

## Note to suppliers and Respondents.

- In managing this procurement Council 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 RFT Process, Terms and Conditions (shortened to RFT-Terms) which apply to this procurement.
- Words and phrases that have a special meaning are shown by the use of capitals e.g., Respondent, which means *'a person, organisation, business or other entity that submits a Tender in response to the RFT. 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 marketplace that does not submit a Tender.'* Definitions are at the end of this section.
- If you have any questions about the RFT-Terms, please email the listed point of contact.

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## Standard RFT process

### Preparing and submitting a Tender

#### 6.1 Preparing a Tender

- a. Respondents are to use the Response Form provided and include all information requested by Council in relation to the RFT.
- b. By submitting a Tender, the Respondent accepts that it is bound by the RFT Process, Terms and Conditions (RFT-Terms) contained in Section 6 (as varied by Section 1, paragraph 1.6, if applicable).
- c. Each Respondent will:
  - i. examine the RFT and any documents referenced in the RFT, and any other information provided by Council
  - ii. consider all risks, contingencies and other circumstances relating to the delivery of the Requirements and include adequate provision in its Tender to manage such risks and contingencies
  - iii. document in its Tender all assumptions and qualifications made about the delivery of the Requirements, including any assumption that Council or a third party will deliver any aspect of the Requirements or incur any cost related to the delivery of the Requirements
  - iv. ensure that pricing information is quoted in NZ\$ exclusive of GST
  - v. if appropriate, obtain independent advice before submitting a Tender
  - vi. satisfy itself as to the correctness and sufficiency of its Tender, including the proposed pricing and the sustainability of the pricing.
- d. There is no expectation or obligation for Respondents to submit Tenders in response to the RFT solely to remain on any prequalified or registered supplier list. Any Respondent on such a list will not be penalised for failure to submit a Tender.

#### 6.2 Offer Validity Period

- a. Tenders are to remain valid and open for acceptance by Council for the Offer Validity Period.

### **6.3 Respondents' Deadline for Questions**

- a. Each Respondent should satisfy itself as to the interpretation of the RFT. If there is any perceived ambiguity or uncertainty in the RFT documents Respondents should seek clarification before the Deadline for Questions.
- b. All requests for clarification of the RFT information should be made using the GETS forum online (Council's Point of Contact). Council will respond to the query in like manner and all suppliers who have downloaded the document will have access to the response.

### **6.4 Submitting a Tender**

- a. Each Respondent is responsible for ensuring that its Tender received by Council in the correct electronic tenderbox on or before the Deadline for Registrations. Allow enough time for your internet upload speed.
- b. Council intends to rely on the Respondent's Tender and all information provided by the Respondent (e.g., correspondence and negotiations). In submitting a Tender and communicating with Council each Respondent should check that all information it provides to Council 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

## **Assessing Tenders**

### **6.5 Evaluation Panel**

- a. Council will convene an evaluation panel comprising members chosen for their relevant expertise and experience. In addition, Council may invite independent advisors to evaluate any Tender, or any aspect of any Tender.

### **6.6 Third party information**

- a. Each Respondent authorises Council 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 Tender.
- b. Each Respondent is to ensure that all referees listed in support of its Tender agree to provide a reference.
- c. To facilitate discussions between Council and third parties each Respondent waives any confidentiality obligations that would otherwise apply to information held by a third party, with the exception of commercially sensitive pricing information.

### **6.7 Council's clarification**

- a. Council may, at any time, request from any Respondent clarification of its Tender as well as additional information about any aspect of its Tender. Council 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. Council may take such clarification or additional information into account in evaluating the Tender.

- c. Where a Respondent fails to respond adequately or within a reasonable time to a request for clarification or additional information, Council may cease evaluating the Respondent's Tender and may eliminate the Tender from the RFT process.

## **6.8 Evaluation and shortlisting**

- a. Council will base its initial evaluation on the Tenders submitted in response to the RFT. Council may adjust its evaluation of a Tender following consideration of any clarification or additional information as described in paragraphs 6.6 and 6.7.
- b. In deciding which Respondent/s to shortlist Council will take into account the results of the evaluations of each Tender and the following additional information:
  - i. each Respondent's understanding of the Requirements, capability to fully deliver the Requirements and willingness to meet the terms and conditions of the Proposed Contract
  - ii. except where the price is the only criterion, the best value-for-money over the whole-of-life of the goods or services.
- c. In deciding which Respondent/s to shortlist Council may take into account any of the following additional information:
  - i. the results from reference checks, site visits, product testing and any other due diligence
  - ii. the ease of contracting with a Respondent based on that Respondent's feedback on the Proposed Contract (where these do not form part of the weighted criteria)
  - iii. any matter that materially impacts on Council's trust and confidence in the Respondent
  - iv. any other relevant information that Council may have in its possession.
- d. Council will advise Respondents if they have been shortlisted or not. Being shortlisted does not constitute acceptance by Council of the Respondent's Tender, or imply or create any obligation on Council to enter into negotiations with, or award a Contract for delivery of the Requirements to any shortlisted Respondent/s.

