



Waikato River
Authority

Request for Tender (RFT)

by: Waikato River Authority

for: Waikato River Authority: Review of Te Ture Whaimana o te Awa o Waikato (Vision & Strategy)

RFT released: 11 September 2021
Deadline for Questions: 5pm, 23 September 2021
Deadline for Tenders: 5pm, 8 October 2021

Waikato River Authority
<https://waikatoriver.org.nz/>
21 Rostrevor Street
Kirikiriroa
Hamilton 3204

The opportunity

This RFT is issued by the Waikato River Authority, referred to below as “the Buyer” or “we” or “us”.

What we need

In 2010, the Waikato-Tainui Raupatu Claims (Waikato River) Settlement Act established the Waikato River Authority (WRA) as an independent statutory organisation tasked with the guardianship of the Te Ture Whaimana o Te Awa o Waikato (Vision & Strategy), among other objectives. The Vision & Strategy is the primary direction setting document for the Waikato River and activities within its catchment affecting the Waikato and Waipā River.

The WRA is required to periodically review the Vision & Strategy every 5 years. The WRA Board have approved that the review of Vision & Strategy should proceed with consideration to potential amendments. The WRA are seeking consultant/s to lead and undertake this review of the Vision & Strategy.

All content of the Vision & Strategy is able to be amended, save for the Vision statement itself. New provisions to update the Vision & Strategy may be added by the WRA. The WRA want to be clear that proposed amendments to the Vision & Strategy must respect the spirit and intent of its founding treaty settlements and ensure it continues to be the primary direction setting document for the Waikato and Waipā Rivers.

It is also essential that the review process has equal weighting given to Mātauranga Māori alongside western science and this is incorporated this within all stages of the review. The Waikato River Authority supports a strong co-designed review process with River Iwi and the Crown.

What’s important to us?

The WRA is seeking a suitably qualified organisation/s that can provide the following services in support of the review process for the Vision & Strategy:

- A successful engagement process with the appointers (River Iwi and the Crown) throughout the review process including as part of a co-design review approach with the WRA;
- A successful engagement process with key stakeholders throughout the review process;
- A successful engagement process with catchment communities throughout the review process;
- Drafting of potential amendments to the Vision & Strategy supported by a sound analysis of the reasoning for, and impact of, any amendments (similar to a Regulatory Impact Statement);
- Prepare proposed amendments to the Vision & Strategy arising from the consultation, for WRA Board consideration.
- Notifying a revised Vision & Strategy and calling for submissions (including how they are received and acknowledged);
- Conducting an open and transparent submission process;
- Supporting the hearing process so that all submitters wishing to be heard are fairly heard and the hearing panel is supported where required; and
- Supporting the hearing panel in preparing a final revised Vision & Strategy for the Waikato River Authority’s consideration.
- Communication services associated with delivery of the above.

This is an opportunity to build on the innovation that the Vision & Strategy provided at its inception and the gains made through other treaty settlements and national policy change since 2010.

Why should you bid?

This is a very unique and exciting opportunity to influence the wellbeing of the Waikato and Waipā Rivers and all they embrace for future generations. With the impending resource management reforms, increasing demands for water and an escalating population, the one constant for our region is that the Vision & Strategy remain the primary direction setting document for the Waikato and Waipā Rivers.

The review must honour the spirit, intent and integrity of the River Settlements. The approach must be inclusive and focus on the wellbeing of the Waikato and Waipā Rivers.

A bit about us

The Waikato River Authority and Waikato River Clean-up Trust were established under the Waikato-Tainui Raupatu Claims (Waikato River) Settlement Act 2010 with the purpose of acting as an independent entity on behalf of the river. To reflect the aspiration of co-management, the board of the authority consists of a representative of each of the five river iwi authorities (Tūwharetoa Māori Trust Board, Te Whakakitenga o Waikato-Tainui, Raukawa Settlement Trust, Te Arawa River Iwi Trust and Maniapoto Māori Trust Board) and five Crown representatives.

The Ngā Wai o Maniapoto (Waipā River) legislation was enacted in 2012 to include the upper catchment of the Waipā River through to its junction with the Pūniu River ensuring that the Vision & Strategy applies to the whole of the Waikato and Waipā river catchments.

The purpose of the Authority is to:

- a) set the primary direction through the Vision and Strategy to achieve the restoration and protection of the health and wellbeing of the Waikato and Waipā Rivers for future generations;
- b) promote an integrated, holistic, and co-ordinated approach to the implementation of the Vision and Strategy and the management of the Waikato and Waipā Rivers; and
- c) fund rehabilitation initiatives for the Waikato and Waipā Rivers in its role as trustee for the Waikato River Clean-up Trust.
- d) Over the past 10 years, the WRA has established itself as an advocate for the Waikato and Waipā Rivers, and the communities the rivers support. We have given ourselves a further 70 years to achieve our Vision.

SECTION 1: Key Information

1.1 Context

- a. This Request for tenders (RFT) is an invitation to submit a Tender for the Review of the Vision & Strategy for the Waikato and Waipā Rivers (Review of the V&S).
- b. This RFT is the next step in a multi-step procurement process.

