



Physical Works Supplier Panel (PWSP)

RFT Process, Terms and Conditions (RFT-Terms)

(PR05-702b Jun 18)



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## 6. RFT Process, Terms and Conditions (RFT-Terms)

### 6.1 Interpretation

The provisions of [Clause 1](#) of [NZS 3910:2013](#) (as amended by any Special Conditions of Contract) shall apply to these RFT Process, Terms and Conditions.

### 6.2 Auckland Transport's Point of Contact

All enquiries regarding the RFT, including registrations for RFT briefings or Site visits if applicable, must be directed to Auckland Transport's [Point of Contact](#) as listed in [Section 4 RFT Schedule](#). Tenderers must not directly or indirectly approach any representative of Auckland Transport, or any other person, to solicit information concerning any aspect of the RFT.

Where a Site visit is indicated as mandatory, it must be attended before deadline as listed in RFT Schedule. A mandatory Site visit must be attended in the presence of Auckland Transport's nominated representative.

Only the [Point of Contact](#) is authorised to communicate with tenderers regarding any aspect of the RFT. Auckland Transport will not be bound by any statement made by any person including the [Point of Contact](#) unless that statement is subsequently expressly incorporated into the Contract.

Auckland Transport may change the [Point of Contact](#) at any time. Auckland Transport will notify tenderers of any such change. This notification may be posted on GETS or sent by email.

All enquires including registrations for RFT briefings or Site visits if applicable, must be directed to our [Point of Contact](#). We will manage all external communications through this [Point of Contact](#).

All questions specific to this RFT or the RFT process, terms and conditions should be submitted onto GETS Question and Answer Forum, <http://www.gets.govt.nz>

If technical support is required relating to the functioning of the GETS, then contact the GETS Helpdesk:

Free Phone: **0508 GETS HELP (0508 438 743)**

International: **+64 4 901 3188**

Email: [info@gets.govt.nz](mailto:info@gets.govt.nz)



All communications, including Addenda and RFT Q&A proposals will be sent by the Auckland Transport's Point of Contact via the GETS online service and will arrive at the tenderers' email address from the GETS address [noreply@gets.govt.nz](mailto:noreply@gets.govt.nz)

### 6.3 Deadline for questions

Each tenderer should satisfy itself as to the interpretation of the RFT. If there is any perceived ambiguity or uncertainty in the RFT document/s tenderers should seek clarification before the [Deadline for Questions](#).

All requests for clarification must be submitted onto GETS Question and Answer Forum, [www.gets.govt.nz](http://www.gets.govt.nz). Auckland Transport will endeavour to respond to requests in a timely manner.

If Auckland Transport considers a request to be of sufficient importance to all tenderers it may provide details of the question and answer to other tenderers. In doing so Auckland Transport may summarise the tenderer's question, and will not disclose the tenderer's identity. The question and answer may be



posted as an Addendum on GETS and/or emailed to participating tenderers. A tenderer may withdraw a request for clarification at any time.

In submitting a request for clarification a tenderer is to indicate, in its request, any information that is commercially sensitive. Auckland Transport may modify a request to eliminate such commercially sensitive information, and publish this and the answer where Auckland Transport considers it of general significance to all tenderers. In this case, however, the tenderer will be given an opportunity to withdraw the request or remove the commercially sensitive information.

## 6.4 Confidential information

Auckland Transport may require any tenderer to sign a Confidentiality Deed before releasing any confidential or commercially sensitive information to the tenderer.

Auckland Transport is subject to the Local Government Official Information and Meetings Act 1987. Information provided by tenderers may be required to be disclosed under that Act.

## 6.5 Information from Auckland Transport

Any information provided by Auckland Transport to tenderers has been provided to assist tenderers in preparing the tender and in carrying out the Contract Works. Auckland Transport does not represent or warrant the completeness or accuracy of such information. Tenderers shall rely on the information provided by Auckland Transport at their own risk and are responsible for the interpretation of the information.

## 6.6 Preparing a tender

Tenderers are to use the [Non Price Response Template](#) and [Price Response Templates](#) provided and include all information requested by Auckland Transport in relation to the RFT.

