



# RFx Terms and Conditions

These Terms and Conditions apply to the Wellington City Council te Kaunihera RFx they are referenced within. This use of “RFx” is a reference but is not limited to: a Request for Proposal, Request for Quote, Request for Tender, Request for Information, Registration of Interest or Procurement In A Day Brief. These Terms and Conditions have been shortened to “RFx T&Cs”.

These RFx T&Cs have been developed by Wellington City Council te Kaunihera to reflect the standard [Government Procurement Terms and Conditions](#), and incorporate relevant terms and conditions for te Kaunihera as a local government entity.

“The Buyer” refers to Wellington City Council te Kaunihera. “RFx Response” refers to a response to an RFx.

## 1. RFx Process

- a. The Buyer may amend, suspend, cancel or re-issue the RFx, or any part of it including negotiations, so long as it notifies the Respondent, and where response to material changes arise the Respondent is given time to respond and update the RFx accordingly.
- b. the Buyer may liaise or negotiate with any Respondent without informing, or doing the same, with any other Respondent.
- c. The Buyer may waive requirements or irregularities around the RFx process if the Buyer considers it appropriate or reasonable to do so.

## 2. Preparing a Proposal

### a. Respondent obligations

The Respondent must:

- i. read the complete RFx and any additional information provided and referred to by the Buyer, and obtain independent advice before submitting a RFx Response (if necessary).
- ii. respond using the RFx Response Form and Pricing Schedule provided and include all information the Buyer requests. Prices must be in NZ\$, and exclusive of GST unless otherwise stated.
- iii. include any assumptions, dependencies and/or qualifications in the RFx Response, including anything that may limit its obligations or increase its quoted pricing or cost estimates.
- iv. make sure the RFx Response is correct and the RFx Response pricing is sustainable for Council and the entity themselves.

**b. Process acceptance**

By submitting a Proposal, the Respondent accepts the RFX T&Cs.

**3. Offer Validity Period**

The RFX Response must remain open for the Offer Validity Period stated in the RFX.

**4. Respondent questions**

- a. The Respondent must make sure they understand the RFX.
- b. If the Respondent has any questions or needs clarification, they:
  - i. must submit questions before the Deadline for Questions stated in the RFX.
  - ii. must clearly indicate any commercially sensitive information in their questions.
  - iii. may withdraw their questions at any time.
- c. When the Buyer receives questions before the Deadline for Questions:
  - i. The Buyer will respond on or before the Deadline for Answers, unless stated otherwise in the RFX.
  - ii. The Buyer may provide details of both the questions and the answers to other Respondents. In these circumstances the Buyer will summarise the questions and will not disclose the Respondent's identity or commercially sensitive information. However, if the Buyer considers the information to be significant for all Respondents, the Buyer may modify the question and publish both this and the answer. In that case the Buyer will first give the Respondent the opportunity to withdraw the question or remove any of their own commercially sensitive information.
- d. At its discretion, the Buyer may answer a question submitted after the Deadline for Questions, and if required will notify all Respondents about the submission of the question and the answer.

**5. Submitting a Proposal**

- a. The Respondent must ensure the Buyer receives the RFX Response at the correct address on or before the Deadline for Proposals (RFX Response).
- b. Where the RFX stipulates a 'two-envelope' process, the Respondent must ensure that all financial information and pricing components of the RFX Response are contained in a separate file from the rest of the RFX Response and clearly marked 'Pricing Information'.
- c. The Respondent must ensure that all information they provide to the Buyer:
  - i. is true, accurate, complete and not misleading in any material respect
  - ii. does not contain material that infringes a third party's intellectual property rights
  - iii. can be relied on during the RFX process, including correspondence and in negotiations.
- d. The Buyer may accept a late RFX Response if it is the Buyer's fault it is late, or if the Buyer considers there is no material prejudice to other Respondents in accepting a late Proposal.