1.2 Our timeline

Here is our timeline for this RFT (all are New Zealand times and dates):

RFT publicly released	11-Sept-2021
Deadline for Questions	5pm, 23-Sept-2021
Deadline for us to answer questions	30-Sept-2021
Deadline for Tenders	5pm, 8-Oct-2021
<i>Note: during this period the WRA will undertake evaluation, seek clarification (if needed) and may request a presentation from shortlisted respondents. Appropriate time extension will be provided if a presentation is desired.</i>	
Successful Respondent(s) notified (indicative)	12-Nov-2021
Expected start date of Contract (indicative)	22-Nov-2021

1.3 How to contact us

- a. Contact us through our Point of Contact via email only.
- b. Our Point of Contact:

Name: Julian Williams
Title/role: Principal Advisor, Policy and Engagement
Email address: julian@waikatoriver.org.nz

1.4 Developing and submitting your Tender

- a. This is an open, competitive tender process.
- b. This is a two-envelope process. The first envelope will include your Tender. The second envelope will include pricing for your Tender.
- c. Take time to read and understand the RFT.
- d. Take time to understand our Requirements. These are in SECTION 2: of this document.
- e. Take time to understand how your Tender will be evaluated. See SECTION 3: of this document.
- f. If you have questions, ask our Point of Contact before the Deadline for Questions (see Section 1.3b above).
- g. Use the [Response Form here](#) to submit your Tender.

- h. Complete and sign the declaration at the end of the Response Form.
- i. Use the Pricing Schedule in the Response Form for your pricing information.
- j. We have a mailbox size limit of 20MB per each envelope. There is no limit for the number of pages, or word count requirements for your Tender.
- k. Check you have provided all the necessary information in the correct format and order.
- l. Submit your Tender before the Deadline for Tenders.

1.5 Address for submitting your Tender

Submit your electronic Tender to the following address: julian@waikatoriver.org.nz

We will not accept Tenders sent by post or delivered to our office.

Make sure you include all attachments and reference material.

Please remember to submit all pricing information in a separate file and clearly labelled Financial and Pricing Information.

1.6 Our RFT Terms

a. Offer Validity Period

By submitting a Tender, the Respondent agrees that their offer will remain open for 6 calendar months from the Deadline for Tenders.

b. RFT Terms

By submitting a Tender, the Respondent agrees to the RFT-Terms described in SECTION 6: .

Remember, if a Respondent commits a non-trivial breach of the RFT-Terms, we may exclude them from further participation in the RFT process, whether or not that requirement is contractually binding.

1.7 Later changes to the RFT or RFT process

After publishing the RFT, if we need to change anything or provide additional information, we will let all Respondents know by placing a notice on the website.

1.8 Defined terms

These are shown using capitals. You can find all definitions at the back of the RFT-Terms.

SECTION 2: Our Requirements

2.1 Background

This RFT relates to the purchase of services to complete the review of the Vision & Strategy to the point of submitting recommendations to the WRA for consideration. We currently do not provide this service and seek your Tender to achieve the services required and guide future reviews.

The review must honour the spirit, intent and integrity of the River Settlements. The approach must be inclusive and focus on the wellbeing of the Waikato and Waipā Rivers.

2.2 Key outcomes

- The key objective of this procurement is to obtain high quality services from an organization that will successfully support the WRA in meeting its duty to complete the V&S review by **30 June 2023**.
- The procurement's proposed outcomes are:
 - Fulfil obligations of Schedule 4 of the Waikato-Tainui Claims (Waikato River) Settlement Act 2010;
 - A successful engagement process with the appointers (Waikato River Iwi and the Crown) throughout the review process;
 - A successful engagement process with key stakeholders throughout the review process;
 - A successful engagement process with catchment communities throughout the review process;
 - Scoping of the review with the WRA
 - Undertaking a background review and gap analysis
 - Drafting an issues an options paper
 - Drafting of potential amendments to the V&S supported by a sound analysis of the reasoning for, and impact of, any amendments (similar to a Regulatory Impact Statement);
 - Notifying a revised V&S and calling for submissions;
 - Conducting an open and transparent submission process;
 - Supporting the hearing process so that all submitters wishing to be heard are fairly heard and the hearing panel is supported where required; and
 - Supporting the hearing panel in preparing a final revised V&S for the WRA's consideration.

