

SECTION 6: RFP PROCESS, TERMS AND CONDITIONS

~~Standard RFP process~~

Preparing and submitting a proposal

6.1 Preparing a Proposal

- a. ~~Respondents~~Applicants are to use the Response Form provided and include all information requested by the ~~Buyer~~Ministry in relation to the RFP.
- b. By submitting a Proposal the ~~Respondent~~Applicant accepts that it is bound by the RFP Process, Terms and Conditions (RFP-Terms) contained in Section 6 (as varied by ~~Section 1~~Section 1, paragraph 1.6, if applicable).
- c. Each ~~Respondent~~Applicant will:
 - i. examine the RFP and any documents referenced in the RFP and any other information provided by the ~~Buyer~~Ministry
 - 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 the ~~Buyer~~Ministry 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, except where this RFP specifically requires otherwise
 - 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~~Applicants to submit Proposals in response to the RFP solely to remain on any prequalified or registered supplier list. Any ~~Respondent~~Applicant on such a list will not be penalised for failure to submit a Proposal.

6.2 ~~Offer Validity Period~~

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

6.3 ~~Respondents'~~ Deadline for Questions

- a. Each ~~Respondent~~Applicant should satisfy itself as to the interpretation of the RFP. If there is any perceived ambiguity or uncertainty in the RFP document/s ~~Respondents~~Applicants should seek clarification before the Deadline for Questions.
- b. All requests for clarification must be made by email to the ~~Buyer's~~Ministry's Point of Contact. The ~~Buyer~~Ministry will endeavour to respond to requests in a timely manner, but not later than the deadline for the ~~Buyer~~Ministry to answer ~~Respondents'~~Applicants' questions in Section 1, paragraph 1.2.a, if applicable.
- c. If the ~~Buyer~~Ministry considers a request to be of sufficient importance to all ~~Respondents~~Applicants it may provide details of the question and answer to other ~~Respondents~~Applicants. In doing so the ~~Buyer~~Ministry may summarise the

~~Respondent's Applicant's~~ question and will not disclose the ~~Respondent's Applicant's~~ identity. The question and answer may be ~~posted on GETS and/or~~ emailed to participating ~~Respondents Applicants~~. ~~An Applicant~~ may withdraw a request at any time.

- d. In submitting a request for clarification ~~a Respondent an Applicant~~ is to indicate, in its request, any information that is commercially sensitive. The ~~Buyer Ministry~~ will not publish such commercially sensitive information. However, the ~~Buyer Ministry~~ may modify a request to eliminate such commercially sensitive information, and publish this and the answer where the ~~Buyer Ministry~~ considers it of general significance to all ~~Respondents Applicants~~. In this case, however, the ~~Respondent Applicant~~ will be given an opportunity to withdraw the request or remove the commercially sensitive information.

6.4 Submitting a Proposal

- a. Each ~~Respondent Applicant~~ is responsible for ensuring that its Proposal is received by the ~~Buyer Ministry~~ at the correct address on or before the Deadline for Proposals. The ~~Buyer Ministry~~ will acknowledge receipt of each Proposal.
- b. The ~~Buyer Ministry~~ intends to rely on the ~~Respondent's Applicant's~~ Proposal and all information provided by the ~~Respondent Applicant~~ (e.g. correspondence and negotiations). In submitting a Proposal and communicating with the ~~Buyer Ministry~~ each ~~Respondent Applicant~~ should check that all information it provides to the ~~Buyer Ministry~~ is:
- true, accurate and complete, and not misleading in any material respect
 - does not contain Intellectual Property that will breach a third party's rights.

c. The Ministry is under no obligation to check any RFP response for errors. Acceptance of an RFP response that contains errors will not invalidate any contract that may be negotiated on the basis of that RFP response.

d. Where the ~~Buyer Ministry~~ requires the Proposal to be delivered in hard and soft copies, the ~~Respondent Applicant~~ is responsible for ensuring that both the hard and soft copies are identical.

