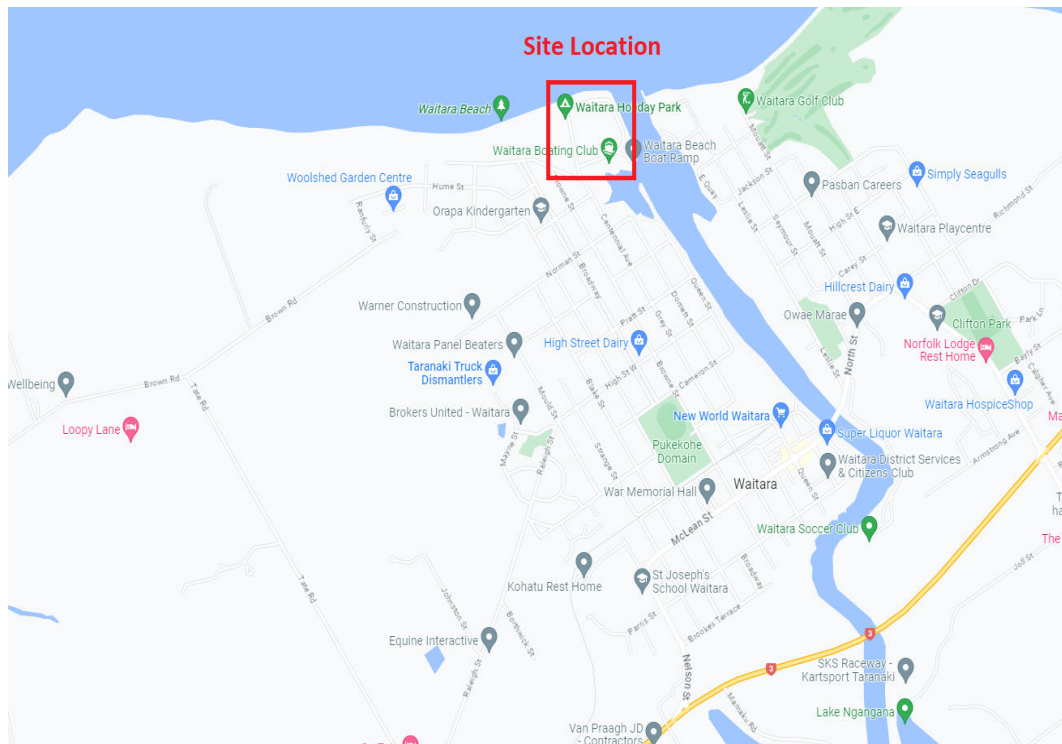




Te Kaunihera-ā-Rohe o Ngāmotu

# New Plymouth District Council

## Request for Information



## Otupaiia/Marine Park, Waitara State Park

Contract 23-391

RFI released: 26-May-2023

Deadline for Questions: 15-Jun-2023 12:00pm

**Deadline for Information: 26-Jun-2023 12:00pm**

New Plymouth District Council  
84 Lizardet Street  
New Plymouth

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# This opportunity in a nutshell

## What we need

New Plymouth District Council together with the Te Kōwhatu Tū Moana Trust is seeking an experienced contractor to design and build a high-quality hybrid skatepark at Waitara Marine Park, West Beach Waitara, on a flat site of approximately 1,000m<sup>2</sup>. The total budget for the project is \$800,000 +GST, and the desired completion date is June 2024.

**This is the first step in a 2-step tender process.** 2-3 contractors will be selected from this process and then invited into a closed Request for Proposals (RFP) tender process. NPDC will negotiate a fee with these contractors for the submission of proposals at the RFP stage.

The skatepark should be designed to cater for everyone from beginner to advanced levels and include elements for learners through to more experienced skaters. The design should provide good transition between features and be based on a flat site with limited drainage options, therefore all elements and surfaces are to be at or above ground level. All works must be completed within the project budget of \$800,000+ GST

The skatepark should be a hybrid type, including both street and transition features, and incorporate any existing structures or features in Otupaiia/Marine Park if appropriate. The design should prioritize durability and have a design life of at least 50 years.

