

Instructions to Suppliers & Standard Conditions

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Instructions to Suppliers & Standard Conditions

Introduction

This document contains instructions for suppliers interested in submitting a Response to a Wellington City Council Tender document. It also sets out the Standard Conditions that apply to the Tender process.

NOTE: The buyer may make minor changes to these *Instructions to Suppliers & Standard Conditions*. Any changes must be listed in the buyer's Tender Response.

Wellington City Council wants to reduce the time, cost and effort that both parties devote to the submission and evaluation of tenders. If you are already on the Council's Contractors and Consultants Register (CCR) then you are only required to complete those parts of the submission where changes have taken place since your last submission of a Tender Response, or within the last three years (whichever is the later). For example if the details of your insurance cover have changed then you need to complete the Insurance section of the Tender Response.

To be listed on the Council's Contractors and Consultants Register (CCR) your organisation will need to be listed on one of the following registers:

- a. The Main Contractors Register (MCR); this register is updated automatically with the details of all organisations who have submitted compliant corporate information and have completed engagements with the Council following an open contestable process.
- b. The Pre-Qualified sub-register (PQR); this register is updated automatically with the details of all organisations who have submitted compliant corporate information and were unsuccessful at bidding for Council business in the last three years.
- c. The Technical Consultants Register (TCR); this register is updated automatically and contains the details of all pre-qualified consultants and the areas of expertise the consultants have been pre-qualified to deliver.

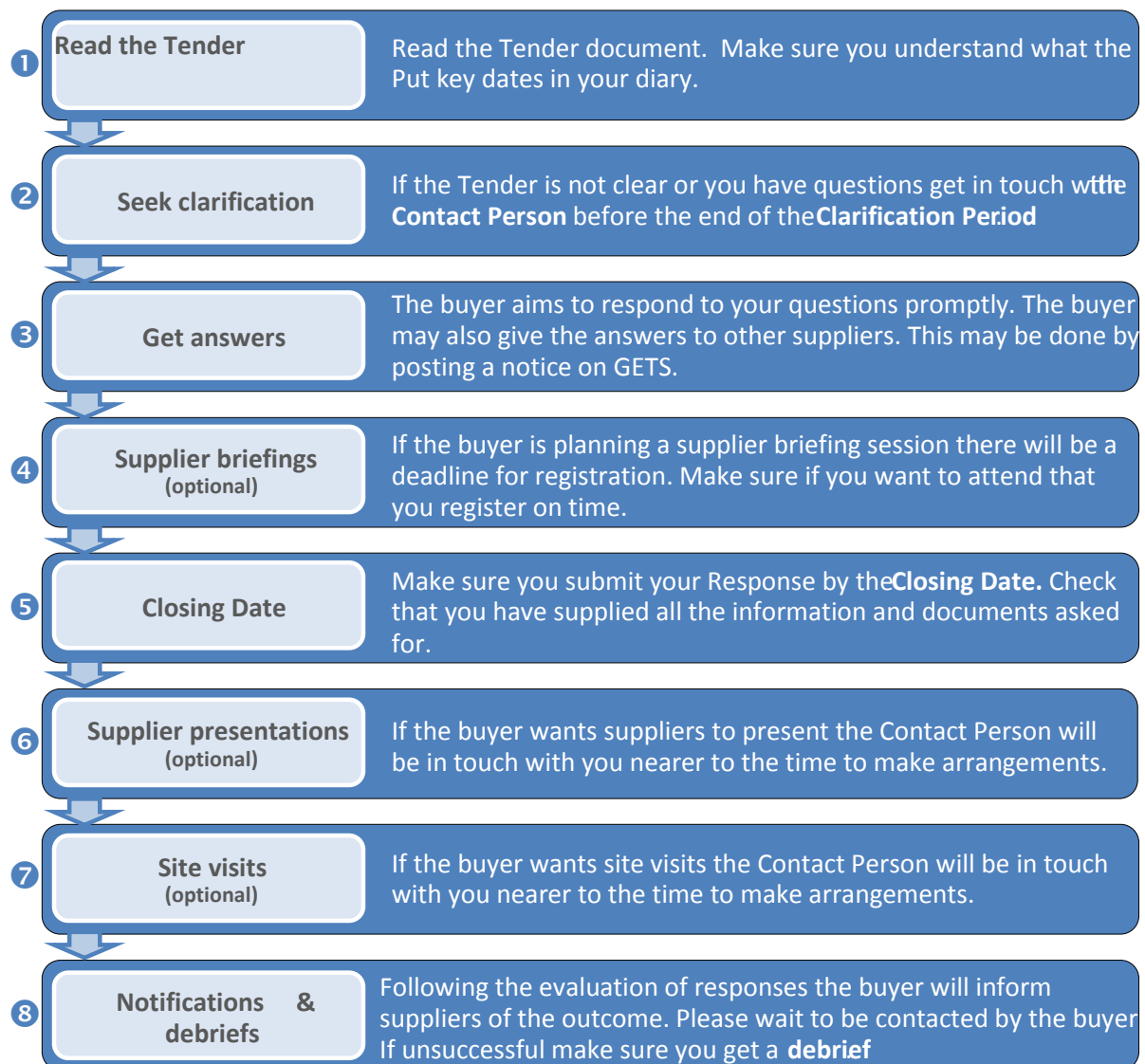
If you are not listed on the Council's Contractor and Consultant Register you should complete all sections of the Tender Response document provided, or provide a response to each of the Council's requirements specified in the Tender Document.

