPI reviews

Turnover Rent – An agreed percentage rental paid and reviewed on anniversary based upon full year results

Key responsibilities	Landlord	Tenant
Lease	Yes ²	

² The lease has been prepared by NAL, however costs to be shared equally.

Fit-out		Yes
Architect		Yes
Project Manager^		Yes

^ Aesculus Project Management is charged with delivery of the new terminal and any successful participant will be recommended to use the same PM to ensure the smooth operational running of the terminal during construction

SECTION 3: Our Evaluation Approach

NAL is looking at providing an excellent customer experience coupled with partners that are wanting both parties' business interests to grow. Our purchasing policy is to provide the best value-for-money over the whole-of-life of the contract and includes such things as local supply, ease of management and confidence of delivery.

Evaluation model

The evaluation model that will be used is weighted attribute (weighted criteria). Price, or more specifically the percentage rental being proposed, is a weighted criterion. This means that all Proposals that are capable of full delivery on time will be shortlisted. The Proposal that scores the highest will likely be selected as the Successful Respondent.

3.1 Pre-conditions

Each Proposal must meet all of the following pre-conditions. Proposals which fail to meet one or more will be eliminated from further consideration.

Respondents who are unable to meet all pre-conditions should conclude that they will not benefit from submitting a Proposal.

#	Pre-condition
1.	An experienced retail operator who can show at least three years of successful experience within the retail sector as an owner with an understanding around fit-out costs, staff management, and logistics supply.

3.2 Evaluation criteria

Proposals which meet all pre-conditions will be evaluated on their merits according to the following evaluation criteria and weightings.

Criterion	Weighting
1. Proposed solution (fit for purpose)	40%
Appropriate product offering	
Understanding Airport specific demands	
Local product	
2. Capability of the Respondent to deliver	30%
Successful retail experience	
Management Experience	
Health and Safety Plan and Record	
3. Capacity of the Respondent to deliver	30%
Scale of previous retail experience	
Understanding of the requirements of NAL	
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.

Rating	Definition	Score
EXCELLENT significantly exceeds the criterion	Exceeds the criterion. Exceptional demonstration by the Respondent of the relevant ability, understanding, experience, skills, resource and quality measures required to meet the criterion. Proposal identifies factors that will offer potential added value, with supporting evidence.	9-10
GOOD exceeds the criterion in some aspects	Satisfies the criterion with minor additional benefits. Above average demonstration by the Respondent of the relevant ability, understanding, experience, skills, resource and quality measures required to meet the criterion. Proposal identifies factors that will offer potential added value, with supporting evidence.	7-8
ACCEPTABLE meets the criterion in full, but at a minimal level	Satisfies the criterion. Demonstration by the Respondent of the relevant ability, understanding, experience, skills, resource, and quality measures required to meet the criterion, with supporting evidence.	5-6
MINOR RESERVATIONS marginally deficient	Satisfies the criterion with minor reservations. Some minor reservations of the Respondent's relevant ability, understanding, experience, skills, resource and quality measures required to meet the criterion, with little or no supporting evidence.	3-4
SERIOUS RESERVATIONS significant issues that need to be addressed	Satisfies the criterion with major reservations. Considerable reservations of the respondent's relevant ability, understanding, experience, skills, resource and quality measures required to meet the criterion, with little or no supporting evidence.	1-2
UNACCEPTABLE significant issues not capable of being resolved	Does not meet the criterion. Does not comply and/or insufficient information provided to demonstrate that the Respondent has the ability, understanding, experience, skills, resource and quality measures required to meet the criterion, with little or no supporting evidence.	0

3.4 Evaluation process and due diligence

In addition to the above, we will undertake the following process and due diligence in relation to shortlisted Respondents. The findings will be taken into account in the evaluation process.

