



# Request for Proposal

Survey of the Clutha River 2020

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Otago Regional Council  
70 Stafford Street  
Dunedin 9054

# SECTION 1: Key information

## 1.1 Context

- 1.1.1 This Request for Proposal (RFP) is an invitation to suitably qualified suppliers to submit proposals for the provision of services relating to the “Survey of the Clutha River 2020”.

## 1.2 RFP

- 1.2.1 This RFP comprises:

- (a) Section 1 Key information.
- (b) Section 2 Specification.
- (c) Section 3 ORC’s Evaluation Approach.
- (d) Section 4 Pricing information.
- (e) Section 5 The Contract.
- (f) Section 6 ORC RFP Process, Terms and Conditions.
- (g) The following Appendices:
  - Appendix 1 Information to be supplied by Council.
  - Appendix 2a-2k Clutha River cross-section locations for survey
  - Appendix 3 Sample Raw Data Set
  - Appendix 4 Standard ORC feature codes
  - Appendix 5 Conditions of Contract
  - Appendix 6 Health and Safety Requirements
  - Appendix 7 Mycoplasma Bovis Cleaning and Decontamination Protocol
- (h) The RFP forms.
- (i) Any response or notice to submitters issued under Sections 6.3.3, 6.3.4 or 6.3.5.

## 1.3 Timeline

- 1.3.1 The timeline for this RFP is:

Deadline for questions: 20 January 2020

Deadline to answer questions: 23 January 2020

**Deadline for Proposals: 1:00 pm 31 January 2020**

Anticipated Contract award date: **10 February 2020**

Contract start date: **11 February 2020 (or as agreed between the Parties)**

- 1.3.2 All dates and times are dates and times in New Zealand.

## 1.4 ORC Contact

- 1.4.1 All enquiries must be directed in writing to ORC’s Contact. All communications must be through this Contact.

- 1.4.2 ORC’s Contact

**Name:** Bikesh Shrestha

**Email address:** Bikesh.Shrestha@orc.govt.nz

**Phone:** (03) 474 0827

## 1.5 Bidder’s Contact

- 1.5.1 All persons interested in making a proposal must register their interest by email with ORC’s Contact.

- 1.5.2 The email must include the name and email address of the Bidders Contact.

## **1.6 Proposals**

- 1.6.1 Submitters must use the forms provided.
- 1.6.2 Submitters must also provide all information required by this RFP.
- 1.6.3 Additional and supporting information can be attached with the forms.
- 1.6.4 Additional information must be clearly identified, attached to the appropriate form and included in the appropriate envelope.
- 1.6.5 Form A and Envelope A must contain only non-price information. Envelope A must not contain any price information. Additional non-price information must be attached to Form A and included in Envelope A.
- 1.6.6 Envelope A must contain all the information other than price required for evaluation of tender.
- 1.6.7 Form B and Envelope B must contain only price information. Additional information relating to price must be attached to Form B and included in Envelope B.
- 1.6.8 Envelope A must be addressed:

“Tender – Survey of the Clutha River 2020”

Otago Regional Council  
70 Stafford Street  
Dunedin

With the words “Envelope A – Non-Price information” clearly marked in the top left-hand corner.

- 1.6.9 Envelope B must be addressed:

“Tender – Survey of the Clutha River 2020”

Otago Regional Council  
70 Stafford Street  
Dunedin

With the words “Envelope B - Price” clearly marked in the top left-hand corner.

- 1.6.10 ORC may in its sole discretion reject any proposal which does not comply with this clause.

## **1.7 Specific Proposal Requirements**

- 1.7.1 Each Tenderer must provide:

- (a) All the information required by the forms.
- (b) All price and non-price information set out in this RFP.

- 1.7.2 Each Submitter must identify the personnel whom the Tenderer proposes will carry out the Service, and give details of their qualifications, skills and experience relevant to the Service; supporting written evidence is essential (Resume). The Services must only be carried out by the personnel identified and no substitution shall be made to any personnel without the written agreement of ORC.

- 1.7.3 Each Submitter must provide details of the Submitter’s relevant previous experience and those personnel involving the investigation of flood hazards. This information must include details of three projects directly relevant to the Services which will include comment on:

- Name of project;
- Client;
- Contact person to verify track record on behalf of the Client; and
- Brief description of work(s) carried out

- 1.7.4 Each Submitter must include details on the methodology to be used in providing the Service which must include:
- The procedures to be used to achieve the required deliverables. In particular, the Submitter must provide sufficient detail to demonstrate the proposed level of service can be provided throughout the work; and
  - A timeline outlining the Submitter's proposed works programme to meet the required completion date shall be supplied; and
  - The Quality Assurance and Control procedures, relevant for the contract, that are adopted by the Submitter
- 1.7.5 Each Submitter must submit a health and safety plan for the Services
- 1.7.6 Each Submitter must provide details of its track record
- 1.7.7 Each Submitter must identify and provide contact details for three referees
- 1.7.8 Submitters must provide the following price information:
- (a) Lump sum rates. Rates must include all costs incurred in carrying out the Submitters obligations as required by the Service and shall be deemed to include:
    - Labour;
    - Equipment;
    - Accommodation and travel; and
    - All other costs incurred in providing the Services.
  - (b) The submittor must also provide lump sum for communicating with landowners/occupiers and obtaining consent to access private property for the purposes of the Services.
  - (c) The submittor must also provide lump sum price for cost associated with Mycoplasma bovis cleaning.

## **1.8 Offer Validity Period**

- 1.8.1 All proposals remain open for acceptance by ORC for three calendar months from the deadline for proposals.

## **1.9 ORC RFP Process, Terms and Conditions**

- 1.9.1 The ORC RFP Process, Terms and Conditions in Section 6 apply.
- 1.9.2 If there is any inconsistency between Section 1 and Section 6, Section 1 prevails.

# SECTION 2: Specification

## Introduction for RFP

- 2.1 The Council is the caretaker for Otago's land, air and water. This role includes the maintenance of existing flood protection schemes. In this capacity, the Council has an objective to investigate changes in the river morphology of the Clutha River after the December 2019 flood event. This requires several cross-sections to be surveyed.

