



**Tertiary Education
Commission**
Te Amorangi Mātauranga Matua

Request for Proposal (RFP)

by: Tertiary Education Commission

for: Host for the National Centre for Tertiary Teaching Excellence, 2023-2026

RFP released:	10 March 2023
Deadline for Questions:	5pm 14 April 2023
Deadline for Proposals:	5pm 28 April 2023

Tertiary Education Commission
Tec.govt.nz
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Wellington

The opportunity

This RFP is issued by the Tertiary Education Commission (TEC), referred to below as “the Buyer” or “we” or “us”.

TEC invites proposals from Tertiary Education Organisations (TEOs) to host the National Centre for Tertiary Teaching Excellence (NCTTE). From 1 July 2023, the successful host will receive and administer the NCTTE fund (\$3.556m per annum). The Centre’s purpose is to support the tertiary education sector to increase learner success by improving tertiary teaching capability. The initial contract will last three years, with the potential for two extensions of up to three years each.

What the NCTTE (the Centre) does

Working with TEOs, the Centre encourages and enables sustainable improvement of tertiary teaching and learning.

As set out in the NCTTE funding mechanism, the Centre’s functions include:

- building the teaching capability of TEOs and educators
- commissioning and, where appropriate, researching, monitoring, and evaluating effective teaching and learning in tertiary education, and
- providing advice to the tertiary education sector and government agencies.

What we need

The host can be a single TEO or a consortium of TEOs. The host is accountable for the Centre:

- being well managed
- undertaking well-targeted, effective activities
- providing evidence of the impact and outcomes of those activities.

The host is responsible for passing funding from the TEC through to the centre and providing premises and essential services on a cost-recovery basis. The host provides financial, HR, library, ICT and procurement services. The host influences the Centre’s strategy and ensures the quality of its work through robust governance arrangements and accountability processes.

The host will build on the accomplishments of the current Centre, Ako Aotearoa. The current hosting contract ends 30 June 2023.

What’s important to us?

The host must have a track record of proven strong governance and management experience. It must demonstrate commitment to Te Tiriti o Waitangi principles and obligations, and in particular, to addressing equity for Māori ākonga. It must be efficient and provide value for money in its core educational and research work.

The host must be committed to making the Centre a true Centre of Excellence, one that concentrates existing expertise in tertiary teaching and assists the sector to attain and maintain world-leading performance in tertiary teaching.

We are interested in innovation. The innovation could focus on using leading edge research to develop significantly different new programmes; on a new model of working that addresses the Centre’s funding constraints (the fund is a fixed amount annually, and inflation has changed what work that amount can support); or other ideas.

It is important that the Centre work with all parts of the tertiary education sector. The Centre should be useful to – respected by, engaged with, and work alongside – Wānanga, Universities, Te Pūkenga, PTEs and other vocational education centres. It should build teaching capability for increasing learner success for all tertiary students. We will want to know how the host will work with TEOs to achieve this.

We will also select for a host that commits to a robust programme of performance measurement for the Centre. TEC wants strong evidence for tracking the impacts and outcomes of the Centre’s work.

Why should you bid?

This is an opportunity to make a significant contribution towards achieving the government’s Tertiary Education Strategy (TES). TEC has asked all TEOs to work towards improving tertiary sector teaching. Hosting the National Centre for Tertiary Teaching Excellence will put your TEO at the forefront of this effort. You will shape how the sector pursues the goal; you will ensure the Centre focuses on the opportunities that matter most, and you will facilitate TEOs across the sector to meet their own targets for increasing their teaching capability.

As a champion for excellence in teaching capability, you will build your own and New Zealand’s reputation. This is an opportunity to enable New Zealand learners, parents and whānau, and employers to gain greater appreciation for the value of the tertiary education experience, and for international students to recognise the New Zealand tertiary sector’s focus on excellence in teaching.

SECTION 1: Key Information

1.1 Context

- a. This Request for Proposals (RFP) is an invitation to submit a Proposal for the National Centre for Tertiary Teaching Excellence contract opportunity.
- b. This RFP is a single-step procurement process.

