

Auckland Council and Council-Controlled Organisations (CCOs) RFX Conditions

1. Interpretation:

In these Conditions:

- a) RFX Conditions means this document;
- b) Contact Person means the RFX information contact person stated in the RFX Documents.
- c) RFX means any one of a:
 - o Request for Information (RFI);
 - o Request for Quote (RFQ);
 - o Request for Expressions of Interest (REOI);
 - o Request for Proposal (RFP); and
 - o Request for Tender (RFT)
- d) RFX Documents means any and all documents and written information issued in relation to a particular RFX.
- e) Goods and/or services mean those goods or services identified in the RFX Documents.
- f) The term “including” does not imply any limitation.
- g) Any rights reserved to the Council Organisation may be exercised at the sole discretion of the Council Organisation or the Administrator.

2. Issue of RFX Documents

2.1 The issue of the RFX Documents is not an offer to enter into a contract.

2.2 The RFX Documents have been provided to assist participants in preparing proposals. The Council Organisation does not represent or warrant the completeness or accuracy of the RFX Documents. Participants rely on any information provided in relation to the RFX at their own risk and are responsible for the interpretation of that information. RFX Documents remain the property of the Council Organisation.

2.3 The Contact Person may be contacted with any questions in relation to the RFX. All questions must be received by the last date for questions set out in the RFX Documents.

3. Participants to inform themselves

3.1 Each participant is deemed to have examined the RFX Documents and to have satisfied itself as far as is practical for an experienced supplier as to the correctness and sufficiency of:

- its proposal to cover the Goods/ Services; and
- the prices/rates/sum stated in its proposal.

3.2 The rates/prices submitted in each participant's proposal will, except where otherwise provided, allow for all of the participant's obligations under the terms of contract as set out in the Contract that is part of the RFX Documents. The participant will undertake any investigations, measurements and analysis as it may consider necessary before submitting a proposal.

3.3 The Contact Person is the only person authorised to receive queries, requests for information or other communications by participants or related parties regarding the RFX. The Council Organisation will not be bound by any statement, written or verbal, made by any person including the Contact Person unless that statement is subsequently incorporated into a formal written contract for the provision of the Goods and/or services between the Council Organisation and the participant.

4. Ambiguities in the RFX Documents

4.1 Participants may request an explanatory notice where the RFX Documents are ambiguous or unclear. All requests for explanatory notices must be received by the last date for questions set out in the RFX Documents.

4.2 In the absence of an explanatory notice, proposals may be submitted subject to any reasonable interpretation of any ambiguity or uncertainty in the RFX Documents, provided that the interpretation is expressly stated in the proposal.

5. Submission of proposals

5.1 The period for submitting responses will be opened and closed at the times stated in the RFX Documents. The Council Organisation reserves the right to extend the period allowed for the submission of proposals.

5.2 Proposals must be submitted electronically to the SAP Ariba electronic tender box. If you have difficulty accessing SAP Ariba, please refer to SAP Ariba support information in the first instance and email the contact person before the deadline for proposals to discuss alternative arrangements. Proposals sent by post or fax or email or delivered to our office will not be accepted. If you need to submit supporting material that cannot be transmitted electronically, please email the contact person before the deadline for proposals to discuss delivery. Your response document must still be submitted through SAP Ariba.

5.3 Joint proposals may be submitted. In the event that a joint proposal is successful, all joint parties will be jointly and severally liable to discharge the duties, obligations and responsibilities under any contract for the provision of Goods and/or services that result from the RFX. One of the participants to the joint proposal must be identified as the contact point for all communications with the Council Organisation relating to the proposal.

5.4 The cost of preparing and submitting a proposal, and the cost to the participant of any subsequent negotiations, meetings or discussions, will be borne by the participant.

Applied to RFP, RFT and RFQ only

5.5 If a proposal contains an error and the Council Organisation becomes aware of that error, then the Council Organisation will draw the error to the attention of the relevant participant(s) and reserves the right to either:

- a) Invite the participant to confirm that its proposal remains open for acceptance at the rates, prices or sum set out in the proposal, notwithstanding the error; or
- b) Permit the participant to correct the error (including by alteration of the rates/prices or sum set out in the proposal).

