

# APPENDIX C: ROI TERMS AND CONDITIONS

This Appendix C sets out the Terms and Conditions that apply to this procurement. If you have any questions about the ROI Terms and Conditions, please get in touch with the point of contact named in the RFP Invitation.

## 1. Preparing a Registration

Respondents are to use the ROI Response Template provided and include all information requested by Counties Manukau Health in relation to the ROI.

By submitting a Registration the Respondent accepts that it is bound by these ROI Terms and Conditions as well as any terms and conditions specified in the ROI Invitation.

Respondents should:

- a) examine the ROI and any documents referenced in the ROI and any other information provided by Counties Manukau Health;
- b) if appropriate, obtain independent advice before submitting a response; and
- c) satisfy itself as to the correctness and sufficiency of its proposal .

## 2. Requests for Additional Information

### Provider Requests

Providers may request additional information or clarification of the ROI prior to 3.00pm 26/05/2016. Such requests are to be submitted through GETs or by email to Counties Manukau Health's nominated point of contact (as specified in the ROI Invitation document).

If Counties Manukau Health considers a request to be of sufficient importance to all respondents it may provide details of the question and answer to other respondents. In doing so, Counties Manukau Health 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.

In submitting a request for clarification a respondent is to indicate, in its request, any information that is commercially sensitive. Counties Manukau Health will not publish such commercially sensitive information. However, Counties Manukau Health may modify a request to eliminate such commercially sensitive information, and publish this and the answer where Counties Manukau Health considers it of general significance to all respondents. In this case, however, the respondent will be given an opportunity to withdraw the request or remove the commercially sensitive information.

### Counties Manukau Health Requests

At any time during the ROI process, additional clarification, discussion or information for any aspect of a proposal may be required by Counties Manukau Health. When such clarification, discussion or information is requested, a written response via email must be provided within 3 working days, unless a different time period is indicated in the request.

## 3. Submitting a Registration

Provider responses to the ROI close on 1.00pm 31/05/2016. Responses received after the closing date will not be considered unless prior approval has been sought and given by Counties Manukau Health.

Counties Manukau Health reserves the right to accept or decline late responses at any time at Counties Manukau Health's absolute discretion. Should the decision to accept late proposals be made prior to the notified closing date above, Counties Manukau Health will advise all respondents of the extended deadline for submitting or resubmitting their responses.

All responses must be submitted using the ROI Response Template provided and must be submitted electronically on GETs.

Counties Manukau Health shall not be liable for any costs or expenses incurred by respondents in preparation of their proposals in response, or in connection with any discussions, negotiation or documentation relating to this ROI. In addition, Counties Manukau Health shall take no responsibility or be in any way liable should Counties Manukau Health rely on information in a proposal that is incorrect or in breach of any third party intellectual property rights.

Faxed or emailed responses will not be accepted.

Each respondent will meet its own costs associated with the preparation and presentation of its response.

#### **4. Assessing Registrations**

Counties Manukau Health will convene an Evaluation comprising members chosen for their relevant expertise and experience. In addition, Counties Manukau Health may invite independent advisors to evaluate any proposal, or any aspect of any proposal.

Counties Manukau Health will base its initial evaluation on the proposals submitted in response to the invitation. This evaluation will be in accordance with the evaluation approach set out in the RFP Invitation.

In deciding which respondent/s to shortlist Counties Manukau may take into account any of the following additional information:

- a) any matter that materially impacts on Counties Manukau Health's trust and confidence in the Respondent
- b) any relevant information that Counties Manukau Health may have in its possession.

Counties Manukau Health will advise respondents if they have been shortlisted or not. Being shortlisted does not constitute acceptance by Counties Manukau Health of the respondent's proposal, or imply or create any obligation on Counties Manukau Health to enter into negotiations with, or award a contract for delivery of the Service to any shortlisted respondent/s. At this stage in the ROI process, Counties Manukau Health will not make public the names of the shortlisted respondents.

Counties Manukau Health is under no obligation to short-list any proposal.

All proposals submitted become the property of Counties Manukau Health and will not be returned in any form to the respondents to this ROI.

Respondents will be notified of the acceptance or rejection of their response in writing via email upon a decision being made by Counties Manukau Health with regard to the short-listed respondents.

Respondents are not to make public statements about the ROI process, unless authorised by Counties Manukau Health to do so.

All information in this document is believed to be the best information available at the time. However, Counties Manukau Health cannot guarantee the accuracy or completeness of any such information. Counties Manukau Health shall not be directly or indirectly liable (whether in contract, tort or otherwise) for any loss or damage arising from any statement, representation, misrepresentation, inaccuracy or omission in respect of the information supplied or statements made by or to any respondent, or otherwise in respect of the response process.

Counties Manukau Health is under no obligation to check any responses for errors and Counties Manukau Health will rely on the information provided by respondents as being accurate.