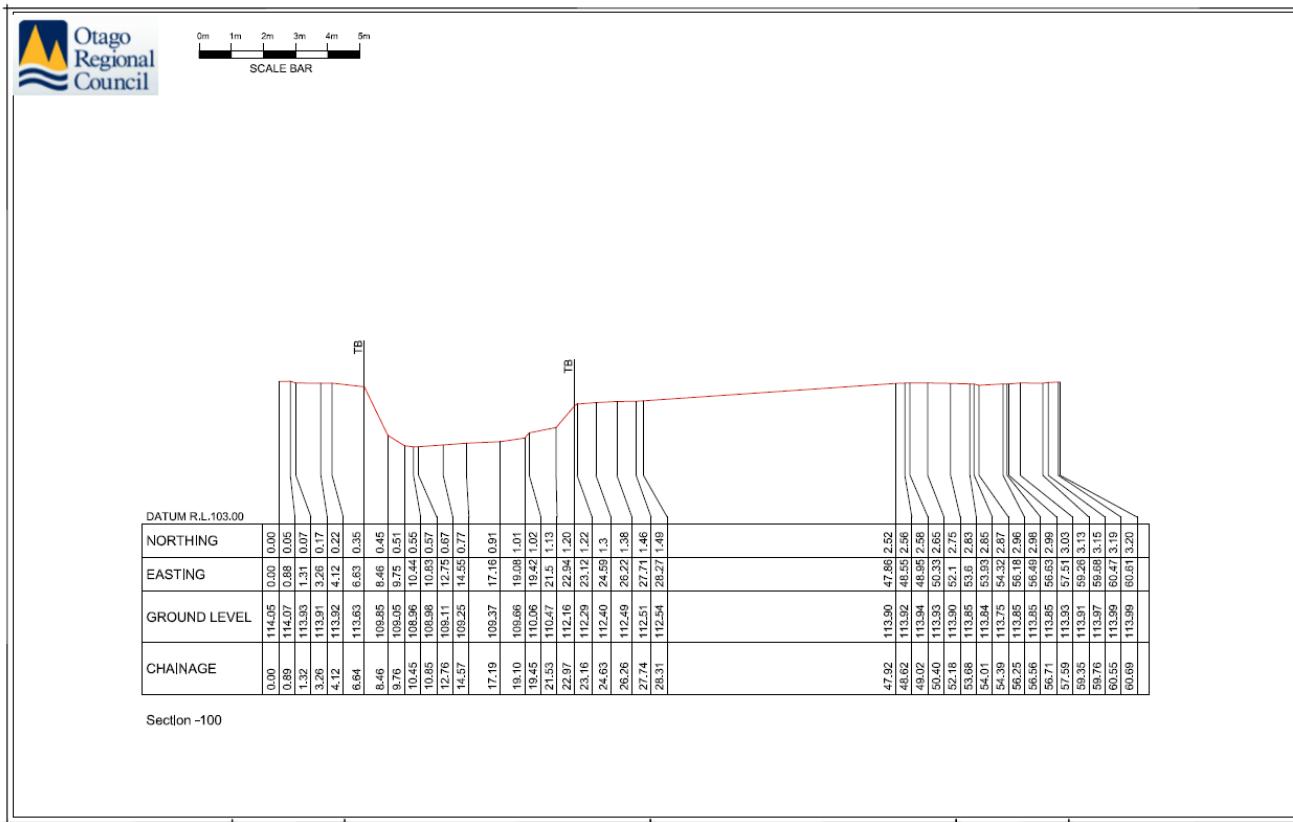
## Scope of Professional Services Required

- 2.3 The purpose of the proposed work is as follow:
- 2.3.1 To survey 104 cross-sections of the Clutha River between Roxburgh Dam to Clutha Mouth. Please refer to Appendix 2a-2k for cross-section locations.
- 2.4 The scope of work covered by this RFP comprises:
- 2.4.1 River cross-section survey
    - 2.4.1.1 All river cross-sections are to be taken at right angles to the direction of flow and show a complete section of banks and stop banks. Points on stopbanks shall include toes, both top edges and a crest height taken in the middle of the top of the stopbank.
    - 2.4.1.2 Sufficient spot heights are to be taken along the cross-sections to accurately describe the profile of the floodplain, riverbank, river channel and stopbanks. All obvious changes of grade shall be fixed. Particular care shall be taken when surveying riverbank edges, so as not to misrepresent the shape of the bank.
    - 2.4.1.3 The Contractor shall fix and label feature points including but not limited to water level, fences, top of bank, bottom of bank, inverts, bridge abutments, and culverts using the standard Council Feature Code library attached in Appendix 4. Any additional feature that the surveyor feels may be of interest to Council staff shall be identified in the comments column.
    - 2.4.1.4 Sections that extend across roads shall have points fixed at both the left and right road edges and the road crest.
    - 2.4.1.5 Spot heights shall be taken at intervals of no more than 5m, except where the profile is even, where they shall be taken at intervals of no more than 20m. In an active river channel, spot heights shall be taken at intervals not greater than 10% of the channel width up to a maximum of 5m between spot heights. Particular care shall be taken close to river edges to ensure an accurate profile is represented.
    - 2.4.1.6 Each raw spot height shall not deviate by more than:
      - 2.4.1.6.1 0.5m from the line of the cross section for channels less than 10m wide.
      - 2.4.1.6.2 1.5m from the line of the cross section for channels greater than 10m but less than 30m wide.
      - 2.4.1.6.3 3 m from the line of the cross section for channels greater than 30m wide.
    - 2.4.1.7 Water level, along with date and time, shall be accurately recorded at each bank of the river.