If you do not know whether you are already listed on the Council's Contractors and Consultants Register (CCR) please contact the Contracts and Procurement Team via email:

procurement@wcc.govt.nz

Process overview

The flow chart below is an example of a typical Tender process. The actual process for each Tender is contained in the Tender document (which takes precedence over the process listed below) may vary slightly from the example below.



Definitions

The following words and expressions (where they appear in the Tender, this document and any Schedule) have the meanings described below.

Business Day	A calendar day other than any Saturday, Sunday and public holiday in Wellington. This excludes any day falling within the period from 24 December to 5 January, which is the normal Christmas Holiday period.
Business Hours	Business hours means the period from 8.30am to 5.00pm on any Business Day.
Buyer	The Buyer is the organisation that has issued the Tender with the intent to purchase the goods, services or works described in the Requirements. The Buyer under the Tender is Wellington City Council (Council).
Clarification Period	The period within which a Supplier can ask for clarification or additional information from the Buyer in relation to the Tender.
Closing Date	The deadline for Responses to be received by the Buyer as stated in the Tender document.
Competitors	Any other business that is in competition with a Supplier either in relation to the goods or services sought under the Tender or in general.
Confidential Information	Information that: <ol style="list-style-type: none">is by its nature confidentialis marked by either the Buyer or a Supplier as 'Confidential',is provided by the Buyer, a Supplier, or a third party 'In Confidence'the Buyer or a Supplier knows, or ought to know, is confidential
Conflict of Interest	A Conflict of Interest arises if a Supplier's personal or business interests or obligations do, could or be perceived to, conflict with its obligations to the buyer under the Tender or in the anticipated provision of the goods, services or works. It means that the Supplier's independence, objectivity or impartiality can be called into question. A Conflict of Interest may be: <ol style="list-style-type: none">actual: where the conflict currently existspotential: where the conflict is about to happen or could happen, orperceived: where other people may reasonably think that a person is compromised.
Contact Person	Both the Buyer and Suppliers are required to appoint a Contact Person. This is the person who is the single point of contact for all communications during the Tender process and negotiations. The Buyer's Contact Person is identified in the Tender. The Supplier's Contact Person is identified in its Response.
Contract	The contract for the supply of the goods, services or works between the successful supplier and the Buyer using the Proposed Conditions of Contract as agreed between the parties and arising as a result of a Tender.
Expression of Interest	An expression of interest (EOI) is sought by the Buyer. The Supplier's response to the EOI is evaluated to identify a shortlist- this acts like a pre-qualification in a two phase procurement. The Buyer may then provide the shortlisted Suppliers with an RFx.