2.3 What we require from a Respondent:

a. Track record

The successful respondent must demonstrate the following:

- knowledge and understanding of the Vision & Strategy and the historical context in which it was developed;
- how you have applied, or worked with, the Vision & Strategy and its objectives in policy or project implementation;
- a track record of managing and/or delivering statutory processes;
- a strong track record of engaging with stakeholders, in particular with Iwi and Marae; and
- Three example projects which demonstrate the Respondents ability to deliver the Services, on time, within budget and achieving a quality outcome. References should be provided which may be used to verify the Respondent's delivery of the projects.

b. Capability

This will require the successful respondent to demonstrate the following skill sets:

- Ability to include and understand Mātauranga ā Iwi, tikanga, co-governance framework, Settlement and Treaty Principles within the review process;
- Social, economic, environmental and statutory planning assessments arising from proposed amendments to the Vision & Strategy;
- Sector knowledge across industry within the Waikato River catchment, particularly the primary and energy sectors;
- Community and stakeholder workshop facilitation, coordination and reflection;
- Understanding and management of a submission and hearing process, as guided by Schedule 4 of Settlement legislation;
- Media/Public/Stakeholder communication; and
- Policy drafting and implementation.

c. Capacity

We are seeking Respondents that can complete the review of the Vision & Strategy and its delivery to the WRA by **31 June 2023**. To achieve the key outcomes of this RFT, it is anticipated that the Respondent assembles a team which will include the following. Please note that this is a non-exhaustive list, and Respondents are required to assemble a team that can deliver the outcomes sought:

- An experienced Engagement lead with River Iwi and Iwi Māori, confident in tikanga associated with Waikato and Waipā River Marae;
- Workshop facilitator for community, Iwi and sectors discussions;
- Policy team.

d. Solution

We are looking for Respondents to provide their proposed methodology which will achieve the outcomes sought, together with a project plan with resources, costs and timeframes. It is important to indicate which tasks/activities will be undertaken by the Respondent and which will be undertaken by the Buyer or other 3rd parties.

2.4 Other information

- a. Given the proposed length of the contract, the WRA will seek a collaborative relationship with the supplier to reflect an appropriate level of desired trust and communication.
- b. This means there will be close communication from the supplier to the WRA on a no surprises basis and issues will be addressed in collaboration with the WRA.
- c. The completed contract will see the delivery of a revised Vision & Strategy, including support documentation, to the WRA at 21 Rostrevor Street, Hamilton.
- d. Payment will be on the successful delivery of agreed milestones.

2.5 Contract term

We expect that the Contract will commence 22 November 2021. The anticipated Contract term and options to extend are:

Description	Years
Initial term of the Contract	Up to 2 (two) years
Options for us to extend the Contract	In discussion with the WRA only.

2.6 Contract value

An estimate of the total cost over the whole-of-life of the contract is \$400,000 to \$700,000. The cost is highly dependent on multiple unknown variables including, the degree of engagement required by external parties, the underpinning technical (social, cultural, environment, and economic) assessments required to support proposed amendments, and the number and detail of submissions received (analysis required and length of hearing).

The tender outcome will inform the costs anticipated.

2.7 Key deliverables

Description	Indicative date for delivery
Begin Contract	22-Nov-2021
Confirm scope of the Review	
Confirm Stakeholder Engagement Plan	2-Mar-2022
Finalise Scope	
Background Analysis	
Conduct Gap Analysis	29-April- 2022
Gather required information	
Finalise Issues and Options Paper	
Undertake stakeholder engagement	1-July-2022
Confirm papers and topics	
Final Draft Vision and Strategy	
Test and confirm design principles	
Stakeholder engagement	30-Jun-2023
Assess benefits, costs and options	
Formal Statutory Process	
Submission period	
Hearings	30-Jun-2023
Develop recommendations	
Prepare new Vision and Strategy for Appointors decision	
Draft Implementation Plan	
Stakeholder engagement	
Economic Case	30-Jun-2021
Management Case	
Financial Case	

2.8 Other tender documents

These documents have been uploaded on the Buyers website and are available to Respondents – they form part of this RFT. These include the [RFT Response form here](#).

SECTION 3: Our Evaluation Approach

This section sets out the Evaluation Approach that will be used to assess Tenders.

3.1 Pre-conditions

Each Tender must meet the following pre-condition. We will not consider Tenders which fail to meet this condition:

- The successful respondent must demonstrate knowledge and understanding of the Vision & Strategy and the historical context in which it was developed. You should also demonstrate how you have applied, or worked with, the Vision & Strategy and its objectives.

Pre-conditions

1. The Respondent must hold Public Liability insurance of at least \$5M and Professional Indemnity insurance of \$2M
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3.2 Evaluation model

The evaluation model is **weighted attribute**. Price is a weighted criterion. All Tenders that are capable of full delivery on time will be shortlisted. The Tender that scores the highest will likely be selected as the Successful Respondent.

Two envelope system:

We will use the “two-envelope” system to conduct evaluations. Respondents must provide all financial information relating to price, expenses and costs in a separate soft copy file. The evaluation panel will score each Tender according to the weighted evaluation criteria in Section 3.3 below, and then examine the financial information of each Tender. The panel will assess which Tenders to shortlist based on the scores and the total costs over the whole-of-life Contract.

Overall assessment:

All Tenders that meet the pre-conditions are evaluated using the evaluation model. Scores will assist in deciding the Successful Respondent(s), but ultimately the decision will be based on which Tender(s) we consider will provide the best overall public value. The evaluation model that will be used is weighted attribute method. Price will be a weighted criterion in determining overall value for money over the whole-of-life of the contract.

3.3 Evaluation criteria

We will evaluate Tenders which meet all pre-conditions according to the following criteria and weightings.

