

SECTION 5: RFQ Process, Terms & Conditions

Notes to suppliers and Respondents-

- All dates and times are dates and times in New Zealand.
- All dates are subject to change at Council's discretion.
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- All dates are subject to change at Council's discretion.
- Should the responses to this RFQ be deemed unsuitable, Council reserves the right to consider other options.
- If an error or omission is identified Council will notify GETS of the amendment and all suppliers who have downloaded the document will be informed electronically.
- Should the responses to this RFQ be deemed unsuitable, Council reserves the right to consider other options.
- In managing this procurement, the Council will endeavour to act fairly and reasonably in all its dealings with interested suppliers and Respondents, and to follow due process which is open and transparent.
- This page contains the RFP Process, Terms and Conditions (shortened to RFP-Terms) which apply to this procurement.
- 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 a Proposal in response to the RFP. 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 Proposal. [Definitions](#) are at the end of this section.

If you have any questions about the RFP-Terms, please email our Point of Contact.

Preparing and submitting a proposal

5.1 Preparing a Proposal

- a. Respondents are to use the Response Form provided and include all information requested by Council in relation to the RFP.
- b. By submitting a Proposal, the Respondent accepts that it is bound by the RFP Process, Terms and Conditions (RFP-Terms) contained in Section 5 (here).
- c. Each Respondent will:
 - i. examine the RFP and any documents referenced in the RFP 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 Proposal to manage such risks and contingencies.
 - iii. document in its Proposal 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 Proposal.
 - vi. satisfy itself as to the correctness and sufficiency of its Proposal, including the proposed pricing and the sustainability of the pricing.
- d. There is no expectation or obligation for Respondents to submit Proposals in response to the RFP 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 Proposal.

5.2 Offer Validity Period

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

5.3 Respondents' Deadline for Questions

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

5.4 Submitting a Proposal

- a. Each Respondent is responsible for ensuring that its Proposal received by the Council at the correct electronic tenderbox / email address on or before the Deadline for Registrations. Allow enough time for your internet upload speed.
- b. Council intends to rely on the Respondent's Proposal and all information provided by the Respondent (e.g., correspondence and negotiations). In submitting a Proposal 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 Proposals

5.5 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 Proposal, or any aspect of any Proposal.

5.6 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 Proposal.
- b. Each Respondent is to ensure that all referees listed in support of its Proposal 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, except for commercially sensitive pricing information.

5.7 Buyer's clarification

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

5.8 Evaluation and shortlisting

- a. Council will base its initial evaluation on the Proposals submitted in response to the RFP. Council may adjust its evaluation of a Proposal following consideration of any clarification or additional information as described in paragraphs 5.6 and 5.7.
- b. In deciding which Respondent/s to shortlist Council will consider the results of the evaluations of each Proposal 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 consider 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 Proposal, or imply or create any obligation on Council to enter negotiations with, or award a Contract for delivery of the Requirements to any shortlisted Respondent/s. At this stage in the RFP process Council will not make public the names of the shortlisted Respondents.

5.9 Negotiations

- a. Council may invite a Respondent to enter 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 between the Successful Respondent and Council will be essentially in the form set out in Section 4, the Proposed Contract.

5.10 Respondent's notification

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

5.11 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.

5.12 Issues and complaints

- a. A Respondent may, in good faith, raise with Council any issue or complaint about the RFP, or the RFP 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 RFP.
- 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 RFP process or future contract opportunities.

Standard RFP conditions

5.13 Buyer's Point of Contact

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

5.14 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 RFP

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

5.15 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 RFP.
- b. A Respondent who attempts to do anything prohibited by paragraphs 5.13.a. and d. and 5.15.a. may be disqualified from participating further in the RFP process.
- c. Council reserves the right to require additional declarations, or other evidence from a Respondent, or any other person, throughout the RFP process to ensure probity of the RFP process.

5.16 Anti-collusion and bid rigging.

- a. Respondents must not engage in collusive, deceptive, or improper conduct in the preparation of their Proposals 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 RFP process. In submitting a Proposal, the Respondent warrants that its Proposal 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 Proposal.

5.17 Confidential Information

- a. Council and Respondent will each take reasonable steps to protect Confidential Information and, subject to paragraph 5.17.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 RFP 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 RFP.
- c. Respondents acknowledge that Council's obligations under paragraph 5.17.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.

5.18 Confidentiality of RFP information

- a. For the duration of the RFP, to the date of the announcement of the Successful Respondent, or the end of the RFP process, the Respondent agrees to keep the RFP strictly confidential and not make any public statement to any third party in relation to any aspect of the RFP, the RFP process or the award of any Contract without Council's prior written consent.
- b. A Respondent may disclose RFP information to any person described in paragraph 5.17.b. but only for the purpose of participating in the RFP. 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 RFP.

5.19 Costs of participating in the RFP process

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

5.20 Ownership of documents

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

5.21 No binding legal relations

- a. Neither the RFP, nor the RFP 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 Proposal
 - ii. the Offer Validity Period
 - iii. the Respondent's statements, representations and/or warranties in its Proposal and in its correspondence and negotiations with Council
- b. Each exception in paragraph 5.21.a. is subject only to Council's reserved rights in paragraph 5.23.
- c. Except for the legal obligations set out in paragraph 5.21.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 RFP does not legally obligate or otherwise commit the principal to proceed with or follow the process outlined in this RFP, or to evaluate any tenderers proposal, or to enter into any negotiations or contractual arrangements with any tenderer. This RFP does not give rise to a process contract.