Evaluation Methodology	The methodology set out in the Tender used by the Buyer to evaluate Tenders.
GETS	Government Electronic Tenders Services www.gets.govt.nz .
GST	The goods and services tax payable in accordance with the New Zealand Goods and Services Tax Act 1985.
Highest Supplier	Ranked Following the evaluation of Responses the Supplier whose Tender Response has been identified overall as the top ranked.
Indicative Timeline	The suggested dates and times for the Tender process as described in the Tender. These may be subject to change at the Buyer's sole discretion.
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 the Tender (offer) is held open by Suppliers for acceptance by the Buyer. The Offer Validity Period is stated in the Tender.
Proposed Conditions of Contract	The contract terms and conditions proposed by the Buyer and stated in the Tender.
Representative of the buyer	A person who represents the Buyer. This can be a member of staff, contractor, consultant, agent or secondee. Suppliers must not directly or indirectly approach, lobby or solicit information from a representative of the Buyer, other than the Buyers' Contact Person named in the Tender.
Request Information	for An RFI is a form of early market engagement. It is a formal request for information to gain a more detailed understanding of the supplier market and the range of solutions and technologies that may be available. It is not a request for offers or used as a mechanism from which to directly select suppliers.
Request for Proposal	The RFP is a contestable and competitive procurement process which invites suppliers to submit a proposal to deliver products, services or assets. It comprises of the RFP document and any Schedule attached by the Buyer.
Request for Quotation	An RFQ is a formal means of seeking quotations from the market for goods or services which are generally of a lower value or standardised commodities.
Request for Tender	The RFT is a contestable and competitive procurement process which invites suppliers to respond to a defined need. It comprises of the RFT document any Schedule attached by the Buyer.
Requirements	The goods and/or services, and works described in the Tender.
Schedule	Any attachment to the Tender with the title 'Schedule' or 'Appendix'.
Response	The response a Supplier submits in reply to the Tender. It comprises the Supplier's bid and should include all information specified by the Buyer in the Tender.

Services	All services to be provided under the Tender and includes professional services.
Standard Conditions	The instructions to Suppliers, containing an outline of the process and the terms and conditions which apply to the process. This document contains the Standard Conditions
Successful Supplier	Following the evaluation of Tender Responses and successful negotiations (if any) the Supplier/s who is awarded the contract to deliver the Requirements.
Supplier	A person, organisation, business or other entity that submits a Response in response to the Tender. It includes successors and permitted assignees.
Tender	A Request for Proposal (RFP), Request for Tender (RFT), Expression of Interest (EOI), Request for Information (RFI), Request for Quotation (RFQ)
Works	Means all physical works including any design works required as part of the physical works.
\$	Unless otherwise stated all currency is in New Zealand dollars.

1. Preparing a Tender Response



Preparing a Tender Response

1. Suppliers must provide in their Response all information requested by the Buyer in the Tender. The information must be supplied in the format specified by the Buyer.
2. Failure to provide all information requested or in the correct format may result in the Tender Response being treated as non-conforming and being rejected.
3. If asked to provide hard copies please print Responses double-sided and minimise the use of non-recyclable or non-reusable materials.
4. **Please also note:** To avoid assumptions if your answer to a question is the same as to another question – please do not leave the response blank or refer to a previous answer – instead if you want to provide the same answer this needs to be replicated.

Language and price

5. Tender Responses must be in English. Unless stated otherwise, prices are to be quoted in New Zealand dollars exclusive of goods and services tax (GST).

Offer Validity Period

6. Tender Responses shall remain valid and open for acceptance by the Buyer for the Offer Validity Period stated in the Tender.

Clarification Period



7. Each Supplier must satisfy itself as to the interpretation of the Tender. If there is any perceived ambiguity or uncertainty in the Tender documents Suppliers should seek clarification before the end of the Clarification Period.
8. All requests for clarification must be made by email to the Buyer's Contact Person. Please allow a reasonable period of time for the Buyer to respond to a request. Requests will be dealt with by the Buyer during Business Hours.
9. The Buyer will not answer questions submitted after the Clarification Period ends, although it reserves the right to do so.
10. If the Buyer considers a request to be of sufficient importance to all Suppliers it may provide details of the question and answer to other Suppliers. This information may be posted on GETS (or through other media sources used to advise of the Tender). In deciding whether or not to publish the question and answer the Buyer will take into account the risk of

disclosing information which may be commercially sensitive to the Supplier making the request.