Criterion	Weighting
Technical merit (fit for purpose)	30%
Ability to work well with River Iwi and Crown	
Degree to which services meet or exceed requirements (methodology)	
Quality of services	
Degree of innovation	
Level of risk	
Quality of methodology	
Capability and Capacity of the supplier to deliver	50%
Ability to include and understand Mātauranga ā Iwi and tikanga within the review process	
Supplier's location, size, structure and annual turnover	
Track record in delivering services relevant to this tender	
Understanding of the requirements	
Operational and financial systems to manage delivery	
CV's for key project team members	
Example projects	
Value for money (based on whole-of-life cost)	20%
Total costs over whole-of-life	
Other benefits	
Total weightings	100%

3.4 Scoring

Rating	Definition	Score
EXCELLENT	Respondent demonstrates exceptional ability, understanding, experience and skills. The Tender identifies factors that will offer potential added value, with supporting evidence.	9-10
GOOD	Respondent demonstrates above average ability, understanding, experience and skills. The Tender identifies minor additional benefits, with supporting evidence.	7-8
ACCEPTABLE	Respondent demonstrates the ability to meet the criteria, with supporting evidence.	5-6
RESERVATIONS	Satisfies only a minimum of the criteria but not all. Reservations about the Respondent to adequately meet the criteria. Little supporting evidence.	3-4
SERIOUS RESERVATIONS	Extremely limited or no supporting evidence to meet the criteria. Minimum effort made to meet the criteria.	1-2
UNACCEPTABLE	Does not comply or meet the criteria at all. Insufficient information to demonstrate the criteria.	0

3.5 Price

If a Respondent offers a substantially lower price than other Tenders, we may make enquiries or require additional evidence to verify that the Respondent can meet all the Requirements and conditions of the Proposed Contract for the price quoted. Note: Any claims made about price must be clear, accurate and unambiguous. Prices must include or be clear about Goods and Services Tax (GST).

3.6 Due diligence

For shortlisted Respondents, we may:

- a. reference check the Respondent and any named personnel
- b. make other checks against the Respondent e.g. a search of the Companies Office or NZBN
- c. interview Respondents
- d. request Respondents make a presentation to the Evaluation Panel, the Board or any other persons.

SECTION 4: Pricing information

4.1 Pricing information provided by Respondents

- a. Please submit pricing in a separate file via email to the point of contact.
- b. The Pricing Schedule must show a breakdown of all costs, fees, expenses and charges. It must also clearly state the total Contract price exclusive of GST.
- c. Where the price is based on fee rates, specify all rates, either hourly or daily or both as required.
- d. Respondents must show how they will manage risks and contingencies related to the delivery of the Requirements.
- e. Respondents must document all assumptions and dependencies that affect its pricing and/or the total cost to us. In other words, if the Respondent would expect us to pay more than the quoted price or estimate if particular assumptions or dependencies are not satisfied, the Respondent must call out those assumptions and dependencies.
- f. Respondents must tender prices in NZ\$.
- g. Respondents may submit a pricing approach that is different to the Pricing Schedule, however, the Respondent must also submit a Pricing Schedule that conforms.
- h. If two or more Respondents intend to submit a joint Tender the Pricing Schedule must include all costs, fees, expenses and charges chargeable by all Respondents. The WRA will only pay invoices received from the lead contractor, and after review.

SECTION 5: Our Proposed Contract

5.1 Proposed Contract

The Proposed Contract is the Government Model Contract (GMC) Form 2 Services (3rd Edition).

In submitting your Tender you must let us know if you wish to question or negotiate any of the terms or conditions in the Proposed Contract or wish to negotiate using your own or different terms and conditions.

SECTION 6: RFT Terms

Defined terms are shown using capitals. You can find definitions at the end of this Section.

Preparing and submitting a Tender

6.1 Preparing a Tender

a. Respondent obligations

The Respondent must:

- i. read the complete RFT and any additional information provided and referred to by the Buyer
- ii. respond using the RFT Response Form and Pricing Schedule provided and include all information the Buyer requests
- iii. consider the risks and contingencies relating to the delivery of the RFT requirements and outline how it will manage those risks and contingencies
- iv. include any assumptions, dependencies and/or qualifications in the Tender, including anything that may limit its obligations or increase its quoted pricing or cost estimates
- v. quote prices in NZ\$, exclusive of GST
- vi. obtain independent advice before submitting a Tender (if necessary)
- vii. make sure the Tender is correct and the Tender pricing is sustainable, i.e. covers the Whole-of- Life of the Contract, not just the initial term.

b. Process acceptance

By submitting a Tender, the Respondent accepts the RFT-Terms.

c. No obligation, no penalty

Suppliers are not expected or required to submit a Tender in order to remain on any prequalified or registered supplier list.

6.2 Offer Validity Period

The Tender must remain open for the Offer Validity Period stated in Section 1 of the RFT.

6.3 Respondent questions

- a. The Respondent must make sure they understand the RFT.
- b. If the Respondent has any questions or needs clarification, they:
 - i. must submit questions before the Deadline for Questions (Section 1 of the RFT)
 - ii. must clearly indicate any commercially sensitive information in their questions
 - iii. may withdraw their questions at any time.

