

5.10.3 Each Tenderer agrees that any legally binding contract entered into between the Tenderer and the Crown will be essentially in the form set out in Part Three of this RFT.

5.10.4 The Crown may use third parties to negotiate with Tenderers as required.

5.11 Tenderer's debrief

5.11.1 The Crown will offer all unsuccessful Tenderers a debrief. Each Tenderer will have 20 Business Days, from the date of offer, to request a debrief. When a Tenderer requests a debrief, the Crown will provide the debrief within 30 Business Days of the date of the request, or of the date the contract has been signed, whichever is later.

5.11.2 The debrief may be provided by letter, email, phone or at a meeting. The debrief will:

- (a) provide the reasons why the Tender was not successful;
- (b) explain how the Tender performed against the Evaluation Criteria;
- (c) indicate the Tender's relative strengths and weaknesses;
- (d) explain, in general terms, the relative advantage(s) of the successful Tender;
- (e) seek to address any concerns or questions from the Tenderer; and
- (f) seek feedback from the Tenderer on the RFT and the RFT process.

5.11.3 Each Tenderer shall meet its own costs associated with any debrief.

5.11.4 Where a probity auditor is appointed for the project, the probity auditor may also make contact with each Tenderer separately to discuss the RFT process with them.

5.12 Notification of outcome

5.12.1 At any point after conclusion of negotiations, but no later than 30 Business Days after the date the contract is signed, the Crown will inform all unsuccessful Tenderers of the name of the successful Tenderer, if any. The Crown may make public the name of the successful Tenderer and any unsuccessful Tenderer(s). Where applicable, the Crown will publish a contract award notice on GETS.

5.13 Issues and complaints

5.13.1 A Tenderer may, in good faith, raise with the Crown any issue or complaint about the RFT (including any interpretation or inconsistency issues), or the RFT process at any time. Any such issue or complaint shall be lodged in writing with the Contact Officer.

5.13.2 The Crown will consider and respond promptly and impartially to the Tenderer's issue or complaint.

5.13.3 Both the Crown and Tenderer agree to act in good faith and use their best endeavours to resolve any issue or complaint that may arise in relation to the RFT.

5.13.4 The fact that a Tenderer has raised an issue or complaint is not to be used by the Crown to unfairly prejudice the Tenderer's ongoing participation in the RFT process or future contract opportunities.

- 5.13.5 Paragraph 5.3 applies with respect to any such issue or complaint, where the Crown considers the issue or complaint is of general application to the RFT or all Tenderers.

Standard RFT conditions

5.14 Crown's Contact Officer

- 5.14.1 All enquiries regarding the RFT must be directed by email to the Crown's Contact Officer. Tenderers must not directly or indirectly approach any representative of the Crown, or any other person, to solicit information concerning any aspect of the RFT.
- 5.14.2 Only the Contact Officer, and any authorised person of the Crown, are authorised to communicate with Tenderers regarding any aspect of the RFT. The Crown will not be bound by any statement made by any other person.
- 5.14.3 The Crown may change the Contact Officer at any time. The Crown will notify Tenderers of any such change. This notification may be posted on GETS or sent by email.
- 5.14.4 Where a Tenderer has an existing contract with the Crown, business as usual communications, for the purpose of managing delivery of that contract, will continue using the usual contacts. Tenderers must not use business as usual contacts to lobby the Crown, solicit information or discuss aspects of the RFT.

5.15 Conflict of interest

- 5.15.1 Each Tenderer must complete the declaration in Schedule 1 to this Part One, which includes a conflict of interest declaration.
- 5.15.2 Each Tenderer must immediately inform the Crown should a conflict of interest arise during the RFT process. A material conflict of interest may result in the Tenderer being disqualified from participating further in the RFT process.
- 5.15.3 If a Tenderer fails to notify the Crown of a conflict of interest or is unable or unwilling to resolve or deal with the conflict as required by the Crown, the Tenderer may be disqualified from participating further in the RFT process.

5.16 Ethics

- 5.16.1 Tenderers must not attempt to influence or provide any form of personal inducement, reward or benefit to any representative of the Crown in relation to the RFT.
- 5.16.2 Tenderers must not seek or accept assistance from current employees of the Crown or NZDF, or utilise any information unlawfully obtained from the Crown (including in breach of an obligation of confidentiality) in the preparation of their Tenders.
- 5.16.3 A Tenderer who attempts to do anything prohibited by paragraphs 5.14.1, 5.14.4, 5.16.1 or 5.16.2 of this section 5 may be disqualified from participating further in the RFT process.
- 5.16.4 The Crown reserves the right to require additional declarations, or other evidence from a Tenderer, or any other person, throughout the RFT process to ensure probity of the RFT process.

5.17 Anti-collusion and bid rigging

- 5.17.1 Tenderers must not engage in collusive, deceptive or improper conduct in the preparation of their Tenders or other submissions or in any discussions or negotiations with the Crown. Such

behaviour will result in the Tenderer being disqualified from participating further in the RFT process. In submitting a Tender, the Tenderer warrants that its Tender has not been prepared in collusion with a competitor.

- 5.17.2 The Crown reserves the right, at its discretion, to report suspected collusive or anti-competitive conduct by Tenderers to the appropriate authority and to give that authority all relevant information, including a Tenderer's Tender.

5.18 Confidential Information

- 5.18.1 The Crown and Tenderer will each take reasonable steps to protect Confidential Information and, subject to paragraphs 5.18.2, 5.18.3 and 5.18.4 below, 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.
- 5.18.2 The Crown and Tenderer may each disclose Confidential Information to any person who is directly involved in the RFT 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 RFT.
- 5.18.3 The Crown may disclose Confidential Information (excepting price information) contained in a Tender to the Governments of Australia, Canada, the United Kingdom and/or the United States of America if such information is requested by those governments. If Confidential Information is disclosed to overseas Governments under this paragraph 5.18.3, it will be done so on a confidential basis.
- 5.18.4 Tenderers acknowledge that the Crown's obligations under paragraph 5.18.1 above are subject to requirements imposed by the Official Information Act 1982 (OIA), the Privacy Act 1993, parliamentary and constitutional convention and any other obligations imposed by law. The Crown will not be in breach of its obligations if Confidential Information is disclosed by the Crown to the appropriate authority because of suspected collusive or anti-competitive tendering behaviour. Where the Crown receives an OIA request that relates to a Tenderer's Confidential Information, the Crown will consult with the Tenderer and may ask the Tenderer to explain why the information is considered by the Tenderer to be confidential or commercially sensitive.

5.19 Confidentiality of RFT information

- 5.19.1 For the duration of the RFT, to the date of the announcement of the successful Tenderer(s), or the end of the RFT process, the Tenderer agrees to keep the RFT strictly confidential and not make any public statement to any third party in relation to any aspect of the RFT, the RFT process or the award of any Contract without the Crown's prior written consent.
- 5.19.2 A Tenderer may disclose RFT information to any person described in paragraph 5.18.2 above but only for the purpose of participating in the RFT. The Tenderer 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 RFT.

5.20 Costs of participating in the RFT process

- 5.20.1 Each Tenderer will meet its own costs associated with the preparation and presentation of its Tender and any negotiations and no such costs will be included in or attributed to the price, nor will the Tenderer recover, or attempt to recover, such costs from the Crown or any other party in any other manner.