

# Registration of Interest

## Service Outcomes and Service Providers

### Social Bond Pilot

(Note: The ROI for Intermediaries will follow in 2014)

## Part 3 – ROI Terms and Conditions

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Whats inside? – The legal stuff.

# Introduction

This document contains the Terms and Conditions of this ROI.

By responding to this ROI, the Provider accepts the terms and conditions of the ROI and the ROI process, including all instructions outlined in Part 1 – Instructions and Supporting Information.

## Interpreting this Registration of Interest

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Words starting with capital letters can have special meaning. When used in this ROI the following words in bold have the meaning described.

<b>Business Day</b>	A day when most businesses are open for business in New Zealand. It excludes Saturday, Sunday and public holidays. A Business Day starts at 8.30am and ends at 5pm.
<b>Ministry</b>	The Ministry is the purchaser of the Requirements. The Ministry is the Sovereign in right of New Zealand who acts by and through the government agency named as The Ministry of Health.
<b>Clarification Period</b>	The period within which any Provider can ask for a clarification or additional information in relation to the ROI.
<b>Closing Date</b>	The date when responses must be delivered to the Ministry as stated in Part 1, 'The Timeline'.
<b>Competitor</b>	A person or organisation that is in competition with a Provider now, or in the future.
<b>Conflict of interest</b>	<p>A conflict of interest happens if a Provider (or any employee of the Provider):</p> <ul style="list-style-type: none"><li>has any obligation to another person that would limit the Provider's right or ability to perform its obligations under any Contract with the Ministry; or</li><li>has any other interest which would be likely to adversely influence the Provider's performance of its obligations under any Contract.</li></ul> <p>It means that the Provider's independence, objectivity or impartiality can be called into question. 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 Provider is compromised.</li></ul>
<b>Confidential Information</b>	<p>Information that:</p> <ul style="list-style-type: none"><li>is by its nature confidential</li><li>is marked by either the Ministry or a Provider as 'Confidential', 'Commercially Sensitive'</li><li>is provided by the Ministry, a Provider, or a third party 'In Confidence'</li><li>the Ministry or a Provider knows, or ought to know, is confidential</li><li>is of a sensitive nature, or commercially sensitive to the Ministry, a Provider or a third party.</li></ul>
<b>Contact Person</b>	The Ministry's appointed official who is the single point of contact for all Provider enquiries and other matters relating to this ROI. The Contact Person is described in Part 1, 'The Contact Person'.

<b>Evaluation Criteria</b>	The criteria set out in Part 1 used by the Ministry to evaluate Proposals.
<b>Expense</b>	Any actual and reasonable out-of-pocket costs that will be incurred by the Provider in the delivery of the Requirements.
<b>GETS</b>	Government Electronic Tenders Services <a href="http://www.gets.govt.nz">www.gets.govt.nz</a>
<b>GST</b>	The value added tax under the Goods and Services Tax Act 1985, as amended.
<b>Intellectual Property</b>	An intangible asset that consists of human knowledge or ideas. Some examples are patents, copyrights, trademarks, design, software and similar industrial, commercial or artistic property. It can include modifications, upgrades and versions.
<b>Intermediary</b>	An intermediary is and organisation who can assist with structuring the bond, raising capital, driving performance and matching parties together
<b>Proposal</b>	A written offer submitted in response to this ROI.
<b>ROI</b>	Registration of Interest which is this document, including all its parts. It is an invitation to all Providers to submit a Proposal.
<b>Schedule</b>	Any schedule to this ROI that is to be read in conjunction with this ROI.
<b>Provider</b>	A person, business, partnership, company or organisation that submits a Proposal in relation to this ROI.

Unless otherwise stated all currency is in New Zealand dollars.

# Standard Conditions

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**The Standard Terms & Conditions are as follows. They are referenced in Part 3 Section 3 (Provider's Declaration) of the ROI.**

This Request for Proposal is subject to the following Terms and Conditions.

## 1. Basic requirements

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### Ministry's terms

- 1.1. This ROI, including all Schedules, sets out the Ministry's terms upon which Providers may submit Proposals. These terms are non-negotiable.
- 1.2. Any suitably qualified and experienced Provider may submit a Proposal in response to this ROI.
- 1.3. Each Provider should carefully read this ROI to ensure that its Proposal complies with the Ministry's terms. By submitting a Proposal the Provider accepts that it is bound, without reservation or variation, by the terms set out in this ROI.
- 1.4. The Ministry is not required to accept any Proposal for evaluation that does not comply with these terms.