- 2.4.1.8 Each spot height shall be fixed to  $\pm 0.050$  metres vertically and  $\pm 0.100$  horizontally.
- 2.4.1.9 The survey should not deviate from the designated cross-section alignment. This may mean the removal of vegetation is necessary to undertake the survey. Where significant vegetation requires removal, ORC should be contacted.
- 2.4.1.10 Where it is not practical to survey a section at the prescribed position or interval the position of the section may be moved. However, the interval between two adjacent sections shall not exceed the prescribed interval.
- 2.4.1.11 Cross-section offset shall ascend from true left bank to true right bank of the river. This means that negative values for offsets can occur. Offset zero (0.00m), typically a benchmark will be provided for each cross-section in the job schedule.
- 2.4.1.12 The Contractor shall resurvey the full extent of the old cross-section unless specified otherwise or as specified by the Project Manager. Resurveys should follow the historic cross section alignment as closely as possible. Where bank erosion or gravel deposition have caused the active river channel/banks to deviate beyond the original cross section extents, then the survey should extend to the undisturbed bank, and also extend a sufficient distance to include that part of the berm area that the river may conceivably occupy in the future.

## **Deliverables**

- 2.5 The Contractor is encouraged to submit sample outputs for review prior to preparing final outputs for the survey job.
- 2.6 A single USB drive containing all electronic data is to be submitted at the completion of the contract for the survey job.
- 2.7 The Contractor shall supply the following to the Council at the completion of the contract for the survey job:
  - 2.7.1 Summary Report  
A summary report outlines all information relevant to the Council such as: datum used, general accuracy of the data, types of survey equipment used, any corrections applied to the data, geoid/ellipsoid issues, information relating to disturbed benchmarks (if found) and associated reinstatement/traversing, access issues, and any other issues/problems encountered.
  - 2.7.2 Plans  
An electronic copy of \*.pdf file drawing showing cross-section locations, culverts location, bridge/other stream crossing structures, benchmark locations, traverse bearings and distances, bearing and coordinates of zero offset of all cross-sections with an aerial photographic underlay, as supplied by the Council, for each cross-section job.
  - 2.7.3 Cross sections  
An electronic copy of \*.pdf file drawing showing cross section details (see sample below).



## 2.7.4 Photos

At each cross-section, photos must be taken in \*.jpg format to help describe the cross-section. Care should be taken to ensure that photos are useable i.e. enough light being present to view features of relevance and a clear view of the river cross-section. A minimum of four photos should be taken:

- Looking from the true left bank to the true right bank.
- Looking from the true right bank to the true left bank.
- Two photos should be taken from the mid-point of the section 1) looking upstream 2) looking downstream.

These photos shall be provided to the Council with the naming convention of a cross-section prefix followed by a descriptor.

## 2.7.5 Reduced Data

An electronic copy (in Excel or other approved format) of all reduced data relating to each survey job under this contract in the form of Appendix 3. The Council Standard feature code library in Appendix 4 shall be adopted. If other codes used, they should be explained in summary report. Where GPS is used, the geoid-ellipsoid separation correction (Geoid Model) must also be included in the reduced data (i.e., Geodetic Height (m), Geoid-Ellipsoid Separation (m), and Orthometric Height (m)).

## 2.7.6 Field Books & Raw Data

Due to the nature of its survey works, the Council favours the use of an electronic data recorder in the field to reduce the potential for errors associated with manually booking data. Should the Contractor wish to manually book the data, then they may do so provided that the survey methodology adopted is sound, and they advise so in their tender.

*If survey data is manually booked:*

A Standard University Level Book shall be used to book the job. These books are to be submitted along with any other intermediate calculation material, including all checks and reductions that may assist the Council in reviewing the data prior to the completion of the contract for each survey job.

*If survey data is captured using an electronic data recorder:*

An electronic copy of all raw data shall be supplied in a format approved by the Project Manager (i.e. \*.csv, \*.xls). Any other intermediate calculation material that may assist the Regional Council in reviewing the data should also be submitted prior to the completion of each survey job under this contract.

#### 2.7.7 Level Datum

Surveys are to be undertaken in Otago Datum unless the Project Manager allows the use of an alternative/assumed datum.

#### 2.7.8 Bearing Origin

All coordinate information must be supplied in terms of the following Land Information New Zealand (LINZ) datum/projection terms:

New Zealand Geodetic Datum 2000 (NZGD2000) - New Zealand Transverse Mercator (NZTM), to two decimal places.

#### 2.7.9 Geoid/Ellipsoid Separation

If applicable, corrections must be made for separation between the ellipsoid and geoid caused by local variations in gravity. Full procedures associated with the correction must be provided, and if a gravimetric geoid model used, must be specified.

### Timeframes

- 2.8 It is anticipated that work on this investigation will commence around **11 February 2020 (or as agreed between the Parties)**.
- 2.9 Final reporting and receipt of all deliverables would then be expected by **16 March 2020**.

# SECTION 3: ORC's Evaluation Approach

## 3.1 Evaluation criteria

3.1.1 Proposals will be evaluated by ORC considering the following criteria and weightings:

Evaluation Criteria	Weighting (%)
Non-Price Evaluation Criteria (70% of total weighting)	Non-Price Evaluation Criteria (70% of total weighting)
Technical skills	25%
Relevant experience and track record	20%
Methodology and Approach	15%
Completeness of services offered	10%
Health and Safety	Pass / Fail
<i>Total Non-price Evaluation Criteria</i>	<i>70%</i>
Price Evaluation Criteria (30% of total weighting)	Price Evaluation Criteria (30% of total weighting)
<i>Total Price Evaluation Criteria</i>	<i>30%</i>
<b>Total Evaluation Criteria</b>	<b>100%</b>

