**APPENDIX - 1**

April 2022

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| F:\ICONS GMRFx\ICONS dark grey\Icons_Key.png | **1.6 Our RFP Process, Terms and Conditions** |

Here are the changes we have made to SECTION 6: The RFP Process, Terms and Conditions. The changes/new additions are identified by ***bold and italic*** font.

Note to suppliers and Respondents

One additional bullet point is added:

* If this RFP has been issued via GETS, anything that is required under these RFP Process, Terms and Conditions to be emailed or otherwise addressed to the “Point of Contact” shall instead be submitted via GETS.

6.4 Submitting a Proposal

Paragraph 6.4.a. is deleted and replaced with the following wording:

1. Each Respondent is responsible for ensuring that its Proposal is received by the Buyer at the correct address on or before the Deadline for Proposals. The Buyer ***may*** acknowledge receipt of each Proposal ***if requested***.

A new paragraph 6.4.e. is added:

***e. The Buyer would prefer to receive Proposals that comply with the RFP but reserves the right to consider Proposals submitted with departures, tags, qualifications, conditions or endorsements (“non-conformities”). All non-conformities must be set out in a Statement of Departures included with the relevant Proposal.***

A new paragraph 6.4.f. is added:

***f. The cost of preparing and submitting a Proposal, and the cost to the Respondent of any subsequent negotiations, meetings or discussions, will be borne by the Respondent.***

A new paragraph 6.4.g. is added:

***g. The Respondent warrants that:***

1. ***all information it submits is true, accurate and complete and not misleading in any material respect (whether by omission or otherwise);***
2. ***none of the information it submits breaches any third party’s rights, including Intellectual property rights, and the use of the information in relation to this RFP will not breach any such rights;***
3. ***it has not withheld any information potentially relevant to the Buyer’s consideration of its Proposal, including any actual or potential controversies, disputes or claims involving the Respondent; and***
4. ***the foregoing warranties will remain true and correct during the period of any negotiations between the Respondent and the Buyer.***

6.10 Respondent’s debrief

Section 6.10 is deleted and replaced with the following wording:

1. At any time after shortlisting Respondents, the Buyer ***may*** offer Respondents who have not been shortlisted a debrief. If offered, 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.
2. The debrief may be provided by letter, email, phone or at a meeting. The debrief ***may***:
   1. provide the reasons why the Proposal was or was not successful
   2. explain how the Proposal performed against the pre-conditions (if applicable) and the evaluation criteria
   3. indicate the Proposal’s relative strengths and weaknesses
   4. explain, in general terms, the relative advantage/s of the successful Proposal
   5. seek to address any concerns or questions from the Respondent
   6. seek feedback from the Respondent on the RFP and the RFP process.

6.12 Respondent’s debrief

Paragraph 6.12.c. is deleted and replaced with the following wording:

c. Both the Buyer and the Respondent agree to act in good faith and use ***reasonable*** endeavours to resolve any issue or complaint that may arise in relation to the RFP.

6.18 Confidentiality of RFP information

A new paragraph 6.18.c. is added:

***c. The Buyer may, if it considers it appropriate, require a Respondent to sign a confidentiality agreement before releasing any confidential or commercially sensitive information to the Respondent. The Respondent agrees to sign a suitable confidentiality agreement, if requested.***

6.21 No binding legal relations

Paragraph 6.21.c. is deleted and replaced with the following wording:

c. Except for the legal obligations set out in paragraph 6.21.a. no legal relationship is formed between the Buyer and any Respondent unless and until a Contract is entered into between those parties. ***For the avoidance of doubt, the issue of the RFP is not an offer to enter into a contract.***

6.22 Elimination

Paragraph 6.22.a. is deleted and replaced with the following wording:

1. The Buyer may exclude a Respondent from participating in the RFP if the Buyer has evidence of, ***or has reasonable grounds to suspect***, any of the following, and is considered by the Buyer to be material to the RFP:
   1. the Respondent has failed to provide all information requested, or in the correct format, or materially breached a term or condition of the RFP
   2. the Proposal contains a material error, omission or inaccuracy
   3. the Respondent is in bankruptcy, receivership or liquidation
   4. the Respondent has made a false declaration
   5. there is a serious performance issue in an historic or current contract delivered by the Respondent
   6. the Respondent has been convicted of a serious crime or offence
   7. there is professional misconduct or an act or omission on the part of the Respondent which adversely reflects on the integrity of the Respondent
   8. the Respondent has failed to pay taxes, duties or other levies
   9. the Respondent represents a threat to national security or the confidentiality of sensitive government information
   10. The Respondent is a person or organisation designated as a terrorist by New Zealand Police.

6.23 Buyer’s additional rights

The following new sub-paragraphs are added to paragraph 6.23.a.:

***xii. Not consider any Proposal***

***xiii. Seek clarification of any Proposal***

***xiv. Accept part of a Proposal from any Respondent(s) and, at the Buyer’s option, re-tender for the remainder***

***xv. Re-issue this RFP***

***xvi. Take into account any other relevant information that the Buyer may have in its possession and to make enquiries of any person to assist it in the evaluation process***

***xvii. Reject or not consider further any documentation related to a Proposal that it may receive from a Respondent***

***xviii. Obtain similar goods/services from any third party and not deal exclusively with any Respondent***

***xix. Request additional Proposals.***

6.25 Disclaimer

Paragraph 6.25.a. is deleted and replaced with the following wording:

1. The Buyer will not be liable in contract, tort ***(including negligence)****,* equity, or in any other way whatsoever for any direct or indirect damage, loss or cost incurred by any Respondent or any other person in respect of ***the RFP and/or*** the RFP process.

A new paragraph 6.25.d. is added:

***d. The RFP has been prepared to assist Respondents in preparing Proposals. The Buyer does not represent or warrant the completeness or accuracy of the RFP. Respondents rely on any information provided in relation to the RFP at their own risk and are responsible for the interpretation of that information.***

Definitions

The definition of “Buyer” is deleted and replaced with the following wording:

***Buyer******The Buyer is Unitec New Zealand Limited. The term Buyer includes the officers, employees, contractors, consultants, agents and representatives of Unitec New Zealand Limited.***

The following worded is added to the definition of “Point of Contact”:

**Point of Contact**

The Buyer and each Respondent are required to appoint a Point of Contact. This is the channel to be used for all communications during the RFP process. The Buyer’s Point of Contact is identified in Section 1, paragraph 1.3. The Respondent’s Point of Contact is identified in its Proposal. ***If this RFP has been issued via GETS and no Point of Contact is nominated, the Buyer’s Point of Contact shall be GETS.***