### Indicative timeline

- 1.5. The indicative timeline for this ROI is stated in ROI Part 1 ('The Timeline'). Please note that these dates and times may be subject to change at the sole discretion of the Ministry. The Ministry will notify Providers of any changes to these dates or times by notice posted on GETS.

### Ministry's Contact Person

- 1.6. All enquiries regarding this ROI must be directed to the Ministry's Contact Person, whose details are provided in ROI Part 1 ('The Contact Person'). The Ministry requests that email be used for all communications in relation to this ROI.
- 1.7. Only the Contact Person, and any person authorised by the Contact Person, are authorised to communicate with Providers regarding any aspect of this ROI. Where a Provider has an existing contract with the Ministry then business as usual communication, for the purpose of that contract, will continue using the usual contacts. Providers must not use business as usual contacts to lobby the NZ Government, solicit information or discuss aspects of this ROI.
- 1.8. The Ministry will not be bound by any written or oral statement made by any person, other than the Contact Person.
- 1.9. The Ministry may change the Contact Person at any time. The Ministry will notify Providers of any such change by posting a notice on GETS.

### Providers' obligations

- 1.10. Each Provider will be considered to have:
  - a. examined the ROI and any documents referenced in the ROI and any other information provided by the Ministry
  - b. considered all the risks, contingencies and other circumstances relating to the delivery of the goods or services
  - c. satisfied itself as to the correctness and sufficiency of its Proposal, including the proposed pricing and the sustainability of the pricing.

### Provider contact point

- 1.11. Potential Providers are asked to include a single point of contact in their organisation for their response to the ROI. The Ministry will not be responsible for contacting the Potential Provider through any route other than the nominated contact. The Potential Provider must therefore undertake to notify any changes relating to the contact promptly.

## Ethics

- 1.12. Providers must not, in relation to any representative of the Ministry, directly or indirectly:
  - a. make public statements in relation to this ROI
  - b. approach, contact, lobby or solicit information concerning any aspect of this ROI, or
  - c. attempt to influence, or provide any form of personal inducement, reward or benefit.
- 1.13. A representative of the NZ Government includes any employee, consultant, contractor or advisor engaged by the NZ Government in relation to the Social Bond Pilot project. Any Provider, who attempts to do anything prohibited by the above clause, will be disqualified from this ROI.

## Anti-collusion

- 1.14. In submitting a Proposal each Provider is required to provide a warranty that its tender has not been prepared with consultation, communication, contract, arrangement or understanding with any Competitor (unless for joint venture, consortium or sub-contracting purposes).
- 1.15. There is no expectation or obligation for Providers to submit Proposals in response to this ROI solely to remain on any prequalified or preferred Provider list. Any Provider on such a list will not be penalised for failure to submit a Proposal.
- 1.16. Providers must indicate if they intend any person or organisation, who is not an employee, to sub-contract any part of the deliverables. The sub-contractor's details including the sub-contracted deliverables and price must be provided.
- 1.17. The Ministry reserves the right, at its discretion, to report suspected collusive or anti-competitive conduct by Providers to the appropriate authority and to provide that authority with any relevant tender information.

## Confidentiality

- 1.18. The Ministry, and each Provider, will keep confidential all Confidential Information provided by the other. No Confidential Information will be provided to a third party without the other's prior written consent.
- 1.19. Where a Provider's Proposal contains information, such as intellectual property, that it considers should be held confidential, the Provider must clearly identify the information and mark it 'confidential' or 'commercially sensitive'. The Provider may be asked by the Ministry to indicate the reason why such information should be held as confidential.
- 1.20. Notwithstanding clauses 1.18 and 1.19 the Provider will allow the Ministry to provide any information, including confidential information to an intermediary or any other party directly involved in the Social Bond Pilot project, if it is required in the opinion of the Ministry to facilitate the Social Bond Pilot process.
- 1.21. Providers acknowledge that the Ministry's obligations under the above clause are subject to the requirements imposed by statute (e.g. Official Information Act 1982, the Privacy Act 1993) and parliamentary convention. The Ministry's obligation to keep the Provider's information confidential will not be breached if the information is disclosed by the Ministry to the appropriate authority because of suspected collusive, or anti-competitive tendering behaviour.
- 1.22. The Ministry may release summary information about the successful Provider(s). The names and addresses of the successful Provider(s) and the approximate value of the Goods and/or Services will be published on GETS, if applicable.

