

## **1. RFP CONDITIONS**

### **1.1. Rights reserved by the CAA**

#### **1.1.1. The CAA reserves the right to:**

- Reject all or any RFP response and not award and not accept the lowest-priced response;
- Call and/or re-advertise for RFP responses or revisit any prior ROI process;
- Waive any irregularities or informalities in the RFP process;
- Amend the closing date, the acceptance date, or any other date in the RFP document;
- Amend this RFP and any associated documents by the issuance of a written amendment notice;
- Seek clarification of any RFP response;
- Suspend or cancel (in whole or in part) this RFP process;
- Consider or reject any alternative RFP response;
- Deal separately with any of the divisible elements of any RFP response, unless the relevant RFP response specifically states that those elements must be taken collectively;
- Enter into discussions and/or negotiations with any respondent at any time, and upon any terms and conditions, before or after acceptance of an RFP response;
- Conduct a financial check on any respondent submitting a tender response;
- Obtain similar goods/services from any third party and not deal exclusively with any respondent under this RFP process; and
- Meet with any respondent before and/or after the RFP closes and prior to the award of any contract.

1.1.2. The CAA will not be bound to give any reasons for decisions made as a result of this RFP or as an outcome of the RFP evaluations.

1.1.3. It is the CAA's preference that one contract be awarded for the goods/services. However, the CAA may, in its sole discretion, decide to divide the products/services and award different contracts for different products/services. The terms of this RFP does not guarantee the successful respondent any volume, value, or the placement of any orders.

### **1.2. Canvassing**

In respect of this RFP, respondents will not canvass any CAA employees, contractors, consultants, board member or anyone who has a direct working relationship with the CAA, other than the Authorised Representative. Any respondent found to be canvassing or have canvassed any CAA employee, contractor, consultant, board member or anyone who has a direct working relationship with the CAA, other than the Authorised Representative, regarding this RFP may be excluded from further consideration.

### **1.3. CAA liability for your information disclosed**

1.3.1. While the CAA endeavours to supply correct information, it disclaims, to the extent allowed by law, any liability (in contract and in tort, including negligence) to any respondent or other person if they rely on any information provided by the CAA in relation to this RFP.

1.3.2. Those submitting RFP responses will be deemed to have:

- Examined this RFP and all documents referenced (if any);
- Considered all the risks, contingencies and other circumstances that may have an effect on their RFP response; and
- Satisfied themselves as to the correctness and sufficiency of their RFP response, including the pricing structure offered.

### **1.4. Subject to contract**

1.4.1. All parties submitting an RFP response agree that:

- A contract is only formed between the CAA and the successful respondent when the CAA executes such a contract covering the relevant products/services;
- This RFP and any provision contained in it does not give rise to a separate contract between the CAA and that party; and
- Nothing in this RFP, or in the relationship of the CAA and that party, imposes any duty of care on the Crown or the CAA, and any such duty of care is expressly excluded.

### **1.5. RFP responses complete and accurate**

All information provided by respondents in their responses is warranted by each respondent to be complete and accurate in all material respects. The respondent also warrants to the CAA that the provision of information to the CAA, and the use of it by the CAA for the evaluation of RFP responses and for the negotiation and implementation of a contract, will not breach any third-party intellectual property rights. Respondents will be responsible for verifying the accuracy and adequacy of information supplied by or on behalf of the CAA.

The CAA 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.

## **1.6. Shortlisting and negotiations**

- 1.6.1. Where there is a decision to shortlist and proceed to negotiation, the preferred respondent(s) will be notified of their preferred status and the expected timeframe for negotiations.
- 1.6.2. Other respondents will be notified that their RFP responses:
- Have been unsuccessful; or
  - Are shortlisted but not preferred. In this case, the respondent will be asked to confirm that their RFP response remains open for the period of negotiation with the preferred respondent(s).
- 1.6.3. Any failure to reach agreement between the CAA and the preferred respondent(s) may result in a re-evaluation of other shortlisted respondents. Contract negotiation may then commence with the respondent selected from this re-evaluation.
- 1.6.4. This re-evaluation process will be repeated until a successful respondent is accepted, or until the CAA elects to cancel the RFP process.
- 1.6.5. The CAA is not bound to draw up a shortlist nor negotiate with any respondent.

## **1.7. Confidentiality**

- 1.7.1. The CAA undertakes to keep confidential any information marked "Commercial in Confidence" provided to the CAA by the respondent/s prior to the award of a contract and, in respect of unsuccessful respondents, after contract award.
- 1.7.2. The obligation of confidentiality in clause 6.7.1 does not apply if the confidential information:
- Is disclosed by the CAA to its consultants, advisors or employees solely in order to consider the tender responses;
  - Is disclosed by the CAA to its responsible Minister;
  - Is disclosed by the CAA, in response to a request under the Official Information Act 1982;
  - Is information the CAA is authorised to disclose by law; or
  - Is in the public domain otherwise than due to a breach of clause 6.7.1.
- 1.7.3. This RFP, and the information supplied by the CAA (either itself or through its consultants or advisors) in connection with this RFP, is confidential. You must not release or disclose any of the information to any other person (other than your employees or advisors) without the prior written consent of the CAA.

- 1.7.4. Respondents are advised that the CAA is subject to the Official Information Act 1982, and respondents should make their responses "Commercial in Confidence" if they wish to protect specific information. The CAA cannot, however, guarantee that information marked as such can be protected if the CAA receives a request for information under that Act.

## **1.8. Copyright**

- 1.8.1. Copyright in every document (electronic and paper) comprising this RFP belongs to the CAA. All rights are reserved. This RFP document must be kept secure, and must not be used, stored, copied or passed on in any form by any means without the CAA's prior written consent in each case.

## **1.9. Probity of tender procedures**

- 1.9.1. Should any respondent consider that they have been prejudiced by any breach of the Conditions of Tender or any other relevant principles affecting the tender process and/or evaluation of tender responses, the respondent must provide immediate notice of the alleged breach to the CAA's Authorised Representative listed in Section 4.1. The respondent should include in their notification the issues in dispute, the impact upon the respondent's interest, any relevant background information and the outcome they seek to desire.

## **1.10. RFP costs**

You must pay your own costs of preparing and submitting your RFP response, including, but not limited to, all costs relating to any:

- Communication and/or negotiation with the CAA;
- Meetings or interviews with, or presentation to the CAA; and/or
- Site inspections/visits.

## **1.11. Advertising**

- 1.11.1. 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 CAA.

- 1.11.2. The CAA has a statutory obligation to advertise and declare the outcome of the RFP under the Government's Post-Award Transparency Policy to improve the transparency of procurement processes in Government departments. The award of this RFP will be published on the Contracts Awarded page of the CAA website.

## **1.12. Governing law**

This RFP is governed by the law of New Zealand, and the New Zealand courts have exclusive jurisdiction as to all matters relating to this RFP.

**1.13. Conflict of interest**

Respondents should disclose any conflicts of interest in relation to the matter covered by this RFP (see Conflict of Interest form).

**1.14. Acceptance of gifts**

In compliance with the CAA policy, gifts, inducements, promotional products or services, etc. should not be offered to the CAA employee, agent, consultant, board member or contractor acting on behalf of the CAA at any time. Any respondent attempting to provide gifts, inducements, promotional products or services to any CAA employee, agent, consultant, board member or contractor acting on behalf of the CAA may be disqualified from tendering.