## What we don't want

**We do not require design proposals at this stage.** This is the first step to gauge interest and capacity in the market for a build of this size and scope. The successful suppliers will be invited to a closed RFP.

## What's important to us

**Experience:** The local council is looking for a contractor with a proven track record of designing and building high-quality skateparks that meet the needs of different skill levels and user groups.

**Innovation:** The local council is interested in contractors who can bring fresh and creative ideas to the project, while still meeting the needs and desires of the community.

**Safety:** Safety is of utmost importance to us, and the contractor must be able to demonstrate that all elements of the skatepark design meet industry safety standards and regulations.

**Value for money:** The local council is looking for a contractor who can provide a high-quality skatepark within the project budget of \$800,000 +GST. Designs that deliver better value for money will be favoured.

**Community engagement:** The local council is looking for a contractor who is willing and able to engage with the local community throughout the design and construction process, to ensure that the final product is something that the community can be proud of and will use for many years to come.

**Quality assurance:** The contractor must be able to provide a warranty or maintenance plan to ensure that the skatepark will remain in good condition for its expected design life of 50 years.

**Health and safety:** The contractor must have a strong health and safety policy, including risk management procedures and appropriate insurance coverage, to ensure that the project is completed safely and without incident. The contractor will have to be H&S pre-approved prior to the award of the main contract.

**Timeliness:** The local council is looking for a contractor who can complete the project within the desired timeframe of completion by June 2024. If this is not possible, please indicate your availability.

## Why should you bid?

We are seeking an experienced and innovative skatepark design and build contractor to undertake this exciting project. The successful contractor will have the opportunity to work collaboratively with the NPDC, Te Kōwhatu Tū Moana Trust and the local community to create a skatepark that meets the needs of skaters of all levels, while also being a unique and visually striking feature of Otupaia/Marine Park.

Not only will the successful contractor have the opportunity to showcase their expertise and creativity, but they will also be playing a vital role in providing a safe and enjoyable space for the community to engage in physical activity and outdoor recreation.

In addition, this project presents a significant business opportunity for the successful contractor, with a budget of \$800,000 +GST available for the **design and construction** of the skatepark.

We encourage all experienced and innovative skatepark design and build contractors to submit a proposal, and we look forward to hearing from you.

## A bit about us

Operating under the Local Government Act 2002 and through consultation with the New Plymouth District community, the Council seeks to meet the current and future needs of the district's communities for good-quality infrastructure, local public services, and performance of regulatory functions.

The vision and community outcomes articulate the Council's strategic direction and the priorities that give effect to this. They sit at the heart of the Council strategic framework and assist the organisation's move towards a more integrated and aligned approach to planning, projects, policy, and strategy.

# Key Information

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## Context

- a. This is an invitation to suitably qualified suppliers to submit Information for the Otupaia/Marine Park, Waitara State Park contract opportunity.
  - b. This RFI is the first step in a multi-step procurement process. Following evaluation shortlisted Respondent/s will be invited to submit a full proposal in response to a Request for Proposals (RFP). This document deals only with the first step i.e. the RFI process.
  - c. Words and phrases that have a special meaning are shown using capitals e.g. Respondent, which means *'a person, organisation, business or other entity that submits Information in response to the RFI. The term Respondent includes its officers, employees, contractors, consultants, agents and representatives. The term*
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*Respondent differs from a supplier, which is any other business in the market place that does not submit Information.'*

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## Our timeline

- a. Here is our timeline for this RFI.

