



133 Molesworth  
Street  
PO Box 5013  
Wellington 6140  
New Zealand  
T+64 4 496 2000

31 January 2023

**s 9(2)(a)**

By email: **s 9(2)(a)**  
Ref: H2023019147

Tēnā koe **s 9(2)(a)**

### **Response to your request for official information**

Thank you for your request under the Official Information Act 1982 (the Act) to Manatū Hauora (the Ministry of Health) on 12 January 2023. I will respond to each part of your request in turn.

*In the Ministry's Report on the Smokefree Environments and Regulated Products (Smoked Tobacco) Amendment Bill (17 October 2022) page 43, the Ministry of Health states that:*

*'The Ministry [of Health] has contracted Auckland University to conduct a multiyear study to independently monitor illicit supply of tobacco over the implementation of the Smokefree Aotearoa 2025 Action Plan...'*

*It is in the context of acknowledging the importance of understanding the nature and scale of illicit activity.*

*1. Was this research proposal put out to tender. If so, to who? Please provide copies of the tender documents.*

In late 2021, five suppliers were identified from the All of Government Panel as potential providers as part of fulfilling the Smokefree Aotearoa 2025 Action Plan. The tender documents are attached to this letter and are itemised in Appendix 1 below.

A Request for Proposal (RFP) was sent to Ernst & Young, Deloitte, Auckland UniServices Limited, Allen and Clarke, and Business and Economic Research Limited. Manatū Hauora received two proposals in response to the RFP from Auckland University and Allen and Clarke.

*2. What were the Terms of Reference and the research objectives?*

Please refer to the tender documents, listed in the section titled "Our Requirements" for this information.

*3. What was the proposed time-line and research milestones?*

The survey period is 5 years, from 2022 to 2026. Annual reporting is required to Manatū Hauora.

*4. Who has been awarded the research and the budget for the research?*

University of Auckland (Auckland UniServices Limited) was awarded the research contract.

The total project cost agreed to in the contract is \$475,742, including GST. The maximum approved budget in the RFP was \$475,744.

*5. What is the deadline for reporting back on the research?*

The final summary report is due in the last quarter of 2026. There is also annual reporting due, beginning in 2022.

I trust this information fulfils your request. Under section 28(3) of the Act, you have the right to ask the Ombudsman to review any decisions made under this request. The Ombudsman may be contacted by email at: [info@ombudsman.parliament.nz](mailto:info@ombudsman.parliament.nz) or by calling 0800 802 602.

Please note that this response, with your personal details removed, may be published on the Manatū Hauora website at: [www.health.govt.nz/about-ministry/information-releases/responses-official-information-act-requests](http://www.health.govt.nz/about-ministry/information-releases/responses-official-information-act-requests).

Nāku noa, nā



Andrew Old  
**Deputy Director-General**  
**Public Health Agency | Te Pou Hauora Tūmatanui**

## Appendix 1: List of documents for release

#	Date	Document details	Decision on release
1	N/A	Part 1: Request for Proposal: Designing and conducting illicit tobacco trade surveys	Released in full.
2		Part 2: Proposal Response Form: Designing and conducting illicit tobacco trade surveys	
3		Part 3: Proposal Response Pricing Template: Designing and conducting illicit tobacco trade surveys	



# Part 1:

## Request for Proposal

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Designing and conducting illicit tobacco trade surveys

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## Section 1: Overview of this opportunity

### Protection from commercial and other vested interests of the tobacco industry

New Zealand has an obligation under Article 5.3 of the Framework Convention on Tobacco Control (FCTC) when 'setting and implementing public health policies with respect to tobacco control ... to protect these policies from the commercial and other vested interests of the tobacco industry'. The internationally agreed Guidelines for Implementation of Article 5.3 recommend that parties to the treaty 'should interact with the tobacco industry only when and to the extent strictly necessary to enable them to effectively regulate the tobacco industry and tobacco products. To help us meet our obligations under the FCTC and ensure transparency, we ask all respondents to disclose whether they have any direct or indirect links to, or receive funding from, the tobacco industry.

#### 1.1 Opportunity overview

This Request for Proposal (RFP) is an invitation to suitably qualified Respondents to submit a Proposal for designing and conducting a survey to measure the size of the illicit tobacco market and to give insights into how consumers interact with it. The Ministry of Health (the Ministry) is seeking a supplier to provide reports (baseline and ongoing) on the size of the illicit tobacco trade market in New Zealand and how any potential legislative changes in the Smokefree Aotearoa 2025 Action Plan impact on the incentives to engage in importing and selling of illicit tobacco products, and for consumers to interact with the illicit market.

**Note:** The Smokefree Aotearoa 2025 Action Plan is likely to be publicly released before the end of 2021, and any legislative amendments may not take place before 2023.

Independent research is required to better understand the size of the illicit market, and to measure the impact policy changes have on it including driving purchasers from legal to illicit sellers. This will help inform monitoring and enforcement strategies and help the Ministry to understand the cost to New Zealand, in terms of undermining smokefree policies and loss of excise tax.

This RFP is a closed competitive tender process. It is a single step procurement process.

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## Section 2: Instructions for preparing and submitting your Proposal

#### 2.1 Format overview

This RFP contains several key documents. The following table provides an overview of these key documents.

RFP Part	Description
Part 1: Request for Proposals	Part 1 (this document) sets out our Requirements, instructions and the RFP process, terms and conditions.

Part 2: Proposal Response Form	This is provided for Respondents to use to complete their Proposal (except for their pricing response).
Part 3: RFP Pricing Template	This document is provided for Respondents to use to submit their pricing.
Part 4: Proposed Contract	This is a copy of the Ministry's Proposed Contract for Respondents to review.

## 2.2 Timeline and events during this RFP

### 2.2.1 Timeline for Proposal development and submission

The following table provides the timeline for this RFP:

Event	Date
Due date for registration for Respondent briefing	29 October 2021
Respondent briefing held	1-1:30 pm 4 November 2021
Due date for notifications of intention to respond	9 November 2021
Deadline for Questions	15 November 2021
Deadline for Ministry of Health to respond	18 November 2021
<b>Deadline for Proposals</b>	<b>Midday 1 December 2021</b>

All dates and times are dates and times in New Zealand. Any change in dates or times set out above will be notified via GETS.

### 2.2.2 Briefings

We will be holding a briefing about this opportunity to provide potential Respondents with further information about our Requirements and enable Respondents to ask questions. We strongly encourage Respondents to attend. We will provide questions and answers which arise from the briefing to all Respondents on GETS after the briefings have been held.

The briefing will be held via **Microsoft Teams** 1-1:30 pm 4 November 2021

To register to attend the briefing, please email our Point of Contact.

### 2.2.3 Notification of intention to respond

Please email our Point of Contact by **30 October 2021** to inform us that you intend to respond to this RFP. This is not required in order to be eligible to respond, however this is requested to assist with the Ministry's evaluation planning.

## 2.2.4 Offer Validity Period and finalisation of the Contract

### **Offer Validity Period:**

In submitting a Proposal, the Respondent agrees that their offer will remain open for acceptance by the Ministry for 12 calendar months from the Deadline for Proposals.

We estimate that the Contract will be finalised by 30 January 2022.

## 2.3 Ministry Point of Contact and communications during this procurement

### 2.3.1 Respondent communications with the Ministry prior to the Deadline for Proposals

Ministry personnel managing this RFP through GETS are the Ministry's Point of Contact for this RFP.

If you have a question about this RFP which arises prior to the Deadline for Proposals, submit your question using GETS.

Please note that it is a breach of the RFP-Terms to seek information through contacts other than our designated Point of Contact.

All questions about the RFP should be asked before the Deadline for Questions (although the Ministry may answer questions after this date at our discretion). See the RFP-Terms for more information about how the Ministry manages Respondent questions.

### 2.3.2 Contacting the Ministry following the Deadline for Proposals

GETS cannot be used to communicate with the Ministry after the Deadline for Proposals. If you need to communicate with us after the Deadline for Proposals (eg, to inform us of conflict), please contact the Point of Contact using the following email address.

Email: **procurement@health.govt.nz**

### 2.3.3 Informing you of any changes

If we make any changes to the RFP or the RFP process prior to the Deadline for Proposals, we will let all Respondents know by placing a notice on GETS. After the Deadline for Responses, we will contact you through your point of contact.

### 2.3.4 GETS support

For help using the GETS system, contact the GETS helpdesk.

Email: info@gets.govt.nz  
Phone: 0508 438 743 (0508 GETS HELP)  
+64 4 9013188

## 2.4 Submission of your Proposal

### 2.4.1 Submission method

Submit your Proposal electronically using the GETS system. GETS will acknowledge receipt. Please ensure that:

- your Proposal is submitted on time and is complete (otherwise it may not be accepted)
- all documents provided as part of your Proposal are less than 50.0 MB
- you contact the Ministry Point of Contact promptly if there are extraordinary circumstances which are preventing submission.

### 2.4.2 Summary of documents to be submitted

Please note:

- the following table provides an overview of the documents that Respondents must provide
- all content that you would like to be evaluated should be addressed in the main body of your Proposal – please do not provide additional documents or embed hyperlinks.

Document	Instructions
Completed Part 2: Proposal Response Form	Submit your response (excluding price) using the Part 2: Proposal Response Form provided. You may use Microsoft Word or PDF format
Completed Part 3: RFP Pricing Template	Submit pricing separately from your Part 2: Proposal Response Form. Please use the pricing template provided.