**6. Assessing RFX Responses**

- a. The Buyer may accept or reject any Proposal, or part of a Proposal. This includes any non-compliant, non-conforming or alternative Proposal.

- b. The Buyer's evaluation panel will evaluate the RFX Response. The Buyer may have different evaluation panel members, including independent advisors, for evaluating different aspects of the RFX Response.
- c. Third party information**
  - i. The Buyer may request information from a third party where the Buyer considers the information may be relevant to the RFX process, excluding commercially sensitive information about pricing or contract terms.
  - ii. If this occurs, the Respondent authorises the Buyer to collect that information from the relevant third party (e.g. a referee or client), and authorises the third party to release it to the Buyer to be used in the evaluation of the RFX Response.
  - iii. The Respondent must ensure that all referees listed in the RFX Response have pre-agreed to provide a reference.
- d. Clarification of Proposal**
  - i. The Buyer may ask the Respondent for more information or clarification on the RFX Response at any time during the RFX process and need not ask all Respondents for the same clarification.
  - ii. The Respondent agrees to provide the information or clarification within the requested timeframe, in the format requested by the Buyer.
  - iii. If the Respondent does not provide adequate information or clarification within the requested timeframe, the Buyer may remove the RFX Response from its evaluation process.
- e. Evaluation and shortlisting of Proposal**
  - i. The Buyer will evaluate the RFX Response according to the Evaluation Approach detailed in the RFX.
  - ii. The Buyer may adjust its evaluation after considering additional information or clarification, as described in this "Assessing Proposals".

## **7. Negotiations**

- a. The Buyer may invite one or more Respondents to enter into negotiations with a view to forming a contract.
- b. During negotiations, the Buyer may discontinue negotiations with one Respondent and then initiate negotiations with another Respondent.
- c. Unless the Buyer agrees otherwise, the Respondent agrees that any legally binding contract that may result from the negotiations will be essentially in the form noted in the RFX under section Proposed Contract.

## **8. Respondent debrief**

- a. At the end of the RFX process, the Buyer will offer to debrief the Respondent. This debrief may be by letter, email, phone or a meeting.
- b. The Respondent has within the nominated time period of the Buyer to accept a debrief.
- c. The debrief will:
  - i. explain why the RFX Response was successful or not successful, including indicating the Proposal's relative strengths and weaknesses.
  - ii. explain how the RFX Response performed against the evaluation criteria.
  - iii. seek to address feedback, including any concerns or questions from the Respondent on the RFX process.

## 9. Notification of outcome

Unless deemed commercially sensitive, after the Contract has been signed, the Buyer:

- a. Will let all unsuccessful Respondents know the name of the Successful Respondent, if any, by either:
  - i. publishing a Contract Award Notice on GETS, or
  - ii. during the debrief given, or
  - iii. via letter, email, phone or a meeting.
- b. The Successful Respondent may request that the Buyer withhold its address from the Contract Award Notice for privacy reasons.
- c. Notification of the outcome of an RFX process will be in a manner consistent with the Privacy Act 2020.

## 10. Issues and complaints

- a. The Respondent may, in good faith, raise with the Buyer any issue or complaint about the RFX process at any time. When this occurs:
  - i. The Buyer will consider and respond promptly and impartially to the Respondent's issue or complaint.
  - ii. Both the Respondent and the Buyer must do their best to resolve the issue or complaint.
  - iii. The Buyer must not allow the issue or complaint to prejudice the Respondent's participation in the RFX process, or limit or affect the Respondent's future procurement opportunities.

## 11. General conditions

### a. Buyer's Point of Contact

- i. The Respondent must direct all RFX enquiries to the Buyer's Point of Contact detailed in the RFX.
- ii. The Respondent must not approach any other employee or other representative of the Buyer, directly or indirectly, for information on any aspect of the RFX.
- iii. Only the Point of Contact, or a person authorised by the Buyer, may communicate with the Respondent on any aspect of the RFX. The Buyer will not be bound by any statement made by any other person, or to respond to communication received through other means than the Point of Contact.
- iv. The Buyer may change its Point of Contact at any time. The Buyer will notify the Respondent of any change by email or posting a notification on GETS.
- v. If the Respondent has an existing contract with the Buyer, the Respondent must not use its business-as-usual communications to contact the Buyer or Wellington City Council employees regarding the RFX.