<b>Step in RFI process:</b>		<b>Date:</b>
Deadline for Questions from suppliers:	12:00pm	15-Jun-2023
Deadline for the Buyer to answer supplier's questions:	12:00pm	20-Jun-2023
<b>Deadline for Information:</b>	<b>12:00pm</b>	<b>26-Jun-2023</b>
Respondents notified:		Jul-2023

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

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

### Our Point of Contact

**Name:** Joel Richardson  
**Title/role:** Senior Infrastructure Project Manager  
**Email address:** joel.richardson@npdc.govt.nz

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## Developing and submitting your Information

- a. This is an Open, competitive tender process. The RFI sets out the step-by-step process and conditions that apply.
  - b. Take time to read and understand the RFI. In particular:
  - c. develop a strong understanding of our Requirements.
  - d. in structuring your Information consider how it will be evaluated, described in our Evaluation Approach.
  - e. For resources on tendering go to: [www.procurement.govt.nz/for-suppliers](http://www.procurement.govt.nz/for-suppliers).
  - f. If anything is unclear or you have a question, ask us to explain. Please do so before the Deadline for Questions. Email our [Point of Contact](#).
  - g. In submitting your Information, you must use the Response Form provided. This is a Microsoft Word document that you can download.
  - h. You must also complete and sign the declaration at the end of the Response Form.
  - i. You must use the pricing schedule template for your pricing information.
  - j. Check you have provided all information requested, and in the format and order asked for.
  - k. Having done the work don't be late – please ensure you get your Information to us before the Deadline for Information!
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## Address for submitting your Information

Information must be delivered as an electronic copy via the Tenderlink portal.  
Information sent by email, post or fax, or hard copy delivered to our office, will not be accepted.

### Envelope 1 – Submissions

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**Our RFI Process, Terms and Conditions**

- a. The RFI is subject to the government's standard RFI Process, Terms and Conditions (shortened to RFI-Terms) described. We have not made any variation to the RFI-Terms.

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**Later changes to the RFI or RFI process**

- a. If, after publishing the RFI, we need to change anything about the RFI, or RFI process, or want to provide suppliers with additional information we will let all suppliers know by placing a notice on Tenderlink.
  - b. If you downloaded the RFI from Tenderlink you will automatically be sent notifications of any changes through Tenderlink by email.
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# Our Requirements

We are looking for a contractor who is experienced in delivering skateparks of this size and value, and who has a proven track record of delivering high-quality projects on time and within budget. The successful contractor will be required to provide a statement of their H&S policy, and must be committed to complying with all relevant health and safety and risk management requirements during the design and construction phases.

We value transparency and open communication with our suppliers, and we welcome innovative solutions to meet our requirements while ensuring value for money. We encourage all eligible contractors to submit their proposals for consideration.

## **What are we buying and why?**

**This is the first step in a 2-step tender process.** This RFI is to gauge interest and capacity in the market to deliver this project for the community. 2 or 3 successful suppliers will then be invited into a closed RFP tender process.

## **What we require: the solution**

At this stage we are looking for contractors that can demonstrate their experience delivering skate parks of this size and value for the community. **No design proposal is required at this time.**

## **What we require: capacity**

We are seeking contractors that have the skills, experience and capacity to deliver this project by June 2024.

## **What we require: Capability**

We are seeking a contractor with proven experience in the design and construction of high-quality skate parks. The successful bidder must be able to demonstrate their expertise in the field through relevant project experience and a strong portfolio of completed work. We require a contractor with a team of skilled professionals including designers, project managers, and construction workers who are able to work collaboratively to deliver a successful outcome.

## **Other information**

Any further information required to outline the quality, desired delivery dates, payment methods or intellectual property will be available as an upload as part of this opportunity.

## **Other tender documents**

Any additional documents that this RFI refers to or will influence the outcome of this opportunity will be uploaded as part of this opportunity.

# Our Evaluation Approach

## Evaluation model

The evaluation model that will be used to shortlist respondents is weighted attributes (weighted criteria).

## Pre-conditions

Each submission must meet all these pre-conditions. Those which fail to meet one or more will be eliminated for further considerations.

