

Appendix B: ROI Process, Terms and Conditions

Preparing and submitting a Registration

4.1 Preparing a Registration

a. **Respondent obligations**

The Respondent must:

- read the complete ROI and any additional information provided and referred to by HCC
- respond using the ROI Response Form provided and include all information HCC requests.

b. **Process acceptance**

By submitting a Registration, the Respondent accepts the ROI Terms and Conditions.

4.2 Respondent questions

a. The Respondent must make sure they understand the ROI.

b. If the Respondent has any questions or needs clarification, they:

- must submit questions before the Deadline for Questions (Section 1 of the ROI)
- must clearly indicate any commercially sensitive information in their questions
- may withdraw their questions at any time.

c. When HCC receives questions before the Deadline for Questions:

- HCC will respond on or before the Deadline for Answers.

4.3 Submitting a Registration

a. The Respondent must ensure HCC receives the Registration at the correct address on or before the Deadline for Registrations.

b. After the Deadline for Registrations, HCC will acknowledge receipt of the Registration.

c. The Respondent must ensure that all information they provide to HCC:

- is true, accurate and complete.
- is not misleading in any material respect.
- does not contain material that infringes a third party's intellectual property rights.

d. HCC may rely on the Registration and all information provided by the Respondent during the ROI process.

Assessing Registrations

4.4 Evaluation panel

HCC's panel will consider the Registration. HCC may have different panel members for considering different aspects of the Registration. HCC may include independent advisors as panel members to consider some or all aspects of the Registration.

4.5 Third party information

- a. HCC may request information from a third party where HCC considers the information may be relevant to the ROI process, excluding commercially sensitive information about pricing or contract terms.
- b. If this occurs, the Respondent:
 - authorises HCC to collect that information from the relevant third party and authorises the third party to release it to HCC.
 - agrees the HCC may use that information in its assessment of the Registration.

4.6 Clarification of Registration

- a. HCC may ask the Respondent for more information or clarification on the Registration at any time during the ROI process.
- b. HCC 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 HCC.
- d. If the Respondent does not provide adequate information or clarification within a reasonable time (as determined by the HCC), HCC may remove the Registration from its assessment process.

4.7 Shortlisting of Registrations

- a. HCC will assess the Registration based on the Respondent's submitted ROI Response Form.
- b. **If a Registration is shortlisted this does not mean that HCC has accepted an offer or made any commitment. There is no obligation for HCC to enter negotiations with, or award a Contract to, any shortlisted Respondent.**
- c. After the shortlisting of Respondents based on their Registrations, any further participation by a shortlisted Respondent in any subsequent stage of the procurement process that flows out of the ROI will be subject to the shortlisted Respondent accepting.
- d. If a Respondent is not shortlisted based on its Registration, HCC will exclude it from any further participation in any subsequent stage of the procurement process that flows out of the ROI.

4.11 HCC's Point of Contact

- a. The Respondent must direct all ROI enquiries to HCC's Point of Contact in Section 1 of the ROI.
- b. The Respondent must not approach any other employee or other representative of HCC, directly or indirectly, for information on any aspect of the ROI. Doing so may result in the Respondent's exclusion from the ROI. (refer 4.13c)
- c. Only the Point of Contact, or a person authorised by the HCC, may communicate with the Respondent on any aspect of the ROI. HCC will not be bound by any statement made by any other person.
- d. The HCC may change its Point of Contact at any time. The HCC will notify the Respondent of any change by email or posting a notification on GETS.
- e. If the Respondent has an existing contract with HCC, the Respondent must not use its business-as-usual communications to contact HCC regarding the ROI.

4.12 Conflict of Interest

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

4.13 Ethics

- a. The Respondent must not attempt to influence, reward or benefit any representative of HCC, nor offer any form of personal inducement, in relation to the ROI or the ROI process.
- b. The Respondent must comply with the Supplier Code of Conduct issued by HCC, and any other relevant codes of conduct listed in the ROI.
- c. HCC may exclude the Respondent from the ROI process for a breach of paragraphs 4.11b, 4.11e, 4.13a or 4.13b.
- d. To maintain a fair and ethical ROI process, HCC may require additional declarations or other evidence from the Respondent, or any other person, at any time.

4.15 Confidential Information

- a. Without limiting any other confidentiality agreement between them, HCC 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 4.15, 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 ROI process on that party's behalf, but only for the purpose of participating in the ROI. 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 ROI process.
- d. The Respondent acknowledges that HCC'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 HCC receives an OIA request that relates to a Respondent's Confidential Information, HCC 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 HCC'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 HCC before making such a disclosure.
- f. HCC 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.

4.16 Costs of participating in the ROI process

The Respondent must meet their own costs associated with the preparation and submission of the Registration.

4.17 Ownership of documents

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

4.18 Limited rights and obligations

- a. Except as stated otherwise in this Section 4.18, nothing in the ROI, these ROI terms and conditions or the ROI process creates a contract or any other legal relationship between HCC and Respondent, unless and until they enter into a Contract.

b. The following are binding on the Respondent:

- The Respondent's signed declaration (contained in the ROI Response Form).
- The Respondent's obligations under paragraphs 4.3c and 4.3d. Nothing in this Section 4.18 takes away from any rights or remedies HCC may have in relation to the Respondent's statements, representations or warranties in the Registration or in correspondence or negotiations with the HCC.
- The standard ROI terms and conditions in Sections 4.11 to 4.23.