### b. Conflict of Interest

- i. The Respondent must complete the Conflict of Interest declaration in the RFX Response Form. If a joint RFX Response is being submitted, each party must complete the Conflict of Interest declaration separately.
- ii. If a Conflict of Interest arises during the RFX process, the Respondent must inform the Buyer immediately.
- iii. The Buyer may exclude a Respondent from the RFX process if a material Conflict of Interest arises.
- iv. The Buyer's own Conflict of Interest management is governed by its own internal processes.

**c. Ethics**

- i. The Respondent must not attempt to influence, reward or benefit any representative of the Buyer, nor offer any form of personal inducement, in relation to the RFX or the RFX process.
- ii. The Respondent must comply with the Supplier Code of Conduct issued by the Buyer, and any other relevant codes of conduct listed by New Zealand Government Procurement Group.
- iii. The Buyer may exclude the Respondent from the RFX process for a breach of any of the Terms and Conditions noted in this document.
- iv. To maintain a fair and ethical RFX process, the Buyer may require additional declarations or other evidence from the Respondent, or any other person, at any time.

**d. Anti-collusion and bid rigging**

- i. By submitting the RFX Response the Respondent warrants that the RFX Response has not been prepared in collusion with a Competitor and it has not and will not engage in deceptive or improper conduct during the RFX process.
- ii. The Buyer may exclude the Respondent from the RFX process if a breach of these warranties occurs.
- iii. The Buyer reserves the right to report suspected collusion or anti-competitive behaviour to the appropriate authority, and to give that authority all relevant information, including the RFX response and associated communications.

**e. Confidential Information**

- i. Without limiting any other confidentiality agreement between them, the Buyer and the Respondent will both take reasonable steps to protect the other party's Confidential Information.
- ii. Except as permitted by the other provisions of these Terms and Conditions, neither party will disclose the other party's Confidential Information to a third party without that other party's prior written consent.
- iii. Each party may each disclose the other party's Confidential Information to anyone who is directly involved in the RFX process on that party's behalf, but only for the purpose of participating in the RFX. This could include (but is not limited to) officers, employees, consultants, contractors, professional advisors, evaluation panel members, partners, principals or directors. Where this occurs, the disclosing party must take reasonable steps to ensure the third party does not disclose the information to anyone else and does not use the information for any purpose other than participating in the RFX process.
- iv. The Respondent acknowledges that the Buyer's confidentiality obligations are subject to requirements imposed by the Local Government Official Information and Meetings Act 1987 (LGOIMA), the Privacy Act 2020, parliamentary and constitutional convention, and any other obligations imposed by law. Where the Buyer receives an LGOIMA 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.
- v. The Respondent may disclose the Buyer's Confidential Information to the extent strictly necessary to comply with law or the rules of any stock exchange on which the securities of the Respondent or any related entity are currently listed. Unless prohibited by law, the Respondent must consult with the Buyer before making such a disclosure.
- vi. The Buyer will not be in breach of its obligations if it discloses Confidential Information to the appropriate authority because of suspected collusive or anti-competitive tendering behaviour.

**f. Costs of participating in the RFX process**

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

**g. Ownership of documents**

- i. The RFX and its contents remain the property of the Buyer. All Intellectual Property rights in the RFX remain the property of the Buyer or its licensors.
- ii. The Buyer may request the immediate return or destruction of any RFX documents and any copies, in which case the Respondent must comply in a timely manner.
- iii. All documents forming part of the RFX Response will, once they are delivered to the Buyer, become the property of the Buyer. The RFX Response will not be returned to the Respondent.
- iv. Intellectual Property rights in the RFX Response remain the property of the Respondent or its licensors.
- v. The Respondent grants to the Buyer a licence to retain, use, copy and disclose information contained in the RFX Response for any purpose related to the RFX process, including keeping appropriate records.

