

PHARMAC

Pharmaceutical Management Agency

Request for Proposals

External Tender System

RFP released: 19 01 2016

Deadline for Questions: 5PM NZT 19 02 2016

Deadline for Proposals: 5PM NZT 29 02 2016

PHARMAC
Level 9, 40 Mercer Street
Wellington

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This opportunity in a nutshell

What we need

PHARMAC is interested in considering proposals for an IT solution able to record and manage tender bids and relevant tender bid information received during PHARMAC's tender process ("Solution"). The Solution also needs to allow data exports to PHARMAC's internal tender system to enable PHARMAC to analyse tender bids.

The Solution needs to satisfy PHARMAC business requirements, with a focus on security and usability of the Solution by external submitters to the tender (domestic and international), as well as meeting the pre-conditions stated in Section 3.2 of this RFP.

It is PHARMAC's intent that the solution will be hosted by a third party. The Solution must be fully tested and operational by 30 September 2016.

Background

The multi-product tender process is a mechanism used by PHARMAC to procure the supply of pharmaceuticals for community pharmacies and/or DHB hospitals.

The tender is open from approximately the beginning of November until the end of December, involving approximately 50-60 submitters to the tender, and 500-600 medicines and/or medical devices.

What we don't want

PHARMAC does not want:

- Solutions that are unable to fulfil PHARMAC's business requirements as set out in the high level business requirements document attached to this RFP.
- Solutions that do not meet the pre-conditions stated in Section 3.2 of this RFP.
- Unsupported solutions. By this we mean a solution that is delivered for PHARMAC to support and run.

What's important to us

PHARMAC is looking for a Respondent who has capability and experience in delivering e-tender systems. The Respondent needs to have demonstrated a good track record in the implementation and on-going support of e-tender systems with medium to large organisations.

A bit about us

The Pharmaceutical Management Agency (PHARMAC) is the New Zealand government agency that decides which medicines, medical devices and related products are subsidised.

PHARMAC's primary objective is to secure for eligible people in need of pharmaceuticals, the best health outcomes that are reasonably achievable from pharmaceutical treatment and from within the amount of funding provided.

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 external tender system 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:	19 02 2016 17:00
Deadline for the Buyer to answer suppliers' questions:	24 02 2016
Deadline for Proposals:	29 02 2016 17:00
Shortlisted Respondents' presentations: starting	14 03 2016
Shortlisted Respondents' interviews if required: starting	14 03 2016
Unsuccessful Respondents notified of award of Contract:	30 04 2016
Respondents' debriefs: starting	02 05 2016
Anticipated Contract start date:	04 04 2016
Deadline for system availability:	30 09 2016

- 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 GETS.

- b. **Our Point of Contact**

Name: Tim Wild

Title/role: Solution Architect

Email address: via GETS



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: <http://www.business.govt.nz/procurement/for-suppliers>
 - d. If anything is unclear or you have a question, ask us to explain. Please do so before the Deadline for Questions. See "How to contact us" above.
 - e. In submitting your Proposal you must use the Response Form provided on GETS. This is
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- 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. Please ensure you submit a copy of your proposal that is easily searchable using an application find command, which may be additional to any scanned signed copies.
 - h. Check you have provided all information requested, and in the format and order asked for.
 - i. 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 Proposal

- a. Proposals must be submitted using GETS.
 - b. Proposals 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 12 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](#). We have not made any variation to the RFP-Terms.
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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 placing a notice on the Government Electronic Tenders Service (GETS) at 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.
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SECTION 2: Our Requirements

2.1 Background

The multi-product tender process is a mechanism used by PHARMAC to procure the supply of pharmaceuticals for community pharmacies and/or DHB hospitals.

The tender is open from approximately the beginning of November until the end of December, involving approximately 50-60 submitters to the tender, and 500-600 medicines and/or medical devices.

2.2 What we are buying and why

This RFP relates to the purchase of services for an external tender system. The key outcomes that PHARMAC wants to achieve are:

- Ensure tender bids and relevant tender bid information is recorded and presented to PHARMAC in a consistent manner.
- Reduce the administrative workload of staff by removing the need to manually follow up with submitters to the tender for additional details and information for their tender bids.
- Reduce time spent fixing submitters to the tender mistakes made during the tender bids.
- Reduce user error and data loss by submitters to the tender.
- Ensure the data provided by the submitters to the tender meets PHARMAC requirements.
- Ensure data provided by the submitters to the tender is formatted, ordered and designated to a particular tender bid.

2.3 What we require: the solution

PHARMAC is interested in considering proposals for an IT solution able to record and manage tender bids and relevant tender bid information received during PHARMAC's multi-product tender process. The Solution also needs to allow data exports to PHARMAC's internal tender system to enable PHARMAC to analyse tender bids.

The Solution needs to satisfy PHARMAC business requirements, with a focus on security and usability of the Solution by external submitters to the tender (domestic and international), as well as meeting the pre-conditions stated in Section 3.2 of this RFP.

It is PHARMAC's intent that the solution will be hosted by a third party. The Solution must be fully tested and operational by the date stated above.

2.4 What we require: capacity

Please refer to the high level business requirements document for capacity requirements.

2.5 What we require: capability

Please refer to the high level business requirements document for capability requirements.