3.1.2 The following scoring scale will be used in evaluating Proposals:

Rating	Definition	Score
<b>EXCELLENT</b> Significantly exceeds the criterion	Exceeds the criterion. Exceptional demonstration by the Submitter of the relevant ability, understanding, experience, skills, resource and quality measures required to meet the criterion. Proposal identifies factors that will offer potential added value, with supporting evidence.	<b>9-10</b>
<b>GOOD</b> Exceeds the criterion in some aspects	Satisfies the criterion with minor additional benefits. Above average demonstration by the Submitter of the relevant ability, understanding, experience, skills, resource and quality measures required to meet the criterion. Proposal identifies factors that will offer potential added value, with supporting evidence.	<b>7-8</b>
<b>ACCEPTABLE</b> Meets the criterion in full, but at a minimal level	Satisfies the criterion. Demonstration by the Submitter of the relevant ability, understanding, experience, skills, resource, and quality measures required to meet the criterion, with supporting evidence.	<b>5-6</b>
<b>MINOR RESERVATIONS</b> Marginally deficient	Satisfies the criterion with minor reservations. Some minor reservations of the Submitter's relevant ability, understanding, experience, skills, resource and quality	<b>3-4</b>

	measures required to meet the criterion, with little or no supporting evidence.	
<b>SERIOUS RESERVATIONS</b> Significant issues that need to be addressed	Satisfies the criterion with major reservations. Considerable reservations of the Submitter's relevant ability, understanding, experience, skills, resource and quality measures required to meet the criterion, with little or no supporting evidence.	<b>1-2</b>
<b>UNACCEPTABLE</b> Significant issues not capable of being resolved	Does not meet the criterion. Does not comply and/or insufficient information provided to demonstrate that the Submitter has the ability, understanding, experience, skills, resource and quality measures required to meet the criterion, with little or no supporting evidence.	<b>0</b>

- 3.1.3 ORC reserves the right to make its own enquiries and use the results of those enquiries in its evaluation of Proposals.
- 3.1.4 The evaluation criteria must be addressed by all Submitters but do not limit the matters which ORC may take into account in evaluating Proposals.
- 3.1.5 The ORC's evaluation of Proposals is final and binding on all Submitters.

## SECTION 4: Pricing information

### 4.1 In submitting the Price the Submitter must meet the following:

- 4.1.1 Submitters must use Form B.
- 4.1.2 Form B must show, if required, a breakdown of all costs, fees, expenses and charges associated with the full delivery of the Requirements over the whole of the life of the contract. It must also clearly state the total contract price exclusive of GST.
- 4.1.3 Where the price, or part of the price, is based on fee rates, all rates excluding GST must be specified, either hourly or daily or both as required.
- 4.1.4 In preparing Proposals, Submitters must consider all risks, contingencies and other circumstances relating to the delivery of the Requirements and include adequate provision in the Proposal and pricing information to manage such risks and contingencies.
- 4.1.5 Submitters must document in their Proposals all assumptions and qualifications made about the delivery of the Requirements, including in the financial pricing information. Any assumption that the ORC or a third party will incur cost related to the delivery of the Requirements must be stated, and the cost estimated, if possible.

## SECTION 5: The Contract

- 5.1 The Conditions of Contract are attached as Appendix 5.
- 5.2 Any contract entered into after the RFP process will be on the terms and conditions in Appendix 5 unless otherwise agreed in writing by the parties.

# SECTION 6: ORC RFP Process, Terms and Conditions

## Note to Submitters

- Words and phrases that have a special meaning are shown by the use of capitals. Definitions are at the end of this section.
- If you have any questions about the ORC RFP-Terms get in touch in writing with ORC's Contact.

## Standard ORC RFP process

### Preparing and Submitting a Proposal

#### 6.1 Preparing a Proposal

- 6.1.1 Submitters must use the Tender Form(s) provided and must provide all other information requested by the ORC in the RFP.
- 6.1.2 By submitting a Proposal the Submitter accepts that it is bound by the ORC RFP Process, Terms and Conditions (ORC RFP-Terms) contained in Section 6 (as varied by Section 1, if applicable).
- 6.1.3 Each Submitter must:
- a. examine the RFP and any documents referenced in the RFP and any other information provided by the ORC
  - b. consider all risks, contingencies and other circumstances relating to the delivery of the Requirements and include adequate provision in its Tender to manage such risks and contingencies
  - c. document in its Proposal all assumptions and qualifications made about the delivery of the Requirements, including any assumption that the ORC or a third party will deliver any aspect of the Requirements or incur any cost related to the delivery of the Requirements
  - d. ensure that pricing information is quoted in NZ\$ exclusive of GST
  - e. if appropriate, obtain independent advice before submitting a Proposal
  - f. satisfy itself as to the correctness and sufficiency of its Proposal, including the proposed pricing and the sustainability of the pricing.

6.1.4 RFP Documents

- a. Each Tenderer is deemed:
  - (i) To have read and understood the RFP documents.
  - (ii) To be satisfied the RFP documents are adequate and complete;
  - (iii) To be satisfied the RFP documents contain no errors, omissions, inconsistencies or other defects;
  - (iv) To have waived any claim against the Council for any error, omission, inconsistency or other defect in the RFP documents;
  - (v) To have relied only upon that Tenderer's own evaluation of the RFP documents;
  - (vi) To have accepted the terms and conditions of tendering in the RFP documents;
  - (vii) To have not relied on any statement or representation made by ORC;
  - (viii) To have relied solely on that Submitter's own judgment in preparing and submitting the Proposal.
  - (ix) To accept the specification in Section 2 and the conditions of contract in Section 5.

#### 6.2 Offer Validity Period

- 6.2.1 Proposals are to remain valid and open for acceptance by the ORC for the Offer Validity Period.
- 6.2.2 No proposal may be withdrawn.

## 6.3 Submitter's Deadline for Questions

- 6.3.1 Each Submitter must satisfy itself as to the interpretation of the RFP. If there is any perceived ambiguity or uncertainty in the RFP documents, Submitters should seek clarification before the Deadline for Questions.
- 6.3.2 All requests for clarification must be made by email to the ORC's Contact. The ORC will endeavour to respond to requests in a timely manner, but not later than the deadline for the ORC to answer Submitters' questions in paragraph 1.3.1, if applicable.
- 6.3.3 If the ORC considers a request to be of sufficient importance to all Submitters it may provide details of the question and answer to other Submitters. In doing so the ORC may summarize the Submitter's question and will not disclose the Submitter's identity. The question and answer may be posted on GETS and/or emailed to participating Submitters. A Submitter may withdraw a request at any time.
- 6.3.4 In submitting a request for clarification a Submitter is to indicate, in its request, any information that is commercially sensitive. The ORC will not publish such commercially sensitive information. However, the ORC may modify a request to eliminate such commercially sensitive information, and publish this and the answer where the ORC considers it of general significance to all Submitters. In this case, however, the Submitter will be given an opportunity to withdraw the request or remove the commercially sensitive information.
- 6.3.5 At any time before the deadline for Proposals, ORC may issue a notice to Submitters. The notice to Submitters may be posted on GETS and/or emailed to participating Submitters.
- 6.3.6 Every response or notice given under 6.3.3, 6.3.4 and 6.3.5 forms part of the RFP documents.
- 6.3.7 ORC has discretion whether to issue a response or notice to Submitters under 6.3.3, 6.3.4 and 6.3.5 and its judgment shall be final and binding.