e. Where the ~~Buyer Ministry~~ stipulates a two envelope RFP process the following applies:

- each ~~Respondent Applicant~~ must ensure that all financial information and pricing components of its Proposal are provided separately from the remainder of its Proposal
- financial information and pricing must be contained either in a separate sealed envelope or as a separate soft copy file (whichever option has been requested by the ~~Buyer Ministry~~)
- the pricing information must be clearly marked 'Financial and Pricing Information.' This is to ensure that the pricing information cannot be viewed when the package containing the other elements of the Proposal is opened.

Assessing Proposals

6.5 Evaluation panel

- a. The ~~Buyer Ministry~~ will convene an evaluation panel comprising members chosen for their relevant expertise and experience. In addition, the ~~Buyer Ministry~~ may invite independent advisors to evaluate any Proposal, or any aspect of any Proposal.

6.6 Third party information

- a. Each ~~Respondent Applicant~~ authorises the ~~Buyer Ministry~~ 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 Applicant's Proposal.

- b. Each Respondent Applicant is to ensure that all referees listed in support of its Proposal agree to provide a reference.
- c. To facilitate discussions between the Buyer Ministry and third parties each Respondent Applicant 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 Buyer's Ministry's clarification

- a. The Buyer Ministry may, at any time, request from any Respondent Applicant clarification of its Proposal as well as additional information about any aspect of its Proposal. The Buyer Ministry is not required to request the same clarification or information from each Respondent Applicant.
- b. The Respondent Applicant must provide the clarification or additional information in the format requested. Respondents Applicants will endeavour to respond to requests in a timely manner. The Buyer Ministry may take such clarification or additional information into account in evaluating the Proposal.
- c. Where a Respondent an Applicant fails to respond adequately or within a reasonable time to a request for clarification or additional information, the Buyer Ministry may cease evaluating the Respondent's Applicant's Proposal and may eliminate the Proposal from the RFP process.

6.8 Evaluation and shortlisting

- a. The Buyer Ministry will base its initial evaluation on the Proposals submitted in response to the RFP. The Buyer Ministry may adjust its evaluation of a Proposal following consideration of any clarification or additional information as described in paragraphs 6.6 and 6.7.
- ~~a. In deciding which Respondent/s to shortlist the Buyer will take into account 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
 - i. except where the price is the only criterion, the best value for money over the whole of life of the goods or services.~~
- b. ~~In deciding which Respondent/s, to shortlist the Buyer Applicant/s, to shortlist the Ministry~~ 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 an Applicant based on that Respondent's Applicant's feedback on the Proposed Contract (where these do not form part of the weighted criteria)
 - iii. any matter that materially impacts on the Buyer's Ministry's trust and confidence in the Respondent Applicant
 - iv. any other relevant information that the Buyer Ministry may have in its possession.
- c. The Buyer Ministry will advise Respondents Applicants if they have been shortlisted or not. Being shortlisted does not constitute acceptance by the Buyer Ministry of the Respondent's Applicant's Proposal, or imply or create any obligation on the Buyer Ministry to enter into negotiations with, or award a Contract for delivery of the Requirements contract or any financial support to any shortlisted Respondent Applicant/s. At this stage in the RFP process the Buyer Ministry will not make public the names of the shortlisted Respondents Applicants.