1.2 Our timeline

Here is our timeline for this RFP (all are New Zealand times and dates):

Respondent briefing session	10am, 31/03/23
Deadline for Questions	5pm, 14/04/23
Deadline for us to answer questions	5pm, 20/04/23
Deadline for Proposals	5pm, 28/04/23
Presentations by shortlisted Respondents (indicative)	15/05/23
Successful Respondent(s) notified (indicative)	29/05/23
Expected start date of Contract (indicative)	01/07/23

1.3 How to contact us

- a. Contact us through our Point of Contact via email.
- b. Our Point of Contact:

Email address: contractmanagement@tec.govt.nz

- c. To register for our Respondent briefing session contact our Point of Contact via email.

1.4 Developing and submitting your Proposal

- a. This is a closed competitive tender process.
- b. Take time to read and understand the RFP.
- c. Take time to understand our requirements. These are in SECTION 2: of this document.
- d. Take time to understand how your proposal will be evaluated. See SECTION 3: of this document.
- e. For resources on tendering visit <https://www.procurement.govt.nz/suppliers-2/>
- f. If you have questions, ask our Point of Contact before the Deadline for Questions (see Section 1.2 above).

- g. Review the Response Form [[NCTTE RFP Response Form 2023](#)] for examples or a template for developing your Proposal.
- h. Complete your proposal **and** sign the declaration at the end of the Response Form.
- i. Check you have provided all the necessary information in the correct format and order.
- j. Submit your Proposal before the Deadline for Proposals.

1.5 Address for submitting your Proposal

Submit your Proposal to the following address: contractmanagement@tec.govt.nz.

We will not accept Proposals sent by post or delivered to our office.

Make sure you include all attachments and reference material.

1.6 Our RFP Terms

a. Offer Validity Period

By submitting a Proposal, the Respondent agrees that their offer will remain open for three calendar months from the Deadline for Proposals.

b. RFP Terms

By submitting a proposal, the Respondent agrees to the RFP-Terms described in SECTION 5: .

1.7 Later changes to the RFP or RFP process

After publishing the RFP, if we need to change anything or provide additional information, we will let all Respondents know by email.

1.8 Defined terms

These are shown using capitals. You can find all definitions at the back of the RFP-Terms.

SECTION 2: Our Requirements

2.1 Background

This procurement relates to the purchase of hosting services for the National Centre for Tertiary Teaching Excellence. The NCTTE fund was established by Cabinet in 2004 and its first host was procured in 2006. The contract has been held by the same host, Massey University, through a series of renewals and extensions over the years.

Recent changes in New Zealand's tertiary education system have altered the landscape substantially. It is appropriate to test the market at this time to see how the NCTTE fund could best be delivered now that key changes such as the Reform of Vocational Education (RoVE), Te Pūkenga, Ōritetanga-Learner Success and the Unified Funding System have all been rolled out.

2.2 Key outcomes

Improving the quality of tertiary teaching is an objective in the Tertiary Education Strategy (TES): "Quality teaching and leadership: quality teaching and leadership makes the difference for Learners and whānau." In addition, one of TEC's flagship programmes, Ōritetanga-Learner Success, requires institutions to increase their capability for how they support learners.

The NCTTE fund contributes directly to both the TES and TEC Strategy on this objective. The fund's purpose is to establish and sustain a centre that works in partnership with TEOs to enhance the effectiveness of teaching and learning with the overall outcome of supporting excellent educational outcomes for learners.

2.3 What we require from a Respondent

We need to procure a host institution for the National Centre for Tertiary Teaching Excellence (the Centre) who will ensure the Centre delivers against its funding mechanism. The selected host will deliver the best public value from the NCTTE fund; it may do so either through negotiating with the current host to continue the existing centre Ako Aotearoa with changes, or through establishing and running a new centre.

Preconditions

A successful host must meet three preconditions. They must:

- Be a TEO or a consortium of TEOs
- Have effective governance and management
- Be efficient and provide value for money.

TEC will use information it holds on TEO performance to establish whether pre-conditions are met. If a consortium submits a proposal, each member must meet preconditions.

Detailed requirements and outcomes

TEC's requirements for the successful host and centre are described in this section. It also describes how the proposal should demonstrate that it meets these requirements.