4.19 Exclusion from the ROI process

a. HCC may exclude the Respondent from the ROI process if the Respondent:

- has not provided requested information in the correct format
- has breached the ROI-Terms and conditions, HCC 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)
- included a material error, omission or inaccuracy in the Registration
- is in bankruptcy, receivership or liquidation has made a false declaration
- has a conviction for a serious crime or offence
- has failed to pay taxes, duties or other levies
- represents a threat to national security or to confidentiality of government information, and/or
- is a person or organisation designated as a terrorist by New Zealand Police.

b. HCC may exclude the Respondent from the ROI process if:

- there was a serious performance issue in a previous, or current, contract delivered by the Respondent
- HCC 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
- HCC becomes aware of any other matter that materially diminishes HCC's trust in the Respondent.

4.20 HCC's additional rights

a. **Changes to the ROI**

- HCC may amend, suspend, cancel or re-issue the ROI, or any part of it, so long as it notifies the Respondent.
- HCC may change material aspects of the ROI, such as the timeline, Requirements or Evaluation Approach, provided it gives the Respondent time to respond to update its Registration in relation to the changes.

b. **Timeline**

- HCC may accept a late Registration if it is HCC's fault it is late, or if HCC considers there is no material prejudice to other Respondents in accepting a late Registration.

c. **The Registration**

- HCC may accept or reject any Registration, or part of a Registration. This includes any non-compliant, non-conforming or alternative Registration.

d. **ROI Process**

- HCC may decide not to shortlist any Respondent.

4.21 New Zealand law

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

4.22 Disclaimer

- a. Nothing contained or implied in the ROI, or ROI process, or any other communication by HCC to the Respondent is to be construed as legal, financial or other advice.
- b. HCC 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. HCC 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 ROI process, whether as a result of HCC exercising its rights under Section 4.20, HCC's negligence or breach of these ROI Terms, or any other cause.
- d. To the extent that liability cannot be excluded, the maximum aggregate liability of HCC, its agents and advisors in connection with the ROI process, to all Respondents combined, is NZ\$5 000.

4.23 Precedence

- a. Any conflict or inconsistency in the ROI shall be resolved by giving precedence in the following descending order:
 - Section 1 of the ROI
 - these ROI-Terms and Conditions
 - all other Sections of the ROI document
 - any additional information or document provided by HCC to Respondents through HCC's Point of C
- 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 ROI the following words and expressions have the meanings described below.

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.
HCC	The Council that has issued the ROI with the intent of purchasing the goods or services described in the Requirements.
Confidential Information	<p>Confidential Information of a party (Provider) means information acquired by the other party (Recipient) from the Provider in connection with the ROI process, where that information:</p> <ol style="list-style-type: none">is by its nature confidentialis marked at the time of disclosure to the Recipient as 'confidential', 'in confidence', 'restricted', 'sensitive', 'secret' or 'top secret', and/orthe 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	<p>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:</p> <ol style="list-style-type: none">conflict with the Respondent's obligations to HCC under the ROI or in the provision of the goods or services, and/orcall into question the independence, objectivity or impartiality of any person involved in the ROI process on behalf of HCC. <p>A Conflict of Interest may be:</p> <ol style="list-style-type: none">actual: where the conflict currently existspotential: where the conflict is about to happen or could happen, orperceived: where other people may reasonably think that a person is compromised.
Contract	Any written Contract entered into by HCC and a Successful Respondent for the delivery of the Requirements.
Deadline for Answers	The deadline for HCC to respond to questions submitted by a Respondent stated in Section 1.2 of the ROI.
Deadline for Registrations	The deadline for delivering or submitting Registrations to HCC as stated in Section 1 of the ROI.
Deadline for Questions	The deadline for submitting questions to HCC as stated in Section 1 of the ROI.

Assessment Approach	The approach used by HCC to assess Registrations as described in Section 3 of the ROI.
---------------------	--

GETS	Government Electronic Tenders Service available at www.gets.govt.nz .
------	---

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.	For
Point of Contact	HCC and each Respondent are required to appoint a Point of Contact. This is the channel to be used for all communications during the ROI process. HCC's Point of Contact is identified in Section 1 of the ROI. The Respondent's Point of Contact is identified in its Registration.	
Registration	The response a Respondent submits in reply to the ROI. It comprises the ROI Response Form, and all other information submitted by a Respondent.	
Registration of Interest	A formal request by a HCC asking potential Respondents to register their interest in a procurement. It is the first step in a multi-step tender process.	
Call for Registrations (ROI)	The ROI comprises the Call for Registrations of Interest , the ROI document (including the ROI-Terms and Conditions) and any other schedule, appendix or document attached to the ROI, and any subsequent information provided by HCC to Respondents through the HCC's Point of Contact or GETS.	
Requirements	HCC's requirements for goods and/or services as described in Section 2 of the ROI.	
Respondent	A person, company or organisation that submits a Registration in response to the ROI. The term Respondent includes each member of any consortium.	
ROI Response Form	The form and declaration prescribed by HCC and used by a Respondent to respond to the ROI, duly completed and submitted by a Respondent as part of the Registration.	