- c. When the Buyer receives questions before the Deadline for Questions:
 - i. The Buyer will respond on or before the Deadline for Answers.
 - ii. The Buyer may provide details of both the questions and the answers to other Respondents. In these circumstances the Buyer will summarise the questions and will not disclose the Respondent's identity.
 - iii. Unless stated otherwise in the RFT, the Buyer will post both the questions and answers on its website.
 - iv. The Buyer will not publish the Respondent's commercially sensitive information. However, if the Buyer considers the information to be significant for all Respondents, the Buyer may modify the question and publish both this and the answer. In that case the Buyer will first give the Respondent the opportunity to withdraw the question or remove any of their own commercially sensitive information.

6.4 Submitting a Tender

- a. The Respondent must ensure the Buyer receives the Tender at the correct address on or before the Deadline for Tender.
- b. Where the RFT stipulates a 'two-envelope' process, the Respondent must ensure that all financial information and pricing components of the Tender are contained in a separate digital file from the rest of the Tender, clearly marked 'Financial and Pricing Information'
- c. After the Deadline for Tenders, the Buyer will acknowledge receipt of the Tender.
- d. The Respondent must ensure that all information they provide to the Buyer:
 - i. is true, accurate and complete
 - ii. is not misleading in any material respect
 - iii. does not contain material that infringes a third party's intellectual property rights
- e. The Buyer may rely on the Tender and all information provided by the Respondent during the RFT process (e.g. correspondence and negotiations).

Assessing Tenders

6.5 Evaluation panel

The Buyer's evaluation panel will evaluate the Tender. The Buyer may have different evaluation panel members for evaluating different aspects of the Tender. The Buyer may include independent advisors as evaluation panel members to evaluate some or all aspects of the Tender. The Buyer may seek feedback from its Board on any or all Tenders.

6.6 Third party information

- a. The Buyer may request information from a third party where the Buyer considers the information may be relevant to the RFT process, excluding commercially sensitive information about pricing or contract terms.
- b. If this occurs, the Respondent:
 - i. authorises the Buyer to collect that information from the relevant third party (e.g. a referee or client), and authorises the third party to release it to the Buyer
 - ii. agrees the Buyer may use that information in its evaluation of the Tender
 - iii. must ensure that all referees listed in the Tender agree to provide a reference.

6.7 Clarification of Tender

- a. The Buyer may ask the Respondent for more information or clarification on the Tender at any time during the RFT process.
- b. The Buyer need not ask all Respondents for the same clarification.
- c. The Respondent agrees to provide the information or clarification as soon as possible, in the format requested by the Buyer.
- d. If the Respondent does not provide adequate information or clarification within a reasonable time (as determined by the Buyer), the Buyer may remove the Tender from its evaluation process.

6.8 Evaluation and shortlisting of Tender

- a. The Buyer will evaluate the Tender according to the Evaluation Approach (Section 3 of the RFT).
- b. The Buyer may adjust the Evaluation Approach if it deems it necessary.
- c. The Buyer may adjust its evaluation after considering additional information or clarification, as described in Sections 6.6 and 6.7 above.

6.9 Negotiations

- a. The Buyer may invite one or more Respondents to enter into negotiations at any time with a view to forming a contract.
- b. During negotiations, the Buyer may:
 - i. discontinue negotiations with one Respondent and then initiate negotiations with another Respondent
 - ii. negotiate concurrently with more than one Respondent.
- e. If negotiating concurrently with more than one Respondent, the Buyer must:
 - i. treat each Respondent fairly
 - ii. prepare a separate plan for each negotiation
 - iii. hold a separate negotiation meeting with each Respondent
 - iv. advise each relevant Respondent that concurrent negotiations will be carried out.
- f. Unless the Buyer agrees otherwise, the Respondent agrees that any legally binding contract that may result from the negotiations will be essentially in the form in Section 5 of the RFT (Proposed Contract).

6.10 Respondent debrief

- a. At the end of the RFT process, the Buyer will provide a debrief for the unsuccessful Respondents. This debrief may be by letter, email, phone or a meeting.
- b. The debrief may:
 - i. explain why the Tender was successful or not successful
 - ii. explain how the Tender performed against the pre-conditions (if applicable) and the evaluation criteria
 - iii. indicate the Tender's relative strengths and weaknesses
 - iv. explain, in general terms, the relative advantages of the successful Tender
 - v. seek to address any concerns or questions from the Respondent
 - vi. seek feedback from the Respondent on the RFT and RFT process.

6.11 Notification of outcome

After the Contract has been signed, the Buyer:

- a. will let all unsuccessful Respondents know the name of the Successful Respondent.
- b. may make public the name of the Successful Respondent and any unsuccessful Respondents
- c. may publish a Contract Award Notice on its website.

