

TENDER RULES

1 Tender Rules

- 1.1 These Tender Rules are for the submission of tenders to the New Zealand Defence Force ("NZDF") for consideration by NZDF for the letting of a contract for the supply of the Deliverables specified. By submitting a Response, the Respondent accepts that these Tender Rules will apply.

2 Submission of Responses

- 2.1 Unless specifically expressed in this tender or previously agreed in writing by NZDF, Responses submitted by any other means than NZDF's electronic tendering system, SmartProcure, will not be accepted.

3 Contract Authority

- 3.1 Only the Chief of Defence Force, or their delegates authorised in writing, has the authority to legally bind NZDF in respect of this tender. No enforceable contract will exist between the Respondent and NZDF until both parties have signed a written contract.

4 NZDF Contact

- 4.1 Any person who requires information in respect of this tender should contact NZDF using SmartProcure's electronic messaging system. NZDF personnel, with access to SmartProcure, are the only persons authorised to respond to enquiries from Respondents.
- 4.2 Any other form of contact with NZDF personnel is not permitted unless authorised in writing through SmartProcure. Unauthorised contact with NZDF personnel may result in the Respondent being disqualified from this tender process.

5 Written Enquiries

- 5.1 Written enquires must:
- a. clearly and concisely set out what matters require clarification or what further information is sought; and
 - b. be received through SmartProcure prior to the date specified in the tender, or they may not be responded to.
- 5.2 NZDF will try to respond in writing to written enquiries within two working days.
- 5.3 All written questions and answers will form part of this tender.

6 Conflicts of Interest

- 6.1 Respondents and their respective officers, employees, agents and advisers must not be in a position which may, or does, give rise to an actual, potential or perceived conflict of interest between the interests of NZDF and the interests of any other entity during the tender process.
- 6.2 Respondents must disclose any circumstances, arrangements, understandings or relationships which constitute, or may reasonably be considered to constitute, an actual or potential conflict of interest which a Respondent could have as a result of participating in this tender process or as a result of any contract which may be negotiated or executed between the Respondent and NZDF.
- 6.3 Any actual or potential conflicts of interest should be declared within the relevant section of the tender. Failure to do so is likely to lead to the disqualification of a Response. "Conflict of Interest" could, for example, include being a member of NZDF or having a close relationship with a person who is a member of NZDF.

7 Collusive Arrangements

- 7.1 Respondents and their officers, employees, agents and advisers must not engage in any collusion, anti-competitive conduct or any other similar conduct with any other Respondent or any other person in relation to the preparation or lodgement of a Response.
- 7.2 If NZDF considers that a Respondent, or any of its officers, employees, agents or sub-contractors, has engaged in the conduct specified in paragraph 7.1, this may result in the Respondent's Response being excluded from further participation in the tender process, and may also result in the Respondent being excluded from subsequent market processes conducted by NZDF.
- 7.3 NZDF may pursue other remedies available against a Respondent who has engaged in the conduct specified in paragraph 7.1 under any law.

8 Corruption or Unethical Conduct

- 8.1 During the tender process, Respondents must not solicit information from NZDF personnel or agents via unauthorised means including by the provision of gifts or other inducements to NZDF personnel or agents.
- 8.2 If NZDF considers that a Respondent, or any of its officers, employees, agents or sub-contractors has:
- a. offered any inducement or reward to any public servant or employee, agent or sub-contractor of NZDF or the New Zealand Government, contrary to any applicable laws or NZDF policies, in connection with their Response or tender process, or
 - b. been involved in corrupt conduct within the meaning of the New Zealand Commerce Act, or
 - c. compiled their Response with the improper assistance of employees of NZDF, ex-employees of NZDF and/or contractors or ex-contractors of NZDF, or
 - d. compiled their Response with the utilisation of information unlawfully obtained from NZDF, or
 - e. a record or alleged record of unethical behaviour,
- this may result in the Response not receiving further consideration, and the Respondent being excluded from the tender process.

9 Expenses incurred by the Respondent

- 9.1 The Respondent is responsible for all of its own costs incurred in participating and responding to this tender.
- 9.2 Neither NZDF nor their agents will be liable in contract, tort (including negligence), equity or any other cause or action, for any direct or indirect damage, loss or cost (including legal and lawyer/client costs) to the Respondent or any other person in respect of:
- this tender, or
 - any matters relating to the negotiating, drafting, execution of any contract, or
 - preparatory work in anticipation of a contract being entered into, or
 - reliance by a Respondent on any information provided by NZDF.