Requirement	How demonstrated to TEC
Governance and management: The Centre must	
1. Have effective governance and management <i>[note: this is required of the Centre; the similar pre-condition asks about the host's track record]</i>	Identify key challenges in these areas and how the challenges will be addressed
2. Demonstrate a commitment to Treaty of Waitangi principles and obligations, and in particular to addressing equity for Māori ākonga	The proposal's details will be considered
3. Be efficient and provide value for money <i>[note: this is required of the Centre; the similar pre-condition asks about the host]</i>	Provide budget planning information (see Section 4 below) and identify how challenges will be addressed
4. Avoid unnecessary duplication of existing work, research, and resources	Describe processes the Centre will use to identify and avoid potential duplication
5. Develop performance measures that track progress on achieving the fund's policy goals	List the performance measures, or provide a plan for how these will be developed
Strategy and outcomes: The Centre must	
6. Develop and maintain a 3-year strategic plan aligned with the TES and TEC strategy	Describe how this will be achieved
7. Drive learner success in the tertiary education system by improving teaching capability of TEOs and educators	Describe how the centre strategy, proposed actions and performance measures will achieve this outcome
8. Improve TEO capability to support learner success by focusing on equity, priority learners, and learner pathways	Describe how the centre strategy will achieve this outcome
9. Serve the interests of all New Zealand TEOs; work and engage across the sector	Describe how the Centre's actions and strategy address the full range of NZ TEOs
Activities and outputs: The Centre must	
10. Produce and share with the sector monitoring, evaluation and research about effective teaching and learning in New Zealand	Describe the strategy for each output and identify specific actions to be taken
11. Advise TEOs and agencies regarding teaching capability	
12. Incentivise quality and innovation in tertiary teaching	
13. Forge and maintain global linkages to learn from, share with and benchmark against comparable international organisations	

14. Undertake a system stewardship role with all TEOs, with particular emphasis on those who have their own in-house centres of teaching and learning, helping them to coordinate their offerings and adopt best-practice approaches.	
15. Administer the Tertiary Teaching Awards (<i>note: TEC provides the prize money for these awards separately from the NCTTE fund</i>)	Acknowledge the Centre's responsibility for this work.
Considerations – The proposal should	
16. In its financial planning, the proposal should maintain good awareness of the level of funding the NCTTE fund provides, and how the Centre would adapt to pressures from inflation	Identify likely financial challenges and how these would be addressed
17. In its strategy, have a clear logic for how the activities specified in the proposal will deliver progress on the fund's policy goals and the TES.	Develop an intervention logic or logic map that both justifies proposed activities and shows how they will contribute to the desired outcomes
18. Address how best to transition to the new version of the Centre	Identify key challenges in this area and how the challenges will be addressed. Provide a well-considered high-level plan that will be efficient and effective

2.4 Contract term

We expect that the Contract will commence on 1 July 2023. The anticipated Contract term and options to extend are:

Description	Years
Initial term of the Contract	3
Options for us to extend the Contract	Up to two extensions of up to 3 years each
Maximum term of the Contract	9

2.5 Contract value

We estimate the value of this Contract to be \$3.556m ex GST annually.

2.6 Other tender documents

The [RFP Response form](#) is available to Respondents – it is part of this RFP. The response form includes two MANDATORY sections: the Respondent profile (this is mainly contact information) and the Respondent

declaration (signed statement). Other sections provide a template for organising your information that addresses other requirements; you may provide this information in another format if you prefer.

SECTION 3: Our Evaluation Approach

This section sets out the Evaluation Approach that will be used to assess Proposals.

3.1 Pre-conditions

Proposals will only be considered if the proposed host meets three preconditions. They must

- Be a TEO or a consortium of TEOs
- Have effective governance and management
- Be efficient and provide value for money.

TEC will use information it holds on TEO performance to establish whether pre-conditions are met. If a consortium submits a proposal, each member must meet preconditions.

3.2 Evaluation model

The evaluation model is **simple score**. Proposals that are capable of full delivery on time will be shortlisted by score, and the Successful Respondent(s) will then be selected from the shortlist based on an overall assessment of best overall public value.

3.3 Evaluation criteria

Proposals that meet all pre-conditions will be evaluated according to the following criteria. The criteria are equally weighted and sit within two broad areas: to what extent is the proposal fit for purpose, and to what extent does the supplier have the capability and capacity to deliver.

Fit for purpose criteria are

- Does the proposal address all the elements of what's wanted?
- Would this host's National Centre be high quality?
- How innovative is the proposal?
- Are plans for governance and management sufficient?
- To what extent would this host's National Centre be a whole-of-sector resource?

Capability and capacity criteria include:

- How well does the provider understand the requirements?
- What is their track record of delivery on similar contracts?
- Do they have the cultural competency to improve teacher delivery to priority learners?
- How realistic is the budget, given both the scope of intended work and the funding envelope?
- To what extent do they have the relevant expertise needed?