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

Pre-conditions
Is your company interested in partaking in the RFP that is planned to come out August 2023?
Do you have experience Designing and constructing Skateparks over the value of \$500,000

## Evaluation Criteria

Criterion	Weighting
<b>Relevant Experience</b>	100%
Respondents to provide information on 3 relevant skatepark projects completed in the last 5 years. Information to include the name, and contact details, of a referee (client or engineer to contract) for each of the projects. The evaluation team will contact each of the referees who will be asked the questions: Project description, and cost of project (approx.); and “Would you employ this contractor again: yes or no?” “Is the community satisfied with the design and construction: yes or no?” “How would you rate their H & S?” “Were there any issues or challenges that arose during the project, and how did the supplier manage them?” “Did the supplier communicate effectively throughout the project?” “Is there anything else you would like to add about the supplier's performance on this project?”	
<b>Total Weighting</b>	100%



## Scoring

The following indicative scoring scale will be used in evaluating non-price attributes of Tenders.

Scores by individual panel members may be modified through a moderation process across the whole evaluation panel. In moderating scores, a “round” number to the nearest “5” will be determined by the evaluation panel.

Rating	Definition	Score
<b>MAJOR BENEFITS</b> Significantly exceeds the criterion	Exceeds the criterion. Exceptional demonstration by the Respondent of the relevant ability, understanding, experience, skills, resources and quality measures required to meet the criterion. Tender identifies factors that will offer potential added value, with supporting evidence.	<b>100</b>
		<b>95</b>
		<b>90</b>
<b>MINOR BENEFITS</b> Exceeds the criterion in some aspects	Satisfies the criterion with minor additional benefits. Above average demonstration by the Respondent of the relevant ability, understanding, experience, skills, resource and quality measures required to meet the criterion. Tender identifies factors that will offer potential added value, with supporting evidence.	<b>85</b>
		<b>80</b>
		<b>75</b>
<b>ACCEPTABLE</b> meets the criterion in full, but at a minimal level	Satisfies the criterion. Demonstration by the Respondent of the relevant ability, understanding, experience, skills, resource, and quality measures required to meet the criterion, with supporting evidence.	<b>65</b>
		<b>60</b>
		<b>55</b>
<b>MINOR RESERVATIONS</b> marginally deficient	Satisfies the criterion with minor reservations. Some minor reservations of the Respondent’s relevant ability, understanding, experience, skills, resource and quality measures required to meet the criterion, with little or no supporting evidence.	<b>45</b>
		<b>40</b>
		<b>35</b>
<b>SERIOUS RESERVATIONS</b> significant issues that need to be addressed	Satisfies the criterion with major reservations. Considerable reservations of the respondent’s relevant ability, understanding, experience, skills, resource and quality measures required to meet the criterion, with little or no supporting evidence.	<b>25</b>
		<b>20</b>
		<b>15</b>
<b>UNACCEPTABLE</b> significant issues not capable of being resolved	Does not meet the criterion. Does not comply and/or insufficient information provided to demonstrate that the Respondent has the ability, understanding, experience, skills, resource and quality measures required to meet the criterion, with little or no supporting evidence.	

Note that this scoring scale will be supplemented by **definitions FOR EACH ATTRIBUTE** which correspond to the criteria described in evaluation criteria above.

## 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, quality and price.

**However no pricing is required at this time.**

## 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 considered in the evaluation process.

Due Diligence Options	Required
References	Yes

## Pricing information

No pricing is required at this time.

## Our proposed contract

Any intended proposed contract will be upload to this opportunity as separate PDF document. In most cases, the type of contract and contract terms and conditions will be reviewed and jointly agreed during negotiations.

# RFI 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 RFI Process, Terms and Conditions (shortened to RFI-Terms) which apply to this procurement. Any variation to the RFI-Terms will be recorded. Check to see if any changes have been made for this RFI.
  - 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 Information in response to the RFI. 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 Information.*' [Definitions](#) are at the end of this section.
  - If you have any questions about the RFI-Terms, please get in touch with our [Point of Contact](#).
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## Standard RFI process

### Preparing and submitting Information

#### Preparing Information

- a. Respondents are to use the Response Form provided and include all information requested by the Buyer in relation to the RFI.
- b. By submitting Information, the Respondent accepts that it is bound by the RFI Process, Terms and Conditions (RFI-Terms).
- c. Each Respondent will:
  - i. examine the RFI and any documents referenced in the RFI and any other information provided by the Buyer
  - ii. if appropriate, obtain independent advice before submitting Information
  - iii. satisfy itself as to the correctness and sufficiency of its Information.
- d. There is no expectation or obligation for Respondents to submit Information in response to the RFI solely to remain on any prequalified or registered supplier list. Any Respondent on such a list will not be penalised for failure to submit Information.