Tenderers who wish to respond to this RFT will have:

- Inspected the Site when required in the presence of Auckland Transport's nominated representative.
- Undertaken all reasonable and practicable investigations and measurements, and familiarise itself with the requirements of the all relevant authorities.
- Examined the RFT and any documents referenced in the RFT and any other information provided by Auckland Transport.
- Considered all risks, contingencies and other circumstances relating to the delivery of the Contract Works and include adequate provision in its tender to manage such risks and contingencies.
- If appropriate, obtain independent advice before submitting a tender.
- Satisfied itself as to the correctness and sufficiency of its tender, including the tendered Contract Price and the sustainability of the pricing making up the Contract Price.
- Ensured that pricing information is quoted in NZ\$ exclusive of GST.
- Documented in [Statement of Departures of Non Price Response Template](#) all assumptions and qualifications made about the carrying out of the Contract Works, including any assumption that Auckland Transport or a third party will deliver any aspect of the Contract Works or incur any cost related to the delivery of the Contract Works.



## 6.7 Alternative, tagged and other non-conforming tenders

Auckland Transport may consider any alternative tenders which fulfil Auckland Transport's requirements. Alternative tenders must be submitted as a **separate electronic file clearly marked as an alternative tender**. Tenderers may be requested during the tender evaluation period to submit additional information to facilitate evaluation of the alternative tender.

As a means of encouraging or permitting innovation, Tenderers are invited to submit Alternative tenders that propose methods and/or materials which differ from those specified in the Tender Documents. Auckland Transport reserves the right to only consider an Alternative tender if the Price is certain. Auckland Transport is not obliged to consider any Alternative tender.

Tenders submitted subject to tags, conditions or endorsement may be considered as alternative or non-conforming tenders. In respect of any alternatives, tags, qualifications, endorsements and other non-conformities (collectively Non Conformities), Auckland Transport may at its sole discretion:

- Evaluate or reject such tenders.
- Assign a price to any Non Conformity.
- Request that the tenderer withdraws any Non Conformity without adjustment to the tender price.
- Request that the tenderer withdraws any Non Conformity with adjustment of the tender price, provided that the adjustment is for an amount that would have been reasonably expected, if the tender had been submitted without that Non Conformity.

All Non Conformities must be outlined in [Statement of Departures](#) in the [Non Price Response Template](#).

Auckland Transport will not be bound by any Non Conformity unless such Non Conformity has been:

- Outlined in [Statement of Departures](#).
- Expressly agreed by Auckland Transport and incorporated into the Contract other than the Contractor's tender.

## 6.8 Requirements for tender submission and pricing

Tenders must be prepared and submitted in the format provided within the response templates.

Tenderers must include the rates or percentages stated in the [Price Response Template](#).

The tenderer must include rates and prices for all items of work described in the [Schedule of Prices](#). Items against which no rate or price is entered by the tenderer will not be paid for by Auckland Transport when the Contract is carried out and shall be deemed covered by other rates and prices in the [Schedule of Prices](#).

Unless otherwise provided in the [Price Response Template](#), the rates included in the [Schedule of Prices](#) shall be deemed to be fully inclusive of all allowances for On-site Overheads and for Off-site Overheads and Profit.

Auckland Transport is under no obligation to check tenders for errors or omissions.

If the price offered is substantially lower than other responses (an abnormally low bid), Auckland Transport may seek to verify that the tenderer is capable of carrying out the Contract Works and meeting all of the conditions of the Contract for the tendered price. Where Auckland Transport is not satisfied that the price tendered is adequate to meet the obligations of the Contract, Auckland Transport may at its sole discretion exclude the tender from further evaluation.

If we discover price errors and/or omissions in your tender, we will notify you. You may be allowed to correct such error and/or omission, so long as by the correction there would be no material prejudice



to any other submission (as determined by Auckland Transport in its sole discretion), or you may be given the opportunity to:

- Confirm that your tender remains open for acceptance notwithstanding the error; or
- Withdraw your tender.

Acceptance of a tender that contains errors will not invalidate the contract formed by that acceptance.

## 6.9 Submitting a tender

Each tenderer is responsible for ensuring that its tender is uploaded to GETS before the [Deadline for Tenders](#). GETS will acknowledge receipt of each tender.

Auckland Transport intends to rely on all the information provided by the tenderer (e.g. correspondence and negotiations). In submitting a tender and communicating with Auckland Transport the tenderer should check that all information it provides 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.