## Section 3: Our Requirements

### 3.1 Overview

The Ministry of Health (the Ministry) is seeking a supplier to provide information (baseline and ongoing) and analysis on the size of the illicit tobacco trade market and how any potential legislative changes in the Smokefree Aotearoa 2025 Action Plan impact on the incentives to engage in importing and selling of illicit tobacco products, and for consumers to interact with the illicit market.

Independent research is required to better understand the size of the illicit market, and to measure the impact policy changes have on it.

This will help inform monitoring and enforcement strategies and help the Ministry and the New Zealand Customs Service to understand the cost to New Zealand, in terms of undermining smokefree policies and loss of Crown revenue from the avoidance of taxes on tobacco products.

## What we want to find out

- How large is the illicit market, and what is happening in specific communities (ie, Māori, Asian and Pacific communities)?
- Where is illicit tobacco being sold?
- Who is selling it?
- Who is buying it and why?
- What are the changes in the size and nature of the market over time?
- How easy is it for people to interact with the illicit market, and is this changing over time?

## Background

Illicit tobacco trade undermines tobacco control measures, such as taxes on tobacco products and warning labels, which are effective in reducing youth smoking uptake and increasing quitting.

The illicit tobacco trade is by its nature difficult to measure and most surveys/reports into the illicit markets are funded by the tobacco industry (ie, British American Tobacco 2010, Philip Morris International 2015 and 2016 and reports produced by KPMG in 2019 commissioned by Imperial Tobacco New Zealand and others).

Action on Smoking and Health (ASH) produced an independent report in 2013.

The New Zealand Customs Service estimates that the illicit tobacco market is around six to seven percent of the overall market. It also advises that the smuggling and distribution of illicit tobacco is a serious and growing problem. Industry funded research has calculated the illicit tobacco market as larger (11.5 percent in 2019)<sup>1</sup>, though independent research suggest industry claims are exaggerated.

Aside from those travellers claiming their duty-free baggage concession or paying excise at the airport, importers need a permit to bring tobacco into New Zealand and must pay excise tax at the time of importation. They must comply with regulations on plain packaging to sell tobacco products at the retail level. Illicit tobacco is that which is brought into New Zealand (smuggled) without a permit, or without paying excise-equivalent duty. It is also any domestically manufactured product that is not manufactured in a Customs-controlled area and does not pay excise duty (excluding product that comply with the personal use exemption).

The New Zealand Customs Service is responsible for compliance and enforcement at the border and domestically in relation to excisable goods, as well as the collection of excise and excise-equivalent duty. Customs collects data on interceptions of illicit tobacco products at the border. The Ministry of Health is responsible for compliance with the Smokefree Environments and Regulated Products Act 1990, which covers matters such as packaging requirements.

The Ministry's budget is \$475,744.00, funding which will be available through to June 2026. We have requested that you complete the pricing template to provide an indicative cost breakdown using the Pricing Response Template. As outlined in the Evaluation Criteria, price is not a weighted

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<sup>1</sup> The annual industry funded study produced by KPMG, [https://www.imperialbrandsplc.com/content/dam/imperial-brands/corporate/media/KpmgNZ\\_26\\_May\\_2020.pdf](https://www.imperialbrandsplc.com/content/dam/imperial-brands/corporate/media/KpmgNZ_26_May_2020.pdf).

criterion. However, a value for money assessment will be undertaken on the cost breakdown information provided in accordance with clause 5.1.5 of this RFP Part 1.

### 3.1.1 Capability and capacity required

The successful supplier will:

- Understand our requirements
- Have the ability to develop a range of methodologies that could be used to measure the illicit tobacco market for example, a discarded pack survey, comparison of sales/tax paid and self-reported consumption, a consumer survey (with and without inspection/surrender) and econometric modelling
- Have had previous experience in developing and conducting surveys and analysing the results in a timely fashion
- Be able to produce baseline and ongoing reports throughout the project
- Understand the complexities of carrying out research about illicit behaviour
- Can work closely with Māori, Pacific and Asian communities.

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### 3.1.2 Key requirements

The Ministry of Health (the Ministry) is seeking a supplier to provide a baseline and ongoing reports on the size of the illicit tobacco trade market and how and how any potential legislative changes in the Smokefree Aotearoa 2025 Action Plan increase importing and selling of illicit tobacco products.

Independent research is required to better understand the size of the illicit market, and to measure the impact policy changes have on it.

This will help inform monitoring and enforcement strategies and help the Ministry of Health and the New Zealand Customs Service to understand the cost to New Zealand, in terms of undermining smokefree policies and loss of Crown revenue from the avoidance of taxes on tobacco products.

#### **What we want to find out**

- How large is the illicit market and what is happening in specific communities, i.e. Māori, Asian and Pacific communities?
- Where is illegal tobacco being sold?
- Who is buying it and why?
- What are the changes in the size and nature of the market over time?
- The ease with which people can interact with the illicit market, and whether this changes over time?

### 3.2.2 Key deliverables

- To better understand the size of the illicit tobacco market, a baseline report, using various methodologies (see page 5) to be conducted before any legislative amendments to the Smokefree Environments and Regulated Products Act 1990 come into force.
- An annual report (using various methodologies) through to June 2026 to measure any change to the market following legislative amendments and to measure the impact policy changes have on it and a report outlining any changes.

## 3.2 Indicative outcomes and performance standards

<i>Outcome</i>	<i>Measure</i>
The illicit tobacco trade is fully understood at baseline	Baseline survey conducted
What are the changes in the size and nature of the market over time?	Annual surveys conducted following legislative change

## Section 4: The Proposed Contract

A copy of our Proposed Contract is provided. Please note that this is indicative only and may be amended.

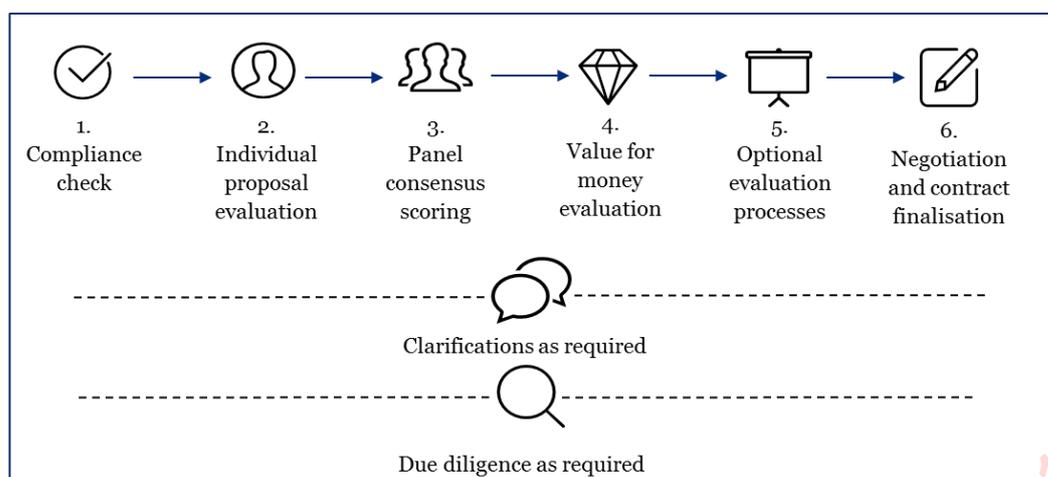
The intended term of the contract is from February 2022 to June 2026.

In submitting your Proposal, you must let us know if you wish to question and/or negotiate any of the terms or conditions in the Proposed Contract or wish to negotiate new terms and/or conditions. The Response Form contains a section for you to state your position. If you do not state your position you will be deemed to have accepted the terms and conditions in the Proposed Contract in full.

## Section 5: Evaluation Approach and selection processes

### 5.1 Selection process overview

The following diagram provides an overview of our general approach to selecting the Successful Respondent. Further explanation is provided about each step in the rest of this section.



### 5.1.1 Compliance check

We will check that your Proposal is complete and is received on time. Late or incomplete Proposals may be excluded.

We will also check that your Proposal meets the following precondition. If you do not meet this precondition, your Proposal will not be evaluated. Please note that the Ministry may, at its discretion, require you to provide evidence to support your response to this prequalification question. The Ministry will contact you directly to obtain this evidence if it is required.

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#### Precondition

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The supplier has led developed and conducted research or surveys, complete with analysis within the last twelve months.

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### 5.1.2 Individual evaluation

Evaluators will undertake an individual review and assessment of your Proposal (excluding price) against the evaluation criteria in the table below.

Questions that relate to these criteria are listed in the Response Form. Your response to these questions will be scored against the evaluation criteria as part of the initial evaluation of your Proposal.

Please pay careful attention to our evaluation questions in the Response Form and any additional information provided with the evaluation questions.

Evaluation criteria	Weighting
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<b>Capability of the Respondent to deliver</b>	70%
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Provide us with an overview of your methodology you intend to use, including:

- your understanding of the overall requirements
- your ability to develop a range of methodologies that could be used to measure the illicit tobacco market for example, a discarded pack survey, comparison of sales/tax paid and self-reported consumption, a consumer survey (with and without inspection/surrender) and econometric modelling
- your ability to undertake research in areas that might be operating outside the law
- outlining the mitigations that you will use should there be any risks associated with this research
- your proposed timeline
- examples of previous reports

<b>Capacity of the Respondent to deliver</b>	30%
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Provide us for an overview of the team members that will be working on this project, including their role and a brief biography of their relevant experience and skills.