3.4 Scoring

Rating	Definition	Score
EXCELLENT	Respondent demonstrates exceptional ability, understanding, experience and skills. The Proposal significantly exceeds the requirement in a way that provides significant added value.	9-10
GOOD	Respondent demonstrates above average ability, understanding, experience and skills. The Proposal exceeds the requirement in some respects and offers some added value.	7-8
ACCEPTABLE	Respondent demonstrates the ability to meet the criteria, with supporting evidence. The proposal can provide the requirement to the minimum level.	5-6
RESERVATIONS	Minor deficiency. The proposal marginally misses meeting the criteria. Minor negotiation required to achieve the requirement.	3-4
SERIOUS RESERVATIONS	Significant deficiency. The proposal largely misses meeting the requirement. Significant negotiation required to achieve the requirement.	1-2
UNACCEPTABLE	Critical deficiency. The proposal does not comply or meet the criteria at all.	0

3.5 Due diligence

For shortlisted proposals, we may:

- reference check the respondent and any named personnel
- interview respondents
- request respondents make a presentation
- inspect audited accounts for the last 5 financial years

SECTION 4: Budget planning information

4.1 Budget information provided by Respondents

- a. Complete the table below. Include a figure for each category, even where the estimate is zero. You may add categories as needed.
- b. Respondents should describe how they will manage risks and contingencies related to the delivery of the Requirements.
- c. If a consortium submits a proposal, the estimated costs must include all NCTTE-related charges by all consortium members.

Category	Estimated Cost (NZ\$000, ex- GST)	Notes
Staff costs		
Overheads/administration		
Research project funding		
Scholarships and prizes		
Contracted services		
Other direct costs		
TOTAL		

SECTION 5: RFP Terms

Preparing and submitting a Proposal

5.1 Preparing a Proposal

- a. Respondent obligations
The Respondent must:
 - i. read the complete RFP and any additional information provided and referred to by the Buyer
 - ii. respond including all information the Buyer requests
 - iii. consider the risks and contingencies relating to the delivery of the RFP requirements and outline how it will manage those risks and contingencies
 - iv. include any assumptions, dependencies and/or qualifications in the Proposal, including anything that may limit its obligations
 - v. provide budget planning information in NZ\$, exclusive of GST
 - vi. obtain independent advice before submitting a Proposal (if necessary)
 - vii. make sure the Proposal is correct and covers the Whole-of- Life of the Contract, not just the initial term.
- b. Process acceptance
By submitting a Proposal, the Respondent accepts the RFP-Terms.

5.2 Offer Validity Period

The Proposal must remain open for the Offer Validity Period stated in Section 1 of the RFP.

5.3 Respondent questions

- a. The Respondent must make sure they understand the RFP.
- b. If the Respondent has any questions or needs clarification, they:
 - i. must submit questions before the Deadline for Questions
 - ii. must clearly indicate any commercially sensitive information in their questions
 - iii. may withdraw their questions at any time.
- c. When the Buyer receives questions before the Deadline for Questions:
 - i. The Buyer will respond on or before the Deadline for Answers.
 - ii. The Buyer may provide details of both the questions and the answers to other Respondents. In these circumstances the Buyer will summarise the questions and will not disclose the Respondent's identity.
 - iii. Unless stated otherwise in the RFP, the Buyer will post both the questions and answers on its web page.
 - iv. The Buyer will not publish the Respondent's commercially sensitive information. However, if the Buyer considers the information to be significant for all Respondents, the Buyer may modify the question and publish both this and the answer. In that case the Buyer will first give the Respondent the opportunity to withdraw the question or remove any of their own commercially sensitive information.

5.4 Submitting a Proposal

- a. The Respondent must ensure the Buyer receives the Proposal at the correct address on or before the Deadline for Proposals.
- b. After the Deadline for Proposals, the Buyer will acknowledge receipt of the Proposal.
- c. The Respondent must ensure that all information they provide to the Buyer:
 - i. is true, accurate and complete
 - ii. is not misleading in any material respect
 - iii. does not contain material that infringes a third party's intellectual property rights.
- e. The Buyer may rely on the Proposal and all information provided by the Respondent during the RFP process (e.g. correspondence and negotiations).