## 6.4 Submitting a Proposal

- 6.4.1 Each Submitter is responsible for ensuring that its Proposal is received by the ORC at the correct address on or before the Deadline for Proposals. The ORC will acknowledge receipt of each Proposal.
- 6.4.2 The ORC intends to rely on the Submitter's Proposal and all information provided by the Submitter (e.g. correspondence and negotiations). In submitting a Proposal each Submitter warrants that all information it provides to the ORC is:
  - a. true, accurate and complete and not misleading in any respect
  - b. does not contain Intellectual Property that will breach a third party's rights.
- 6.4.3 Where the ORC requires the Proposal to be delivered in hard and soft copies the Submitter is responsible for ensuring that both the hard and soft copies are identical.
- 6.4.4 Where the ORC stipulates a two envelope process the following applies:
  - a. each Submitter must ensure that all financial information and pricing components of their Proposal are provided separately from the remainder of the Proposal.
  - b. 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 ORC).
  - c. Proposals must be submitted in two sealed envelopes contained within a single large envelope, which is also sealed. The envelopes must be labelled as specified in Section 1 to ensure the pricing information cannot be viewed when the envelope containing the other elements of the Proposal is opened.

# Assessing Proposals

## 6.5 Evaluation Panel

- 6.5.1 The ORC may convene an evaluation panel comprising members chosen for their relevant expertise and experience. In addition, the ORC may invite independent advisors to evaluate any Proposal, or any aspect of any Proposal.

## 6.6 Third Party Information

- 6.6.1 Each Submitter authorises the ORC 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 Submitter's Proposal.
- 6.6.2 ORC may make any enquiries about any Submitter or any Proposal as it thinks fit.
- 6.6.3 Each Submitter must ensure that all referees provided in support of its Proposal agree to provide a reference.
- 6.6.4 To facilitate discussions between the ORC and third parties each Submitter irrevocably waives any confidentiality or privacy obligations that would otherwise apply to information held by a third party, with the exception of commercially sensitive pricing information.
- 6.6.5 ORC is not bound to:
- contact any referee
  - make any other enquiries

## 6.7 ORC's Clarification

- 6.7.1 ORC is not required to request clarification or confirmation of any Proposal.
- 6.7.2 ORC may, at any time, request from any Submitter clarification of a Proposal and additional information about any aspect of a Proposal. The ORC is not required to request the same clarification or information from each Submitter. ORC is not bound to seek further information from any Submitter.
- 6.7.3 The Submitter must provide the clarification or additional information in the format requested. Submitters will endeavour to respond to requests in a timely manner. The ORC may take such clarification or additional information into account in evaluating the Proposal.
- 6.7.4 Where a Submitter fails to respond adequately or within a reasonable time to a request for clarification or additional information, the ORC may in its discretion reject the Proposal or waive the deficiency.
- 6.7.5 ORC may, at its discretion, interview a Submitter.
- 6.7.6 ORC is not bound to interview any Submitter.
- 6.7.7 If ORC interviews a Submitter, it is not bound to interview any other Submitter.

## 6.8 Evaluation

- 6.8.1 ORC will first assess Tenders by having regard to non-price information.
- 6.8.2 ORC may re-evaluate Tenders after considering any additional non-price information received under paragraphs 6.6 and 6.7.
- 6.8.3 ORC may take into account and attach such weight as it thinks fit to any other information known to it.

- 6.8.4 ORC will then consider the price information submitted for each Tender.
- 6.8.5 After evaluating both price and non-price information, ORC may:
  - a. accept a Tender
  - b. negotiate with any Tenderer
  - c. reject all Tenders.
- 6.8.6 In carrying out its evaluation, ORC may take into account:
  - a. each Tenderer's understanding of the specification in Section 2 and that Tenderer's ability to fully deliver the requirements of the specification and meet the conditions of contract in Section 5
  - b. the best value for money over the whole of life of the proposed contract
  - c. the Tenderer's track record
  - d. the results from reference checks, site visits, product testing and any other enquiries made by ORC
  - e. the ease of contracting with a Tenderer
  - f. any matter that materially impacts on ORC's trust and confidence in the Tenderer
  - g. any relevant information known to ORC.
- 6.8.7 The weighting if any, to be attached to any criterion considered by ORC, is entirely for ORC using its own judgment.

## 6.9 Negotiations

- 6.9.1 The ORC may negotiate with any Submitter with a view to entering into a contract.
- 6.9.2 The ORC may at its discretion discontinue negotiations with a Submitter and may then initiate negotiations with another Submitter.
- 6.9.3 The ORC may conduct concurrent negotiations with more than one Submitter.

## 6.10 Award of Contract

- 6.10.1 If ORC accepts any Proposal, without negotiation with the Submitter, the contract shall be awarded on the terms and conditions in the RFP documents and in the successful Tender. A legally binding agreement will come into force when the ORC notifies in writing the successful Submitter that its Proposal has been accepted.
- 6.10.2 If ORC enters into a contract with any Submitter after negotiation, the terms and conditions of the contract will be those agreed by the parties. A legally binding agreement shall be formed when a written contract is signed by both parties.

## 6.11 Notification of Outcome

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

## 6.12 Issues and Complaints

- 6.12.1 A Submitter may, in good faith, raise with the ORC any issue or complaint about the RFP, or the RFP process at any time.
- 6.12.2 The ORC will consider and respond promptly and impartially to the Submitter's issue or complaint.
- 6.12.3 Both the ORC and Submitter 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.

- 6.12.4 The fact that a Submitter has raised an issue or complaint is not to be used by the ORC to unfairly prejudice the Submitter's ongoing participation in the RFP process or future contract opportunities.
- 6.12.5 The provisions of paragraph 6.12 are the only means by which any person can raise any issue with the RFP or RFP process.