Please identify the Account Manager or Point of Contact within the team. Outline how the Account Manager/Point of Contact will work with the Ministry to ensure the research delivers the required outcomes

Total	100%
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### 5.1.3 Scoring scale

Evaluation against the evaluation criteria will be supported by the following scoring scale. The scoring scale gives a sense of the features commonly considered when assessing Proposals. This does not limit the range of relevant considerations that we may take into account in evaluating your Proposal against our evaluation criteria.

Score	Indicative features	Confidence
5 Excellent	Significant strengths and comprehensive evidence that the Respondent can meet the Requirements. Exhibits outstanding capability, knowledge, creativity, innovation or other factors which establish excellent performance. No material weaknesses.	Very high
4 Strong	Provides significant evidence that the Respondent can meet the Requirements. Shows significant strengths relevant to the evaluation criteria.	High

Score	Indicative features	Confidence
3 Some strengths	The Proposal provides sufficient evidence to clearly substantiate that the Respondent can meet the Requirements and demonstrates some strengths in relation to the evaluation criteria	Confident
2 Acceptable	The Proposal provides evidence that the Respondent can meet the Requirements. There are some reservations or matters that are not clearly substantiated.	Mostly confident
1 Reservations	The Proposal demonstrates that the Respondent can partially meet the Requirements but does not provide sufficient evidence to overcome reservations.	Low
0 Unacceptable	The Proposal meets very few to none of the Requirements. There is insufficient evidence to overcome major reservations.	Very low/no confidence

#### 5.1.4 Panel consensus

Following individual evaluation, the evaluation panel will meet, discuss their individual assessment against the evaluation criteria, and seek to reach a shared panel understanding of the strengths and weaknesses of your Proposal. This is supported by a consensus score against each of the evaluation criteria.

This is an initial score and may be revised by the panel as clarifications or further evaluation processes occur. Respondents that are assessed as being able to sufficiently meet the Requirements will be taken through to the next stages of the evaluation.

#### 5.1.5 Value for money evaluation

A value for money analysis will be conducted. The assessment is focused on a consideration of the qualitative differences between Proposals and the cost implications of the different options put forward by Respondents. The purpose is to decide which Proposal offers the best value for money over the whole-of-life of the goods or services. At this stage of the process, the Respondent's Pricing will be reviewed as a component of this assessment.

Please note:

- value for money evaluation may include consideration of all relevant matters, including the combination of qualitative benefits, risks and costs to the Ministry
- costs considered may include anything relevant to the total cost to the Ministry, such as costs that will need to be incurred in order to transition to, or manage, the different shortlisted Proposals, and the sustainability of the pricing
- we may also take into account the impacts of any proposed changes to our contract.

### 5.1.6 Additional processes and considerations

We may use additional processes to help decide between top-ranked or preferred Respondents. The processes we may use include:

- presentations
- interviews
- health and safety checks
- site visits
- best and final offer (BAFO) processes

If we feel that these steps are necessary to make our final decision, we will provide notice to the shortlisted candidates.

### 5.1.7 Other due diligence

In addition to reviewing your due diligence declaration in the Response Form and speaking to your nominated referees, we may assess additional information to verify that it is appropriate for us to proceed to contract. We may take into account any information from any source (including information held by the Ministry) and conduct due diligence at any time during the selection process.

We may exclude a Respondent at any time if there is evidence of a good reason to do so, or take the information attained into account during the selection process. Please refer to the RFP – Terms and Conditions for more information.

### 5.1.8 Negotiation and Contract finalisation

The Ministry may invite one or more Respondents to negotiate with the Ministry.

Following a successful conclusion of negotiations and finalisation of a Contract, the outcome will be published on GETS.

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## Section 6: RFP Process, Terms and Conditions

### Standard RFP process

#### 6.1 Preparing a Proposal

6.1.1 Respondents are to use the Response Form provided and include all information requested by the Ministry in relation to the RFP.

- 6.1.2 By submitting a Proposal the Respondent accepts that it is bound by the RFP Process, Terms and Conditions (RFP - Terms) contained in this Section 6.
- 6.1.3 Each Respondent will:
- i. examine the RFP and any documents referenced in the RFP and any other information provided by the Ministry
  - ii. consider all risks, contingencies and other circumstances relating to the delivery of the Requirements and include adequate provision in its Proposal to manage such risks and contingencies
  - iii. document in its Proposal all assumptions and qualifications made about the delivery of the Requirements, including any assumption that the Ministry or a third party will deliver any aspect of the Requirements or incur any cost related to the delivery of the Requirements
  - iv. ensure that pricing information is quoted in NZ\$ exclusive of GST
  - v. if appropriate, obtain independent advice before submitting a Proposal
  - vi. satisfy itself as to the correctness and sufficiency of its Proposal, including the proposed pricing and the sustainability of the pricing.
- 6.1.4 There is no expectation or obligation for Respondents to submit Proposals in response to the RFP solely to remain on any prequalified or registered supplier list. Any Respondent on such a list will not be penalised for failure to submit a Proposal.

## **6.2 Joint Proposals**

- 6.2.1 Respondents may submit a Joint Proposal provided that the Joint Proposal complies with the RFP-Terms and the instructions in the RFP documents (including the Response Form).
- 6.2.2 If a Joint Proposal is successful, the Ministry may:
- i. contract with a lead Respondent only (ie, so that the lead Respondent is liable to the Ministry for delivering all Requirements under the Contract), and/or
  - ii. require that the parties to the Joint Proposal be jointly and severally liable under the Contract/s, and/or
  - iii. contract individually with each Respondent to a Joint Proposal.

## **6.3 Offer Validity Period**

- 6.3.1 Proposals are to remain valid and open for acceptance by the Ministry for the Offer Validity Period.

## **6.4 Respondents' Questions**

- 6.4.1 Each Respondent should satisfy itself as to the interpretation of the RFP. If there is any perceived ambiguity or uncertainty in the RFP document/s, Respondents should seek clarification before the Deadline for Questions.

- 6.4.2 All requests for clarification must be made using GETS or by email to the Ministry's Point of Contact (refer to the process for asking questions about the RFP that is set out in Section 2.2.4).
- 6.4.3 The Ministry may provide details of the question and answer to other Respondents. In doing so the Ministry may summarise the Respondent's question and will not disclose the Respondent's identity. The question and answer may be posted on GETS and/or emailed to participating Respondents. A Respondent may withdraw a request at any time prior to the Ministry posting the question and answer.
- 6.4.4 In submitting a request for clarification, a Respondent is to indicate, in its request, any information that is commercially sensitive. The Ministry will not publish such commercially sensitive information. However, the Ministry may modify a request to eliminate such commercially sensitive information and publish this and the answer where the Ministry considers it of general significance to all Respondents. In this case, the Respondent may be given an opportunity to withdraw the request or remove the commercially sensitive information.

## **6.5 Submitting a Proposal**

- 6.5.1 Each Respondent is responsible for ensuring that its Proposal is received by the Ministry at the correct address on or before the Deadline for Proposals. The Ministry will acknowledge receipt of each Proposal.
- 6.5.2 The Ministry intends to rely on the Respondent's Proposal and all information provided by the Respondent (eg, correspondence and negotiations). In submitting a Proposal and communicating with the Ministry, each Respondent must ensure that all information it provides to the Ministry is:
- i. true, accurate and complete, and not misleading in any material respect
  - ii. does not contain Intellectual Property that will breach a third party's rights.
- 6.5.3 Where the Ministry requires the Proposal to be delivered in hard and soft copies, the Respondent is responsible for ensuring that both the hard and soft copies are identical.
- 6.5.4 If the Ministry requires a two envelope RFP process, the following applies:
- i. each Respondent must ensure that all financial information and pricing components of its Proposal are provided separately from the remainder of its Proposal
  - ii. financial information and pricing must be contained either in a separate sealed envelope or as a separate soft copy file (whichever option has been requested by the Ministry)
  - iii. the pricing information must be clearly marked 'Financial and Pricing Information.' This is to ensure that the pricing information cannot be viewed when the package containing the other elements of the Proposal is opened.
- 6.5.5 If after submitting a Proposal a Respondent notices an inaccuracy in its Proposal, it must notify the Ministry's Point of Contact immediately. The Respondent must also notify the Ministry's Point of Contact during the RFP process if it becomes aware of relevant or material information in the Proposal that has changed since the time the Proposal was submitted.

## **6.6 Evaluation panel**

- 6.6.1 The Ministry will convene an evaluation panel comprising members chosen for their relevant expertise and experience. In addition, the Ministry may consult or invite independent advisors or Ministry advisors to evaluate any Proposal or any aspect of any Proposal, or to make decisions that may influence the outcome of the RFP (such as the preferred service mix).
- 6.6.2 As panel members and advisors are chosen for their relevant expertise and experience, they may have some previous knowledge of Respondents or experience with the Respondents in a professional capacity. Panel members and advisors may apply this knowledge to the evaluation or due diligence processes.

## **6.7 Third party information**

- 6.7.1 Each Respondent authorises the Ministry to collect additional information, except commercially sensitive pricing information, from any relevant third party (such as a referee or a previous or existing client) and to use that information as part of its evaluation of the Respondent's Proposal.
- 6.7.2 Each Respondent is to ensure that all referees listed in support of its Proposal agree to provide a reference.
- 6.7.3 To facilitate discussions between the Ministry and third parties each Respondent waives any confidentiality obligations that would otherwise apply to information held by a third party, with the exception of commercially sensitive pricing information.