## **6.9 Negotiations**

- a. Council may invite a Respondent to enter into negotiations with a view to contract. Where the outcome is unsatisfactory Council may discontinue negotiations with a Respondent and may then initiate negotiations with another Respondent.
- b. Council may initiate concurrent negotiations with more than one Respondent. In concurrent negotiations Council will treat each Respondent fairly, and:
  - i. prepare a negotiation plan for each negotiation
  - ii. advise each Respondent, that it wishes to negotiate with, that concurrent negotiations will be carried out
  - iii. hold separate negotiation meetings with each Respondent.
- c. Each Respondent agrees that any legally binding contract entered into between the Successful Respondent and Council will be essentially in the form set out in Section 5, the Proposed Contract.

## **6.10 Respondent's notification**

- a. Council will notify any unsuccessful Respondents by letter or email. This letter/email will advise how the Respondents Tender performed against the mandatory assessment criteria (if applicable) and the evaluation criteria.

### **6.11 Notification of outcome**

- a. At any point after conclusion of negotiations, but no later than 30 Business Days after the date the Contract is signed, Council will inform all unsuccessful Respondents of the name of the Successful Respondent, if any. Council may make public the name of the Successful Respondent.

### **6.12 Issues and complaints**

- a. A Respondent may, in good faith, raise with Council any issue or complaint about the RFT, or the RFT process at any time.
- b. Council will consider and respond promptly and impartially to the Respondent's issue or complaint.
- c. Both Council and Respondent agree to act in good faith and use their best endeavours to resolve any issue or complaint that may arise in relation to the RFT.
- d. The fact that a Respondent has raised an issue or complaint is not to be used by Council to unfairly prejudice the Respondent's on-going participation in the RFT process or future contract opportunities.

## **Standard RFT conditions**

### **6.13 Council's Point of Contact**

- a. All enquiries regarding the RFT must be directed by email to Council's Point of Contact. Respondents must not directly or indirectly approach any representative of Council, or any other person, to solicit information concerning any aspect of the RFT.
- b. Only the Point of Contact, and any authorised person of Council, are authorised to communicate with Respondents regarding any aspect of the RFT. Council will not be bound by any statement made by any other person.
- c. Council may change the Point of Contact at any time. Council will notify Respondents of any such change. This notification may be posted on GETS or sent by email.
- d. Where a Respondent has an existing contract with Council 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 Council, solicit information or discuss aspects of the RFT.

### **6.14 Conflict of Interest**

- a. Each Respondent must complete the Conflict-of-Interest declaration in the Response Form and must immediately inform Council should a Conflict of Interest arise during the RFT process. A material Conflict of Interest may result in the Respondent being disqualified from participating further in the RFT.

### **6.15 Ethics**

- a. Respondents must not attempt to influence or provide any form of personal inducement, reward or benefit to any representative of Council in relation to the RFT.
- b. A Respondent who attempts to do anything prohibited by paragraphs 6.13.a. and d. and 6.15.a. may be disqualified from participating further in the RFT process.
- c. Council reserves the right to require additional declarations, or other evidence from a Respondent, or any other person, throughout the RFT process to ensure probity of the RFT process.

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

- a. Respondents 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 Council. Such behaviour will result in the Respondent being disqualified from participating further in the RFT process. In submitting a Tender, the Respondent warrants that its Tender has not been prepared in collusion with a Competitor.
- b. Council 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 Tender.