11. If a Supplier identifies an inaccuracy or inconsistency in the Tender please notify the Buyer's Contact Person as soon as possible.

Joint Tenders

12. Suppliers may submit joint Tender Responses, so long as the requirements of the Tender are met. If the Tender is preceded by a qualification process (for example shortlisting of Suppliers from a Registration of Interest) all parties to the joint Tender Response must have met the qualification.

13. Any joint Tender Response must:

- a. identify all of the parties to the Response
- b. state the nature of the relationship between the parties for the purpose of the joint Response
- c. confirm that all parties are committed to the relationship and the joint Response
- d. specify the parts of the Requirements each party will be responsible for delivering
- e. identify the structure and systems that support joint governance, accountability and financial and contract management
- f. be signed by all parties.

14. In evaluating a joint Response the Buyer may take into account any complexity or risk presented by a joint Response.

15. Suppliers submitting joint Responses are required to identify only one Contact Person who will represent all parties to the Joint Response. Each supplier to the joint Response must complete a Supplier's Declaration.

16. A joint Response must be a genuine joint venture with the provision of the goods, services or works to be provided on a joint and fully integrated basis. A joint Response is not to be used as a cover for price fixing between Competitors.

17. If a joint Response is successful each party to the joint Response will be jointly and severally liable for the provision of the goods, services or works as the case may be, to meet the Requirements and the contract between the buyer and the Supplier will include a clause to this effect.

Alternative Tenders

18. The Council's preference is to contract on the basis set out in the Tender. However, the Council may consider alternative tenders at its sole discretion.



19. Any alternative tenders should be clearly identified as an "Alternative Tender" and clearly outline the commercial advantage, any innovation and added value offered to the Council. The Council reserves the right not to consider an alternative tender.

2. Submitting a Tender Response



Submitting a Tender Response

20. Responses must be received by the Buyer before the Closing Date.
21. The Buyer accepts no responsibility for Responses delivered to the wrong address or, for whatever reason, is not received by the Buyer.
22. The Buyer will acknowledge receipt of each Response by telephone or email.
23. By submitting a Response each Supplier warrants that all information provided is complete and accurate in all material respects. Each Supplier also warrants that the provision of that information, or its use by the Buyer for the purposes of the Tender process, will not breach any third party Intellectual Property rights.
24. Where the Buyer has requested the Response in hard copies and an electronic copy and there is a difference between the hard copy and the electronic copy the hard copy will prevail, other than where clause 26 applies, in which instance the earlier copy of the Response received by the Buyer shall prevail.
25. If the Buyer stipulates a two envelope process for the submission of Tender Responses the following applies:
 - a. Each Supplier must ensure that all pricing components of their Response are provided separately from the remainder of their Response.
 - b. All information relating to pricing must be contained either in a separate sealed envelope or as a separate soft copy file (whichever is applicable).
 - c. The pricing information must be clearly marked 'Pricing Response' to indicate that it contains the pricing information. This is to ensure that the pricing information cannot be viewed when the package containing the other elements of the Response is opened.

Late Responses

26. The Buyer reserves the right to accept late Responses in exceptional circumstances where it considers that there is no material prejudice to



other Suppliers. However, the Buyer will not accept a late Response if it considers that:

- a. there is any risk of collusion on the part of a Supplier or Suppliers
- b. the Supplier may have knowledge of the content of any other Response
- c. it would be unfair to any other Supplier to accept the late Response.