## **6.8 Ministry's clarification**

- 6.8.1 The Ministry may, at any time, request from any Respondent clarification of its Proposal as well as additional information about any aspect of its Proposal. The Ministry is not required to request the same clarification or information from each Respondent.
- 6.8.2 The Respondent must provide the clarification or additional information in the format requested. Respondents will endeavour to respond to requests in a timely manner. The Ministry may take such clarification or additional information into account in evaluating the Proposal.
- 6.8.3 Where a Respondent fails to respond adequately or within a reasonable time to a request for clarification or additional information, the Ministry may cease evaluating the Respondent's Proposal and may eliminate the Proposal from the RFP process.

## **6.9 Evaluation**

- 6.9.1 A general description and overview of the Ministry's evaluation and selection processes is set out in Section 5. The Ministry may amend this process, including expanding or reducing aspects of the evaluation and selection process, as the Ministry considers appropriate in the circumstances.

- 6.9.2 The Ministry bases its evaluation on the Proposals submitted in response to the RFP, but may also adjust its evaluation of a Proposal following consideration of any clarification, relevant additional information, or due diligence.
- 6.9.3 While the weighted evaluation criteria set out in Section 5 are provided to support Respondents to develop their responses, the Ministry's decision regarding the preferred Respondent/s to award the Contract may take into account any additional matters or information relevant to determining which Respondent/s both:
- i. demonstrate full understanding of the Requirements, and capability to fully deliver the Requirements and meet the terms and conditions of the Proposed Contract, and
  - ii. offer the best value-for-money over the whole-of-life of the goods or services (or, if price is the only criterion, offer the lowest price).
- 6.9.4 In deciding the preferred Respondent/s to award a Contract, additional matters or information the Ministry may take into account include, but are not limited to:
- i. the results from reference checks, site visits, product testing, health and safety reviews, and any other due diligence
  - ii. the ease of contracting with a Respondent based on that Respondent's feedback on the Proposed Contract
  - iii. any matter that materially impacts on the Ministry's trust and confidence in the Respondent
  - iv. any other relevant information that the Ministry may have in its possession.
- 6.9.5 While the Ministry is still in the process of evaluating Proposals or negotiating a Contract, the Ministry generally will not make public the names of shortlisted or preferred Respondents.

## **6.10 Negotiations**

- 6.10.1 The Ministry may invite any Respondent/s to enter into negotiations.
- 6.10.2 The Ministry may initiate consecutive or concurrent negotiations with more than one Respondent. Where the Ministry decides to enter concurrent negotiations regarding competing Proposals, the Ministry will hold separate negotiation meetings in relation to each Proposal.
- 6.10.3 Where the outcome or state of negotiations is unsatisfactory to the Ministry, it may discontinue (for a period) or end negotiations with any Respondent/s, and may initiate negotiations with any other Respondent/s.
- 6.10.4 Being invited to enter negotiations, or participating in negotiations, does not constitute acceptance by the Ministry of the Respondent's Proposal or imply or create any obligation on the Ministry to award a Contract for delivery of the Requirements to any Respondent/s.

## **6.11 Respondent's debrief**

- 6.11.1 The Ministry will offer all Respondents the opportunity to request a debrief. Each Respondent will have 30 Business Days, from the date of offer, to request a debrief. When a Respondent requests a debrief, the Ministry will provide the debrief within 30 Business Days of the date of the request, or of the date the Contract is signed by all parties, whichever is later.
- 6.11.2 The debrief may be provided by letter, email, phone or at a meeting. The debrief will:
- i. provide the reasons why the Proposal was or was not successful
  - ii. explain how the Proposal performed against the pre-conditions (if applicable) and the evaluation criteria
  - iii. indicate the Proposal's relative strengths and weaknesses
  - iv. explain, in general terms, the relative advantage/s of the successful Proposal
  - v. seek to address any concerns or questions from the Respondent
  - vi. seek feedback from the Respondent on the RFP and the RFP process.

## **6.12 Notification of outcome**

- 6.12.1 At any point after conclusion of negotiations, but no later than 30 Business Days after the date the Contract is signed by all parties, the Ministry will inform all unsuccessful Respondents of the name of the Successful Respondent, if any. The Ministry may make public the name of the Successful Respondent and any unsuccessful Respondent. Where applicable, the Ministry will publish a Contract Award Notice on GETS.

## **6.13 Issues and complaints**

- 6.13.1 A Respondent may, in good faith, raise with the Ministry any issue or complaint about the RFP, or the RFP process at any time.
- 6.13.2 The Ministry will consider and respond promptly and impartially to the Respondent's issue or complaint.
- 6.13.3 Both the Ministry and Respondent agree to act in good faith and use their best endeavours to resolve any issue or complaint that may arise in relation to the RFP.
- 6.13.4 The fact that a Respondent has raised an issue or complaint will not be used by the Ministry to unfairly prejudice the Respondent's ongoing participation in the RFP process or future contract opportunities.

## **Standard RFP conditions**

## **6.14 Ministry's Point of Contact**

- 6.14.1 All communications regarding the RFP must be made via GETS or directed to the Ministry's Point of Contact (refer to Section 2.2.4). Respondents must not directly or indirectly approach any other Ministry representative or person related to the Ministry to solicit information concerning any aspect of the RFP.
- 6.14.2 Only the Point of Contact, and any other person authorised by the Ministry by notice on GETS or by email to the Respondent, are authorised to communicate with Respondents regarding any aspect of the RFP. The Ministry will not be bound by any statement made by any other person.
- 6.14.3 The Ministry may change the Point of Contact at any time. The Ministry will notify Respondents of any such change. This notification may be posted on GETS or sent by email.
- 6.14.4 Where a Respondent has an existing contract with the Ministry then business as usual communications, for the purpose of managing delivery of that contract, will continue using the usual contacts (unless otherwise advised in writing by the Ministry). Respondents must not use business as usual contacts to lobby the Ministry, solicit information or discuss aspects of the RFP.

## **6.15 Conflict of Interest**

- 6.15.1 Each Respondent must complete the Conflict of Interest declaration in the Response Form and must immediately inform the Ministry should a Conflict of Interest arise during the RFP process. A material Conflict of Interest may result in the Respondent being disqualified from participating further in the RFP, or being required to agree to an appropriate process for managing the Conflict of Interest as a condition of further participation in the RFP process.

## **6.16 Ethics**

- 6.16.1 Respondents must not attempt to influence or provide any form of personal inducement, reward or benefit to any representative of the Ministry in relation to the RFP.
- 6.16.2 A Respondent who attempts to do anything prohibited by paragraphs 6.14.1, 6.14.4 and 6.16.1 may be disqualified from participating further in the RFP process.
- 6.16.3 The Ministry reserves the right to require additional declarations, or other evidence from a Respondent, or any other person, throughout the RFP process to ensure probity of the RFP process.

## **6.17 Anti-collusion and bid rigging**

- 6.17.1 Respondents must not engage in collusive, deceptive or improper conduct in the preparation of their Proposals or other submissions or in any discussions or negotiations with the Ministry. Such behaviour will result in the Respondent being disqualified from participating further in the RFP process. In submitting a Proposal the Respondent warrants that its Proposal has not been prepared in collusion with a Competitor.

- 6.17.2 The Ministry reserves the right, at its discretion, to report suspected collusive or anti-competitive conduct by Respondents to the appropriate authority and to give that authority all relevant information including a Respondent's Proposal.
- 6.17.3 A Joint Proposal must not be used as a cover for price fixing between Competitors. Respondents must ensure that their Proposal does not breach the Commerce Act or other restrictions on anti-competitive conduct.

## **6.18 Confidential Information**

- 6.18.1 The Ministry and Respondent will each take reasonable steps to protect Confidential Information and, subject to paragraphs 6.18.3 and 6.24.3 and without limiting any confidentiality undertaking agreed between them, will not disclose Confidential Information to a third party without the other's prior written consent.
- 6.18.2 The Ministry and Respondent may each disclose Confidential Information to any person who is directly involved in the RFP process on its behalf, such as officers, employees, consultants, contractors, professional advisors, evaluation panel members, partners (including a partnering party in a Joint Proposal), principals or directors, but only for the purpose of participating in the RFP.
- 6.18.3 Respondents acknowledge that the Ministry's obligations under paragraph 6.18.1 are subject to requirements imposed by the Official Information Act 1982 (OIA), the Privacy Act 1993, parliamentary and constitutional convention and any other obligations imposed by law. The Ministry will not be in breach of its obligations if Confidential Information is disclosed by the Ministry as a result of its legal obligations, disclosed to the appropriate authority because of suspected collusive or anti-competitive tendering behaviour, or disclosed as part of the Ministry's due diligence process of validating information. Where the Ministry receives an OIA request that relates to a Respondent's Confidential Information, the Ministry may consult with the Respondent and ask the Respondent to explain why the information is considered by the Respondent to be confidential or commercially sensitive, and what predicted harm or prejudice would likely result from its release.

## **6.19 Confidentiality of RFP information**

- 6.19.1 For the duration of the RFP, to the date of the announcement of the Successful Respondent, or the end of the RFP process, the Respondent agrees to keep the RFP strictly confidential and not make any public statement to any third party in relation to any aspect of the RFP, the RFP process or the award of any Contract without the Ministry's prior written consent.
- 6.19.2 A Respondent may disclose RFP information to any person described in paragraph 6.18.2 but only for the purpose of participating in the RFP. The Respondent must take reasonable steps to ensure that such recipients do not disclose Confidential Information to any other person or use Confidential Information for any purpose other than responding to the RFP.

## **6.20 Costs of participating in the RFP process**

- 6.20.1 Each Respondent will meet its own costs associated with the preparation and presentation of its Proposal and any negotiations.