## RFP Conditions

### 6.13 ORC's Point of Contact

- 6.13.1 All enquiries regarding the RFP must be directed by email to the ORC's Contact. Submitters must not directly or indirectly approach any representative of the ORC, or any other person, to solicit information concerning any aspect of the RFP.
- 6.13.2 Only the ORC Contact is authorized to communicate with Submitters regarding any aspect of the RFP. The ORC will not be bound by any statement made by any other person.
- 6.13.3 The ORC may change its Contact at any time. The ORC will notify Submitters of any such change. This notification may be posted on GETS or sent by email.

### 6.14 Communications

- 6.14.1 During the Tender period, all communications about this RFP must be in writing between the ORC's Contact and the Submitter's Contact.
- 6.14.2 No Submitter shall contact ORC to solicit information, lobby or communicate with ORC in any other way except in writing to ORC's Contact.
- 6.14.3 ORC may in its discretion reject any Proposal made by any Submitter who is directly or indirectly communicating with ORC, except in writing to ORC's Contact.

### 6.15 Conflict of Interest

- 6.15.1 Each Submitter must complete the Conflict of Interest declaration in the Response Form and must immediately inform the ORC should a Conflict of Interest arise during the RFP process. A material Conflict of Interest may result in the Submitter being disqualified from participating further in the RFP.

### 6.16 Ethics

- 6.16.1 Submitters must not attempt to influence or provide any form of personal inducement, reward or benefit to any representative of the ORC in relation to this RFP.
- 6.16.2 A Submitter who attempts to do anything prohibited by paragraphs 6.13 and 6.14 may be disqualified from participating in the RFP process.
- 6.16.3 The ORC reserves the right to require additional declarations, or other evidence from a Submitter, or any other person, throughout the RFP process to ensure probity of the RFP process.
- 6.16.4 Where a Submitter has an existing contract with the ORC then business as usual communications, for the purpose of managing delivery of that contract, will continue using the usual contacts. Submitters must not use business as usual contacts to lobby the ORC, solicit information or discuss this RFP.

### 6.17 Anti-Collusion and Bid Rigging

- 6.17.1 Submitters 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 ORC. Such

behaviour will result in the Submitter being disqualified from participating further in the RFP process. In submitting a Proposal the Submitter warrants that its Proposal has not been prepared in collusion with a Competitor.

6.17.2 The ORC reserves the right, at its discretion, to report suspected collusive or anti-competitive conduct by Submitters to the appropriate authority and to give that authority all relevant information including a Submitter's Proposal.

## 6.18 Confidential Information

6.18.1 The ORC and Submitter will each take reasonable steps to protect Confidential Information 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 ORC and Submitter 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, principals or directors, but only for the purpose of participating in the RFP.

6.18.3 Tenderers acknowledge that the ORC's obligations under paragraph 6.18.1 are subject to requirements imposed by the Local Government Official Information Act 1982 (LGOIMA), the Privacy Act 1993, parliamentary and constitutional convention and any other obligations imposed by the law. The ORC will not be in breach of its obligations if Confidential Information is disclosed by the ORC to the appropriate authority because of suspected collusive or anti-competitive tendering behaviour. Where the ORC receives an LGOIMA request that relates to a Submitter's Confidential Information the ORC will consult with the Submitter and may ask the Submitter to explain why the information is considered by the Submitter to be confidential or commercially sensitive.

## 6.19 Confidentiality of RFP Information

6.19.1 For the duration of the RFP, to the date of the announcement of the Successful Submitter, or the end of the RFP process, the Submitter 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 ORC's prior written consent.

6.19.2 A Submitter may disclose RFP information to any person described in paragraph 6.18.2, but only for the purpose of participating in the RFP. The Submitter 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 Process

6.20.1 Each Submitter will meet its own costs associated with the preparation and presentation of its Tender and any negotiations.

## 6.21 Ownership of Documents

6.21.1 The RFP and its contents remain the property of the ORC. All Intellectual Property rights in the RFP remain the property of the ORC or its licensors. The ORC may request the immediate return or destruction of any or all RFP documents and any copies. Submitters must comply with any such request in a timely manner.

6.21.2 All documents forming the Proposal will, when delivered to the ORC, become the property of the ORC. Proposals will not be returned to Submitters at the end of the process.

6.21.3 Ownership of Intellectual Property rights in the Proposal remain the property of the Submitter or its licensors. However, the Submitter grants to the ORC a non-exclusive, non-transferable, perpetual license to retain, use, copy and disclose information contained in the Proposal for any purpose related to the RFP process.

## 6.22 No Binding Legal Relations

6.22.1 This RFP is not an offer of any kind capable of acceptance by any person.

6.22.2 Neither the RFP, nor the RFP process, creates a process contract or any other legal relationship between the ORC and any Submitter, except in respect of:

- a. the Submitter's declaration in its Proposal
- b. any statement, warranty or representation made expressly or impliedly by any Submitter whether in its Proposal or otherwise
- c. the Offer Validity Period
- d. the standard RFP conditions set out in paragraphs 6.13 to 6.27
- e. any other matters expressly described as binding obligations in Section 1.

6.22.3 Each exception in paragraph 6.22.2 is subject to the ORC's rights in paragraph 6.24.

6.22.4 Except for the legal obligations set out in paragraph 6.22.2 no legal relationship is formed between the ORC and any Submitter unless and until a Contract is entered into between those parties.

## 6.23 Elimination

6.23.1 The ORC may exclude a Submitter from participating in the RFP if the ORC has evidence of any of the following, and is considered by the ORC to be material to the RFP:

- a. the Submitter has failed to provide all information requested, or in the correct format, or materially breached a condition of the RFP
- b. the Proposal contains a material error, omission or inaccuracy
- c. the Submitter is in bankruptcy, receivership or liquidation
- d. the Submitter has made a false declaration
- e. there is a serious performance issue in a historic or current contract delivered by the Submitter
- f. the Submitter has been convicted of a serious crime or offence
- g. there is professional misconduct or an act or omission on the part of the Submitter which adversely reflects on the integrity of the Submitter
- h. the Submitter has failed to pay taxes, duties or other levies
- i. the Submitter represents a threat to national security or the confidentiality of sensitive government information
- j. the Submitter is a person or organisation designated as a terrorist by New Zealand Police.