10 Late or incomplete Responses may be excluded

- 10.1 NZDF may, at its sole discretion, exclude any late or incomplete Response from consideration.

11 Form of Contract

- 11.1 NZDF reserves the right to:
- negotiate terms of contract during any contract negotiation stage, and/or
 - require the successful Respondent, or any parent company of the successful Respondent, to provide NZDF with security for performance (for example a performance bond or a guarantee) in a form satisfactory to NZDF.

12 Validity Period

- 12.1 From the closing date of the tender, a Response remains open for acceptance by NZDF and may not be changed, except with the written consent of NZDF, for the period detailed in the tender.

13 Probity Adviser

- 13.1 NZDF may appoint an independent external Probity Adviser for this tender. The Probity Adviser's role in the evaluation process will include:
- ensuring that the procedures adopted in the receipt and evaluation of a Response are fair and equitable, and that the probity of the process is independently validated;
 - monitoring and reporting to NZDF that the evaluation process and procedures in this tender have been followed, and that the outcome is capable of being independently validated;
 - providing confidence to all Respondents that appropriate processes were fully adhered to and that no Respondents was given an unfair advantage or was unfairly discriminated against;
 - providing guidance to NZDF as to how unforeseen probity issues could be resolved;
 - attending evaluation committee and NZDF meetings where relevant;
 - attending any meetings or presentations with Respondents when held;
 - monitoring communication during the period between submission of Responses and final decisions; and
 - preparing a report outlining the work performed, any issues that arose during the process, and confirming that the evaluation process and procedures have been followed.
- 13.2 The Probity Adviser is not a part of the evaluation panel but an independent observer of the process, and will not be involved in the actual evaluation of any Response.

14 Evaluation Process

- 14.1 Methodology
- Responses will be evaluated against the Evaluation Criteria document provided in the Attachments section.
 - Information provided by the Respondent in their Response will be the basis of the evaluation of each criterion. Respondents are advised to respond clearly to all the Evaluation Criteria listed in this tender.
 - The quality and the format of the Response will be taken into account in evaluating the tender.
 - At NZDF's discretion, Responses which do not contain sufficient information to permit a proper evaluation to be conducted, or electronic tenders that cannot be effectively evaluated because the file has become corrupt, may be excluded from the tender process without further consideration.
 - NZDF may, in its sole discretion, seek clarification from any Respondent regarding information contained in their Response, and may do so without notification to any other Respondent.
 - A Respondent may be invited to a one-on-one evaluation conference in order to review and clarify their Response and to enable NZDF to interview key personnel identified in their Response.
 - As described in the Commercial Envelope, an overall value for money assessment will be undertaken in respect of each conforming Response.
- 14.2 Mandatory criteria
- A Response must comply with all of the Evaluation Criteria designated as mandatory.

- b. At NZDF's discretion, a Response that fails to fully comply with all mandatory criteria (and any related alternative response) will be deemed a Non-Conforming Response (see clause 15 below), and may be excluded from the tender process, without further consideration.

14.3 Desirable criteria

- a. Evaluation criteria designated as desirable are Evaluation Criteria which will be taken into account by the Evaluation Team when conducting an overall value for money assessment of the Response.
- b. A Response that does not comply with all desirable criteria may reduce the Respondent's overall score, but will not result in the exclusion of the Response from further consideration.

15 Non-Conforming Responses

- 15.1 Non-Conforming Responses (and any related alternative response) may be excluded from the tender process without further consideration.

16 Changes to Tender by NZDF

- 16.1 Where NZDF makes any change to this tender, each person who has "expressed interest" in this tender within the SmartProcure website will be notified of the change, and this tender will be deemed changed as specified. If a Response has been submitted prior to the change, that Response may be withdrawn, modified to take account of the change, and re-submitted by the closing date.
- 16.2 NZDF may, in its sole discretion, during the tender process and any time before the Closing Date and Time, issue an Addendum to this tender. In each case, an Addendum becomes part of this tender. Any such Addendum will be issued via SmartProcure. A Respondent should make its own enquiries to verify if any Addenda have been issued prior to the Closing Date and Time, even if a Respondent has submitted a Response prior to the Closing Date and Time. Any Respondent who has accessed the tender via SmartProcure will automatically receive an e-mail notification advising them of any Addenda issued.