6.9 Negotiations

- a. The ~~Buyer~~Ministry may ~~invite a Respondent to~~ enter into discussions and/or negotiations with a view to contract any Applicant or Applicants at any time, and upon any terms and conditions, before or after acceptance of an RFP response. Where the outcome is unsatisfactory the ~~Buyer~~Ministry may discontinue negotiations with a ~~Respondent~~any Applicant and ~~may then/or~~ initiate negotiations with another ~~Respondent~~Applicant or Applicants.
- b. The ~~Buyer~~Ministry may initiate concurrent negotiations with more than one ~~Respondent~~Applicant. In concurrent negotiations the ~~Buyer~~Ministry will endeavour to treat each RespondentApplicant fairly, and subject to the legitimate time constraints arising from the urgent nature of this procurement as part of the Government's emergency response to COVID-19.
 - ~~i. prepare a negotiation plan for each negotiation~~
 - ~~i. advise each Respondent, that it wishes to negotiate with, that concurrent negotiations will be carried out~~
 - ~~ii. hold separate negotiation meetings with each Respondent.~~
- c. Each ~~Respondent~~Applicant agrees that any legally binding contract entered into between the Successful ~~Respondent~~Applicant and the ~~Buyer~~Ministry will be essentially in the form set out in Section 5, the Proposed Contract, although the Ministry may seek to negotiate changes to that form with individual Successful Applicants to deal with exigencies as they arise.

6.10 ~~Respondent's~~Applicant's debrief

- a. At any time after shortlisting Respondents the Buyer will offer all Respondents who have not been shortlisted a debrief. Each Respondent will have 30 Business Days, from the date of offer, to request a debrief. When a Respondent requests a debrief, the Buyer will provide the debrief within 30 Business Days of the date of the request, or of the date the Contract is signed, whichever is later.
- b. The debrief may be provided by letter, email, phone or at a meeting. The debrief will:
 - i. provide the reasons why the Proposal was or was 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 advantage/s 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 the RFP process.

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, the ~~Buyer~~Ministry will inform all unsuccessful ~~Respondents~~Applicants of the name of the Successful ~~Respondent~~Applicant(s), if any. The ~~Buyer~~Ministry may make public the name of the Successful ~~Respondent~~Applicant(s) and any unsuccessful ~~Respondent~~Applicant(s). Where applicable, the ~~Buyer~~Ministry will publish a Contract Award Notice on GETS.

6.12 Issues and complaints

- a. ~~A Respondent~~An Applicant may, in good faith, raise with the ~~Buyer~~Ministry any issue or complaint about the RFP, or the RFP process at any time.
- b. The ~~Buyer~~Ministry will consider and respond promptly and impartially to the ~~Respondent's~~Applicant's issue or complaint.
- c. Both the ~~Buyer~~Ministry and ~~Respondent~~Applicant 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~~ an Applicant has raised an issue or complaint is not to be used by the Buyer/Ministry to unfairly prejudice the Respondent's/Applicant's ongoing participation in the RFP process or future contract opportunities.

6.13 Canvassing

- a. In respect of this RFP, Applicants will not canvass or lobby any Ministers, or any employees, contractors, consultants, board member of the Ministry or anyone who has a direct working relationship with the Ministry, other than the Ministry Point of Contact. Any Applicant found to have engaged in such conduct regarding this RFP may be excluded from further consideration.

6.14 [intentionally omitted]

6.15 Probity of RFP Responses

- a. Should any Applicant consider that they have been prejudiced by any breach of the terms of this RFP or any other relevant principles affecting the RFP process and/or evaluation of RFP responses, the Applicant must provide immediate notice of the alleged breach to the Ministry's Point of Contact. The Applicant should include in their notification the issues in dispute, the impact upon the Applicant's interest, any relevant background information and the outcome they seek to desire.

6.16 Advertising

- a. No advertisement or other information relating to this RFP process, or any contract that may arise out of it, shall be published in any newspaper, magazine, journal or other advertising media, or broadcast/disseminated by radio, television or other electronic media, without the prior written approval of the Ministry.