## 6.24 ORC's Additional Rights

6.24.1 Despite any other provision in the RFP the ORC may, on giving due notice to Submitters:

- a. amend, suspend, cancel and/or re-issue the RFP, or any part of the RFP
- b. make any material change to the RFP (including any change to the timeline, Requirements or Evaluation Approach) so long as Submitters are given a reasonable time within which to respond to the change.

6.24.2 Despite any other provision in the RFP the ORC may in its absolute discretion:

- a. accept a late Proposal if it is the ORC's fault that it is received late
- b. in exceptional circumstances, accept a late Proposal where it considers that there is no material prejudice to other Submitters. The ORC will not accept a late Proposal if it considers that there is risk of collusion on the part of a Submitter, or the Submitter may have knowledge of the content of any other Proposal
- c. answer a question submitted after the Deadline for Questions, if applicable
- d. confirm or not confirm any information provided by any Submitter
- e. accept or reject any Proposal, or part of a Proposal
- f. accept or reject any non-compliant, incomplete, non-conforming or alternative Proposal
- g. decide not to accept the lowest priced conforming Proposal unless this is expressly stated as the Evaluation Approach
- h. decide not to enter into a Contract with any Submitter
- i. liaise or negotiate with any Submitter without disclosing this to, or doing the same with, any other Submitter
- j. provide or withhold from any Submitter information in relation to any question arising in relation to the RFP
- k. amend the Proposed Contract at any time, including in negotiations with any Submitter
- l. waive irregularities or requirements in the RFP process
- m. reject all Proposals and contract with a person who did not submit a Proposal.

6.24.3 The ORC may request that a Submitter/s agrees to the ORC:

- a. 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
- b. selecting two or more Submitters to deliver the Requirements as a joint venture or consortium.

## 6.25 New Zealand Law

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

## 6.26 Disclaimer

6.26.1 The ORC will not be liable at law, in equity, under any enactment, or in any other way whatsoever for any direct or indirect damage, loss or cost incurred by any Submitter or any other person or any other matter arising out of this RFP or RFP process.

6.26.2 Nothing contained or implied in the RFP, or RFP process, or any other communication by the ORC to any Submitter shall be construed as legal, financial or other advice. The ORC has endeavoured to ensure the integrity of such information. However, it has not been independently verified and may not be up to date, complete or accurate. Submitters must make their own inquiries and rely solely on their own judgment.

6.26.3 To the extent that liability cannot be excluded, the maximum aggregate liability of the ORC, its agents and advisors is \$1.

## 6.27 Precedence

- 6.27.1 Any conflict or inconsistency in the RFP shall be resolved by giving precedence in the following descending order:
- a. Section 1
  - b. Section 6 (RFP-Terms)
  - c. all other Sections of this RFP document (including Appendices)
  - d. any additional information or document provided by the ORC to Submitters through the ORC's Contact or GETS.
- 6.27.2 If there is any conflict or inconsistency between information or documents having the same level of precedence the later information or document will prevail.

# Definitions

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

<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>Closing Date</b>	The deadline for Proposals to be received by the ORC as stated in Section 1, paragraph 1.3.
<b>Competitors</b>	Any other business that is in competition with a Submitter either in relation to the goods or services sought under the RFP or in general.
<b>Confidential Information</b>	<p>Information that:</p> <ul style="list-style-type: none"> <li>a. is by its nature confidential</li> <li>b. is marked by either the ORC or a Submitter as 'confidential', 'commercially sensitive', 'sensitive', 'in confidence', 'top secret', 'secret', classified' and/or 'restricted'</li> <li>c. is provided by the ORC, a Submitter, or a third party in confidence</li> <li>d. the ORC or a Submitter knows, or ought to know, is confidential.</li> </ul> <p>Confidential information does not cover information that is in the public domain through no fault of either ORC or a Submitter.</p>
<b>Conflict of Interest</b>	A Conflict of Interest arises if a Submitter's personal or business interests or obligations do, could, or be perceived to, conflict with its obligations to the ORC under the RFP or in the provision of the goods or services. It means that the Submitters independence, objectivity or impartiality can be called into question. A Conflict of Interest may be: <ul style="list-style-type: none"> <li>a. actual: where the conflict currently exists</li> <li>b. potential: where the conflict is about to happen or could happen, or</li> <li>c. perceived: where other people may reasonably think that a person is compromised.</li> </ul>
<b>Contract</b>	The written Contract/s entered into by the ORC for the delivery of the Specification.
<b>Deadline for Questions</b>	The deadline for suppliers' to submit questions to the ORC as stated in Section 1, paragraph 1.3, if applicable.
<b>Deadline for Proposals</b>	The deadline that Proposals are to be delivered or submitted to the ORC as stated in Section 1, paragraph 1.3.
<b>Evaluation Approach</b>	The approach used by the ORC to evaluate Proposals as described in Section 3 and in Section 6 (as varied by Section 1, if applicable).
<b>GETS</b>	Government Electronic Tenders Service <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>Intellectual Property</b>	All intellectual property rights and interests, including copyright, trademarks, designs, patents and other proprietary rights, recognised or protected by law.
<b>Notice to Submitters</b>	Includes any response given by ORC under 6.3.3, 6.3.4 or 6.3.5.
<b>Offer Validity Period</b>	The period of time when a Proposal (offer) is held open by the Submitter for acceptance by the ORC as stated in Section 1, paragraph 1.6.
<b>ORC</b>	ORC means the Otago Regional Council and includes its elected members, officers, employees and agents.
<b>ORC's Contact</b>	Refer Section 1, paragraph 1.4
<b>Price</b>	The total amount, including all costs, fees, expenses and charges, to be charged by the Successful Submitter for the full delivery of the Requirements. Each Submitter's Proposal must include its Price.