#### Respondents' Deadline for Questions

- a. Each Respondent should satisfy itself as to the interpretation of the RFI. If there is any perceived ambiguity or uncertainty in the RFI 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 respond to requests in a timely manner, but not later than the deadline for the Buyer to answer Respondent questions, 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 TENDERLINK 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.

### **Submitting Information**

- a. Each Respondent is responsible for ensuring that its Information is received by the Buyer at the correct address on or before the Deadline for Information. The Buyer will acknowledge receipt of each Information.
- b. The Buyer intends to rely on the Respondent's Information and all information provided by the Respondent (e.g. in correspondence). In submitting Information 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 Information to be delivered in hard and soft copies, the Respondent is responsible for ensuring that both the hard and soft copies are identical.

## **Assessing Information**

### **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 Information, or any aspect of any Information.

### **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 Information.
- b. Each Respondent is to ensure that all referees listed in support of its Information 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.

### **Buyer's clarification**

- a. The Buyer may, at any time, request from any Respondent clarification of its Information as well as additional information about any aspect of its Information. 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 Information.
- 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 Information and may eliminate the Information from the process.

### **Evaluation and shortlisting**

- a. The Buyer will base its initial evaluation on the Information submitted in response to the invitation. This evaluation will be in accordance with the Evaluation Approach set out in the RFI. The Buyer may adjust its evaluation of Information following consideration of any clarification or additional information.

- b. In deciding which Respondent/s to shortlist the Buyer may take into account any of the following additional information:
  - i. the results from due diligence
  - ii. any matter that materially impacts on the Buyer's trust and confidence in the Respondent
  - iii. any relevant information that the Buyer may have in its possession.
- c. 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 Information, 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 RFI process the Buyer will not make public the names of the shortlisted Respondents.

### **Respondent's debrief**

- a. At any time after shortlisting Respondents, the Buyer will offer 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 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 Information was or was not successful
  - ii. explain how the Information performed against the pre-conditions (if applicable) and the evaluation criteria
  - iii. indicate the Information's relative strengths and weaknesses
  - iv. explain, in general terms, the relative advantage/s of the shortlisted Information/s
  - v. seek to address any concerns or questions from the Respondent
  - vi. seek feedback from the Respondent on the RFI process.

### **Issues and complaints**

- a. A Respondent may, in good faith, raise with the Buyer any issue or complaint about the RFI, or the RFI process at any time.
- b. The Buyer will consider and respond promptly and impartially to the Respondent's issue or complaint.
- c. The Buyer and Respondent each agree to act in good faith and use its best endeavours to resolve any issue or complaint that may arise in relation to the RFI.
- 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 RFI process or future contract opportunities.

## **Standard RFI conditions**

### **Buyer's Point of Contact**

- a. All enquiries regarding the RFI 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 RFI.
- b. Only the Point of Contact, and any authorised person of the Buyer, are authorised to communicate with Respondents regarding any aspect of the RFI. 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 TENDERLINK 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 RFI.

### **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 RFI process. A material Conflict of Interest may result in the Respondent being disqualified from participating further in the RFI process.

### **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 RFI.
- b. A Respondent who attempts to do anything prohibited may be disqualified from participating further in the RFI.
- c. The Buyer reserves the right to require additional declarations, or other evidence from a Respondent, or any other person, throughout the RFI process to ensure probity of the RFI process.

### **Anti-collusion and bid rigging**

- a. Respondents must not engage in collusive, deceptive or improper conduct in the preparation of their Information or other submissions or in any discussions with the Buyer. Such behaviour will result in the Respondent from being disqualified from participating further in the RFI process. The Respondent warrants that its Information 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 Information.