Standard RFP conditions

6.136.17 Buyer's/Ministry's Point of Contact

- a. All enquiries regarding the RFP must be directed by email to the Buyer's/Ministry's Point of Contact. ~~Respondents/Applicants~~ must not directly or indirectly approach any representative of the Buyer/Ministry, or any other person, to solicit information concerning any aspect of the RFP.
- b. Only the Point of Contact, and any authorised person of the Buyer/Ministry, are authorised to communicate with Respondents/Applicants regarding any aspect of the RFP. The Buyer/Ministry will not be bound by any statement made by any other person.
- c. The Buyer/Ministry may change the Point of Contact at any time. The Buyer/Ministry will notify Respondents/Applicants of any such change. This notification may be ~~posted on GETS~~ or sent by email.
- d. Where ~~a Respondent~~ an Applicant has an existing contract with the Buyer/Ministry then business as usual communications, for the purpose of managing delivery of that contract, will continue using the usual contacts. Respondents/Applicants must not use business as usual contacts to lobby the Buyer/Ministry, solicit information or discuss aspects of the RFP.

6.146.18 Conflict of Interest

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

6.156.19 Ethics

- a. ~~Respondents~~Applicants must not attempt to influence or provide any form of personal inducement, reward or benefit to any representative of the ~~Buyer~~Ministry in relation to the RFP.
- b. ~~A Respondent~~An Applicant who attempts to do anything prohibited by paragraphs ~~6.13.a-6.17.a~~6.17.17_a_ and d_ and ~~6.15.a-6.19.a~~6.19_a_ may be disqualified from participating further in the RFP process.
- c. The ~~Buyer~~Ministry reserves the right to require additional declarations, or other evidence from ~~a Respondent~~an Applicant, or any other person, throughout the RFP process to ensure probity of the RFP process.

6.166.20 Anti-collusion and bid rigging

- a. ~~Respondents~~Applicants 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 the ~~Buyer~~Ministry. Such behaviour will result in the ~~Respondent~~Applicant being disqualified from participating further in the RFP process. In submitting a Proposal the ~~Respondent~~Applicant warrants that its Proposal has not been prepared in collusion with a Competitor. This does not prevent Competitors from submitting joint Proposals, where they each remain free to submit individual Proposals, they do not discuss or exchange any information regarding their individual Proposals, and they do not enter into any agreement, arrangement or understanding that would limit their incentives to submit competitive individual Proposals.
- b. The ~~Buyer~~Ministry reserves the right, at its discretion, to report suspected collusive or anti-competitive conduct by ~~Respondents~~Applicants to the appropriate authority and to give that authority all relevant information including ~~a Respondent's~~an Applicant's Proposal.

6.176.21 Confidential Information

- a. The ~~Buyer~~Ministry and ~~Respondent~~Applicant will each take reasonable steps to protect Confidential Information and, subject to paragraph ~~6.17.c-6.21.c~~6.21_c6.21_ 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. The ~~Buyer~~Ministry and ~~Respondent~~Applicant 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 panel members, partners, principals or directors, but only for the purpose of participating in the RFP.
- c. ~~Respondents~~Applicants acknowledge that the ~~Buyer's~~Ministry's obligations under paragraph ~~6.17.a-6.21.a~~6.21_a6.21_ are subject to requirements imposed by the Official Information Act 1982 (OIA), the Privacy Act 1993, parliamentary and constitutional convention and any other obligations imposed by law. The ~~Buyer~~Ministry will not be in breach of its obligations if Confidential Information is disclosed by the ~~Buyer~~Ministry to the appropriate authority because of suspected collusive or anti-competitive tendering behaviour. Where the ~~Buyer~~Ministry receives an OIA request that relates to ~~a Respondent's~~an Applicant's Confidential Information the ~~Buyer~~Ministry will consult with the ~~Respondent~~Applicant and may ask the ~~Respondent~~Applicant to explain why the information is considered by the ~~Respondent~~Applicant to be confidential or commercially sensitive.

6.186.22 Confidentiality of RFP information

- a. For the duration of the RFP, to the date of the announcement of the Successful ~~Respondent~~Applicant(s), or the end of the RFP process, the ~~Respondent~~Applicant 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 the ~~Buyer's~~Ministry's prior written consent.
- b. ~~A Respondent~~An Applicant may disclose RFP information to any person described in paragraph ~~6.17.b.6.21.b.~~ but only for the purpose of participating in the RFP. The ~~Respondent~~Applicant 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.