5.22 Elimination

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

5.23 Buyer's additional rights

- a. Despite any other provision in the RFP Council may, on giving due notice to Respondents:
 - i. amend, suspend, cancel and/or re-issue the RFP, or any part of the RFP.
 - ii. make any material change to the RFP (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 RFP Council may:
 - i. accept a late Proposal if it is Council's fault that it is received late.
 - ii. in exceptional circumstances, accept a late Proposal where it considers that there is no material prejudice to other Respondents. Council will not accept a late Proposal 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 Proposal.
 - iii. in exceptional circumstances, answer a question submitted after the Deadline for Questions, if applicable
 - iv. accept or reject any Proposal, or part of a Proposal.
 - v. accept or reject any non-compliant, non-conforming or alternative Proposal.
 - vi. decide not to accept the lowest priced conforming Proposal unless this is stated as the Evaluation Approach
 - vii. decide not to enter 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 RFP. 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 RFP 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 Proposal and capable of being delivered separately, unless the Proposal specifically states that the Proposal, or elements of the Proposal, are to be taken collectively.

- ii. selecting two or more Respondents to deliver the Requirements as a joint venture or consortium.

5.24 New Zealand law

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

5.25 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 RFP process.
- b. Nothing contained or implied in the RFP, or RFP 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.

5.26 Precedence

- a. Any conflict or inconsistency in the RFP shall be resolved by giving precedence in the following descending order:
 - i. Section 5 (RFP-Terms)
 - ii. all other Sections of this RFP document
 - iii. any additional information or document provided by Council to Respondents through GETS or email.
- 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 RFP the following words and expressions have the meanings described below.

Advance Notice	A notice published by Council on GETS in advance of publishing the RFP. An Advance Notice alerts the market to a contract opportunity. Where used, an Advance Notice forms part of the RFP.
Business Day	Any weekday 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.
Competitors	Any other business that is in competition with a Respondent either in relation to the goods or services sought under the RFP or in general.
Confidential Information	Information that: <ul style="list-style-type: none">a. is by its nature confidentialb. is marked by either Council or a Respondent as 'confidential', 'commercially sensitive', 'sensitive', 'in confidence', 'top secret', 'secret', 'classified' and/or 'restricted'.c. is provided by Council, a Respondent, or a third party in confidence.

	<p>d. Council or a Respondent knows, or ought to know, is confidential.</p> <p>Confidential information does not cover information that is in the public domain through no fault of either Council or a Respondent.</p>
Conflict of Interest	<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 Council under the RFP 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> <ul style="list-style-type: none"> a. actual: where the conflict currently exists. b. potential: where the conflict is about to happen or could happen, or c. perceived: where other people may reasonably think that a person is compromised.
Contract	The written Contract/s entered into by Council and Successful Respondent/s for the delivery of the Requirements.
Council	Council is the Hamilton City Council that has issued the RFP 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.
Deadline for Proposals	The deadline that Proposals are to be delivered or submitted to Council as stated in Section 1, paragraph 1.2.
Deadline for Questions	The deadline for suppliers to submit questions to Council as stated in Section 1, paragraph 1.2, if applicable.
Evaluation Approach	The approach used by Council to evaluate Proposals as described in Section 3 and in Section 5.
GST	The goods and services tax payable in accordance with the New Zealand Goods and Services Tax Act 1985.
Government Electronic Tendering Service (GETS)	Hamilton City Council's chosen tendering platform www.GETS.govt.nz
Intellectual Property	All intellectual property rights and interests, including copyright, trademarks, designs, patents and other proprietary rights, recognised or protected by law.
Offer Validity Period	The period of time when a Proposal (offer) is held open by the Respondent for acceptance by Council as stated in Section 1, paragraph 1.5.
Point of Contact	Council and each Respondent are required to appoint a Point of Contact. This is the channel to be used for all communications during the RFP process. Council's Point of Contact is identified in Section 1, paragraph 1.3. The Respondent's Point of Contact is identified in its Proposal.
Price	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 Proposal must include its Price.
Proposal	The response a Respondent submits in reply to the RFP. It comprises the Response Form, the Respondent's bid, financial and pricing information and all other information submitted by a Respondent.

Proposed Contract	The Contract terms and conditions proposed by Council for the delivery of the Requirements as described in Section 4.
Registration of Interest	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.
Request for Proposal (RFP)	The RFP comprises the Advance Notice (where used), the Registration of Interest (where used), this RFP document (including the RFP-Terms) and any other schedule, appendix or document attached to this RFP, and any subsequent information provided by Council to Respondents through GETS.
Requirements	The goods and/or services described in Section 2 which cover the services Council intends to purchase.
Respondent	A person, organisation, business, or other entity that submits a Proposal in response to the RFP. 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 Proposal.
Response Form	The form and declaration prescribed by Council and used by a Respondent to respond to the RFP, duly completed and submitted by a Respondent as part of the Proposal.
RFP	Means the Request for Proposal.
RFP Process, Terms and Conditions (shortened to RFP-Terms)	The government's standard process, terms and conditions that apply to RFPs as described in Section 5. These may be varied at the time of the release of the RFP by Council. These may be varied subsequent to the release of the RFP by Council on giving notice to Respondents.
RFP-Terms	Means the Request for Proposal - Process, Terms and Conditions as described in Section 5.
Successful Respondent	Following the evaluation of Proposals and successful negotiations, the Respondent/s who is awarded a Contract/s to deliver all or part of the Requirements.