5.6 If the Council Organisation invites the participant to provide the confirmation set out in clause 5.5(a) above and the participant does not provide such confirmation within the timeframe set by the Council Organisation, the relevant proposal will be deemed withdrawn by the participant.

5.7 The participant will include rates and/or prices or a sum for all the Goods and/or services. The rates/prices/sum must be provided in the format set out in the pricing schedule set out in the RFX (or, where no pricing schedule is included, in the format deemed appropriate by the participant).

5.8 Goods and/or services against which no rate or price is specifically submitted by the participant and are required to be provided as part of the Goods and/or services will be deemed covered by other rates and prices submitted by the participant. If there is any ambiguity or uncertainty over what the rates and/or prices submitted cover, the Council Organisation will be entitled to interpret them.

5.9 Without limiting its rights under clause 5.8, the Council Organisation reserves the right to request any participant to clarify and/or amend its proposal and/or negotiate with participants.

5.10 The participant warrants that:

- a) all information it submits is complete and accurate in all material respects and is not misleading whether by omission or otherwise;
- b) none of the information it submits breaches any third party's rights, including intellectual property rights, and the use of the information in relation to the RFX will not breach such rights;
- c) it has not withheld any information potentially relevant to the Council Organisation's consideration of its proposal, including any actual or potential controversies, disputes or claims involving the participant; and
- d) the foregoing warranties will remain true and correct during the period of any negotiations

between the participant and the Council Organisation.

Applied to RFP, RFT and RFQ only

6. Acceptance of proposal

6.1 The lowest priced, highest scoring or any proposal will not necessarily be accepted.

6.2 The Council Organisation reserves the right to:

- a) accept none or any of the proposals;
 - b) waive any non-conformities or other irregularities or informalities in the RFX process;
 - c) amend the RFX process or any associated documents;
 - d) suspend, withdraw or cancel, in whole or in part, the RFX process or withdraw the contract at any time;
 - e) enter into negotiations with one or more of the participants; and/or
 - f) request additional proposals;
- without incurring any liability to any participant.

Applied to REOI only

7. Acceptance of proposal

7.1 The Council Organisation may request any participant to clarify and/or adjust aspects of its EOI and reserves the right to negotiate with any shortlisted participant/s with a view to proceeding to a competitive process or negotiate directly with one or more participant/s.

7.2 Short-listing of any participant does not constitute acceptance by the Council Organisation of that participant's EOI or imply or create any obligations on the Council Organisation to proceed to a competitive process or enter into any commitment to purchase any particular goods and/or services from the participant.

7.3 The Council Organisation reserves the right to:

- a) accept none or any of the proposals;
- b) waive any non-conformities or other irregularities or informalities in the RFX process;
- c) amend the RFX process or any associated documents;
- d) suspend, withdraw or cancel, in whole or in part, the RFX process or withdraw the contract at any time;
- e) enter into negotiations with one or more of the participants; and/or
- f) request additional proposals; and
- g) proceed to the next procurement process of its choosing or not proceed to a competitive process at all;

without incurring any liability to any participant(short-listed or not).

Applied to RFP, RFT and RFQ only

8. Validity period and outcome

8.1 All proposals submitted will remain open as an offer capable of acceptance by the Council Organisation for the validity period stated in the RFX Documents.

8.2 The Council Organisation reserves the right to extend the validity period and, if it does so, will notify all participants of the new validity period and give them the opportunity to withdraw from the RFX process.

8.3 Participants will be notified of the outcome of the RFX process.

Applied to RFP, RFT and RFQ only

9. Alternative, tagged and other non-conforming proposals

9.1 The Council Organisation would prefer to receive proposals that comply with the RFX Documents but reserves the right to consider proposals submitted with departures, tags, qualifications, conditions or endorsements (Non-conformities). All Non-conformities must be set out in a statement of departures included with the relevant proposal.

9.2 The Council Organisation reserves the right to:

- a) evaluate, consider or reject any alternative proposal and/or proposal with Non-conformities (whether or not the proposal has been submitted with an express statement of the Non-conformity or that statement has been included in a statement of departures);
- b) assign a price to a Non-conformity; and/or
- c) request any participant to withdraw any Non-conformity either with or without an adjustment to the rates/prices/sum set out in the proposal.