Assessing Proposals

5.5 Evaluation panel

The Buyer's evaluation panel will evaluate the Proposal. The Buyer may have different evaluation panel members for evaluating different aspects of the Proposal. The Buyer may include independent advisors as evaluation panel members to evaluate some or all aspects of the Proposal.

5.6 Third party information

- a. The Buyer may request information from a third party where the Buyer considers the information may be relevant to the RFP process, excluding commercially sensitive information.
- b. If this occurs, the Respondent:
 - i. authorises the Buyer to collect that information from the relevant third party (e.g. a referee or client), and authorises the third party to release it to the Buyer
 - ii. agrees the Buyer may use that information in its evaluation of the Proposal
 - iii. must ensure that all referees listed in the Proposal agree to provide a reference.

5.7 Clarification of Proposal

- a. The Buyer may ask the Respondent for more information or clarification on the Proposal at any time during the RFP process.
- b. The Buyer need not ask all Respondents for the same clarification.
- c. The Respondent agrees to provide the information or clarification as soon as possible, in the format requested by the Buyer.
- d. If the Respondent does not provide adequate information or clarification within a reasonable time (as determined by the Buyer), the Buyer may remove the Proposal from its evaluation process.

5.8 Evaluation and shortlisting of Proposal

- a. The Buyer will evaluate the Proposal according to the Evaluation Approach (Section 3 of the RFP).
- b. The Buyer may adjust its evaluation after considering additional information or clarification, as described in Sections 5.6 and 5.7 above.

5.9 Negotiations

- a. The Buyer may invite one or more Respondents to enter into negotiations with a view to forming a contract.
- b. During negotiations, the Buyer may:
 - i. discontinue negotiations with one Respondent and then initiate negotiations with another Respondent
 - ii. negotiate concurrently with more than one Respondent.
- c. If negotiating concurrently with more than one Respondent, the Buyer must:
 - i. treat each Respondent fairly
 - ii. prepare a separate plan for each negotiation
 - iii. hold a separate negotiation meeting with each Respondent
 - iv. advise each relevant Respondent that concurrent negotiations will be carried out.

5.10 Respondent debrief

- a. At the end of the RFP process, the Buyer will offer to debrief the Respondent. This debrief may be by letter, email, phone or a meeting.
- b. The Respondent has 10 Business Days from the date of the Buyer's offer to accept a debrief.
- c. The Buyer will provide the debrief within 30 Business Days from either the date of the Respondent's acceptance of a debrief, or the date the Contract is signed, whichever is later.
- d. The debrief will:
 - i. explain why the Proposal was successful or not successful
 - ii. explain how the Proposal performed against the pre-conditions (if applicable) and the evaluation criteria
 - iii. indicate the Proposal's relative strengths and weaknesses
 - iv. explain, in general terms, the relative advantages of the successful Proposal
 - v. seek to address any concerns or questions from the Respondent
 - vi. seek feedback from the Respondent on the RFP and RFP process.

5.11 Notification of outcome

During the 30 Business Days after the Contract has been signed, the Buyer:

- a. will let all unsuccessful Respondents know the name of the Successful Respondents, if any
- b. may make public the name and address of the Successful Respondents (if any) and any unsuccessful Respondents
- c. will publish a Contract Award Notice on GETS, where applicable. Contract Award Notices are available to view by the public on GETS. The Respondent may request that the Buyer withhold its address from the Contract Award Notice for privacy reasons. The Buyer may withhold the Respondent's address from the Contract Award Notice in a manner consistent with the Privacy Act 2020.

5.12 Issues and complaints

- a. The Respondent may, in good faith, raise with the Buyer any issue or complaint about the RFP or RFP process at any time.
- b. When this occurs:

- i. the Buyer will consider and respond promptly and impartially to the Respondent's issue or complaint
- ii. both the Respondent and the Buyer must do their best to resolve the issue or complaint
- iii. the Buyer must not allow the issue or complaint to prejudice the Respondent's participation in the RFP process, or limit or affect the Respondent's future procurement opportunities.

Standard RFP conditions

5.13 Buyer's Point of Contact

- a. The Respondent must direct all RFP enquiries to the Buyer's Point of Contact in Section 1 of the RFP.
- b. The Respondent must not approach any other employee or other representative of the Buyer, directly or indirectly, for information on any aspect of the RFP.
- c. Only the Point of Contact, or a person authorised by the Buyer, may communicate with the Respondent on any aspect of the RFP. The Buyer will not be bound by any statement made by any other person.
- d. The Buyer may change its Point of Contact at any time. The Buyer will notify the Respondent of any change by email.
- e. If the Respondent has an existing contract with the Buyer, the Respondent must not use its business-as-usual communications to contact the Buyer regarding the RFP.