6.196.23 Costs of participating in the RFP process

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

6.206.24 Ownership of documents

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

6.216.25 No binding legal relations

- a. Neither the RFP, nor the RFP process, creates a process contract or any legal relationship between the ~~Buyer~~Ministry and any ~~Respondent~~Applicant, except in respect of:
 - i. the ~~Respondent's~~Applicant's declaration in its Proposal
 - ii. the Offer Validity Period
 - iii. the ~~Respondent's~~Applicant's statements, representations and/or warranties in its Proposal and in its correspondence and negotiations with the ~~Buyer~~Ministry
 - iv. the Evaluation Approach to be used by the ~~Buyer~~Ministry to assess Proposals as set out in Section 3 and in the RFP-Terms (as varied by Section 1, paragraph 1.6, if applicable)
 - v. the standard RFP conditions set out in paragraphs ~~6.13 to 6.26~~6.17 to 6.30
 - vi. any other matters expressly described as binding obligations in Section 1, paragraph 1.6.
- b. Each exception in paragraph ~~6.21.a.6.25.a.~~ is subject only to the ~~Buyer's~~Ministry's reserved rights in paragraph ~~6.23.6.27.~~
- c. Except for the legal obligations set out in paragraph ~~6.21.a.6.25.a.~~ no legal relationship is formed between the ~~Buyer~~Ministry and any ~~Respondent~~Applicant unless and until a Contract is entered into between those parties.

- d. Nothing in this RFP, or in the relationship of the Ministry and that party, imposes any duty of care on the Crown or the Ministry, and any such duty of care is expressly excluded

6.226.26 Elimination

- a. The BuyerMinistry may exclude a Respondentan Applicant from participating in the RFP if the BuyerMinistry has evidence of any of the following, and is considered by the BuyerMinistry to be material to the RFP:
- i. the RespondentApplicant 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 RespondentApplicant is in bankruptcy, receivership or liquidation
 - iv. the RespondentApplicant has made a false declaration
 - v. there is a serious performance issue in a historic or current contract delivered by the RespondentApplicant
 - vi. the RespondentApplicant has been convicted of a serious crime or offence
 - vii. there is professional misconduct or an act or omission on the part of the RespondentApplicant which adversely reflects on the integrity of the RespondentApplicant
 - viii. the RespondentApplicant has failed to pay taxes, duties or other levies
 - ix. the RespondentApplicant represents a threat to national security or the confidentiality of sensitive government information
 - x. the RespondentApplicant is a person or organisation designated as a terrorist by New Zealand Police.

6.236.27 Buyer'sMinistry's additional rights

- a. Despite any other provision in the RFP the BuyerMinistry may, on giving due notice to RespondentsApplicants:
- 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 RespondentsApplicants are given a reasonable time within which to respond to the change.
- b. Despite any other provision in the RFP the BuyerMinistry may:
- i. accept a late Proposal if it is the Buyer'sMinistry'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 RespondentsApplicants. The BuyerMinistry will not accept a late Proposal if it considers that there is risk of collusion on the part of a Respondentan Applicant, or the RespondentApplicant 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 into a Contract with any RespondentApplicant
 - viii. call for additional RFP and/or re-advertise the RFP

- ~~viii~~.ix. liaise or negotiate with any RespondentApplicant without disclosing this to, or doing the same with, any other RespondentApplicant
- ~~ix~~.x. provide or withhold from any RespondentApplicant 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 Respondentan Applicant, is inappropriate to supply at the time of the request or cannot be released for legal reasons
- ~~x~~.xi. amend the Proposed Contract at any time, including during negotiations with a shortlisted RespondentApplicant
- ~~xi~~.xii. waive irregularities or requirements in or during the RFP process where it considers it appropriate and reasonable to do so.
- a. ~~The Buyer may request that a Respondent/s agrees to the Buyer:~~
 - 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.~~
- xiii. conduct a financial check on any Applicant submitting an RFP response
- xiv. obtain similar goods/services from any third party and not deal exclusively with any Applicant under this RFP process
- xv. meet with any Applicant(s) before and/or after the RFP closes and prior to the award of any contract.