9.3 The Council Organisation reserves the right to require participants to submit additional information to facilitate the evaluation of its proposal.

10. Due diligence

10.1 As part of the RFX process, the Council Organisation, its advisors and/or the Administrator may carry out due diligence investigations of any participants that submit proposals.

10.2 Each participant agrees to fully co-operate with any due diligence activities (including

providing all information which may be requested).

11. No obligations

11.1 No legal or other obligations will arise in relation to the conduct or outcome of the RFX process. For the avoidance of doubt, no process contract will apply to the RFX.

11.2 No legal or other obligations will arise in relation to provision of the Goods and/or services unless and until a formal written agreement for the provision of those Goods and/or services is signed by the Council Organisation and the relevant participant.

11.3 The Council Organisation and its agents or advisors will not be liable in contract, tort or in any other way for any direct or indirect damage, loss or cost incurred by any participant or other person in respect of the RFX process, its conduct or outcome.

12. Method of evaluation

12.1 The intended method of proposal evaluation and weightings (where applicable) is set out in the RFX Documents. However, the Council Organisation reserves the right to depart from this methodology and weightings

13. Ethics

13.1 Participants must complete and submit the Declaration set out in the RFX Documents.

13.2 The Council Organisation reserves the right to exclude any participant from the RFX process if the Council Organisation becomes aware that the participant has:

- a) any undeclared conflict of interest;
- b) made any attempt to influence the outcome of the RFX process by canvassing, lobbying or otherwise seeking the support of any officers, consultants, advisors or elected representatives of the Council Organisation or the Administrator (whether before or after the issue of the RFX);
- c) engaged in any practice that gives or is intended to give one or more participants an improper advantage over any other participant; and/or
- d) engaged in any practice that is illegal or which the Council Organisation considers to be unfair or unethical (including collusion and secret commission arrangements).

14. Confidentiality

14.1 If indicated as such in the RFX Documents, the RFX Documents are confidential. Participants must not release or disclose any RFX Document or any information in an RFX Document to any other person (other than their employees or advisors) without the express prior written consent of the Council Organisation.

14.2 Participants must not make any public statement regarding the RFX process without the express prior written consent of the Council Organisation.

14.3 The Council Organisation may, if it considers it appropriate, require a participant to sign a confidentiality deed before releasing any confidential or commercially sensitive information to the participant. The participant agrees to sign the confidentiality deed, if requested.

14.4 The Council Organisation reserves the right to exclude any participant from the RFX process if the Council Organisation becomes aware that the participant has breached any of the obligations set out in this clause 13.

14.5 The Council Organisation and the Administrator are subject to the Local Government Official Information and Meetings Act 1987. Information provided by participants may be required to be disclosed under that act.

15. Publishing of information

15.1 Auckland Council regularly publishes information on its procurement activities, spending and contracting as part of its public information programme (“the Programme”) to further promote openness and transparency of Council operations. As such, the successful participant will consent to Council disclosing information about the awarded agreement/contract in its Programme publicly, which will include

- a description of the services being supplied;
- the name of the participant;
- the term of the agreement/contract;
- the value of the agreement/contract.

In addition the successful participant will also consent to Council disclosing the total spend regarding all agreements or contracts between the participant and Council over a certain time period (which Council will set at its own discretion).

Applied to RFP, RFT and RFQ only

16. Preferred participant

15.1 If a participant is selected as 'a preferred participant' then such selection does not constitute an acceptance by the Council Organisation of the participant's proposal or imply or create any obligations on the Council Organisation to award the contract to that participant.

16.2 The Council Organisation may at any time, without being liable to the preferred participant, cease discussions or negotiations with any preferred participant and not award a contract to that party.

17. Administrator will have no liability

17.1 Clause 16.2 will apply where the Administrator is not the same as the Council Organisation.

17.2 The participant acknowledges that the Administrator is a separate legal entity from the Council Organisation and, notwithstanding the Administrator's involvement in the RFX process:

- a) the Administrator will not be liable in contract, tort or in any other way for any direct or indirect damage, loss or cost incurred by any participant or other person in any way relating to the RFX process, its conduct or outcome; and
- b) no legal or other obligations will arise between the Administrator and any participant in relation to the RFX process, its conduct or outcome.