### **6.17 Confidential Information**

- a. Council and Respondent will each take reasonable steps to protect Confidential Information and, subject to paragraph 6.17.c. and without limiting any confidentiality undertaking agreed between them, will not disclose Confidential Information to a third party without the other's prior written consent.
- b. Council and Respondent 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 team members, partners, principals or directors, but only for the purpose of participating in the RFT.
- c. Respondents acknowledge that Council's obligations under paragraph 6.17.a. are subject to requirements imposed by the Local Government Official Information and Meetings Act 1987 ("LGOIMA"), the Privacy Act 1993, parliamentary and constitutional convention and any other obligations imposed by law. Council will not be in breach of its obligations if Confidential Information is disclosed by Council to the appropriate authority because of suspected collusive or anti-competitive tendering behaviour. Where Council receives a LGOIMA request that relates to a Respondent's Confidential Information Council will consult with the Respondent and may ask the Respondent to explain why the information is considered by the Respondent to be confidential or commercially sensitive.

### **6.18 Confidentiality of RFT information**

- a. For the duration of the RFT, to the date of the announcement of the Successful Respondent, or the end of the RFT process, the Respondent 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 Council's prior written consent.
- b. A Respondent may disclose RFT information to any person described in paragraph 6.17.b. but only for the purpose of participating in the RFT. 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 RFT.

### **6.19 Costs of participating in the RFT process**

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

### **6.20 Ownership of documents**

- a. The RFT and its contents remain the property of Council. All Intellectual Property rights in the RFT remain the property of Council or its licensors. Council may request the immediate return or destruction of any or all RFT documents and any copies. Respondents must comply with any such request in a timely manner.

- b. All documents forming the Tender will, when delivered to Council, become the property of Council. Tenders will not be returned to Respondents at the end of the RFT process.
- c. Ownership of Intellectual Property rights in the Tender remain the property of the Respondent or its licensors. However, the Respondent grants to Council a non-exclusive, non-transferable, perpetual licence to retain, use, copy and disclose information contained in the Tender for any purpose related to the RFT process.

## 6.21 No binding legal relations

- a. Neither the RFT, nor the RFT process, creates a process contract or any legal relationship between Council and any Respondent, except in respect of:
  - i. the Respondent's declaration in its Tender
  - ii. the Offer Validity Period
  - iii. the Respondent's statements, representations and/or warranties in its Tender and in its correspondence and negotiations with Council
- b. Each exception in paragraph 6.21.a. is subject only to Council's reserved rights in paragraph 6.23.
- c. Except for the legal obligations set out in paragraph 6.21.a. no legal relationship is formed between Council and any Respondent unless and until a Contract is entered into between those parties.
- d. The issue of this RFT does not legally obligate or otherwise commit the principal to proceed with or follow the process outlined in this RFT, or to evaluate any particular tenderers proposal, or to enter into any negotiations or contractual arrangements with any tenderer. This RFT does not give rise to a process contract.

## 6.22 Elimination

- a. Council may exclude a Respondent from participating in the RFT if Council has evidence of any of the following, and is considered by Council to be material to the RFT:
  - i. the Respondent has failed to provide all information requested, or in the correct format, or materially breached a term or condition of the RFT
  - ii. the Tender contains a material error, omission or inaccuracy
  - iii. the Respondent is in bankruptcy, receivership or liquidation
  - iv. the Respondent has made a false declaration
  - v. there is a serious performance issue in a historic or current contract delivered by the Respondent
  - vi. the Respondent has been convicted of a serious crime or offence
  - vii. there is professional misconduct or an act or omission on the part of the Respondent which adversely reflects on the integrity of the Respondent
  - viii. the Respondent has failed to pay taxes, duties or other levies
  - ix. the Respondent represents a threat to national security or the confidentiality of sensitive government information
  - x. the Respondent is a person or organisation designated as a terrorist by New Zealand Police.

### 6.23 Council's additional rights

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

### 6.24 New Zealand law

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



## 6.25 Disclaimer

- a. Council 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 RFT process.
- b. Nothing contained or implied in the RFT, or RFT process, or any other communication by Council to any Respondent shall be construed as legal, financial or other advice. Council 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 Council, its agents and advisors is \$1.

## 6.26 Precedence

- a. Any conflict or inconsistency in the RFT shall be resolved by giving precedence in the following descending order:
  - i. Section 6 (RFT-Terms)
  - ii. all other Sections of this RFT document
  - iii. any additional information or document provided by Council to Respondents through GETS.
- b. If there is any conflict or inconsistency between information or documents having the same level of precedence the later information or document will prevail.

## Definitions

In relation to the RFT the following words and expressions have the meanings described below.