Where Auckland Transport stipulates an electronic two file RFT process, the following applies:

- The tenderer must ensure that all financial information and pricing components of its tender are provided in [Price Response – File 2](#).
- The pricing information must be clearly marked as stated in [RFT Schedule](#). This is to ensure that the pricing information cannot be viewed when [Non Price Response](#) is opened.

It is recommended that you begin the uploading process with sufficient time to allow the upload to complete before [Deadline for Tenders](#). This is particularly important if you are submitting large files (greater than 10Mb).

## 6.10 Third party information

Each tenderer authorises Auckland Transport to collect additional information from any relevant third party (such as a referee or a previous or existing client) and to use that information as part of the RFT evaluation.

Each tenderer must ensure that all referees listed in [Non Price Response Template](#) agree to provide a reference.

To facilitate discussions between Auckland Transport and third parties each tenderer waives any confidentiality obligations that would otherwise apply to information held by a third party, with the exception of commercially sensitive pricing information.

Auckland Transport reserves the right to use any other source of information to assist in the evaluation of the attribute including prior performance on Auckland Transport projects.

## 6.11 Due diligence

In relation to tenderers/ preferred tenderers we may carry out due diligence investigations. The findings will be taken into consideration in the evaluation process.

We may undertake the following due diligence:

- Interview tenderers.
- Request tenderers make a presentation.
- Arrange site visits.



- Inspect audited accounts for the last three financial years.
- Undertake a credit check
- Undertake a Police check for all named personnel
- Check previous performance using ATPACE performance review system tool

## 6.12 Conflict of Interest

Each tenderer must complete the [Conflict of Interest Declaration](#) in the [Non Price Response Template](#) and must immediately inform Auckland Transport should a [Conflict of Interest](#) arise during the RFT process. A material [Conflict of Interest](#) may result in the tenderer being disqualified from participating further in the RFT process.

## 6.13 Ethics

Tenderers must not attempt to influence or provide any form of personal inducement, reward or benefit to any representative of Auckland Transport.

Any tenderer who attempts to influence the outcome of this RFT may be disqualified from participating further in the RFT process.

Auckland Transport reserves the right to require additional declarations, or other evidence from a tenderer, or any other person, throughout the RFT process to ensure probity of the RFT process.

The Probity Auditor function will be provided by: Auckland Transport Risk and Audit: Phone 09 355 3553.

Alternatively tenderers can contact the Auckland Transport Independent Hotline to report any concerns Phone: 0800 287 376 or e-mail [AT.report@nz.pwc.com](mailto:AT.report@nz.pwc.com)

The Probity Auditor is not a member of the Tender Evaluation Team.

## 6.14 Anti-collusion and bid rigging

Tenderers must not engage in collusive, deceptive or improper conduct in the preparation of their tenders or other submissions or in any discussions or negotiations with Auckland Transport. Such behaviour will result in the tenderer being disqualified from participating further in the RFT process. In submitting a tender the tenderer warrants that its tender has not been prepared in collusion with a competitor.

Suspected collusive or anti-competitive conduct by tenderers may be reported by Auckland Transport to the appropriate authority.

## 6.15 Evaluation Panel

Auckland Transport will convene an Evaluation Panel comprising members chosen for their relevant expertise and experience. In addition, Auckland Transport may invite independent advisors to evaluate any tenders, or any aspect of any tenders.

## 6.16 Auckland Transport's clarification

Auckland Transport may, at any time, request from any tenderer clarification as well as additional information about any aspect of its tender. Auckland Transport is not required to request the same clarification or information from each tenderer.



The tenderer must provide the clarification or additional information in the format requested. Tenderers must endeavour to respond to requests in a timely manner. Auckland Transport may take such clarification or additional information into account in evaluating the tender.

Where a tenderer fails to respond adequately or within a reasonable time to a request for clarification or additional information, Auckland Transport may cease evaluation of its tender and may eliminate that tender from the RFT process.

## 6.17 Evaluation and shortlisting

Auckland Transport will base its initial evaluation on the tenders submitted in response to the RFT. Auckland Transport may adjust its evaluation of a tender following consideration of any clarification or additional information as described in [RFT-Terms](#), under [6.10](#), [6.11](#) and [6.16](#).

Auckland Transport may make enquiries regarding the tenderer. Auckland Transport may consider relevant information obtained from any source in the evaluation of the tender. Auckland Transport may verify with any third party any information included in the tender or disclosed to Auckland Transport in connection with the tender.