3. Evaluation of Tender Responses



Evaluation

27. The Buyer will convene an evaluation panel comprising members chosen for their relevant expertise and experience. The Buyer may, at its sole discretion, invite independent advisors to evaluate any Tender Response, or any aspect of any Response. Suppliers must not communicate with any member of the evaluation panel other than the Buyer's Contact Person. Where the Buyer evaluates the responses in two stages; the evaluation panel will compile a shortlist of suppliers for additional evaluation. This panel will fully evaluate each supplier who passes the first stage.
28. The Buyer will evaluate each Tender Response in accordance with the Evaluation Methodology set out in the Tender.
29. The Buyer may undertake due diligence relating to any tender Response at any time during the evaluation process which may include a credit, criminal or security check. In the event a criminal history check or security check is unsuccessful, declined or withdrawn, the Buyer will have no obligation to continue with the evaluation of that Response and that Response may be rejected by the Buyer.



Clarification

30. The Buyer may request clarification and additional information from any Supplier about any aspect of a Response. The Buyer is not required to request the same clarification or information from each Supplier.
31. The Supplier must provide the clarification or additional information in writing and within the time notified by the Buyer. The evaluation team may take such clarification or additional information into account in evaluating the Response.
32. If a Supplier fails to respond adequately or within the time stipulated by the Buyer to any request for clarification or additional information, the Buyer may cease evaluating the Supplier's Tender Response.

Collection of further information

33. Each Supplier authorises the Buyer to collect further information (except commercially sensitive pricing information) from any relevant third parties (such as a referee or a previous or existing client) and to use that information as part of its evaluation of the Supplier's Response.
34. Each Supplier must ensure that all referees provided in support of its Response agree to provide a reference and are appropriately briefed on the Response.
35. To facilitate discussions between the Buyer and third parties each Supplier waives any confidentiality obligations that would otherwise apply to information held by any third party, with the exception of commercially sensitive pricing information.
36. The Buyer is not obliged to contact referees provided by a Supplier and may seek further information on any issue from sources other than the referees provided, including the execution of a credit check. The Buyer may also take into account knowledge it already has regarding the Supplier.
37. The Buyer reserves the ability to adjust its evaluation and scoring of a Supplier's Response following the collection of further information.

Highest Ranked Suppliers

38. Following the evaluation process the evaluation team aims to shortlist those Suppliers who are capable of delivering the Requirements and rank them in order of their evaluated scores and best value for money for the supply of goods services and works. These short listed Suppliers are the Highest Ranked Suppliers.
39. The Buyer will notify the Highest Ranked Suppliers. Such notification does not constitute acceptance by the Buyer of the Response, or imply or create any obligation on the Buyer to enter into negotiations with, or award a contract to any Highest Ranked Supplier.
40. At this stage in the process the Buyer does not intend to publicise the names of the Highest Ranked Suppliers.

Negotiations

41. The Buyer may select the first Highest Ranked Supplier to enter into negotiations with. The selection of the Successful Supplier will be influenced by the willingness of the Supplier to negotiate any outstanding issues in a responsive and co-operative manner.
42. The Buyer may discontinue negotiations with the first Highest Ranked Supplier at any time for any reason and may select the next ranked Supplier at any time.



Successful Supplier

43. On successfully completing negotiations and award of a contract either by a letter of acceptance or signing a contract the Buyer will inform all other Suppliers of the outcome and where a contract has been awarded, the name of the Successful Supplier. Notification will be via GETS or through other media sources used to advise the Tender.

Supplier debrief

44. Following the award of the contract, the Buyer will offer a debrief to all unsuccessful Suppliers. The debrief may be provided by letter, email, phone or face to face meeting as determined by the Buyer. The debrief will aim to:
 - a. provide the reasons why a Response was not successful
 - b. explain how the Response performed against the evaluation criteria
 - c. indicate the relative advantages/strengths of the successful Response
 - d. answer any concerns or questions from the Supplier (subject to confidential and commercially sensitive restrictions on disclosure of certain information)
 - e. seek feedback from the Supplier on the Tender and the Tender process.



4. General terms and conditions

Buyer's terms

45. The Tender comprises this set of Standard Conditions and the Tender documentation and any other Schedules attached by the Buyer. The Tender sets out the Buyer's terms upon which Suppliers must submit Responses. These terms are non-negotiable.
46. Each Supplier should carefully read the Tender to ensure that its Response complies with the terms of the Tender.
47. The Buyer is not required to accept any Response for evaluation that does not comply with these terms.