**h. Limited rights and obligations**

Except as stated otherwise in this Section, nothing in the RFX, these RFX T&Cs or the RFX process creates a contract or any other legal relationship between the Buyer and Respondent, unless and until they enter into a Contract. The following are binding on the Respondent:

- i. The Respondent's signed declaration (contained in the RFX Response Form).
- ii. Nothing in this Section takes away from any rights or remedies the Buyer may have in relation to the Respondent's statements, representations, or warranties in the RFX Response or in correspondence or negotiations with the Buyer.

**i. Exclusion from the RFX process**

The Buyer may exclude the Respondent from the RFX process if the Respondent:

- i. Has not provided requested information in the correct format, included a material error, omission, false declaration, inaccuracy, or has breached the RFX T&Cs.
- ii. Is in bankruptcy, receivership or liquidation or has failed to pay taxes, duties or other levies.
- iii. Has a conviction for a serious crime or offence.
- iv. Represents a threat to national security or to confidentiality of government information, and/or is a person or organisation designated as a terrorist by New Zealand Police.
- v. If there was a serious performance issue in a previous, or current, contract delivered by the Respondent.
- vi. Has its integrity in question or is in doubt due to the Buyer being alerted to or aware of the Respondent's professional misconduct or an act or omission contrary to the Supplier Code of Conduct, and/or the Buyer becomes aware of any other matter that materially diminishes the Buyer's trust in the Respondent.

**j. Consortia and unbundling**

The Buyer may make its selection conditional on the Respondent agreeing to:

- i. the Buyer selecting the Respondent to deliver the Requirements as a joint venture or consortium with another Respondent selected by the Buyer, and/or
- ii. the Buyer selecting individual elements of the RFX Response that can be delivered separately, unless the RFX Response specifically states that the RFX Response, or the relevant elements, must be taken collectively.

**k. New Zealand law**

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

**I. Disclaimer**

- i. Nothing contained or implied in the RFX, or RFX process, or any other communication by the Buyer to the Respondent is to be construed as legal, financial or other advice.
- ii. The Buyer will endeavour to provide accurate information in any communication, but the Respondent accepts this information is not independently verified and may not be up-to-date.
- iii. The Buyer will not be liable in contract, tort, equity, or in any other way for any direct or indirect damage, loss or cost incurred by the Respondent or any other person in respect of the RFX process, whether as a result of the Buyer exercising its rights under these RFX T&Cs, the Buyer's negligence or breach of these RFX T&Cs, the Buyer failing to select the Respondent as the Successful Respondent, or any other cause.
- iv. To the extent that liability cannot be excluded, the maximum aggregate liability of the Buyer, its agents and advisors in connection with the RFX process, to all Respondents combined, is NZ\$5,000 or (if known and greater than \$5,000) 5% of the estimated value of the proposed Contract as determined by the Buyer prior to the release of the RFX.
- v. The limitations and exclusions in paragraphs h and i above do not apply to any liability the Buyer may have for breach of confidentiality or infringement of the Respondent's intellectual property rights.

**m. Precedence**

- i. Any conflict or inconsistency in the RFX shall be resolved by giving precedence in the following descending order:
  - a. Section 1 of the RFX
  - b. These RFX T&Cs
  - c. all other Sections of the RFX document
  - d. any additional information or document provided by the Buyer to Respondents through the Buyer's Point of Contact or GETS.
  - e. If there is any conflict or inconsistency between information or documents having the same level of precedence the more recent information or document will prevail.

**Definitions**

New Zealand Government Procurement publishes a list of definitions used across the public sector in procurement activities. Please refer [here](#) for this list.