Auckland Transport will advise tenderers if they have been shortlisted or not. Being shortlisted does not constitute acceptance by Auckland Transport of a tenderer's tender, or imply or create any obligation on Auckland Transport to enter into negotiations with, or award a Contract for the Contract Works to any shortlisted tenderer. At this stage in the RFT process Auckland Transport will not make public the names of the shortlisted tenderers.

## 6.18 Negotiations with preferred tenderer(s)

Auckland Transport may at any time prior to acceptance of any tender, negotiate with the preferred tenderer(s) or any tenderer. Auckland Transport may invite a tenderer to enter into negotiations with a view to finalising contractual arrangements.

If a tenderer is selected as preferred tenderer then such selection does not constitute an acceptance by Auckland Transport of the tenderer's response, or imply or create any obligation on Auckland Transport to award the contract to that tenderer.

Auckland Transport may at any time without being liable to the preferred tenderer cease discussions with, and not award the Contract to, that tenderer.

Auckland Transport may initiate concurrent negotiations with more than one preferred tenderer.

## 6.19 Elimination

Auckland Transport may reject any tender where:

- The tenderer has failed to provide all information requested, or in the correct format, or materially breached a term or condition of the RFT.
- The tender contains a material error, omission or inaccuracy.
- The tenderer is in bankruptcy, receivership or liquidation.
- The tenderer has made a false declaration.
- There is a serious performance issue in a historic or current contract/Work Package delivered by the tenderer.
- The tenderer has been convicted of a serious crime or offence.
- There is professional misconduct or an act or omission on the part of the tenderer which adversely reflects on the integrity of the tenderer.





## 6.20 Auckland Transport's additional rights

Despite any other provision in the RFT, Auckland Transport may, on giving due notice to tenderers:

- Amend, suspend, cancel and/or re-issue the RFT, or any part of the RFT.
- Make any material change to the RFT (including any change to the [RFT Schedule](#) or [RFT evaluation method and requirements](#)).

Despite any other provision in the RFT Auckland Transport may:

- Accept a late tender if it is Auckland Transport's fault that it is received late.
- In exceptional circumstances, accept a late tender where it considers in its sole discretion that there is no material prejudice to other tenderers.
- In exceptional circumstances, answer a question submitted after the [Deadline for Questions](#), if applicable.
- Accept or reject any tender, or part of a tender.
- Accept or reject any non-compliant, non-conforming or alternative tender.
- At any time prior to acceptance of any tender, withdraw the Contract from tender.
- Not accept the lowest priced, or highest scoring or any tender.
- Decide not to enter into a Contract with any tenderer.
- Liaise or negotiate with any tenderer without disclosing this to, or doing the same with, any other tenderer.
- Provide or withhold from any tenderer information in relation to any question arising in relation to the RFT. Information will usually only be withheld if it is deemed unnecessary, is commercially sensitive to a tenderer, is inappropriate to supply at the time of the request or cannot be released for legal reasons.
- Amend the proposed Contract at any time, including during negotiations with a tenderer.
- Waive irregularities or requirements in or during the RFT process where it considers it appropriate and reasonable to do so.

## 6.21 Notification of outcome

At any point after conclusion of negotiations, but no later than 30 Working Days after the date the Contract is signed, Auckland Transport will inform all unsuccessful tenderers of the name of the successful tenderer, if any. Auckland Transport may make public the name of the successful tenderer and any unsuccessful tenderer(s). Where applicable, Auckland Transport will publish a Contract Award Notice on GETS.

## 6.22 Tenderer's debrief

Unsuccessful tenderers will be notified in writing by Auckland Transport. Each tenderer will have 30 Working Days, from the date of this notification, to request a debrief. When a tenderer requests a debrief, Auckland Transport will provide the debrief within 30 Working Days of the date of the request, or of the date the Contract is signed, whichever is later.

The debrief may be provided by letter, email, phone or at a meeting. The debrief will:

- Provide the reasons why the tender was or was not successful.



- Explain how the tender performed against the preconditions (if applicable) and the evaluation criteria.
- Indicate the tender's relative strengths and weaknesses.
- Explain, in general terms, the relative advantage/s of the successful tender.
- Seek to address any concerns or questions from the tenderer.
- Seek feedback from the tenderer on the RFT and the RFT process.