## **6.21 Ownership of documents**

- 6.21.1 The RFP and its contents remain the property of the Ministry. All Intellectual Property rights in the RFP remain the property of the Ministry or its licensors. The Ministry may request the immediate return or destruction of any or all RFP documents and any copies. Respondents must comply with any such request in a timely manner.
- 6.21.2 All documents forming the Proposal will, when delivered to the Ministry, become the property of the Ministry. Proposals will not be returned to Respondents at the end of the RFP process.
- 6.21.3 Ownership of Intellectual Property rights in the Proposal remain the property of the Respondent or its licensors. However, the Respondent grants to the Ministry a non-exclusive, non-transferable, perpetual licence to retain, use, copy and disclose information contained in the Proposal for any purpose related to the RFP process.
- 6.21.4 Each Respondent warrants that its Proposal does not contain any Intellectual Property that will breach a third party's rights, or that would be infringed if the Ministry exercises its license (set out in paragraph 6.21.3 above).

## **6.22 No binding legal relations**

- 6.22.1 Neither the RFP, nor the RFP process, creates a process contract between the Ministry and any Respondent. The RFP and RFP process also do not create any legal obligation between the Ministry and any Respondent, except in respect of:
- i. the Respondent's declarations in its Proposal
  - ii. the Offer Validity Period
  - iii. the Respondent's statements, representations and/or warranties in its Proposal and in its correspondence and negotiations with the Ministry
  - iv. the standard RFP conditions set out in paragraphs 6.14 to 6.28
  - v. any additional separate written agreement signed by both the Ministry and the Respondent in relation to the RFP process that is intended by both parties to be binding (e.g., a separate Confidentiality Agreement).
- 6.22.2 Each exception in paragraph 6.22.1 is subject only to the Ministry's reserved rights in paragraph 6.25.
- 6.22.3 Except for the legal obligations set out in paragraph 6.22.1 no legal relationship is formed between the Ministry and any Respondent unless and until a Contract is entered into between those parties.

## **6.23 Elimination**

- 6.23.1 The Ministry may exclude a Respondent from participating in the RFP if there is a good reason for exclusion and the Ministry has evidence supporting the reason. Reasons for exclusion include, but are not limited to:
- i. the Respondent has failed to provide all information requested, or in the correct format, or has materially failed to comply with a term or condition of the RFP

- ii. the Proposal contains a material error, omission or inaccuracy
- iii. the Respondent is in bankruptcy, receivership or liquidation
- iv. the Respondent has made a false declaration
- v. there is a serious performance issue in a historic or current contract delivered by the Respondent
- vi. the Respondent has been convicted of a serious crime or offence
- vii. there is professional misconduct, or an act or omission on the part of the Respondent which adversely reflects on the integrity of the Respondent
- viii. the Respondent has failed to pay taxes, duties or other levies
- ix. the Respondent represents a threat to national security or the confidentiality of sensitive government information
- x. the Respondent is a person or organisation designated as a terrorist by New Zealand Police.

## 6.24 Due diligence

- 6.24.1 The Ministry may conduct due diligence. The Ministry is not obliged to conduct the same enquiries or the same level of enquiry with every Respondent. Due diligence enquiries may be made at any stage of the RFP process.
- 6.24.2 In undertaking due diligence, the Ministry may seek additional information from any source, including information known to the Ministry, its advisors, staff or evaluation panel members, and information from third parties.
- 6.24.3 To facilitate the conduct of due diligence, the Respondent waives any confidentiality obligations that would otherwise apply to the information, with the exception of commercially sensitive pricing information. By participating in this RFP, the Respondent consents to the Ministry disclosing the following for the purpose of conducting due diligence:
- i. the Respondent's identity
  - ii. that the Ministry is conducting due diligence as part of a procurement process
  - iii. any representations made in the Proposal (including in documents marked as confidential or commercially sensitive) which the person being contacted as part of the due diligence enquiry could reasonably be expected to validate or provide information about, other than commercially sensitive pricing information.
- 6.24.4 Depending on the nature and severity of any issues identified as part of due diligence, the Ministry may exercise its discretion as to the appropriate response. This may include, but is not limited to:
- i. if the Ministry considers there is a good reason for exclusion and the Ministry has evidence supporting that reason (refer to paragraph 6.23 above, which lists examples of reasons for exclusion), excluding the Respondent at any time
  - ii. if the issue or information is relevant to evaluation matters, taking this into account in the Ministry's evaluation or decisions regarding contracting

- iii. if the Ministry considers that the matter is not sufficiently relevant or material to the RFP, deciding not to take the issue into account or not to exclude the Respondent.
- iv. Respondents accept that the Ministry's due diligence processes may include gathering information from persons who provide that information subject to an obligation of confidence. The Ministry may withhold information from Respondents where there is a good reason to do so. This includes, for example, circumstances where the information was provided subject to an obligation of confidence, or where the disclosure of evaluative material would breach an express or implied promise to the person supplying it that their identity or the information would be held in confidence.

## **6.25 Ministry's additional rights**

- 6.25.1 Despite any other provision in the RFP the Ministry may, on giving due notice to Respondents:
- i. amend, suspend, cancel and/or re-issue the RFP, or any part of the RFP
  - ii. make any material change to the RFP (including any change to the timeline, Requirements or Evaluation Approach) on the condition that Respondents are given a reasonable time within which to respond to the change.
- 6.25.2 Despite any other provision in the RFP the Ministry may, at its discretion:
- i. accept a late Proposal if it is the Ministry's fault that it is received late
  - ii. accept a late Proposal in exceptional circumstances if it considers that there is no material prejudice to other Respondents. The Ministry will not accept a late Proposal if it considers that there is risk of collusion on the part of a Respondent, or the Respondent may have knowledge of the content of any other Proposal
  - iii. answer a question submitted after the Deadline for Questions, if applicable
  - iv. accept or reject any Proposal or part of a Proposal
  - v. accept or reject any non-compliant, non-conforming, amended, clarified or alternative Proposal
  - vi. accept a proposal that is not the lowest priced or highest ranked conforming Proposal
  - vii. decide not to enter into a Contract with any Respondent
  - viii. liaise or negotiate with any Respondent without disclosing this to, or doing the same with, any other Respondent
  - ix. provide or withhold from any Respondent information in relation to any question arising in relation to the RFP
  - x. amend the Proposed Contract at any time, including during negotiations with a shortlisted Respondent (this may also include the Ministry using a different template than the initial Proposed Contract)
  - xi. waive irregularities or requirements in or during the RFP process, or provide any Respondent an opportunity to correct irregularities, where the Ministry considers it appropriate and reasonable to do so.

- 6.25.3 The Ministry may, at its discretion, appoint either a single or multiple Respondents to deliver the Requirements. The Ministry may also request that a Respondent/s agrees to the Ministry:
- i. selecting any individual element/s of the Requirements that is offered in a Proposal and capable of being delivered separately, unless the Proposal specifically states that the Proposal, or elements of the Proposal, are to be taken collectively
  - ii. selecting two or more Respondents to deliver the Requirements as a joint venture or consortium
  - iii. in relation to a Joint Proposal, selecting only one or some of the parties to the Joint Proposal to deliver the Requirements, or elements of the Requirements or Joint Proposal that are capable of being delivered separately
  - iv. having the Respondent/s from one Proposal (or Joint Proposal) work with another Respondent/s or party to deliver the Requirements.

## **6.26 New Zealand law**

- 6.26.1 The laws of New Zealand shall govern the RFP and each Respondent agrees to submit to the exclusive jurisdiction of the New Zealand courts in respect of any dispute concerning the RFP or the RFP process.

## **6.27 Disclaimer**

- 6.27.1 The Ministry will not be liable in contract, tort, 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 process.
- 6.27.2 Nothing contained or implied in the RFP, or RFP process, or any other communication by the Ministry to any Respondent shall be construed as legal, financial or other advice. The Ministry has endeavoured to ensure the integrity of such information. However, it has not been independently verified and may not be up to date.
- 6.27.3 To the extent that liability cannot be excluded, the maximum aggregate liability of the Ministry, its agents and advisors is \$1.

## **6.28 Precedence**

- 6.28.1 Any conflict or inconsistency in the RFP shall be resolved by giving precedence in the following descending order:
- i. Section 6 (RFP-Terms)
  - ii. all other Sections of this RFP document
  - iii. any additional information or document provided by the Ministry to Respondents through the Ministry's Point of Contact or GETS.
- 6.28.2 If there is any conflict or inconsistency between information or documents having the same level of precedence the later information or document will prevail.