6.12 Issues and complaints

- a. The Respondent may, in good faith, raise with the Buyer any issue or complaint about the RFT or RFT process at any time.
- b. When this occurs:
 - i. the Buyer will consider and respond promptly and impartially to the Respondent's issue or complaint
 - ii. both the Respondent and the Buyer must do their best to resolve the issue or complaint
 - iii. the Buyer must not allow the issue or complaint to prejudice the Respondent's participation in the RFT process, or limit or affect the Respondent's future procurement opportunities.

6.13 Buyer's Point of Contact

- a. The Respondent must direct all RFT enquiries to the Buyer's Point of Contact in Section 1 of the RFT.
- b. The Respondent must not approach any other employee or other representative of the Buyer, including members of its Board, directly or indirectly, for information on any aspect of the RFT.
- c. Only the Point of Contact, or a person authorised by the Buyer, may communicate with the Respondent on any aspect of the RFT. The Buyer will not be bound by any statement made by any other person.
- d. The Buyer may change its Point of Contact at any time. The Buyer will notify the Respondent of any change by email or posting a notification on its website.
- e. If the Respondent has an existing contract with the Buyer, the Respondent must not use its business-as-usual communications to contact the Buyer regarding the RFT.

6.14 Conflict of Interest

- a. The Respondent must complete the Conflict of Interest declaration in the RFT Response Form. If a joint Tender is being submitted, each party must complete the Conflict of Interest declaration separately.
- b. If a Conflict of Interest arises during the RFT process, the Respondent must inform the Buyer immediately.
- c. The Buyer may exclude a Respondent from the RFT process if a material Conflict of Interest arises.

6.15 Ethics

- a. The Respondent must not attempt to influence, reward or benefit any representative of the Buyer, nor offer any form of personal inducement, in relation to the RFT or the RFT process.
- b. The Respondent must comply with any relevant codes of conduct listed in the RFT.
- c. The Buyer may exclude the Respondent from the RFT process for a breach of paragraphs 6.13b, 6.13e, 6.15a or 6.15b.
- d. To maintain a fair and ethical RFT process, the Buyer may require additional declarations or other evidence from the Respondent, or any other person, at any time.

6.16 Anti-collusion and bid rigging

- a. By submitting the Tender the Respondent warrants that:
 - i. the Tender has not been prepared in collusion with a Competitor
 - ii. it will not engage in deceptive or improper conduct during the RFT process.
- b. The Buyer may exclude the Respondent from the RFT process if a breach of these warranties occurs.
- c. The Buyer reserves the right to report suspected collusion or anti-competitive behaviour to the appropriate authority, and to give that authority all relevant information, including the Tender.

6.17 Confidential Information

- a. Without limiting any other confidentiality agreement between them, the Buyer and the Respondent will both take reasonable steps to protect the other party's Confidential Information.
- b. Except as permitted by the other provisions of this Section 6.17, neither party will disclose the other party's Confidential Information to a third party without that other party's prior written consent.
- c. Each party may each disclose the other party's Confidential Information to anyone who is directly involved in the RFT process on that party's behalf, but only for the purpose of participating in the RFT. This could include (but is not limited to) officers, employees, consultants, contractors, professional advisors, evaluation panel members, partners, principals or directors. Where this occurs, the disclosing party must take reasonable steps to ensure the third party does not disclose the information to anyone else, and does not use the information for any purpose other than participating in the RFT process.
- d. The Respondent acknowledges that the Buyer's confidentiality obligations are subject to requirements imposed by the Privacy Act 2020, and any other obligations imposed by law.
- e. The Respondent may disclose the Buyer's Confidential Information to the extent strictly necessary to comply with law or the rules of any stock exchange on which the securities of the Respondent or any related entity are currently listed. Unless prohibited by law, the Respondent must consult with the Buyer before making such a disclosure.
- f. The Buyer will not be in breach of its obligations if it discloses Confidential Information to the appropriate authority because of suspected collusive or anti-competitive tendering behaviour.

6.18 Costs of participating in the RFT process

Except as otherwise stated in the RFT, the Respondent must meet their own costs associated with the preparation, presentation and negotiation of the Tender.

6.19 Ownership of documents

- a. The RFT and its contents remain the property of the Buyer. All Intellectual Property rights in the RFT remain the property of the Buyer or its licensors.
- b. The Buyer may request the immediate return or destruction of any RFT documents and any copies, in which case the Respondent must comply in a timely manner.
- c. All documents forming part of the Tender will, once they are delivered to the Buyer, become the property of the Buyer. The Tender will not be returned to the Respondent.
- d. Intellectual Property rights in the Tender remain the property of the Respondent or its licensors.
- e. The Respondent grants to the Buyer a licence to retain, use, copy and disclose information contained in the Tender for any purpose related to the RFT process, including keeping appropriate records.