## 2. Preparing a Proposal

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### Clarification Period

- 2.1 Each Provider must satisfy itself as to the interpretation of the ROI, and should, where there is any perceived ambiguity or uncertainty in the ROI documents, seek clarification.
- 2.2 During the period from the date the ROI is issued to the deadline for Providers' questions, stated in Part 1 'The Timeline' (Clarification Period), Providers may contact the Contact Person to request clarification of any matter regarding the ROI or to request additional information.

- 2.3 All such requests must be by email to the Ministry's Contact Person whose details are provided in Part 1 'The Contact Person' of the ROI. In sending the email the Provider should request a 'read receipt'. Please allow a reasonable period of time for the Ministry to respond to a request. Requests will be dealt with by the Ministry during standard Business Days.
- 2.4 The Ministry will not respond to any request received after the Clarification Period, although it reserves the right to do so.
- 2.5 If the Ministry considers a request to be of sufficient importance to all Providers, it may post a copy of the request (without identifying the Provider) along with the answer on GETS. In deciding whether or not to publish the question and answer the Ministry will take into account the risk of disclosing information which may be commercially sensitive to a Provider's business, such as Intellectual Property Rights. Otherwise, the Ministry may respond directly to individual Providers where it considers it desirable to do so.

## Communication

- 2.6 The Provider must not:
- (a) contact any other person in Government or provider to the Social Bond Pilot project regarding this ROI without the express authorisation of the Ministry's Contact Person;
  - (b) approach, directly or indirectly lobby, attempt to influence or provide any form of incentive to, any of the Ministry's representatives concerning any aspect of this ROI process. Any Provider who either directly or indirectly makes any such approach may be disqualified;
  - (c) make any public statement in relation to this ROI, the ROI process, the Ministry's response or the Ministry's participation in the ROI process, without the Ministry's prior written consent.
  - (d) approach, directly or indirectly lobby, attempt to influence or provide any form of incentive to, service users, or their families and caregivers. Any Provider who either directly or indirectly makes any such approach may be disqualified.

## Preparing a Proposal

- 2.7 Proposals must follow the format set out in Part 2 'Provider's response form and declaration'. Providers must provide in their Proposal all information requested, and in the format specified by the Ministry, including information stated ROI Part 1 'Response Submission'.
- 2.8 Failure to provide all information required by the Ministry may result in the Provider's Proposal being rejected as non-conforming.

## Joint Proposals

- 2.9 Providers may submit joint Proposals, so long as the requirements of this ROI are met. Any joint Proposal must clearly identify:
- a. all of the parties
  - b. the nature of the relationship between the parties for the purpose of the joint Proposal
  - c. confirmation that all parties are committed to the relationship and the joint Proposal
  - d. the specific parts of the Specification of Requirements each party will be responsible for delivering
  - e. the structures set up by the parties that support good governance and accountability and financial and contract management
  - f. be signed by all parties.
- 2.10 In evaluating a joint Proposal the Ministry may take into account, in its evaluation, any complexity or risk presented by a joint Proposal.

## Queries about the Procurement

- 2.11 All requests for clarification or further information in respect of this ROI should be addressed to the Providers named Contact Person. No approach of any kind in connection with this ROI should be made to any other person within, or associated with, the Ministry.



- 2.12 This ROI is being provided on the same basis to all Potential Providers.
- 2.13 The Ministry will not enter into detailed discussion of the requirements at this stage.
- 2.14 Any questions about the procurement should be submitted in writing by email for the attention of the Ministry's Contact person at the address given in Part 1 'The Contact Person'.
- 2.15 All responses received and any communication from Potential Providers will be treated in confidence but will be subject to this paragraph.

### **Language and price**

- 2.16 Proposals must be in English and prices are to be quoted in New Zealand dollars exclusive of goods and services tax (GST) and all other taxes, duties and expenses arising.

### **Proposal costs**

- 2.17 Each Provider must meet all of its own costs associated with the preparation and presentation of its Proposal and any negotiations.

### **Offer validity period**

- 2.18 Proposals shall remain valid and open for acceptance for a period of 12 months as calculated from the Closing Date.