5.14 Conflict of Interest

- a. The Respondent must complete the Conflict-of-Interest declaration in the RFP Response Form. If a joint Proposal is being submitted, each party must complete the Conflict-of-Interest declaration separately.
- b. If a Conflict of Interest arises during the RFP process, the Respondent must inform the Buyer immediately.
- c. The Buyer may exclude a Respondent from the RFP process if a material Conflict of Interest arises.

5.15 Ethics

- a. The Respondent must not attempt to influence, reward or benefit any representative of the Buyer, nor offer any form of personal inducement, in relation to the RFP or the RFP process.
- b. To maintain a fair and ethical RFP process, the Buyer may require additional declarations or other evidence from the Respondent, or any other person, at any time.

5.17 Confidential Information

- a. Without limiting any other confidentiality agreement between them, the Buyer and the Respondent will both take reasonable steps to protect the other party's Confidential Information.
- b. Except as permitted by the other provisions of this Section 5.17, neither party will disclose the other party's Confidential Information to a third party without that other party's prior written consent.
- c. Each party may each disclose the other party's Confidential Information to anyone who is directly involved in the RFP process on that party's behalf, but only for the purpose of participating in the RFP. This could include (but is not limited to) officers, employees, consultants, contractors, professional advisors, evaluation panel members, partners, principals or directors. Where this occurs, the

disclosing party must take reasonable steps to ensure the third party does not disclose the information to anyone else, and does not use the information for any purpose other than participating in the RFP process.

- d. The Respondent acknowledges that the Buyer's confidentiality obligations are subject to requirements imposed by the Official Information Act 1982 (OIA), the Privacy Act 2020, parliamentary and constitutional convention, and any other obligations imposed by law. Where the Buyer receives an OIA 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.
- e. The Respondent may disclose the Buyer's Confidential Information to the extent strictly necessary to comply with law or the rules of any stock exchange on which the securities of the Respondent or any related entity are currently listed. Unless prohibited by law, the Respondent must consult with the Buyer before making such a disclosure.
- f. The Buyer will not be in breach of its obligations if it discloses Confidential Information to the appropriate authority because of suspected collusive or anti-competitive tendering behaviour.

5.18 Costs of participating in the RFP process

The Respondent must meet their own costs associated with the preparation, presentation and negotiation of the Proposal.

5.19 Ownership of documents

- a. The RFP and its contents remain the property of the Buyer. All Intellectual Property rights in the RFP remain the property of the Buyer or its licensors.
- b. The Buyer may request the immediate return or destruction of any RFP documents and any copies, in which case the Respondent must comply in a timely manner.
- c. All documents forming part of the Proposal will, once they are delivered to the Buyer, become the property of the Buyer. The Proposal will not be returned to the Respondent.
- d. Intellectual Property rights in the Proposal remain the property of the Respondent or its licensors.
- e. The Respondent grants to the Buyer a licence to retain, use, copy and disclose information contained in the Proposal for any purpose related to the RFP process, including keeping appropriate records.

5.20 Limited rights and obligations

- a. Except as stated otherwise in this Section 5.20, nothing in the RFP, these RFP Terms or the RFP process creates a contract or any other legal relationship between the Buyer and Respondent, unless and until they enter into a Contract.
- b. The following are binding on the Respondent:
 - i. The Respondent's signed declaration (contained in the RFP Response Form).
 - ii. The Respondent's obligation under Section 5.2 to ensure the Proposal remains open for the Offer Validity Period.
 - iii. The Respondent's obligations under paragraphs 5.4d and 5.4e. Nothing in this Section 5.20 takes away from any rights or remedies the Buyer may have in relation to the Respondent's statements, representations or warranties in the Proposal or in correspondence or negotiations with the Buyer.
 - iv. The standard RFP conditions in Sections 5.13 to 5.25.

- c. Sections 5.17 and 5.19 are binding on the Buyer.
- d. Where applicable, the Buyer and each Respondent are bound by any other obligation expressly identified in Section 1 of the RFP as being binding.
- e. All terms and other obligations that are binding on the Buyer are subject to the Buyer's additional rights in Section 5.22.