6.20 Limited rights and obligations

- a. Except as stated otherwise in this Section 6.20, nothing in the RFT, these RFT Terms or the RFT process creates a contract or any other legal relationship between the Buyer and Respondent, unless and until they enter into a Contract.
- b. The following are binding on the Respondent:
 - i. The Respondent's signed declaration (contained in the RFT Response Form).
 - ii. The Respondent's obligation under Section 6.2 to ensure the Tender remains open for the Offer Validity Period.
 - iii. The Respondent's obligations under paragraphs 6.4d and 6.4e. Nothing in this Section 6.20 takes away from any rights or remedies the Buyer may have in relation to the Respondent's statements, representations or warranties in the Tender or in correspondence or negotiations with the Buyer.
 - iv. The standard RFT conditions in Sections 6.13 to 6.25.
- c. Sections 6.17 and 6.19 are binding on the Buyer.
- d. Where applicable, the Buyer and each Respondent are bound by any other obligation expressly identified in Section 1 of the RFT as being binding.
- e. All terms and other obligations that are binding on the Buyer are subject to the Buyer's additional rights in Section 6.22.

6.21 Exclusion from the RFT process

- a. The Buyer may exclude the Respondent from the RFT process if the Respondent:
 - i. has not provided requested information in the correct format
 - ii. has breached the RFT-Terms and the Buyer considers the impact of the breach is more than trivial (this applies whether or not the provision in question is itself legally binding on the Recipient)
 - iii. included a material error, omission or inaccuracy in the Tender
 - iv. is in bankruptcy, receivership or liquidation
 - v. has made a false declaration
 - vi. has a conviction for a serious crime or offence
 - vii. has failed to pay taxes, duties or other levies
 - viii. represents a threat to national security or to confidentiality of government information, and/or
 - ix. is a person or organisation designated as a terrorist by New Zealand Police.

- b. The Buyer may exclude the Respondent from the RFT process if:
 - i. there was a serious performance issue in a previous, or current, contract delivered by the Respondent
 - ii. the Buyer considers the integrity of the Respondent is in doubt due to the Respondent's professional misconduct or an act or omission contrary to the Supplier Code of Conduct, and/or
 - iii. the Buyer becomes aware of any other matter that materially diminishes the Buyer's trust in the Respondent.

6.22 Buyer's additional rights

a. Changes to the RFT

- i. The Buyer may amend, suspend, cancel or re-issue the RFT, or any part of it, so long as it notifies the Respondent.
- ii. The Buyer may change material aspects of the RFT, such as the timeline, Requirements or Evaluation Approach, provided it gives the Respondent time to respond to update its Tender in relation to the changes (if the Buyer deems it necessary).

b. Timeline

- i. The Buyer may accept a late Tender if it is the Buyer's fault it is late, or if the Buyer considers there is no material prejudice to other Respondents in accepting a late Tender.
- ii. The Buyer may answer a question submitted after the Deadline for Questions, and notify all Respondents about the submission of the question and the answer.

c. The Tender

- i. The Buyer may accept or reject any Tender, or part of a Tender. This includes any non-compliant, non-conforming or alternative Tender.
- ii. The Buyer in its sole discretion may decide not to accept the lowest price conforming Tender, the highest scoring Tender, or any Tender.

d. RFT Process

- i. Subject to paragraph 6.9c, the Buyer may liaise or negotiate with any Respondent without informing, or doing the same, with any other Respondent.
- ii. The Buyer may provide Respondents with information arising from questions about the RFT.
- iii. The Buyer may withhold information arising from questions about the RFT. This may be the case if the information is unnecessary, is commercially sensitive, is inappropriate to supply at the time of the request or cannot be released for legal reasons.
- iv. The Buyer may waive requirements or irregularities around the RFT process if the Buyer considers it appropriate or reasonable to do so.
- v. The Buyer may amend the Proposed Contract at any time, including during negotiations with a Respondent.
- vi. The Buyer may decide not to enter into a Contract with any Respondent.

e. Consortia and unbundling

The Buyer may make its selection conditional on the Respondent agreeing to:

- i. the Buyer selecting the Respondent to deliver the Requirements as a joint venture or consortium with another Respondent selected by the Buyer, and/or
- ii. the Buyer selecting individual elements of the Tender that can be delivered separately, unless the Tender specifically states that the Tender, or the relevant elements, must be taken collectively.

6.23 New Zealand law

The laws of New Zealand govern the RFT. Each Respondent agrees New Zealand courts have non-exclusive jurisdiction to rule in any dispute concerning the RFT or the RFT process. The Respondent agrees that it cannot bring any claim in relation to the RFT except in a New Zealand court.

6.24 Disclaimer

- a. Nothing contained or implied in the RFT, or RFT process, or any other communication by the Buyer to the Respondent is to be construed as legal, financial or other advice.
- b. The Buyer will endeavour to provide accurate information in any communication, but the Respondent accepts this information is not independently verified and may not be up-to-date.
- c. The Buyer will not be liable in contract, tort, equity, or in any other way for any direct or indirect damage, loss or cost incurred by the Respondent or any other person in respect of the RFT process, whether as a result of the Buyer exercising its rights under Section 6.22, the Buyer's negligence or breach of these RFT Terms, the Buyer failing to select the Respondent as the Successful Respondent, or any other cause.
- d. To the extent that liability cannot be excluded, the maximum aggregate liability of the Buyer, its agents and advisors in connection with the RFT process, to all Respondents combined, is NZ\$5,000 or (if known and greater than \$5,000) 5% of the estimated value of the proposed Contract as determined by the Buyer prior to the release of the RFT.
- e. The limitations and exclusions in paragraphs c and d above do not apply to any liability the Buyer may have for breach of confidentiality or infringement of the Respondent's intellectual property rights.