## 6.23 Issues and complaints

A tenderer may, in good faith, raise with Auckland Transport any issue or complaint about the RFT, or the RFT process at any time.

## 6.24 Costs of participating in the RFT process

Each tenderer will meet its own costs associated with the preparation and presentation of its tender and any negotiations.

## 6.25 Ownership of documents

The RFT and its contents remain the property of Auckland Transport. All Intellectual Property rights in the RFT remain the property of Auckland Transport or its licensors. Auckland Transport may request the immediate return or destruction of any or all RFT documents and any copies. Tenderers must comply with any such request in a timely manner.

All documents forming the tender will, when submitted to Auckland Transport, become the property of Auckland Transport. Tenders will not be returned to tenderers at the end of the RFT process.

Ownership of Intellectual Property rights in the tender remain the property of the tenderer or its licensors. However, the tenderer grants to Auckland Transport a non-exclusive, non-transferable, perpetual license to retain, use, copy and disclose information contained in the tender for any purpose related to the RFT process.

## 6.26 Offer validity period

The [Offer Validity Period](#) is calculated from the [Deadline for Tenders](#). Tenders are to remain valid and open for acceptance by Auckland Transport for the [Offer Validity Period](#).

By submitting a tender, the tenderer will be deemed to be representing that their offer will remain open for acceptance by Auckland Transport for 60 Working Days from the [Deadline for Tenders](#).

## 6.27 No binding legal obligations

No legal or other obligations shall arise between the tenderer and Auckland Transport in relation to the conduct or outcome of the tender process unless and until that tenderer has received written notification of the acceptance of its tender.

Auckland Transport, its agents and advisors will not be liable in contract or tort or in any other way for any direct or indirect damage, loss or cost incurred by any tenderer or other person in respect of the tender process.



## 7. Definitions

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

Term	Definitions
NZS3910:2013	New Zealand Standard for Conditions of contract for building and civil engineering construction (for definitions refer to 1.2 Definitions)
Confidential Information	<p>Information that:</p> <ul style="list-style-type: none"> <li>• is by its nature confidential;</li> <li>• is marked by either Auckland Transport or a tenderer as 'confidential', 'commercially sensitive', 'sensitive', 'in confidence', 'top secret', 'secret', 'classified' and/or 'restricted';</li> <li>• is provided by Auckland Transport, a tenderer, or a third party in confidence;</li> <li>• Auckland Transport or a tenderer knows, or ought to know, is confidential.</li> </ul> <p>Confidential information does not cover information that is in the public domain through no fault of either Auckland Transport or a tenderer.</p>
Contract Award Notice	Means an Award Notice published on GETS.
Deadline for Questions	The deadline for Tenderers to submit questions to Auckland Transport as stated in RFT Schedule. See also RFT Terms Section 6.3
Deadline for Tenders	The deadline that tenders are to be delivered or submitted to Auckland Transport as stated in RFT Schedule
Evaluation Panel	Auckland Transport's Evaluation Panel is identified in RFT Terms Section 6.15.
GETS	Government Electronic Tenders Service available at <a href="http://www.gets.govt.nz">www.gets.govt.nz</a>
Intellectual Property	All intellectual property rights and interests, including copyright, trademarks, designs, patents and other proprietary rights, recognised or protected by law.
Non Price Response Template	The form to be used by a tenderer to respond to the RFT non-price attribute requirements.
NTT	Notices to tenderers or Addenda
Panel	Means the Physical Works Supplier Panel One or Two or Three as the context requires.
Point of Contact	Auckland Transport's Point of Contact is identified in RFT Schedule The tenderer's Point of Contact is identified in its tender.
Price Response Template	The form to be used by a tenderer to respond to the RFT Price attribute.



Proposed Contract	The Contract terms and conditions proposed by Auckland Transport for the carrying out of the Contract Works as listed in RFT document tables under Work Package Documents.
Response	Tender submitted by the tenderer.
RFT	Means Request for Tender.
<a href="#">RFT-Terms</a>	Means the Request for Tender - Process, Terms and Conditions as described in Section 6.
Supplier	A person, business, company or organisation that supplies or can supply goods or services or works to Auckland Transport.
Work Package	Means a specific work package proposed by Auckland Transport within the Panel Scope.
Work Package Service Order (WPSO)	Means a Work Package issued as part of a Work Package RFT under Panel Three.