### **Reliance on the Proposal**

- 2.19 Each Provider must ensure that all information provided to the Ministry is complete and accurate. The Ministry may rely upon all information provided by a Provider in its Proposal and in any correspondence or negotiations with the Ministry, or the Ministry's representatives.

### **Ownership of documents**

- 2.20 All documents forming the Proposal will, when delivered to the Ministry, become the property of the Ministry. Proposals will not be returned to Providers at the end of the process.
- 2.21 Ownership of Intellectual Property Rights does not pass on a Proposal being delivered to the Ministry. However, the Provider grants to the Ministry a license to retain, use, disclose and copy information contained in the Proposal to further any purpose related to this ROI process, for any future procurement process related to the Social Bond Pilot, and the disclosure and the sharing of the information with an intermediary if the information is required to facilitate the successful completion of the Social Bond Pilot process.

## **3. Submitting a Proposal**

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### **Submitting a Proposal**

- 3.1 Proposals must be presented and submitted to the Ministry in the manner set out in Part 1 'Response Submission'.
- 3.2 Proposals must be delivered to the Ministry by the deadline for Proposals (Closing Date) stated in the ROI Part 1 'The Timeline'.
- 3.3 The Ministry accepts no responsibility for Proposals delivered to the wrong address, or which, for whatever reason, are not received.
- 3.4 The Ministry will acknowledge receipt of each Proposal by email.
- 3.5 By submitting a Proposal each Provider warrants that all information provided by it to the Ministry, is complete and accurate in all material respects. Each Provider also warrants that the provision of that information, or its use by the Ministry, will not breach any third party Intellectual Property Rights.
- 3.6 Where the Ministry has requested the Proposal in hard copies and an electronic copy, and there is a difference between the hard copy and the electronic copies, the hard copy will prevail.

## No binding legal relations

- 3.7 Proposals are submitted on the basis that no binding legal relations with the Ministry are created unless, and until, a written contract between the Ministry and the Successful Provider is signed by both parties.

## Late Proposals

- 3.8 The Ministry does not intend to accept any Proposal that it receives after the Closing Date, other than in exceptional circumstances.
- 3.9 In particular, the Ministry will not accept a late Proposal if it considers that:
- a. there is any risk of collusion on the part of a Provider or Providers
  - b. the Provider may have knowledge of the content of any other Proposal
  - c. it would be unfair to any other Provider (who has met all of the ROI terms and conditions) to accept the late Proposal.
- 3.10 The Ministry reserves the right to accept any late Proposal, where it considers that there is no material prejudice to other Providers.

## 4. Evaluation of Proposals

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### Evaluation

- 4.1 The Ministry will convene an evaluation team comprising members chosen for their relevant expertise and experience. Providers must not communicate with any member of the evaluation team.
- 4.2 The Ministry will evaluate each Proposal in accordance with the methodology set out in Part 1 – ‘How the Providers Proposal will be Evaluated.’
- 4.3 The Ministry may direct the evaluation team to undertake due diligence relating to any Proposal at any time during the evaluation process. The Ministry may, at its sole discretion, invite independent advisors to evaluate any Proposal, or any aspect of any Proposal.

### Clarification

- 4.4 The Ministry may request clarification and additional information from any Provider about any aspect of a Proposal. The Ministry is not required to request the same clarification or information from each Provider.
- 4.5 The Provider must provide the clarification or additional information in writing and within the reasonable time notified by the Ministry. The evaluation team may take such clarification or additional information into account in evaluating the Proposal.
- 4.6 If a Provider fails to respond adequately or in a timely manner to any request for clarification or additional information, the Ministry may cease evaluating the Provider’s Proposal without further notifying the Provider.

### Collection of further information

- 4.7 Each Provider authorises the Ministry to collect any information (except commercially sensitive pricing information) from any relevant third parties (such as a referee or previous or existing client) and to use that information as part of its evaluation of the Provider’s Proposal.
- 4.8 Each Provider must ensure that all referees provided in support of its Proposal agree to provide a reference and are appropriately briefed on the Proposal. To facilitate discussions between the Ministry and referees, each Provider waives any confidentiality obligations that would otherwise apply to information held by any referee, with the exception of commercially sensitive pricing information.

Provision of your Information to others

### Provider Selection

- 4.9 The Ministry may not accept any Potential Provider who does not:



- (a) Provide a satisfactory response to any questions in the ROI or inadequately or incorrectly completes any question.
- (b) Submit its completed ROI after the deadline.