5.21 Exclusion from the RFP process

- a. The Buyer may exclude the Respondent from the RFP process if the Respondent:
 - i. has not provided requested information in the correct format
 - ii. has breached the RFP-Terms and the Buyer considers the impact of the breach is more than trivial (this applies whether or not the provision in question is itself legally binding on the Recipient)
 - iii. included a material error, omission or inaccuracy in the Proposal
 - iv. is in bankruptcy, receivership or liquidation
 - v. has made a false declaration
 - vi. has a conviction for a serious crime or offence
 - vii. has failed to pay taxes, duties or other levies
 - viii. represents a threat to national security or to confidentiality of government information, and/or
 - ix. is a person or organisation designated as a terrorist by New Zealand Police.
- b. The Buyer may exclude the Respondent from the RFP process if:
 - i. there was a serious performance issue in a previous, or current, contract delivered by the Respondent
 - ii. the Buyer considers the integrity of the Respondent is in doubt due to the Respondent's professional misconduct or an act or omission contrary to the Supplier Code of Conduct, and/or
 - iii. the Buyer becomes aware of any other matter that materially diminishes the Buyer's trust in the Respondent.

5.22 Buyer's additional rights

- a. Changes to the RFP
 - i. The Buyer may amend, suspend, cancel or re-issue the RFP, or any part of it, so long as it notifies the Respondent.
 - ii. The Buyer may change material aspects of the RFP, such as the timeline, Requirements or Evaluation Approach, provided it gives the Respondent time to respond to update its Proposal in relation to the changes.
- b. Timeline
 - i. The Buyer may accept a late Proposal if it is the Buyer's fault it is late, or if the Buyer considers there is no material prejudice to other Respondents in accepting a late Proposal.
 - ii. The Buyer may answer a question submitted after the Deadline for Questions, and notify all Respondents about the submission of the question and the answer.
- c. The Proposal
 - i. The Buyer may accept or reject any Proposal, or part of a Proposal. This includes any non-compliant, non-conforming or alternative Proposal.

- ii. The Buyer may decide not to accept the lowest price conforming Proposal, unless stated otherwise in the Evaluation Approach.
- d. RFP Process
 - i. Subject to paragraph 5.9c, the Buyer may liaise or negotiate with any Respondent without informing, or doing the same, with any other Respondent.
 - ii. The Buyer may provide Respondents with information arising from questions about the RFP.
 - iii. The Buyer may withhold information arising from questions about the RFP. This may be the case if the information is unnecessary, is commercially sensitive, is inappropriate to supply at the time of the request or cannot be released for legal reasons.
 - iv. The Buyer may waive requirements or irregularities around the RFP process if the Buyer considers it appropriate or reasonable to do so.
 - v. The Buyer may decide not to enter into a Contract with any Respondent.
- e. Consortia and unbundling

The Buyer may make its selection conditional on the Respondent agreeing to:

 - i. the Buyer selecting the Respondent to deliver the Requirements as a joint venture or consortium with another Respondent selected by the Buyer, and/or
 - ii. the Buyer selecting individual elements of the Proposal that can be delivered separately, unless the Proposal specifically states that the Proposal, or the relevant elements, must be taken collectively.

5.23 New Zealand law

The laws of New Zealand govern the RFP. Each Respondent agrees New Zealand courts have non-exclusive jurisdiction to rule in any dispute concerning the RFP or the RFP process. The Respondent agrees that it cannot bring any claim in relation to the RFP except in a New Zealand court.

5.24 Disclaimer

- a. Nothing contained or implied in the RFP, or RFP process, or any other communication by the Buyer to the Respondent is to be construed as legal, financial or other advice.
- b. The Buyer will endeavour to provide accurate information in any communication, but the Respondent accepts this information is not independently verified and may not be up-to-date.
- c. The Buyer will not be liable in contract, tort, equity, or in any other way for any direct or indirect damage, loss or cost incurred by the Respondent or any other person in respect of the RFP process, whether as a result of the Buyer exercising its rights under Section 5.22, the Buyer's negligence or breach of these RFP Terms, the Buyer failing to select the Respondent as the Successful Respondent, or any other cause.
- d. To the extent that liability cannot be excluded, the maximum aggregate liability of the Buyer, its agents and advisors in connection with the RFP process, to all Respondents combined, is NZ\$5,000 or (if known and greater than \$5,000) 5% of the estimated value of the proposed Contract as determined by the Buyer prior to the release of the RFP.
- e. The limitations and exclusions in paragraphs c and d above do not apply to any liability the Buyer may have for breach of confidentiality or infringement of the Respondent's intellectual property rights.