Suppliers' obligations

48. Each Supplier will be considered to have:
 - a. examined the Tender and any documents referenced in the Tender and any other information provided by the Buyer



- b. considered all the risks, contingencies and other circumstances relating to the delivery of the goods, services or works and included adequate provision in its Response to manage such risks and contingencies
- c. documented in its Response any assumptions made in the preparation of its Response
- d. satisfied itself as to the correctness and sufficiency of its Response, including the proposed pricing and the sustainability of the pricing.

Reliance on the Tender Response

49. Each Supplier must ensure that all information provided to the Buyer is complete and accurate. The Buyer may rely upon all information provided by a Supplier in its Response and in any correspondence or negotiations with the Buyer, or the Buyer's representatives. Acceptance of a Response that contains errors will not invalidate any contract that may be negotiated and entered into on the basis of the Response submitted.

Indicative Timeline

50. The Indicative Timeline for the Tender process is stated in the Tender. Please note that these dates and times may be changed at the sole discretion of the Buyer. The Buyer will notify Suppliers of any material changes to these dates or times. This may be by notice posted on GETS or through other media sources used to advise details of the Tender.

Buyer's Contact Person

51. All enquiries regarding the Tender must be directed to the Buyer's Contact Person, whose details are provided in the Tender. The Buyer requests that email be used for all communications in relation to the Tender.
52. Only the Contact Person, and any person authorised by the Contact Person, are authorised to communicate with Suppliers regarding any aspect of the Tender.
53. The Buyer will not be bound by any written or oral statement made by any person, other than the Buyer's Contact Person or a person authorised by the Buyer's Contact Person.
54. The Buyer may change the Contact Person at any time. The Buyer will notify Suppliers of any such change. This notification will be posted on GETS or through other media sources used to advise the Tender.
55. Where a Supplier has an existing contract with the Buyer then business as usual communications, for the purpose of that contract, will continue using the usual contacts. Suppliers must not use business as usual contacts to lobby the buyer, solicit information or discuss aspects of the Tender.



Conflict of Interest

56. Each Supplier must include a Conflict of Interest Declaration with its Response. Each Supplier must immediately inform the Buyer should a Conflict of Interest arise during the Tender process.

Ethics

57. Suppliers must direct all enquiries to the Buyer's Contact Person. Suppliers must not directly or indirectly approach, contact, lobby or solicit information concerning any aspect of the Tender from any other representative of the Buyer.
58. Suppliers must not attempt to influence or provide any form of personal inducement, reward or benefit to the Buyer or any representative of the Buyer.
59. A representative of the Buyer includes any employee, consultant, contractor or advisor engaged by the Buyer.
60. Any Supplier, who attempts to do anything prohibited by the above clauses 57 and 58 may be disqualified from the Tender.

Anti-collusion / bid rigging

61. In submitting its Response each Supplier warrants that its Response has not been prepared with consultation, communication, arrangement or understanding with any Competitor (unless for joint venture, consortium or sub-contracting purposes).
62. There is no expectation or obligation for Suppliers to submit Response in response to the Tender solely to remain on any prequalified or preferred supplier list. Any Supplier on such a list will not be penalised for not submitting a Response.
63. Suppliers must indicate if they intend any person or organisation (who is not an employee, a party to a disclosed joint Response or a disclosed sub-contractor) to deliver any part of the Requirements. That party's details, the Requirements they will be responsible for and the price must be provided in the Response.
64. The Buyer reserves the right, at its discretion, to report suspected collusive or anti-competitive conduct by Suppliers to the appropriate authority and to provide that authority with any relevant information including a Supplier's Response.

Confidentiality

65. Subject to clause 67 the Buyer, and each Supplier, will keep confidential all Confidential Information provided by the other. No Confidential Information will be provided to a third party without the other's prior written consent.