The Potential Providers who are not disqualified in accordance with the above grounds shall be evaluated on the qualification criteria which take into account the economic and financial standing and the technical or professional ability of the Potential Provider. A shortlist of Potential Providers will be drawn up and they will be eligible to participate further in the procurement process.

The Ministry may seek independent financial and market advice to validate information declared or to assist in the evaluation. Reference site visits or demonstrations and/or presentations are unlikely to be requested at this stage but the Ministry reserves the right to request the same as a part of the ROI process.

The Ministry may consider other Government information in making a decision for this ROI.

Where a Potential Provider has a valid reason for being unable to provide the information requested in relation to economic, financial and insurance matters, the other information considered appropriate by the Ministry will be accepted.

- 4.10 Should the provider be selected for the shortlist of recommended Potential Providers to participate further in the Social Bond Pilot process, there is no guarantee any Potential Provider on the shortlist will be successful in the remainder of the procurement process.

## Provider Notification

- 4.11 Following the award of Contract, Each Provider that is unsuccessful and is not a shortlisted potential Provider will be notified.

## 5. General terms and conditions

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### Ministry's rights

- 5.1 In addition to any other term described in this ROI, the Ministry reserves the unrestricted rights, at any time, to:
- a. amend, suspend or cancel this ROI, or any part of this ROI
  - b. change any date in this tender process on the proviso that any material change is notified to Providers by a notice published on GETS
  - c. delete, change or add to any requirement contained in Part 1 'Our Full Requirements' prior to the Closing Date on the proviso that any material change is notified to Providers by a notice published on GETS
  - d. reject or accept any non-compliant Proposal
  - e. reject or accept any alternative Proposal
  - f. exclude any Provider from this ROI process where the Provider has breached a term or condition of this ROI
  - g. liaise or negotiate with any Provider without disclosing this to, or doing the same with, any other Provider
  - h. provide, or withhold from any Provider information in relation to any question arising in relation to this ROI. Information will only be withheld if it is deemed unnecessary, is commercially sensitive to a Provider, or is inappropriate to supply at the time of the request
  - i. deal separately with any divisible element/s of the Specification of Requirements (Part 1), or any Proposal, unless the Proposal specifically states that those elements must be taken collectively

- j. split the provision of the Part 1 and Part 2 of this ROI into separate contracts or market arrangements prior to or after the Closing Date on the proviso that any material change is notified to Providers by a notice published on GETS
- k. reapproach the market with a proposed service outcome to find an alternative provider/s should the proposed provider fail to prove capability through the ROI process
- l. use Government information to assess proposals

## **Conflict of Interest**

- 5.2 Each Provider must include a Conflict of Interest Declaration with its Proposal. Each Provider must immediately inform the Ministry should a Conflict of Interest arise during the ROI process.

## **Public statements**

- 5.3 Providers must not issue any public statement in relation to this ROI, or any subsequent contract awarded, without the prior written approval of the Ministry.

## **New Zealand law**

- 5.4 The laws of New Zealand shall govern this ROI and each Provider agrees to submit to the exclusive jurisdiction of the New Zealand courts in respect of any dispute concerning this ROI or the ROI process.

## **Corporate Social Responsibility**

- 5.5 The Ministry is committed to the promotion of appropriate corporate social responsibility in the workplace both in its own practices and in the practices of its Providers. Corporate social responsibility includes such factors as:
- a. having appropriate health and safety arrangements;
  - b. practising behaviour that enhances health, including such things as taking account of and applying the broad strategic direction for the health and disability sectors under the New Zealand Health Strategy and the New Zealand Disability Strategy;
  - c. promotion and facilitation of partnership, participation and protection principles for people with disabilities;
  - d. promotion and facilitation of partnership, participation and protection principles for Maori and other cultures in New Zealand;
  - e. demonstrating sustainable and environmentally friendly practices; and
  - f. being a good employer, demonstrated by such things as equal employment opportunities, a smoke-free workplace, a responsible host policy, a nutrition policy and the like.

It is expected that the successful Provider will be equally committed to CSR.

## **Disclaimer**

Whilst all reasonable care has been taken in compiling this ROI, the information and details are presented in good faith. No warranty (expressed or implied) is given by the Ministry as to the completeness or accuracy of the documents or information.