17 Shortlist from ROI – applicable only for an ROI

- 17.1 NZDF may create a shortlist of Respondents from the ROI stage, and may use any criteria and place any weight on criteria it wishes in its evaluation of any registration. Shortlisting of Respondents invited to respond to any subsequent Request for Tender (RFT) or Request for Proposal (RFP) will be at the sole discretion of NZDF. The shortlisting decision will be based on the information provided in your Response to this ROI.

18 Next Stage Shortlist from ROI – applicable only for an ROI

- 18.1 NZDF may conduct a tender process (an RFT or RFP) for this project on an open or selective basis, or negotiate directly with any Respondent.

19 Notice of Outcome

- 19.1 In relation to each Response submitted, NZDF will notify each Respondent of the success or otherwise of their Response by the stated timeframes as detailed in the tender. However, NZDF may extend this date.

20 Debrief

- 20.1 Via SmartProcure, Respondents may request an opportunity to be de-briefed. The content and format of the de-brief will be at the absolute discretion of NZDF.

21 Disclosure of Tender Information

- 21.1 In accordance with the Government Procurement Rules, NZDF will publish a Contract Award Notice on GETS when it has awarded the contract. This Award Notice will include the successful supplier/s name and address, a description of the goods and services or works, the date the contract was awarded, the term of the contract, the price band of the offers received and the type of procurement process used.
- 21.2 While NZDF tries to maintain confidentiality, it cannot assure any person that all information they disclose to NZDF will be kept confidential, as NZDF may be required by law to make disclosure. NZDF is subject to the provisions of the Official Information Act 1982.

22 Lowest Price not only Determinant

While lowest price is a factor to NZDF, other criteria may influence NZDF's decision to accept or reject any Response. NZDF may use any criteria, and place any weight on any criteria, they wish in their evaluation of a Response.

23 Public Finance Law Restrictions

- 23.1 NZDF is constrained by laws controlling incurring credit (including pre-payments), finance leases and, in respect of guarantees, indemnities and other contingent liabilities.

24 NZDF Information

- 24.1 Every effort is made to ensure that the information contained in the tender is accurate. Information regarding volumes or levels are accurate at the time of issue of the tender but are not to be construed as guarantees of future volumes or levels.
- 24.2 Except to the extent required by law, NZDF may withhold any information from any person for any reason and will not be responsible to any person for any information.

25 No Process Contract

- 25.1 Despite any other provision in this tender or any other document relating to this tender, the issue of this tender does not legally oblige or otherwise commit NZDF to proceed with or follow the process outlined in this tender, or to evaluate any particular Respondent's Response, or enter into any negotiations or contractual arrangements with any Respondent. If this tender is for an RFI, then NZDF will not commit to conducting a procurement process. This tender process does not give rise to a process contract.

26 Rights Reserved by NZDF

26.1 To the extent allowed by law, NZDF reserves the unrestricted rights to, at any time:

- a. change any date in this tender process (e.g. extend or shorten timeframes);
- b. reject any Response where it has been found that the Respondent has offered any inducement to NZDF personnel, or their families, and exclude them from further consideration;
- c. exclude any person from this tender process (whether on the grounds of capability, country of origin, price) due to Government policy or direction, security or operational requirements or otherwise;
- d. restrict or deny the supply of, or access to, any NZDF site or other property or any of NZDF's personnel, information or property to any person;
- e. delete or change any requirement for any type of Deliverable in respect of this tender process;
- f. suspend or cancel all or any part of this tender process by notice in writing;
- g. change any rule of this tender process by notice in writing;
- h. accept, reject or not consider any non-compliant Response;
- i. contact, liaise and negotiate with any Respondents, which may be to the exclusion of any other Respondent, at any time before or after the selection of a Successful Respondent (if any) or award of the contract, and upon any terms and conditions;
- j. withhold or disclose any information (except to the extent required by law);
- k. not retain, return or destroy any information;
- l. have any of NZDF's representatives, at any reasonable time, inspect any property or interview any personnel of any Respondent or other person as part of its evaluation process;
- m. let one or more contracts in respect of any part of this tender process;
- n. employ or engage any other party to provide any type of Deliverable contemplated by this tender;
- o. deal separately with any of the divisible elements of any tender, unless the relevant tender specifically states that those elements must be taken collectively;
- p. re-advertise the tender or revisit any prior tender process;
- q. waive any irregularities or informalities in this tender process;
- r. reject any or all Responses and not accept the lowest priced Response or let any contract; and/or
- s. not give reasons for any rejection, failure or otherwise of any Respondent or Response, or any suspension or cancellation of this tender process.