6.246.28 New Zealand law

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

6.256.29 Disclaimer

- a. The BuyerMinistry 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 RespondentApplicant 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 the BuyerMinistry to any RespondentApplicant shall be construed as legal, financial or other advice. The BuyerMinistry 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 the BuyerMinistry, its agents and advisors is \$1.
- d. Those submitting RFP responses will be deemed to have:
 - i. Examined this RFP and all documents referenced (if any);
 - ii. Considered all the risks, contingencies and other circumstances that may have an effect on their RFP response; and
 - iii. Satisfied themselves as to the correctness and sufficiency of their RFP response, including their Proposals for the amount and calculation of financial support.

6.266.30 Precedence

- a. Any conflict or inconsistency in the RFP shall be resolved by giving precedence in the following descending order:
 - i. Section 1, paragraph 1.~~6~~7
 - ii. Section 6 (RFP-Terms)

- iii. all other Sections of this RFP document
 - iv. any additional information or document provided by the ~~Buyer~~Ministry to ~~Respondents~~Applicants through the ~~Buyer's~~Ministry'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 later information or document will prevail.

Defined Terms

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

Advance Notice Applicant	<u>A person, organisation, business or other entity that submits a Proposal in response to the RFP. A notice published by the buyer 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. The term Applicant includes its officers, employees, contractors, consultants, agents and representatives. The term Applicant differs from a supplier, which is any other business in the market place that does not submit a Proposal.</u>
Business Day	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.
Buyer	<u>The Buyer is the government agency that has issued the RFP with the intent of purchasing the goods or services described in the Requirements. The term Buyer includes its officers, employees, contractors, consultants, agents and representatives.</u>
Competitors	Any other business that is in competition with <u>a Respondent an Applicant</u> either in relation to the goods or services sought under the RFP or in general.
Confidential Information	<p>Information that:</p> <ol style="list-style-type: none"> is by its nature confidential is marked by either the <u>Buyer Ministry</u> or <u>a Respondent an Applicant</u> as 'confidential', 'commercially sensitive', 'sensitive', 'in confidence', 'top secret', 'secret', 'classified' and/or 'restricted' is provided by the <u>Buyer, a Respondent Ministry, an Applicant</u>, or a third party in confidence the <u>Buyer Ministry</u> or <u>a Respondent an Applicant</u> knows, or ought to know, is confidential. <p>Confidential information does not cover information that is in the public domain through no fault of either the <u>Buyer Ministry</u> or <u>a Respondent an Applicant</u>.</p>
Conflict of Interest	<p>A Conflict of Interest arises if <u>a Respondent's an Applicant's</u> personal or business interests or obligations do, could, or be perceived to, conflict with its obligations to the <u>Buyer Ministry</u> under the RFP or in the provision of the goods or services. It means that the <u>Respondent's Applicant's</u> independence, objectivity or impartiality can be called into question. A Conflict of Interest may be:</p> <ol style="list-style-type: none"> actual: where the conflict currently exists potential: where the conflict is about to happen or could happen, or perceived: where other people may reasonably think that a person is compromised.
Contract	The written Contract/s entered into by the <u>Buyer Ministry</u> and Successful <u>Respondent Applicant</u> /s for the delivery of the Requirements.
Contract Award Notice	Government Rules of Sourcing, Rule 45 requires a <u>Buyer Ministry</u> to publish a Contract Award Notice on GETS when it has awarded a contract that is subject to the Rules.
Deadline for Proposals	The deadline that Proposals are to be delivered or submitted to the <u>Buyer Ministry</u> as stated in Section 1, paragraph 1.2.
Deadline for Questions	<u>The deadline for suppliers to submit questions to the Buyer as stated in Section 1, paragraph 1.2, if applicable.</u>