### **Confidential Information**

- a. The Buyer and Respondent will each take reasonable steps to protect Confidential Information 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 RFI 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 RFI.
- c. Respondents acknowledge that the Buyer's obligations are subject to requirements imposed by the Local Government Official and Meetings Information Act 1987 (LGOIMA), the Privacy Act 1993, parliamentary or constitutional convention and any other obligations imposed by the 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 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.

### **Confidentiality of RFI information**

- a. For the duration of the RFI, to the date of the announcement of the Successful Respondent, or the end of the procurement process, the Respondent agrees to keep the RFI strictly confidential and not make any public statement to any third party in relation to any aspect of the RFI, the RFI process or the award of any Contract without the Buyer's prior written consent.
- b. A Respondent may disclose information relating to the RFI to any person described but only for the purpose of participating in the RFI. 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 RFI.

### **Costs of participating in the RFI process**

- a. Each Respondent will meet its own costs associated with the preparation and presentation of its Information and any negotiations.

### **Ownership of documents**

- a. The RFI and its contents remain the property of the Buyer. All Intellectual Property rights in the RFI remain the property of the Buyer or its licensors. The Buyer may request the immediate return or destruction of any or all RFI documents and any copies. Respondents must comply with any such request in a timely manner.
- b. All documents forming the Information will, when delivered to the Buyer, become the property of the Buyer. Information will not be returned to Respondents at the end of the RFI process.
- c. Ownership of Intellectual Property rights in the Information 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 Information for any purpose related to the RFI process.

### **No binding legal relations**

- a. Neither the RFI, nor the RFI 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 Information
  - ii. the Respondent's statements, representations and/or warranties in its Information and in its correspondence with the Buyer
  - iii. the Evaluation Approach to be used by the Buyer to assess Information as set out
  - iv. the standard RFI conditions
  - v. any other matters expressly described as binding obligations
- b. Each exception is subject only to the Buyer's reserved rights
- c. Except for the legal obligations set out, no legal relationship is formed between the Buyer and any Respondent unless and until a Contract is entered into between those parties.

### **Elimination**

- a. The Buyer may exclude a Respondent from participating in the RFI process if the Buyer has evidence of any of the following, and is considered by the Buyer to be material to the RFI:
  - i. the Respondent has failed to provide all information requested, or in the correct format, or materially breached a term or condition of the RFI process
  - ii. the Information 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.

## Buyer's additional rights

- a. Despite any other provision in the RFI the Buyer may, on giving due notice to Respondents:
  - i. amend, suspend, cancel and/or re-issue the RFI, or any part of the RFI
  - ii. make any material change to the RFI (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 RFI the Buyer may:
  - i. accept a late Information if it is the Buyer's fault that it is received late
  - ii. in exceptional circumstances, accept a late Information where it considers that there is no material prejudice to other Respondents. The Buyer will not accept a late Information 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 Information
  - iii. in exceptional circumstances, answer questions submitted after the Clarification Period ends
  - iv. accept or reject any Information, or part of the Information
  - v. accept or reject any non-compliant, non-conforming or alternative Information
  - vi. decide not to enter into a Contract with any Respondent
  - vii. liaise or negotiate with any Respondent without disclosing this to, or doing the same with, any other Respondent
  - viii. provide or withhold from any Respondent information in relation to any question arising in relation to the RFI. 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
  - ix. amend the Proposed Contract at any time, including during negotiations with a shortlisted Respondent
  - x. waive irregularities or requirements in the RFI process where it considers it appropriate and reasonable to do so.
- c. The Buyer may request that a Respondent agrees to the Buyer:
  - i. selecting any individual element/s of the Requirements that is offered in the Information and capable of being delivered separately, unless the Information specifically states that the Information, or elements of the Information, are to be taken collectively
  - ii. selecting two or more Respondents to deliver the Requirements as a joint venture or consortium.

## New Zealand law

- a. The laws of New Zealand shall govern the RFI process and each Respondent agrees to submit to the exclusive jurisdiction of the New Zealand courts in respect of any dispute concerning the RFI or the RFI process.

## 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 RFI process.
- b. Nothing contained or implied in the RFI, or RFI 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 is \$1.