27 Information Correct

27.1 NZDF will rely on any information provided by, or on behalf of, a Respondent in respect of this tender. NZDF is not under any obligation to check any Response for errors. Acceptance of a Response that contains errors will not invalidate any contract formed by that acceptance.

28 No Representations

The Respondent will be deemed to have obtained all information necessary for the completion of its Response and the provision of the Deliverables prior to submitting its Response. The Response accepted will be deemed to include all costs and expenses for provision of the Deliverables, and no claim will be accepted by NZDF on the grounds of want of knowledge by the Respondent at the time of submitting their Response.

29 Privacy

29.1 By lodging a submission in response to this tender, the Respondent authorises NZDF to collect and use any information in respect of the Respondent. The Respondent may require that NZDF update or correct that information.

30 Confidentiality

30.1 The information in this tender, or supplied by NZDF during this tender process, is to be kept confidential except to the extent already publicly available, authorised by NZDF or as required by law.

31 Intellectual Property Rights

31.1 Every proprietary right pertaining to information contained in this tender document, or provided by NZDF at any time during the tender process, belongs to NZDF.

31.2 NZDF will have every proprietary right (e.g. copyright) in information provided by the Respondent during the tender process so that it can freely use that information at any time.

31.3 NZDF has and will retain all Intellectual Property rights in current specifications, manuals and other documentation provided or disclosed to the Respondent during this tender process. Any improvements, enhancements or development of these will also become the property of NZDF.

31.4 Further details on Intellectual Property are included in the contractual provisions.

32 NZDF Security

- 32.1 Every Respondent and their representatives must comply with NZDF's security and operational requirements where they have any access to any NZDF property or information.

33 New Zealand Legal Aspects

- 33.1 New Zealand time, dates and currency apply unless stated otherwise. New Zealand law governs and New Zealand courts have exclusive jurisdiction. Responses and any enquiries must be in English.

34 Agents

- 34.1 NZDF will not consider Responses from agents unless the agent is authorised to submit the Response as agent of the principal. Responses submitted by agents are to include:
- a. written evidence from the principal that the agent is the authorised agent of the principal, and that the agent is authorised to submit the Response; and
 - b. advice from the principal on whether NZDF must deal through the agent or whether NZDF may deal directly with the principal.
- 34.2 Failure to provide this information may invalidate the Response.

35 NZDF Status

- 35.1 NZDF is **THE SOVEREIGN IN RIGHT OF NEW ZEALAND** acting by and through the Chief of Defence Force (i.e. the Crown). "NZDF" is only used for convenience. This tender process affects no executive or prerogative power or right, or any immunity, of NZDF.

NEW ZEALAND GOVERNMENT - SUPPLIER CODE OF CONDUCT

Statement of Government Expectations

The Government is committed to sustainable and inclusive government procurement that delivers for New Zealand and New Zealanders. This Supplier Code of Conduct outlines the expectations we have of our suppliers. Suppliers must make their subcontractors aware of this code.

Ethical behaviour

The Government expects its suppliers to:

- manage their activities and affairs, and conduct themselves, with integrity in accordance with applicable laws, regulations and ethical standards
- not engage in any form of corruption
- be transparent about their ethical policies and practices.

Labour and human rights

The Government expects its suppliers to:

- adhere to international human rights standards in their workplace and monitor and address these standards within their supply chain
- comply with New Zealand employment standards and maintain a workplace that is free from unlawful discrimination.

Health, safety and security

The Government expects its suppliers to:

- comply with workplace health and safety laws and regulations and maintain healthy and safe work environments
- comply with any security requirements notified to them by the Government
- adequately protect any information, assets, tools and materials provided by the Government and return these promptly when requested.

Environmental sustainability

The Government encourages suppliers to establish environmentally responsible business practices and proactively improve their environmental performance. The Government expects its suppliers to:

- conduct their business in accordance with applicable laws, regulations and standards regarding the mitigation of impacts on, and protection of, the environment
- work to improve their environmental sustainability and reduce their environmental impacts.

Corporate social responsibility

The Government encourages its suppliers to be good corporate citizens and contribute positively to their communities. Some positive things suppliers could do are:

- pay their subcontractors promptly
- consider including local, Māori, and Pasifika businesses to deliver the contract.