Subject to Counties Manukau Health's public law duties, the conduct of the evaluation will be at the sole discretion of Counties Manukau Health and Counties Manukau Health may include any matters it reasonably considers to be relevant, including any information provided by respondents' referees or any other source of information it is legitimate for Counties Manukau Health to take into account.

#### **5. Counties Manukau Health's Additional Rights**

Despite any other provision in the ROI, Counties Manukau Health may:

- a) amend, suspend, cancel and/or re-issue the ROI, or any part of the ROI.
- b) make any material change to the ROI (including any change to the timeline, Requirements or Evaluation Approach).

Despite any other provision in the ROI Counties Manukau Health may:

- c) answer questions submitted after the timeframe for questions ends;
- d) accept or reject any proposal, or part of a proposal;
- e) accept or reject any non-compliant, non-conforming or alternative proposal;
- f) decide not to enter into a contract with any respondent;
- g) liaise or negotiate with any respondent without disclosing this to, or doing the same with, any other respondent;
- h) provide or withhold from any respondent information in relation to any question arising in relation to the ROI. Information will usually only be withheld if it is deemed unnecessary, is commercially sensitive to a respondent, is inappropriate to supply at the time of the request or cannot be released for legal reasons
- i) amend the Services sought at any time; and
- j) waive irregularities or requirements in the ROI process where it considers it appropriate and reasonable to do so.

## **6. Prohibition on Canvassing**

From the date of this document to the date that respondents are notified that a decision has been reached regarding acceptance of any of the proposals, respondents are prohibited from canvassing, lobbying or contacting any person in connection with this document other than the point of contact specified in the ROI Invitation document.

Each member of the Evaluation Panel will have signed a probity form forbidding them to have contact with respondents outside the process described in this document.

Respondents may not approach any Counties Manukau Health staff member outside this response process in relation to the services described in the ROI. Failure to comply with this prohibition could lead to your response document being disqualified from consideration.

## **7. Confidentiality**

Subject to the Official Information Act, 1982, all information in responses provided to this document will be treated as confidential.

The information contained in this document is provided for the sole purpose of allowing respondents to submit proposals to Counties Manukau Health. Respondents are not to use any information given to them, either in writing or verbally, for any purpose other than to prepare their response to this ROI.

In submitting a proposal, providers confirm that Counties Manukau Health is authorised to seek further information on any issue from any third party source.

## **8. Conflict of Interest**

Each respondent must complete the Conflict of Interest declaration in the ROI Response Template and must immediately inform Counties Manukau Health should a Conflict of Interest arise during the ROI process. A material Conflict of Interest may result in the respondent being disqualified from participating further in the ROI process.

## **9. Anti-collusion and bid rigging**

Respondents must not engage in collusive, deceptive or improper conduct in the preparation of their proposals or other submissions or in any discussions with Counties Manukau Health. Such behaviour will result in the respondent from being disqualified from participating further in the ROI process. The respondent warrants that its registration has not been prepared in collusion with a competitor.

Counties Manukau Health 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.

## **10. Ethics**

Respondents must not attempt to influence or provide any form of personal inducement, reward or benefit to any representative of Counties Manukau Health in relation to the ROI. A Respondent who attempts to so may be disqualified from participating further in the ROI.

Counties Manukau Health reserves the right to require additional declarations, or other evidence from a respondent, or any other person, throughout the ROI process to ensure probity of the ROI process.

## **11. Elimination**

Counties Manukau Health may exclude a respondent from participating in the ROI process if Counties Manukau Health has evidence of any of the following, and is considered by Counties Manukau Health to be material to the ROI:

- a) the respondent has failed to provide all information requested, or in the correct format, or materially breached a term or condition of the ROI process;
- b) the proposal contains a material error, omission or inaccuracy;
- c) the respondent is in bankruptcy, receivership or liquidation;
- d) the respondent has made a false declaration;
- e) there is a serious performance issue in a historic or current contract delivered by the respondent;
- f) the respondent has been convicted of a serious crime or offence; or
- g) there is professional misconduct or an act or omission on the part of the respondent which adversely reflects on the integrity of the respondent.

**12. ROI Shortlisted Providers**

It is Counties Manukau Health’s intention to shortlist a number of respondents to proceed to the RFP stage but it is not bound to do so.

Counties Manukau Health’s decision regarding short listed providers will be final.

**13. No binding legal relations**

Neither the ROI, nor the ROI process, creates a process contract or any legal relationship between Counties Manukau Health and any respondent.

**14. New Zealand Law**

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

**15. Disclaimer**

Counties Manukau Health 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 ROI process.

Nothing contained or implied in the ROI, or ROI process, or any other communication by Counties Manukau Health to any respondent shall be construed as legal, financial or other advice. Counties Manukau Health has endeavoured to ensure the integrity of such information. However, it has not been independently verified and may not be updated.

To the extent that liability cannot be excluded, the maximum aggregate liability of Counties Manukau Health is \$1.