2.6 Contract term

We anticipate that the Contract will commence as described in the "our timeline" section above. The anticipated Contract term and options to extend are:

Description	Years
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Initial term of the Contract	3 years
Options to extend the Contract	Consecutive 2 year periods upon termination of the initial term of the Contract at the option of PHARMAC.

2.7 Key outcomes

The following are the key outcomes that are to be delivered. Suitable milestones will be arranged with the successful solution provider.

Description	Indicative date for delivery
Final delivery of a working, tested, documented solution	30 September 2016

2.8 Other information

- a. Payment for any solution development or project costs will be on delivery of a working, tested, documented solution, both test and production systems. Payment for ongoing service costs will be monthly or annually on invoice.
- b. New Intellectual Property arising as a result of the Contract will be the property of PHARMAC.

2.9 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. High level business requirements document.
- b. RFP Response template
- c. Proposed contract.

SECTION 3: Our Evaluation Approach

This section sets out the Evaluation Approach that will be used to assess Proposals.

3.1 Evaluation model

The evaluation model that will be used is set out in Section 3.3 of this RFP.

3.2 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	<p>Solution meets specified requirements in the New Zealand Information Security Manual (NZISM) v2.4. Note that within the sections identified below you must meet requirements marked "System Classification(s): All Classifications; Compliance: MUST" unless SHOULD sections are specifically listed below. Note that the RFP respondent is acting on behalf of the agencies.</p> <p>There may be some flexibility in interpretation of these requirements or who is required to meet the requirement the RFP respondent or PHARMAC.</p> <p>Relevant NZISM sections in version 2.4 include:</p> <ul style="list-style-type: none"> • 6.1.6.C.01, 6.2.4.C.01, 6.2.5.C.01, 6.4 (respondent responsibility) • 7 • 14.5 (System Classification(s): All Classifications; Compliance: MUST AND SHOULD) • 16.1.18, 16.1.21, 16.1.22, 16.2.4, 16.2.5 • 17 • 18.4, 18.5 • 19.1.10, 19.1.12, 19.3.8 • 20.1.9, 20.3.4, 20.3.5, 20.3.10, 20.4.4 <p>Notes:</p> <ul style="list-style-type: none"> • Unless specifically mentioned (e.g. SEC-007 from the high level business requirements document) anything that requires annual reviews will be undertaken by PHARMAC. • PHARMAC will also use section 22 and materials referenced by section 22 to assess solution suitability. PHARMAC may request additional information for this assessment. Respondent may optionally choose to address section 22 as part of their response.
2	Meets New Zealand Government standards for accessibility and usability to the specified level, as specified in the high level business requirements document.
3	Solution must be capable of being operational by the date specified above.

3.3 Evaluation criteria

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

Criterion
1. Price / Value for money Includes up front and ongoing costs as well as an overall view of the value of the proposed solution.
2. Proposed solution (fit for business purpose) Meets PHARMAC's business requirements as stated in the high level business requirements document. This includes security requirements, as documented.
3. Proposed solution (non-functional requirements) Meets PHARMAC's non-functional requirements as stated in the high level business requirements document, including performance, reliability, backups, etc

3.4 Price

We wish to obtain the best value-for-money over the whole-of-life of the Contract. This means achieving the right combination of fit for purpose, quality, on time delivery, quantity and price.

If a Respondent offers a price that is substantially lower than other Proposals (an abnormally low bid), the Buyer may seek to verify with the Respondent that the Respondent is capable of fully delivering all of the Requirements and meeting all of the conditions of the Proposed Contract for the price quoted.

3.5 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
- b. interview Respondents (if interviews are held)
- c. request Respondents make a presentation

3.6 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. Should we decide to undertake any of these we will give shortlisted Respondents reasonable notice.

- a. reference check the Respondent organisation and named personnel
- b. other checks against the Respondent e.g. Companies Office
- c. interview Respondents
- d. request Respondents make a presentation
- e. test products
- f. inspect audited accounts for the last three financial years
- g. undertake a credit check
- h. undertake a Police check for all named personnel

SECTION 4: Pricing information

4.1 Pricing information to be provided by respondents

Respondents are to provide their price as part of their Proposal. In submitting the Price the Respondent must meet the following:

- a. the pricing schedule is to show a breakdown of all costs, fees, expenses and charges associated with the full delivery of the Requirements over the whole-of-life of the Contract. Prices for support must be included. It must also clearly state the total Contract price exclusive of GST.
- b. where the price, or part of the price, is based on fee rates, all rates are to be specified, either hourly or daily or both as required.
- c. in preparing their Proposal, Respondents are to consider all risks, contingencies and other circumstances relating to the delivery of the Requirements and include adequate provision in the Proposal and pricing information to manage such risks and contingencies.
- d. Respondents are to document in their Proposal all assumptions and qualifications made about the delivery of the Requirements, including in the financial pricing information. Any assumption that the Buyer or a third party will incur any cost related to the delivery of the Requirements is to be stated, and the cost estimated if possible.
- e. prices should be tendered in NZ\$. Unless otherwise agreed, the Buyer will arrange contractual payments in NZ\$.
- f. where two or more Respondents intend to lodge a joint or consortium Proposal the pricing schedule is to include all costs, fees, expenses and charges chargeable by all Respondents.

SECTION 5: Our Proposed Contract

5.1 Proposed Contract

The following is the Proposed Contract that we intend to use for the purchase and delivery of the Requirements.

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.

Please refer to the Contract attached on GETS.

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.