6.25 Precedence

- a. Any conflict or inconsistency in the RFT shall be resolved by giving precedence in the following descending order:
 - i. Section 1 of the RFT
 - ii. these RFT-Terms
 - iii. all other Sections of the RFT document
 - iv. any additional information or document provided by the Buyer to Respondents through the Buyer's Point of Contact.
- b. If there is any conflict or inconsistency between information or documents having the same level of precedence the more recent information or document will prevail.

Definitions

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

Advance Notice	A notice published by the Buyer on its website in advance of publishing the RFT. An Advance Notice alerts the market to a contract opportunity. Where used, an Advance Notice forms part of the RFT.
Business Day	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.
Buyer	The Waikato River Authority who has issued the RFT with the intent of purchasing the goods or services described in the Requirements.
Competitors	Any other business that is in competition with a Respondent either in relation to the goods or services sought under the RFT or in general.
Confidential Information	<p>Confidential Information of a party (Provider) means information acquired by the other party (Recipient) from the Provider in connection with the RFT process, where that information:</p> <ul style="list-style-type: none"> is by its nature confidential is marked at the time of disclosure to the Recipient as 'confidential', 'in confidence', 'restricted', 'sensitive', 'secret' or 'top secret', and/or the Recipient knows, or ought to know, is confidential to the Provider or a third party who supplied it to the Provider. <p>However, this does not include information that is publicly available through no fault of the Recipient, or that the Recipient acquired entirely independently of the Provider.</p>
Conflict of Interest	<p>A Conflict of Interest arises if personal or business interests, relationships or obligations of the Respondent or any of its personnel do, could, or could be perceived to:</p> <ul style="list-style-type: none"> conflict with the Respondent's obligations to the Buyer under the RFT or in the provision of the goods or services, and/or call into question the independence, objectivity or impartiality of any person involved in the RFT process on behalf of the Buyer. <p>A Conflict of Interest may be:</p> <ul style="list-style-type: none"> actual: where the conflict currently exists potential: where the conflict is about to happen or could happen, or perceived: where other people may reasonably think that a person is compromised.
Contract	Any written Contract entered into by the Buyer and a Successful Respondent for the delivery of the Requirements.
Contract Award Notice	A notice on the Buyer's website.
Deadline for Answers	The deadline for the Buyer to respond to questions submitted by a Respondent stated in Section 1.2 of the RFT.
Deadline for Tenders	The deadline for delivering or submitting Tenders to the Buyer as stated in Section 1 of the RFT.

Deadline for Questions	The deadline for submitting questions to the Buyer as stated in Section 1 of the RFT.
Evaluation Approach	The approach used by the Buyer to evaluate Tenders as described in Section 3 of the RFT.
Intellectual Property	All industrial and intellectual property rights whether conferred by statute, at common law or in equity, including (but not limited to) copyright, trademarks, designs and patents.
Offer Validity Period	The period of time when a Tender is held open by the Respondent for acceptance by the Buyer as stated in Section 1 of the RFT.
Pricing Schedule	The form prescribed by the Buyer and used by a Respondent to submit its pricing for the RFT, duly completed and submitted by a Respondent as part of the Tender.
Point of Contact	The Buyer and each Respondent are required to appoint a Point of Contact. This is the channel to be used for all communications during the RFT process. The Buyer's Point of Contact is identified in Section 1 of the RFT. The Respondent's Point of Contact is identified in its Tender.
Tender	The response a Respondent submits in reply to the RFT. It comprises the RFT Response Form, the Pricing Schedule and all other information submitted by a Respondent.
Proposed Contract	The contract terms and conditions proposed by the Buyer for the delivery of the Requirements as described in Section 5 of the RFT.
Registration of Interest	A formal request by a Buyer asking potential Respondents to register their interest in a procurement. It is the first step in a multi-step tender process.
Request for tenders (RFT)	The RFT comprises the Advance Notice (where used), the Registration of Interest (where used), the RFT document (including the RFT-Terms) and any other schedule, appendix or document attached to the RFT, and any subsequent information provided by the Buyer to Respondents through the Buyer's Point of Contact or its website.
Requirements	The Buyer's requirements for goods and/or services as described in Section 2 of the RFT.
Respondent	A person, company or organisation that submits a Tender in response to the RFT. The term Respondent includes each member of any consortium.
RFT Response Form	The form and declaration prescribed by the Buyer and used by a Respondent to respond to the RFT, duly completed and submitted by a Respondent as part of the Tender.
RFT-Terms	Means the RFT Terms as set out in Section 6 of the RFT, together with any additions or amendments to those RFT Terms specifically identified in Section 1 of the RFT.
Successful Respondent	Following the evaluation of Tenders and successful negotiations, any Respondent who is awarded a Contract to deliver all or part of the Requirements.