5.25 Precedence

- a. Any conflict or inconsistency in the RFP shall be resolved by giving precedence in the following descending order:
 - i. Section 1 of the RFP
 - ii. these RFP-Terms
 - iii. all other Sections of the RFP document
 - iv. any additional information or document provided by the Buyer to Respondents through the Buyer's Point of Contact or GETS.
- b. If there is any conflict or inconsistency between information or documents having the same level of precedence the more recent 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 the Buyer 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.
Buyer	The government agency that has issued the RFP with the intent of purchasing the goods or services described in the Requirements.
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	<p>Confidential Information of a party (Provider) means information acquired by the other party (Recipient) from the Provider in connection with the RFP process, where that information:</p> <ol style="list-style-type: none">a. is by its nature confidentialb. is marked at the time of disclosure to the Recipient as 'confidential', 'in confidence', 'restricted', 'sensitive', 'secret' or 'top secret', and/orc. the Recipient knows, or ought to know, is confidential to the Provider or a third party who supplied it to the Provider. <p>However, this does not include information that is publicly available through no fault of the Recipient, or that the Recipient acquired entirely independently of the Provider.</p>
Conflict of Interest	A Conflict of Interest arises if personal or business interests, relationships, or obligations of the Respondent or any of its personnel do, could, or could be perceived to:

- a. conflict with the Respondent's obligations to the Buyer under the RFP or in the provision of the goods or services, and/or
- b. call into question the independence, objectivity or impartiality of any person involved in the RFP process on behalf of the Buyer.

A Conflict of Interest may be:

- c. actual: where the conflict currently exists
- d. potential: where the conflict is about to happen or could happen, or
- e. perceived: where other people may reasonably think that a person is compromised.

Contract	Any written Contract entered into by the Buyer and a Successful Respondent for the delivery of the Requirements.
Contract Award Notice	A notice which a Buyer is required to publish under Rule 48 of the Government Procurement Rules, when it has awarded a contract that is subject to those Procurement Rules.
Deadline for Answers	The deadline for the Buyer to respond to questions submitted by a Respondent stated in section 1.2 of the RFP.
Deadline for Proposals	The deadline for delivering or submitting Proposals to the Buyer as stated in Section 1 of the RFP.
Deadline for Questions	The deadline for submitting questions to the Buyer as stated in Section 1 of the RFP.
Evaluation Approach	The approach used by the Buyer to evaluate Proposals as described in Section 3 of the RFP.
Intellectual Property	All industrial and intellectual property rights whether conferred by statute, at common law or in equity, including (but not limited to) copyright, trademarks, designs and patents.
Offer Validity Period	The period of time when a Proposal is held open by the Respondent for acceptance by the Buyer as stated in Section 1 of the RFP.
Point of Contact	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 RFP process. The Buyer's Point of Contact is identified in Section 1 of the RFP. The Respondent's Point of Contact is identified in its Proposal.
Proposal	The response a Respondent submits in reply to the RFP. It comprises the RFP Response Form, the Pricing Schedule and all other information submitted by a Respondent.

Registration of Interest	A formal request by a Buyer asking potential Respondents to register their interest in a procurement. It is the first step in a multi-step tender process.
Request for Proposals (RFP)	The RFP comprises the Advance Notice (where used), the Registration of Interest (where used), the RFP document (including the RFP-Terms) and any other schedule, appendix or document attached to the RFP, and any subsequent information provided by the Buyer to Respondents through the Buyer's Point of Contact or GETS.
Requirements	The Buyer's requirements for goods and/or services as described in Section 2 of the RFP.
Respondent	A person, company or organisation that submits a Proposal in response to the RFP. The term Respondent includes each member of any consortium.
RFP Response Form	The form and declaration prescribed by the Buyer and used by a Respondent to respond to the RFP, duly completed and submitted by a Respondent as part of the Proposal.
RFP-Terms	Means the RFP Terms as set out in Section 6 of the RFP, together with any additions or amendments to those RFP Terms specifically identified in Section 1 of the RFP.
Successful Respondent	Following the evaluation of Proposals and successful negotiations, any Respondent who is awarded a Contract to deliver all or part of the Requirements.

View the [RFP Terms](#) dated 1 February 2023.