## Section 7: Definitions

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

<b>Advance Notice</b>	A notice published by the Ministry on GETS in advance of publishing the RFP. An Advance Notice alerts the market to a contract opportunity. Where used, an Advance Notice forms part of the RFP.
<b>Business Day</b>	Any week day 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.
<b>Ministry</b>	The Ministry of Health. The term 'Ministry' includes its officers, employees, contractors, consultants, agents and representatives.
<b>Competitors</b>	Any other business that is in competition with a Respondent either in relation to the goods or services sought under the RFP or in general.
<b>Confidential Information</b>	<p>Information that:</p> <ol style="list-style-type: none"> <li>is by its nature confidential</li> <li>is marked by either the Ministry or a Respondent as 'confidential', 'commercially sensitive', 'sensitive', 'in confidence', 'top secret', 'secret', 'classified' and/or 'restricted'</li> <li>is provided by the Ministry, a Respondent, or a third party in confidence</li> <li>the Ministry or a Respondent knows, or ought to know, is confidential.</li> </ol> <p>Confidential information does not cover information that is in the public domain through no fault of either the Ministry or a Respondent.</p>
<b>Conflict of Interest</b>	<p>A Conflict of Interest arises if a Respondent's personal or business interests or obligations do, could, or could be perceived to, conflict with its obligations to the Ministry under the RFP or in the provision of the goods or services. It means that the Respondent's independence, objectivity or impartiality can be called into question. A Conflict of Interest may be:</p> <ol style="list-style-type: none"> <li>actual: where the conflict currently exists</li> <li>potential: where the conflict is about to happen or could happen, or</li> </ol>

	c. perceived: where other people may reasonably think that a person is compromised.
<b>Contract</b>	The written Contract/s entered into by the Ministry and Successful Respondent/s for the delivery of the Requirements.
<b>Contract Award Notice</b>	A notice published on GETS pursuant to Rule 46 of the Government Procurement Rules when an agency has awarded a contract that is subject to the Rules.
<b>Deadline for Proposals</b>	The deadline that Proposals are to be delivered or submitted to the Ministry as stated in Section 2.2.
<b>Deadline for Questions</b>	The deadline for suppliers to submit questions to the Ministry as stated in Section 2.2, if applicable.
<b>Evaluation Approach</b>	The approach used by the Ministry to evaluate Proposals as described in Section 5 and in Section 6.
<b>GETS</b>	Government Electronic Tenders Service available at <a href="http://www.gets.govt.nz">www.gets.govt.nz</a>
<b>GST</b>	The goods and services tax payable in accordance with the New Zealand Goods and Services Tax Act 1985.
<b>Joint Proposal</b>	A Proposal in which multiple Respondents propose to deliver the Requirements jointly.
<b>Joint Respondents</b>	Each Respondent to a Joint Proposal
<b>Intellectual Property</b>	All intellectual property rights and interests, including copyright, trademarks, designs, patents and other proprietary rights, recognised or protected by law.
<b>Offer Validity Period</b>	The period of time when a Proposal (offer) is held open by the Respondent for acceptance by the Ministry as stated in Section 2.2.
<b>Point of Contact</b>	The Ministry 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 Ministry's Point of Contact is identified in Section 2.2.4. The Respondent's Point of Contact is identified in its Proposal.
<b>Price</b>	The total amount, including all costs, fees, expenses and charges, to be charged by the Successful Respondent for the full delivery of the Requirements. Each Respondent's Proposal must include its Price.

<b>Proposal</b>	The response submitted by a Respondent (or Joint Respondents) in reply to the RFP. It comprises the Response Form, the Pricing Template (and/or any other document containing the Respondent's bid, financial and pricing information), and all other information submitted by the Respondent/s submitting the response.
<b>Proposed Contract</b>	The indicative contract template or other document setting out standard terms and conditions that the Ministry intends to use for contracting delivery of the Requirements. This document is referred to in Section 4 and provided with the RFP documents.
<b>RFP</b>	Means the Request for Proposal.
<b>Registration of Interest (ROI)</b>	A formal request by a Ministry asking potential suppliers to register their interest in a procurement. It is the first step in a multi-step tender process.
<b>Request for Proposal (RFP)</b>	The RFP comprises the Advance Notice (where used), the Registration of Interest (where used), this RFP document (including the RFP-Terms) and any other schedule, appendix or document attached to this RFP, and any subsequent information provided by the Ministry to Respondents through the Ministry's Point of Contact or GETS.
<b>RFP-Terms</b>	Means the Request for Proposal - Process, Terms and Conditions as described in Section 6.
<b>RFP Process, Terms and Conditions (shortened to RFP-Terms)</b>	The Ministry's standard process, terms and conditions that apply to RFPs as described in Section 6. These may be varied subsequent to the release of the RFP by the Ministry on giving notice to Respondents.
<b>Requirements</b>	The goods and/or services described in Section 3 which the Ministry intends to purchase.
<b>Respondent</b>	A person, organisation, business or other entity that submits a Proposal in response to the RFP. The term Respondent includes its officers, employees, contractors, consultants, agents and representatives. The term Respondent differs from a supplier, which is any other business in the market place that does not submit a Proposal.
<b>Response Form</b>	The form and declarations prescribed by the Ministry and used by a Respondent to respond to the RFP, duly completed and submitted by a Respondent as part of the Proposal.

<b>Successful Respondent</b>	Following the evaluation of Proposals and successful negotiations, the Respondent/s who is awarded a Contract/s to deliver all or part of the Requirements.
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# Part 2:

# Proposal

# Response Form

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Designing and conducting illicit tobacco trade surveys

**Submitted by:**

[Respondent name]

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## Checklist for respondents



Respondent tips

- Please use this Part 2: Proposal Response Form when responding to our RFP. Please do not change the structure (section headings and sequence).
- We have included Respondent tip boxes to help you understand what is required.
- Please remove the grey highlighting before sending us your Proposal.
- To select a checkbox, please double click on the correct response and select 'checked' as the default value to produce a selected box like this: . Please note that the grey highlighting cannot be removed from these checkboxes.

Task	<input checked="" type="checkbox"/>
All sections of the Part 2: Proposal Response Form are completed and all statements are signed.	<input type="checkbox"/>
All 'Respondent tips' have been deleted from the Response Form.	<input type="checkbox"/>
The format and instructions in the RFP have been followed.	<input type="checkbox"/>
All information requested has been provided in full – no hyperlinks have been used.	<input type="checkbox"/>
Your pricing has been provided as a separate document and no pricing information is contained in this document.	<input type="checkbox"/>
All documents have been submitted electronically before the Deadline for Proposals.	<input type="checkbox"/>
All documents requested have been provided and no additional documentation has been provided.	<input type="checkbox"/>

## Section 1: Profile

### 1.1 Respondent description



#### Respondent tips

- Please complete the statement below that applies to you and delete the alternative statement.
- If you are submitting a Joint Proposal, aspects of this Part 2: Proposal Response Form must be completed by each of the Respondents individually. Please read the Respondent tips carefully.
- If you are proposing that subcontractors will directly deliver major portions or key components of the Requirements, it may be more appropriate to submit a Joint Proposal. This is because this enables the Ministry of Health (the Ministry) to evaluate the overall capability of those involved.

### Protection from commercial and other vested interests of the tobacco industry

New Zealand has an obligation under Article 5.3 of the Framework Convention on Tobacco Control (FCTC) when 'setting and implementing public health policies with respect to tobacco control ... to protect these policies from the commercial and other vested interests of the tobacco industry'. The internationally agreed Guidelines for Implementation of Article 5.3 recommend that parties to the treaty 'should interact with the tobacco industry only when and to the extent strictly necessary to enable them to effectively regulate the tobacco industry and tobacco products'. To help us meet our obligations under the FCTC and ensure transparency, we ask all respondents to disclose whether they have any direct or indirect links to, or receive funding from, the tobacco industry.

#### Single Respondent Proposal:

This is a Proposal by [insert name of your organisation] (the Respondent) alone to provide the Requirements.

**OR**

#### Joint Proposal:

This is a Joint Proposal to provide the Requirements. The organisations who are submitting this Joint Proposal are [insert name of other organisation/s] (together the Joint Respondents).

If you are submitting a Joint Proposal, please provide details about the arrangement between the parties. Please include:

- the components of the Requirements each party will be responsible for delivering
- the nature and/or legal status of the relationships between the parties (eg, joint venture, sub-contractor, etc) including the allocation of risk between the parties.
- which party (or parties) will contract with the Ministry if the Proposal is successful
- information about the structure and systems that support joint governance, delivery and financial and contract management.

[Insert response or write 'N/A']

Do significant components of your solution involve providing another organisation's products or intellectual property or rely on the services of a party who is not a Respondent to this Proposal?

If yes, please include:

- the identity of the other organisation(s)
- the nature and/or legal status of the relationships with the Respondents
- information about any limitations or risks this poses for the Ministry

[Insert response or write 'N/A']

## 1.2 Point of Contact

Item	Detail
Contact person	[Name of person responsible for communicating with the Ministry on behalf of the Respondent or Joint Respondents]
Position	[Job title or position]
Phone number	[Landline]
Mobile number	[Mobile]
Email address	[Work email]

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## Section 2: Organisation overview

### 2.1 Core organisational information



#### Respondent tips

- This section requesting core organisational information must be completed by all Respondents.
- The questions seek contextual information about your organisation. This information helps the Ministry to understand your organisation and can be taken into account during the selection process.
- If any of the matters are not applicable, please write 'N/A' in the space provided.
- If you are submitting a Joint Proposal, each of the Joint Respondents should complete a copy of the tables in this Section 2.
- If you intend to use a separate legal entity to contract with us directly (such as a subsidiary company of your organisation), you must complete a copy of the tables in this section 2 for each of those legal entities, in addition to completing the tables for each Respondent.

Trading name	[Insert the name that you do business under]
Full legal name	[Insert the full legal name of your organisation, or your full legal name if you are a sole trader]
Physical address	[If more than one office, put the address of your office or where services would be delivered from]
Postal address	[For example a PO Box address]
Registered office	[If you have a registered office, insert the address here]
Website	[Insert business website address]
Type of entity (legal status)	[Sole trader/partnership/limited liability company or other entity/other - please specify]
Registration number	[If your organisation has a registration number, insert it here - for example, the company registration number]
Country of tax residence	[Insert country where you (if you are a sole trader) or your organisation is resident for tax purposes]
GST number	[Insert if you are registered for Goods and Services Tax in New Zealand]
Establishment	[Insert year established]
Organisational scale	[For example, the number of New Zealand based staff, and location of New Zealand offices. If applicable, indicate international presence/scale/locations.]