## Precedence

- a. Any conflict or inconsistency in the documents forming the RFI shall be resolved by giving precedence in the following descending order:
  - i. Key Information
  - ii. RFI Terms
  - iii. all other Sections of this RFI document
  - iv. any additional information or document provided by the Buyer to Respondents through the Buyer's Point of Contact or TENDERLINK.
- 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 this RFI the following words and expressions have the meanings described below.

<b>Advance Notice</b>	A notice published by the buyer on TENDERLINK in advance of publishing the RFI. An Advance Notice alerts the market to a contract opportunity. Where used, an Advance Notice forms part of the RFI.
<b>Business Day</b>	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.
<b>Buyer</b>	The Buyer is the government agency that has issued the call for Information through a RFI with the intent of purchasing the goods or services described in the Requirements. The term Buyer includes its officers, employees, contractors, consultants, agents and representatives.
<b>Competitors</b>	Any other business that is in competition with a Respondent either in relation to the goods or services sought under the RFI or in general.
<b>Confidential Information</b>	<p>Information that:</p> <ol style="list-style-type: none"><li>is by its nature confidential</li><li>is marked by either the Buyer or a Respondent as 'confidential', 'commercially sensitive', 'sensitive', 'in confidence', 'top secret', 'secret', 'classified' and/or 'restricted'</li><li>is provided by the Buyer, a Respondent, or a third party in confidence</li><li>the Buyer or a Respondent knows, or ought to know, is confidential.</li></ol> <p>Confidential information does not cover information that is in the public domain through no fault of either the Buyer or a Respondent.</p>
<b>Conflict of Interest</b>	<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 RFI 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"><li>actual: where the conflict currently exists</li><li>potential: where the conflict is about to happen or could happen, or</li><li>perceived: where other people may reasonably think that a person is compromised.</li></ol>
<b>Contract</b>	The written contract/s entered into by the Buyer and Successful Respondent/s for the delivery of the Requirements.
<b>Deadline for Information</b>	The deadline that Information are to be delivered or submitted to the Buyer as stated.
<b>Deadline for Questions</b>	The deadline for suppliers to submit questions to the Buyer as stated, if applicable.
<b>Evaluation Approach</b>	The approach used by the Buyer to evaluate Information as described, if applicable.
<b>TENDERLINK</b>	Electronic Tenders Service.
<b>GST</b>	The goods and services tax payable in accordance with the New Zealand Goods and Services Tax Act 1985.
<b>Intellectual Property</b>	All intellectual property rights and interests, including copyright, trademarks, designs, patents and other proprietary rights, recognised or protected by law.

<b>Point of Contact</b>	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 RFI process. The Buyer's Point of Contact is identified. The Respondent's Point of Contact is identified in its Information.
<b>Information</b>	The response a Respondent submits in reply to the Buyer's RFI. It comprises the Response Form, the Respondent's Information and all other information submitted by a Respondent.
<b>RFI</b>	Means the Buyer's call for Information.
<b>Information of Interest</b>	The Buyer's call for Information comprises the Advance Notice (where used), this RFI document (including the RFI-Terms) and any other schedule, appendix or document attached to RFI, and any subsequent information provided by the Buyer to Respondents through the Buyer's Point of Contact or TENDERLINK.
<b>RFI-Terms</b>	Means the Process, Terms and Conditions that apply to this Request for Information Conditions, as described.
<b>RFI Process, Terms and Conditions (shortened to RFI-Terms)</b>	The government's standard terms and conditions that apply to RFIs as described. These may be varied at the time of the release of the RFI by the Buyer. These may be varied subsequent to the release of the RFI by the Buyer on giving notice to Respondents.
<b>Requirements</b>	The goods and/or services described, which the Buyer intends to purchase.
<b>Respondent</b>	A person, organisation, business or other entity that submits Information in response to the RFI. 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 Information.
<b>Response Form</b>	The form and declaration prescribed by the Buyer and used by a Respondent to respond to the RFI, duly completed and submitted by a Respondents as part of its Information.