- a. reference check the Respondent organisation and named personnel

3.5 Optional evaluation process and due diligence

In addition to the above, we may undertake the following process and due diligence in relation to shortlisted Respondents. The findings will be taken into account in the evaluation process. Reasonable notice will be provided to shortlisted respondents where further input is required from them.

- a. other checks against the Respondent e.g. Companies Office
- b. interview Respondents
- c. request Respondents make a presentation

- d. arrange site-visits
- e. test products
- f. inspect audited accounts for the last three financial years
- g. undertake a credit check

SECTION 4: Forecast Turnover and Proposed Lease

NAL will work with shortlisted respondents to ensure both parties fully understand the requirements for a successful and profitable relationship. The respondent is expected to provide their “vision” for their operation along with turnover expectations based upon existing operations. NAL will provide estimates for likely turnover based upon previous results, forecasts and input from other airport expansions.

The proposed sublease will be made available to short-listed candidates. The sublease will contain the following information:

- Responsibilities
- Terminal Rules
- Initial rental; broken down into:
 - o Premises rent
 - o Carpark rental
 - o Turnover rent
- CPI reviews for premises and carparks
- Turnover recalculation
- Head lease details

SECTION 6: 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 will 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 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 this section.
- If you have any questions about the RFP-Terms please email our [Point of Contact](#).

Standard RFP process



Preparing and submitting a proposal

6.1 Preparing a Proposal

- a. Respondents are to use the Response Form provided and include all information requested by the Buyer in relation to the RFP.
- b. By submitting a Proposal the Respondent accepts that it is bound by the RFP Process, Terms and Conditions (RFP-Terms) contained in Section 6 (as varied by Section 1, paragraph 1.6, if applicable).
- c. Each Respondent will:
 - i. examine the RFP and any documents referenced in the RFP and any other information provided by the Buyer
 - ii. 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
 - iii. 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
 - iv. ensure that pricing information is quoted in NZ\$ exclusive of GST
 - v. if appropriate, obtain independent advice before submitting a Proposal
 - vi. satisfy itself as to the correctness and sufficiency of its Proposal, including the proposed pricing and the sustainability of the pricing.

- d. 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

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

6.3 Respondents' Deadline for Questions

- a. 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.
- b. All requests for clarification must be made by email to the Buyer's Point of Contact. 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:
 - i. true, accurate and complete, and not misleading in any material respect
 - ii. does not contain Intellectual Property that will breach a third party's rights.
- c. 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.
- d. 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 either in a separate sealed envelope or as a separate soft copy file (whichever option has been requested by the Buyer)
 - iii. 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 take into account 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.
- c. In deciding which Respondent/s, to shortlist the Buyer may take into account any of the following additional information:
 - i. the results from reference checks, site visits, product testing and any other due diligence
 - ii. 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)
 - iii. any matter that materially impacts on the Buyer's trust and confidence in the Respondent
 - iv. any other relevant information that the Buyer may have in its possession.

- d. 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.



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. 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 or sent by email.
- 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.

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 must not engage in collusive, deceptive or improper conduct in the preparation of their Proposals or other submissions or in any discussions or negotiations with the Buyer. Such behaviour will result in the Respondent being disqualified from participating further in the RFP process. In submitting a Proposal the Respondent warrants that its Proposal has not been prepared in collusion with a Competitor.
- b. 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 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.

6.21 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.

6.22 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
 - x. the Respondent is a person or organisation designated as a terrorist by New Zealand Police.

6.23 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.
- b. Despite any other provision in the RFP the Buyer may:
- i. accept a late Proposal if it is the Buyer's fault that it is received late
 - ii. 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
 - iii. in exceptional circumstances, answer a question submitted after the Deadline for Questions, if applicable
 - iv. accept or reject any Proposal, or part of a Proposal
 - v. accept or reject any non-compliant, non-conforming or alternative Proposal
 - vi. decide not to accept the lowest priced conforming Proposal unless this is stated as the Evaluation Approach
 - vii. decide not to enter into a Contract with any Respondent
 - viii. liaise or negotiate with any Respondent without disclosing this to, or doing the same with, any other Respondent
 - ix. 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





- x. amend the Proposed Contract at any time, including during negotiations with a shortlisted Respondent
 - xi. waive irregularities or requirements in or during the RFP process where it considers it appropriate and reasonable to do so.
- c. The Buyer may request that a Respondent/s agrees to the Buyer:
- i. 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
 - ii. selecting two or more Respondents to deliver the Requirements as a joint venture or consortium.