Gross revenue (last 2 years)	[State the gross revenue for the last two years (indicate if revenue is for New Zealand-based or worldwide operations)]
Gross profit (last 2 years)	[State the gross profit for the last two years (indicate if the profit is for New Zealand-based or worldwide operations)]
Last audited accounts	[Insert date of last audited accounts (indicate if audit is for New Zealand-based or worldwide operations)]
Insurance policies and cover limits	[For example, public liability insurance, \$5 million]

Please identify whether your organisation has the following in place. We may request copies at any time.	Yes	No
A health and safety policy and formal staff health and safety training	<input type="checkbox"/>	<input type="checkbox"/>
A business continuity plan	<input type="checkbox"/>	<input type="checkbox"/>
A health information privacy policy	<input type="checkbox"/>	<input type="checkbox"/>
A patient complaints policy and formal investigation process	<input type="checkbox"/>	<input type="checkbox"/>
[Please provide any additional relevant information about the policies held here (optional)]		

## 2.2 Respondents who are part of a corporate group or multinational organisation

Are you part of a corporate group or multinational organisation?	Yes <input type="checkbox"/>	No <input type="checkbox"/>	
If yes, would contract approvals be required from any party beyond the immediate organisation?			
[Insert answer or write 'N/A'. Please include the names of the parties]			
If you have a parent company, would the parent company be willing to offer a parent company guarantee?	N/A <input type="checkbox"/>	Yes <input type="checkbox"/>	No <input type="checkbox"/>

## 2.3 New Zealand Government contracts



### Respondent tips

- Please note that there is no requirement for Respondents to have previously conducted work for a New Zealand government agency in order to respond to this RFP.
- This information is requested to assist the Ministry with due diligence and to avoid requesting information from Respondents that has been provided to other New Zealand government agencies.

Have you previously conducted work funded by a New Zealand government agency?	Yes <input type="checkbox"/>	No <input type="checkbox"/>
Please list up to five contracts or grants that you hold, or have held or been granted, with New Zealand government agencies over the past five years, for these or related services, including: <ul style="list-style-type: none"> <li>- the name of the agency the contract was held with</li> <li>- the name of the agency team holding the contract</li> <li>- the name and date of the contract</li> </ul>		
[[Insert response or write 'N/A']]		

## 2.4 Audit and accreditations

Have you been audited by a New Zealand government agency or other external auditor within the last 12 months?	Yes <input type="checkbox"/>	No <input type="checkbox"/>
[[If yes, please provide a brief overview of the nature of the audit (eg, financial or performance based), the organisation or agency that conducted the audit, and a brief explanation of the outcome (or write 'N/A')]]		
Are you aware of any accreditations or assessments of compliance with legislation which have been conducted by any New Zealand government agency or other legally empowered entity in relation to your organisation or key staff?	Yes <input type="checkbox"/>	No <input type="checkbox"/>
[[If yes, please specify the name of the accreditation, the agency and the date of accreditation. For example, Ministry of Health HealthCERT, Social Sector Accreditation Standards (SSAS), police vetting of staff, membership of a regulated register such as the charities register, or membership of a body which is legally regulated (or write 'N/A')]]		
Do you currently hold any other relevant formal accreditations or meet any other formal regulatory or other standards which may provide external verification of your organisational strength or ability to deliver?		
[[If yes, please name the accreditation held or standard met]]		

## Section 3: Solution information

### 3.1 Overview of solution

For the Ministry's information, please provide a brief overview of your solution.

This provides an introduction for the Ministry; however, please ensure you provide all relevant detail in response to the evaluation criteria in the next section.

[Insert]

### 3.2 Questions relating to the evaluation criteria



Respondent tips

- Here you are asked to answer questions relating to the evaluation criteria. Your answers will be evaluated. Aim to give answers that are relevant, concise and comprehensive.
- Take the weightings into account when deciding how much detail to include.
- If you have made any assumptions about the requirements or delivery, clearly state the assumption.

1.	<b>Methodology</b>	<b>Overall 70%</b>
<p>Provide us with an overview of your methodology for developing this campaign. In your response, please address the following:</p> <ul style="list-style-type: none"> <li>• outline your understanding of the overall requirements</li> <li>• your ability to develop a range of methodologies that could be used to measure the illicit tobacco market for example, a discard pack survey, comparison of sales/tax paid and self-reported consumption, a consumer survey (with and without inspection/surrender) and econometric modelling</li> <li>• your ability to undertake research in areas that might be operating outside the law</li> <li>• outlining the mitigations that you will use should there be any risks associated with this research</li> <li>• your proposed timeline</li> <li>• examples of previous reports</li> </ul>		
<p>[Insert Respondent answer]</p>		

2.	<b>Capability</b>	<b>Overall 30%</b>
<p>Provide us for an overview of the team members that will be working on this project, including their role and a brief biography of their relevant experience and skills.</p> <ul style="list-style-type: none"> <li>• Please identify the Account Manager or Point of Contact within the team. Outline how the Account Manager/Point of Contact will work with the Ministry to ensure</li> </ul>		

<p>the research delivers the required outcomes how you intend to conduct research, including focus groups.</p> <p>If you are missing expertise in any of these areas in your organisation, please outline how you intend to connect with organisations that have the appropriate expertise.</p>	
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### 3.3 Assumptions

<p>Please state any assumptions that you have made in preparing your Proposal.</p> <p>Where you have made assumptions in relation to your pricing or financial information, please provide these in the Part 3: RFP Pricing Template.</p>
<p>[Please list any assumptions here]</p>

### 3.4 Risks

<p>Please provide an overview of any risks which arise from your solution and how the risks identified will be mitigated.</p>
<p>[Please list any risks here]</p>

## Section 4: Proposed Contract feedback

<p>The Ministry needs to know whether or not you are prepared to do business based upon the Proposed Contract provided with the RFP (Part 4: Proposed Contract).</p> <p>Please read the Proposed Contract, which is likely to be used by the Ministry, and then select between Option 1 and Option 2 below. Where you have selected Option 2, please complete the table below, ensuring that the information you provide makes your position clear and enables us to understand any concerns.</p> <p>The Ministry may take into account each Respondent's willingness to accept the Proposed Contract terms and conditions in its decision-making process.</p> <p>Do not put off raising concerns with Proposed Contract until the negotiation stage. If it would have been reasonable for the Respondent to raise the concern within this section, failure to raise the concerns in the Response Form may affect our willingness to consider the change at negotiation. This may also be taken into account when determining the Successful Respondent.</p>	
<p><b>Option 1:</b> Having read and understood the Proposed Contract, I/we confirm that these terms and conditions are acceptable. If successful, I/we agree to sign a contract based on the Proposed Contract, or such amended terms and conditions of contract as are agreed with the Ministry following negotiations.</p>	<input type="checkbox"/>

<p><b>Option 2:</b> Having read and understood the Proposed Contract, I/we agree to sign a contract based on the Proposed Contract subject to negotiating the clauses in the table below.</p> <p>I/we understand that where I/we indicate the change required is essential and the Ministry is unable to accept the proposed change, this may result in the Proposal not progressing through the selection process.</p>	<input type="checkbox"/>
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Clause	Concern	Alternative	Indicative importance
[Insert clause number]	[Briefly describe your concern about this clause]	[Describe your suggested alternative]	<p>[Please indicate the importance of the changes you are seeking – for example:</p> <p><b>Essential:</b> Ministry acceptance anticipated as necessary for contractual agreement</p> <p>or</p> <p><b>Ideal:</b> Ministry acceptance would be preferred, but if the Ministry is unable to accept the proposed amendment, the Respondent would like to continue to be considered]</p>

## Section 5: Referees and Statements



Respondent tips

- This section of the Response Form involves providing us with information to help us verify your suitability to perform the Requirements.
- If you are submitting a Joint Proposal, each Respondent must complete a copy of each table in this section of the Response Form.
- If you intend to use a separate legal entity to contract with us directly (such as a subsidiary company of your organisation), you must complete a copy of the tables in this section for each of those legal entities, in addition to completing the tables for each Respondent.

### 5.1 Referees

In submitting this Proposal, you authorise the Ministry to collect any information about you, except commercially sensitive pricing information from any party or available source, and to use this information for the purposes of conducting due diligence.

To assist with the Ministry’s due diligence, please supply the details of two work-related referees for each Respondent. Please note that referees must not be Ministry personnel. Each referee should be a representative of a separate organisation.

**Referees in respect of:** [Insert Joint Respondent name and copy the tables if submitting a Joint Response. Delete this text if not submitting a Joint Response]

Name of first referee	[Insert name of referee]
Name of organisation	[Insert name of their organisation]
Description	[Insert brief description of the goods/services you provided to this referee and the date of provision]
Telephone	[Insert mobile or landline]
Email	[Insert email address]

Name of second referee	[Insert name of referee]
Name of organisation	[Insert name of their organisation]
Description	[Insert brief description of the goods/services you provided to this referee and the date of provision]
Telephone	[Insert mobile or landline]
Email	[Insert email address]

## 5.2 Due diligence disclosure statement



### Respondent tips

- Please complete this disclosure statement to assist with the Ministry’s due diligence processes.
- If you are submitting a Joint Proposal, each Respondent must complete a separate copy of this confirmation statement. Please copy and paste the tables.
- If you intend to use a separate legal entity to contract with us directly (such as a subsidiary company of your organisation), you must complete a copy of the tables in this section for each of those legal entities, in addition to completing the tables for each Respondent.