<b>Advance Notice</b>	A notice published by Council on GETS in advance of publishing the RFT. An Advance Notice alerts the market to a contract opportunity. Where used, an Advance Notice forms part of the RFT.
<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>Closing Date</b>	The deadline for Tenders to be received by Council as stated in Section 1, paragraph 1.2.
<b>Competitors</b>	Any other business that is in competition with a Respondent either in relation to the goods or services sought under the RFT or in general.
<b>Confidential Information</b>	<p>Information that:</p> <ol style="list-style-type: none"><li>a. is by its nature confidential</li><li>b. is marked by either Council or a Respondent as 'confidential', 'commercially sensitive', 'sensitive', 'in confidence', 'top secret', 'secret', classified' and/or 'restricted'</li><li>c. is provided by Council, a Respondent, or a third party in confidence</li><li>d. Council 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 or a Respondent.</p>
<b>Conflict of Interest</b>	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 Council under the RFT or in the provision of the goods or services. It means that the



	<p>Respondent's independence, objectivity or impartiality can be called into question. A Conflict of Interest may be:</p> <ul style="list-style-type: none"> <li>a. actual: where the conflict currently exists</li> <li>b. potential: where the conflict is about to happen or could happen, or</li> <li>c. perceived: where other people may reasonably think that a person is compromised.</li> </ul>
<b>Contract</b>	The written Contract/s entered into by Council and Successful Respondent/s for the delivery of the Requirements.
<b>Council</b>	The Hamilton City Council; that has issued the RFT with the intent of purchasing the goods or services described in the Requirements. The term Council includes its officers, employees, contractors, consultants, agents and representatives.
<b>Deadline for Questions</b>	The deadline for suppliers to submit questions to Council as stated in Section 1, paragraph 1.2, if applicable.
<b>Deadline for Tenders</b>	The deadline that Tenders are to be delivered or submitted to Council as stated in Section 1, paragraph 1.2.
<b>Evaluation Approach</b>	The approach used by Council to evaluate Tenders as described in Section 3 and in Section 6.
<b>Government Electronic Tendering Service (GETS)</b>	Hamilton City Council's chosen tendering platform <a href="http://www.GETS.govt.nz">www.GETS.govt.nz</a>
<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>Offer Validity Period</b>	The period of time when a Tender (offer) is held open by the Respondent for acceptance by Council as stated in Section 1, paragraph 1.6.
<b>Point of Contact</b>	Council and each Respondent are required to appoint a Point of Contact. This is the channel to be used for all communications during the RFT process. Council's Point of Contact is identified in Section 1, paragraph 1.3. The Respondent's Point of Contact is identified in its RFT Response Form.
<b>Price</b>	The total amount, including all costs, fees, expenses and charges, to be charged by the Successful Respondent for the full delivery of the Requirements. Each Respondent's Tender must include its Price.
<b>Proposed Contract</b>	The Contract terms and conditions proposed by Council for the delivery of the Requirements as described in Section 5.
<b>Tender</b>	The response a Respondent submits in reply to the RFT. It comprises the Response Form, the Respondent's bid, financial and pricing information and all other information submitted by a Respondent.
<b>RFT</b>	Means the Request for Tender.
<b>Registration of Interest</b>	A formal request by Council asking potential suppliers to register their interest in a procurement. It is the first step in a multi-step tender process.

<b>Request for Tender (RFT)</b>	The RFT comprises the Advance Notice (where used), this RFT document (including the RFT-Terms) and any other schedule, appendix or document attached to this RFT, and any subsequent information provided by Council to Respondents through Council's Point of Contact (GETS).
<b>RFT-Terms</b>	Means the Request for Tender - Process, Terms and Conditions as described in Section 6.
<b>RFT Process, Terms and Conditions (shortened to RFT-Terms)</b>	The Council's standard process, terms and conditions that apply to RFTs as described in Section 6. These may be varied at the time of the release of the RFT by Council. These may be varied subsequent to the release of the RFT by Council on giving notice to Respondents.
<b>Requirements</b>	The goods and/or services described in Section 2 which cover the services Council intends to purchase.
<b>Respondent</b>	A person, organisation, business or other entity that submits a Tender in response to the RFT. The term Respondent includes its officers, employees, contractors, consultants, agents and representatives. The term Respondent differs from a supplier, which is any other business in the market place that does not submit a Tender.
<b>Response Form</b>	The form and declaration prescribed by Council and used by a Respondent to respond to the RFT, duly completed and submitted by a Respondent as part of the Tender.
<b>Successful Respondent</b>	Following the evaluation of Tenders and successful negotiations, the Respondent/s who is awarded a Contract/s to deliver all or part of the Requirements.