Evaluation Approach	The approach used by the <u>BuyerMinistry</u> to evaluate Proposals as described in Section 3 and in Section 6 (as varied by Section 1, paragraph 1.6, if applicable).
GETS	Government Electronic Tenders Service available at www.gets.govt.nz
GST	The goods and services tax payable in accordance with the New Zealand Goods and Services Tax Act 1985.
Intellectual Property	All intellectual property rights and interests, including copyright, trademarks, designs, patents and other proprietary rights, recognised or protected by law.
Key ObjectivesOffer Validity Period	The period of time when a Proposal (offer) is held open by <u>objectives listed under the Respondent for acceptance by the Buyer as stated</u> heading ‘Key Objectives’ in Section 1, paragraph 1.62 of this RFP. <u>heading ‘Key Objectives’ in Section 1, paragraph 1.62 of this RFP.</u>
Offer Validity PeriodPoint of Contact	The Buyer and each Respondent are required to appoint a Point <u>period of Contact. This time when a Proposal (offer) is held open by the channel to be used</u> Applicant for all communications during acceptance by the RFP process. The Buyer’s Point of Contact is identified <u>Ministry as stated in Section 1, paragraph 1.3. The Respondent’s Point of Contact is identified in its Proposal</u> 6.
Point of ContactPrice	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. The Ministry and each Applicant are required to appoint a Point of Contact. This is the channel to be used for all communications during the RFP process. The Ministry’s Point of Contact is identified in Section 1, paragraph 1.3. The Applicant’s Point of Contact is identified in its Proposal.
Proposal	The response a Respondent an Applicant submits in reply to the RFP. It comprises the Response Form, the Respondent’s <u>Applicant’s</u> bid, financial and pricing information and all other information submitted by a Respondent. <u>an Applicant.</u> <u>Where the context allows, each reference to the Proposal is to be read as a reference to the Proposal insofar as it relates to each individual international airfreight route for which the Applicant has made a bid in its response to the RFP, with the intention being that the Ministry be able to negotiate and/or accept the Proposal separately in respect of each route, as contemplated in Section 2.4 of this RFP.</u>
Proposed Contract	The Contract terms and conditions proposed by the <u>BuyerMinistry</u> for the delivery of the Requirements as described in Section 5.
RFP	Means the Request for Proposal.
Registration of Interest	A formal request by a Buyer 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 the <u>BuyerMinistry to RespondentsApplicants</u> through the <u>Buyer’sMinistry’s</u> Point of Contact or GETS.
RFP-Terms	Means the Request for Proposal - Process, Terms and Conditions as described in Section 6.
RFP Process, Terms and Conditions (shortened to aka RFP-Terms)	The government’s standard process, terms and conditions that apply to RFPs as described in Section 6. These may be varied at the time of the release of the RFP by the <u>BuyerMinistry</u> in Section 1, paragraph 1.6. These may be varied subsequent to the release of the RFP by the <u>BuyerMinistry</u> on giving notice to <u>RespondentsApplicants</u> .

Requirements	The goods and/or services described in Section 2 which the <u>BuyerMinistry</u> intends to <u>purchaseprocure</u> .
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 market place that does not submit a Proposal.
Response Form	The form and declaration prescribed by the <u>BuyerMinistry</u> and used by a <u>Respondentan Applicant</u> to respond to the RFP, duly completed and submitted by a <u>Respondentan Applicant</u> as part of the Proposal.
Successful RespondentApplicant	Following the evaluation of Proposals and successful negotiations, the <u>RespondentApplicant</u> /s who is awarded a Contract/s to deliver all or part of the Requirements.