6.24 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.

6.25 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. 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.
- c. To the extent that liability cannot be excluded, the maximum aggregate liability of the Buyer, its agents and advisors is \$1.

6.26 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 6 (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.

Advance Notice A notice published by the buyer on GETS in advance of publishing the RFP. An Advance Notice alerts the market to a contract opportunity. Where used, an Advance Notice forms part of the RFP.

Business Day Any week day in New Zealand, excluding Saturdays, Sundays, New Zealand (national) public holidays and all days from Boxing Day up to and including the day after New Year's Day.

Buyer The Buyer is the government agency that 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.

Competitors	Any other business that is in competition with a Respondent either in relation to the goods or services sought under the RFP or in general.
Confidential Information	<p>Information that:</p> <ol style="list-style-type: none"> is by its nature confidential is marked by either the Buyer or a Respondent as 'confidential', 'commercially sensitive', 'sensitive', 'in confidence', 'top secret', 'secret', classified' and/or 'restricted' is provided by the Buyer, a Respondent, or a third party in confidence the Buyer or a Respondent knows, or ought to know, is confidential. <p>Confidential information does not cover information that is in the public domain through no fault of either the Buyer or a Respondent.</p>
Conflict of Interest	<p>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:</p> <ol style="list-style-type: none"> actual: where the conflict currently exists potential: where the conflict is about to happen or could happen, or perceived: where other people may reasonably think that a person is compromised.
Contract	The written Contract/s entered into by the Buyer and Successful Respondent/s for the delivery of the Requirements.
Contract Award Notice	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.
Deadline for Proposals	The deadline that Proposals are to be delivered or submitted to the Buyer as stated in Section 1, paragraph 1.2.
Deadline for Questions	The deadline for suppliers to submit questions to the Buyer as stated in Section 1, paragraph 1.2, if applicable.
Evaluation Approach	The approach used by the Buyer to evaluate Proposals as described in Section 3 and in Section 6 (as varied by Section 1, paragraph 1.6, if applicable).
GETS	Government Electronic Tenders Service available at www.gets.govt.nz
GST	The goods and services tax payable in accordance with the New Zealand Goods and Services Tax Act 1985.
Intellectual Property	All intellectual property rights and interests, including copyright, trademarks, designs, patents and other proprietary rights, recognised or protected by law.
Offer Validity Period	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.
Point of Contact	The Buyer and each Respondent are required to appoint a Point of Contact. This is the channel to be used for all communications during the RFP process. The Buyer's Point of Contact is identified in Section 1, paragraph 1.3. The Respondent's Point of Contact is identified in its Proposal.
Price	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.

Proposal	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.
Proposed Contract	The Contract terms and conditions proposed by the Buyer for the delivery of the Requirements as described in Section 5.
RFP	Means the Request for Proposal.
Registration of Interest	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.
Request for Proposal (RFP)	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.
RFP-Terms	Means the Request for Proposal - Process, Terms and Conditions as described in Section 6.
RFP Process, Terms and Conditions (shortened to RFP-Terms)	The government's standard process, terms and conditions that apply to RFPs as described in Section 6. 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.
Requirements	The goods and/or services described in Section 2 which the Buyer intends to purchase.
Respondent	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.
Response Form	The form and declaration prescribed by the Buyer and used by a Respondent to respond to the RFP, duly completed and submitted by a Respondent as part of the Proposal.
Successful Respondent	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.