66. Where a Supplier's Response contains information, such as Intellectual Property, that it considers should be held confidential, the Supplier must clearly identify the information and mark it confidential. The Supplier may be asked by the Buyer to indicate the reason why such information should be held as confidential.
67. Suppliers acknowledge that the Buyer's obligations under the above clause are subject to the requirements imposed by the Local Government Official Information and Meetings Act 1987, the Privacy Act 1993, and any other obligations imposed by the law or any Court. The Buyer's obligation to keep the Supplier's information confidential will not be breached if the information is disclosed by the Buyer to the appropriate authority because of suspected collusive or anti-competitive tendering behaviour.

Response costs

68. Each Supplier must meet all of its own costs associated with the preparation and presentation of its Response and any negotiations.

Ownership of documents

69. All documents forming the Response will, when delivered to the Buyer, become the property of the Buyer. Responses will not be returned to Suppliers at the end of the Tender process.
70. Ownership of Intellectual Property rights does not pass on a Response being delivered to the Buyer. However, the Supplier grants to the Buyer an irrevocable licence, without fee, to retain, use, disclose and copy information contained in the Tender for any purpose related to the Tender process and for the purposes of any contract entered into as a result of such process.

Status of Tender/No binding legal relations

71. Responses are submitted on the basis that no contract or binding legal relations with the Buyer are created unless, and until, a contract between the Buyer and the Successful Supplier for the goods, services or works is entered into by the Buyer and the Successful Supplier.
72. Neither the Tender nor the Tender process shall create any legal relationship between the Buyer and a Supplier. This Tender process does not give rise to a process contract.

Form of contract

73. Each Supplier agrees that any legally binding contract entered into between the successful Supplier and the Buyer may be based on the form set out in Proposed Conditions of Contract in the Tender, subject to any agreed changes between the Buyer and the Successful Supplier.

74. The Buyer reserves the right to amend the Proposed Conditions of Contract set out in the Tender during negotiations with the Successful Supplier.



Buyer's rights

75. In addition to any other right described in the Tender the Buyer may at any time:
- a. amend, suspend, re-issue or cancel the Tender, or any part of the Tender on notice to the Suppliers
 - b. change any date in the Indicative Timeline contained in the Tender on the proviso that any material change is notified to Suppliers
 - c. delete, change or add to the Requirements contained in the Tender on the proviso that any material change is notified to Suppliers
 - d. reject or accept any non-compliant Response
 - e. reject or accept any alternative Response
 - f. not accept the lowest priced Response
 - g. waive any irregularities or information in the Tender process
 - h. not enter into a contract with any Supplier
 - i. exclude any Supplier from the Tender process where the Supplier has breached a term or condition of the Tender
 - j. liaise or negotiate with any Supplier without disclosing this to, or doing the same with, any other Supplier
 - k. provide or withhold from any Supplier information in relation to any question arising in relation to the Tender. Information will only be withheld if it is deemed unnecessary, is commercially sensitive to a Supplier, or is inappropriate to supply at the time of the request
 - l. deal separately with any divisible element/s of the Requirements and/or bundle any divisible elements of the Requirements or any Response, unless the Response specifically states that those elements must be taken collectively
 - m. not to proceed to evaluate any Response or Responses where the Buyer considers there is a Conflict of Interest.

Public statements

76. Suppliers must not issue any public statement in relation to the Tender, or any subsequent contract awarded, without the prior written approval of the Buyer.

New Zealand law

77. The laws of New Zealand shall govern the Tender and each Supplier agrees to submit to the exclusive jurisdiction of the New Zealand courts in respect of any dispute concerning the Tender or the Tender process.
78. The Supplier acknowledges that the Buyer is a local authority and that in terms of its regulatory functions as a local authority the Buyer is obliged to and shall act as an independent local authority and not as the Buyer under the Tender. Any consent or approval of the Buyer acting as the Buyer under the Tender shall not be construed as a consent or approval of, or bind it in its regulatory capacity.

Disclaimer

79. While all reasonable care has been taken in compiling the Tender no warranty (expressed or implied) is given by the Buyer as to the completeness or accuracy of the documents or information in the Tender.
80. The Buyer and its agents or advisors 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 Supplier or any other person in respect of the Tender process.