**Due diligence disclosure statement in respect of:** [insert Respondent name]

<p>Have you or any related party (such as a parent company, subsidiary, other entity with substantially the same ownership and/or personnel, person with beneficial ownership or control, director, trustee, officer or senior staff member, or key subcontractor in relation to your Proposal) been subject to any investigations, sanctions, penalties, proceedings or claims within the last five years, including any that are ongoing or contemplated?</p>	<p>Yes <input type="checkbox"/></p>	<p>No <input type="checkbox"/></p>
<p>[If yes, please provide particulars, including any remedial actions taken.</p> <p>Relevant areas of consideration include, but are not limited to, claims, investigations or proceedings in relation to the following matters:</p> <ul style="list-style-type: none"> <li>- investigations, penalties or prosecutions in respect of any law, including employment law, environmental law and criminal law</li> <li>- competition or trade practices, tax and corporate practices (including tax evasion, bribery, fraud or money laundering)</li> <li>- professional regulation investigations, discipline or sanctions, or negligence claims</li> <li>- investigations or sanctions for breaches of privacy, consumer/patient rights, or safety</li> <li>- formal sanctions or blacklisting by government or multilateral agencies</li> <li>- striking off or involuntarily deregistration from any register, such as a charities register or companies register</li> <li>- adverse findings or action taken by any other regulatory authority, market operator or government agency]</li> </ul>		
<p>Are you aware of any other past, current, contemplated or threatened matter that may represent a risk to the Ministry, including (but not limited to):</p> <ul style="list-style-type: none"> <li>• matters that reflect upon your professional integrity, or affect our trust and confidence in your competence or professionalism</li> <li>• matters which may affect or reflect upon your ability to successfully deliver the Requirements without disruption.</li> </ul>	<p>Yes <input type="checkbox"/></p>	<p>No <input type="checkbox"/></p>
<p>[If yes, please provide particulars, including any remedial actions taken or proposed.</p> <p>Relevant areas of consideration include, but are not limited to:</p> <ul style="list-style-type: none"> <li>- insolvency</li> <li>- pending complaints (for example, to the Health Practitioners Disciplinary Tribunal)</li> <li>- structural or ownership changes</li> <li>- litigation against you in relation to an alleged breach of contract by you]</li> </ul>		

### 5.3 Conflict of Interest disclosure statement



#### Respondent tips

- Please complete the following Conflict of Interest disclosure statement.
- If you are submitting a Joint Proposal, each Respondent must complete a separate copy of this confirmation statement. Please copy and paste the tables.
- If you intend to use a separate legal entity to contract with us directly (such as a subsidiary company of your organisation), you must complete a copy of the tables in this section for each of those legal entities, in addition to completing the tables for each Respondent.

Disclosure statements for each Respondent should include any Conflict of Interest that relates to a particular individual who belongs to that organisation.

The information supplied will be primarily used to support our probity processes within the procurement phase. A disclosed Conflict of Interest will not necessarily exclude a Respondent's Proposal, if the Ministry considers the disclosed conflict can be managed appropriately.

Failure to disclose a relevant Conflict of Interest may lead to exclusion from this procurement process.

Respondent name: [insert Respondent name]	
<p>A Conflict of Interest arises if a Respondent's personal or business interests or obligations could be perceived to conflict with its obligations to the Ministry under the RFP or in the anticipated provision of the goods or services. It means the Respondent's independence, objectivity or impartiality can be called into question.</p> <p>A Conflict of Interest may be:</p> <ul style="list-style-type: none"> <li>- actual: where the conflict currently exists</li> <li>- potential: where the conflict is about to happen or could happen, or</li> <li>- perceived: where other people may reasonably think that a person is compromised.</li> </ul> <p>Are you aware of any matters which may give rise to an actual, potential or perceived conflict of interest in submitting this Proposal, or entering into a Contract to deliver the Requirements?</p>	<p>Yes <input type="checkbox"/></p> <p>No <input type="checkbox"/></p>
<p>[If you have answered 'yes', please insert details here, including how you intend to manage the conflict of interest risk.</p> <p>Examples of conflicts of interest may include, but are not limited to:</p> <ul style="list-style-type: none"> <li>- where the Respondent (including any of the Respondent's personnel) or related parties have worked for the Ministry within the last 12 months or during the development of this RFP</li> <li>- where the Respondent (including any of the Respondent's personnel) or related parties could be seen to be privy to any information about this RFP which could lead to the view that the Respondent has insider information</li> <li>- where the Respondent or the Respondent's personnel are engaged to conduct work which is inconsistent with the objectives of this RFP, or hold office for an organisation with inconsistent objectives</li> <li>- where the Respondent or its leading personnel have provided donations, sponsorship, gifts or hospitality to any Ministry personnel within the last 12 months]</li> </ul>	

#### 5.4 Confirmation statement



**Respondent tips**

- Please complete this confirmation statement.
- Remember to get the confirmation statement signed by someone who is authorised to sign and able to verify each of the elements of the statement (eg, chief executive or a senior manager).
- If you are submitting a Joint Proposal, each Respondent must sign a separate copy of this confirmation statement.

## Respondent's confirmation statements

**RFP Process, Terms and Conditions:** I have read and fully understand this RFP, including the RFP Process, Terms and conditions detailed in Section 6 of Part 1 of this RFP (RFP-Terms). I/we confirm that I/we agree to be bound by them.

**Collection of further information:** I authorise the Ministry to:

- a. collect any information about me/us, except commercially sensitive pricing information, from any relevant party, including a referee, or previous or existing client
- b. use such information in the evaluation of this Proposal.

I agree that all such information will be confidential to the Ministry.

**Requirements:** I have read and fully understand the nature and extent of the Ministry's Requirements described in Section 3 of Part 1 of this RFP. I/we confirm that I/we have the necessary capacity and capability to fully meet or exceed the Requirements and will be available to deliver throughout the relevant Contract period.

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- Ethics:**
- In submitting this Proposal, I warrant that I:
- a. have not entered into any improper, illegal, collusive or anti-competitive arrangements with any Competitor
  - b. have not directly or indirectly approached any representative of the Ministry (other than the Point of Contact) to lobby or solicit information in relation to the RFP
  - c. have not attempted to influence, or provide any form of personal inducement, reward or benefit to any representative of the Ministry.
- 

**Offer Validity Period:** I confirm that this Proposal, including the price, remains open for acceptance for the Offer Validity Period.

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Content confirmation: In submitting the Proposal and this confirmation statement, I confirm the following:

- a. All information provided is true, accurate, complete and not misleading in any material respect. I will also immediately notify the Ministry of any relevant or material changes to any aspect of this Proposal, including any of the statements, during the course of this procurement process.
- b. The submission and the Ministry's use of the Proposal in accordance with this RFP will not breach a third party's rights (for example, in relation to Intellectual Property rights).
- c. I have secured appropriate authorisations to submit this Proposal, to make the statements and to provide the information in the Proposal and I am/we are not aware of any impediments to enter into a Contract to deliver the Requirements.

I understand that the falsification of information, supply of misleading information or suppression of material information in the Proposal, including any statement, may result in the Proposal being eliminated from further participation in the RFP process and may be grounds for termination of any Contract awarded as a result of the RFP.

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**Due diligence:**

I agree that the Ministry may ask Respondents to provide evidence to support due diligence at any time during this procurement, and that failure to provide the requested information without reasonable justification may lead to a Proposal being excluded.

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Authorisation:

By signing this confirmation statement, the I confirm that I have been authorised by the Respondent to make this confirmation on its behalf.

**Representative signature:**

[Insert signature (may be electronic)]

**Full name:**

[Insert]

**Title/position:**

[Insert title. Please also indicate the organisation's name if submitting a Joint Response.]

**Date:**

[Insert]

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## Part 3:

# RFP Pricing Template

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Designing and conducting illicit tobacco trade surveys

**Submitted by:**

[Respondent name]

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## Instructions for submitting your pricing

Please complete the following template with your pricing. It is our **strong preference** that all Respondents submit pricing using this template.

If this is **not possible** due to the nature of your solution not fitting the indicated structure and you need to use an alternative pricing structure, you can. If so, you must provide us with a written overview of your pricing model explaining the component parts, as well as an explanation as to why you have selected this (including why the Ministry's template could not be used).

Please note:

- when lodging a Joint Proposal, the pricing schedule must include all costs, fees, expenses and charges chargeable by all Respondents that are parties to the Joint Proposal;
- pricing should be tendered in New Zealand dollars;
- all pricing should be provided excluding GST.

Ensure that your response identifies:

- aspects of your price that are fixed
- aspects of your price that will vary, including rates and the proposed formula for charging
- any additional fees and charges, including fees that will be passed on to us from third parties
- any differences in pricing which are associated with each option put forward, if options are provided
- any assumptions you are making in your pricing model, including any assumptions that the Ministry or a third party will deliver any aspect of the requirements or incur any cost related to the delivery of the requirements.

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## Pricing template

Cost component	Items included within cost component	Budget per item	Component subtotal (excl. GST)
Research and evaluation	Developing a range of methodologies that could be used to measure the illicit tobacco market, for example, a discard pack survey, comparison of sales/tax paid and self reported consumption, a consumer survey (with or without inspection/surrender) and econometric modelling	XX	XX
Engaging with priority audiences	Your approach for connecting with Māori and Pacific		
Preparing reports	Developing and presenting reports, baseline and on-going		

## Respondent assumptions

**Please state any assumptions you have made in relation to your cost and pricing information**

[Insert any pricing assumptions]