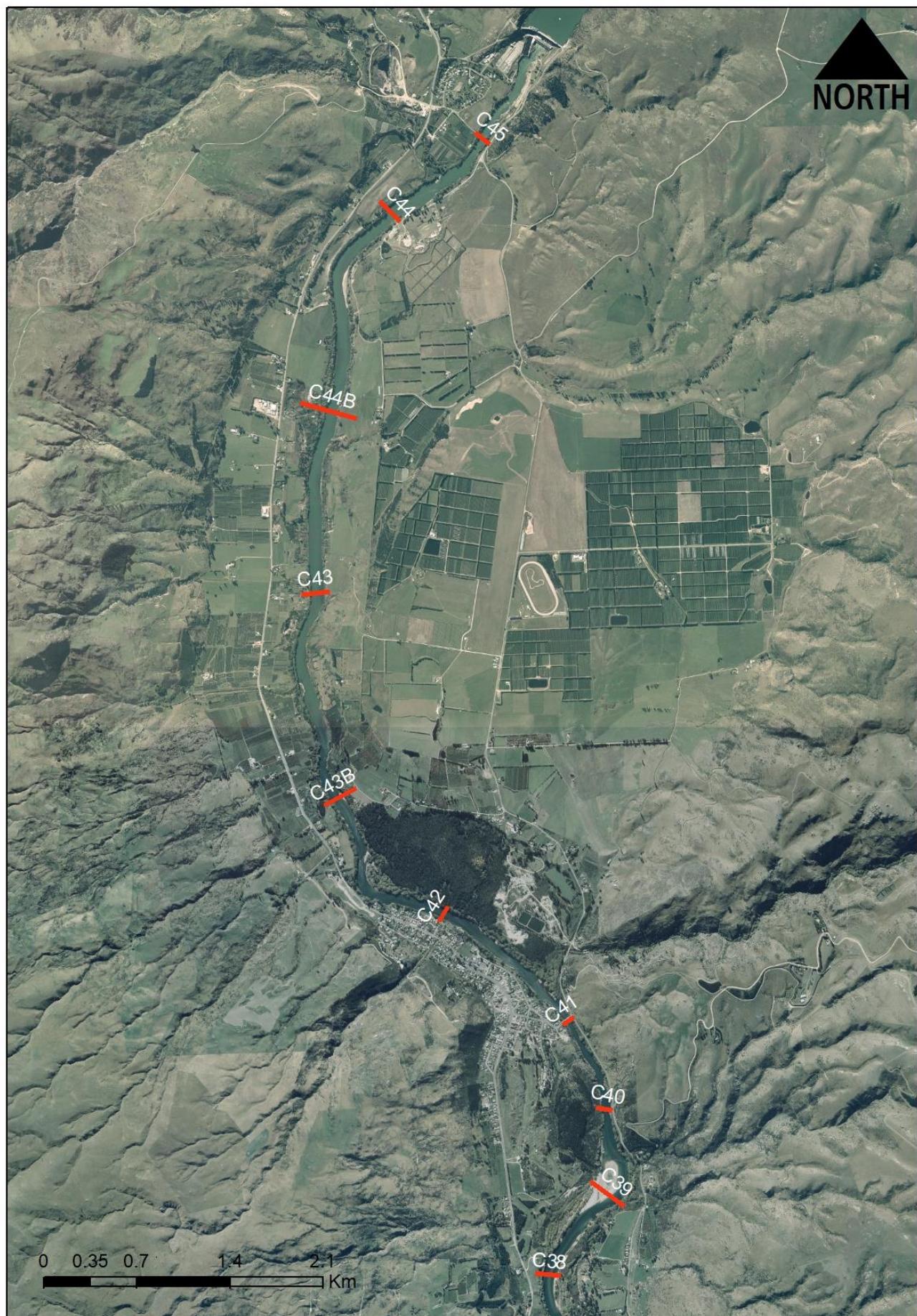
<b>Proposed Contract</b>	The Contract terms and conditions proposed by the ORC for the sale and delivery of the Requirements as described in Section 5.
<b>Request for Proposal (RFP)</b>	The RFP comprises the Advance Notice (where used), the RFP document, (including the RFP-Terms) and any other schedule, appendix or document attached by the ORC to this RFP document, and any subsequent information provided by the ORC to Submitters through the ORC's Point of Contact.
<b>RFP</b>	Means the Request for Proposal.
<b>RFP Documents</b>	Means this RFP, all responses and notices to Submitters.
<b>RFP Process, Terms and Conditions (shortened to RFP-Terms)</b>	The government's standard process, terms and conditions that apply to RFPs as described in Section 6. These may be varied at the time of the release of the RFP by the ORC in Section 1. These may be varied subsequent to the release of the RFP by the ORC on giving notice to Submitters.
<b>RFP-Terms</b>	Means the Request for Proposal - Process, Terms and Conditions as described in Section 6.
<b>Service</b>	The goods, works and/or services described in Section 2 which the ORC intends to purchase.
<b>Successful Submitter</b>	Following the evaluation of Proposals and successful negotiations, the Submitter/s who is awarded a Contract/s to deliver part or all of the Requirements.
<b>Proposal</b>	The response a Submitter submits in reply to the RFP. It comprises the Response Form, the Tenderer's bid, financial and pricing information and all other information submitted by a Submitter.
<b>Submitter</b>	A person, organisation, business or other entity that submits a Proposal in response to the RFP. The term Submitter includes its officers, employees, contractors, consultants, agents and representatives and includes any person who has registered an interest in submitting a Proposal. The term Submitter differs from a supplier, which is any other business in the market place that does not submit a Proposal.
<b>Submitter's Contact</b>	Refer Section 1, paragraph 1.5.
<b>Proposal Form</b>	The form and declaration prescribed by the ORC and used by a Submitter to respond to the RFP, duly completed and submitted by a Submitter as part of the Proposal.

## Appendix 1 – Information to be supplied by Council

### Information to be supplied by Council

- a. The Council will provide all applicable survey information including cross-section location diagrams and previous survey data.
- b. Letter of Introduction – for landowners/occupiers
- c. ORC's protocol for m-bovis.

## Appendix 2a – Clutha River cross-section locations for survey



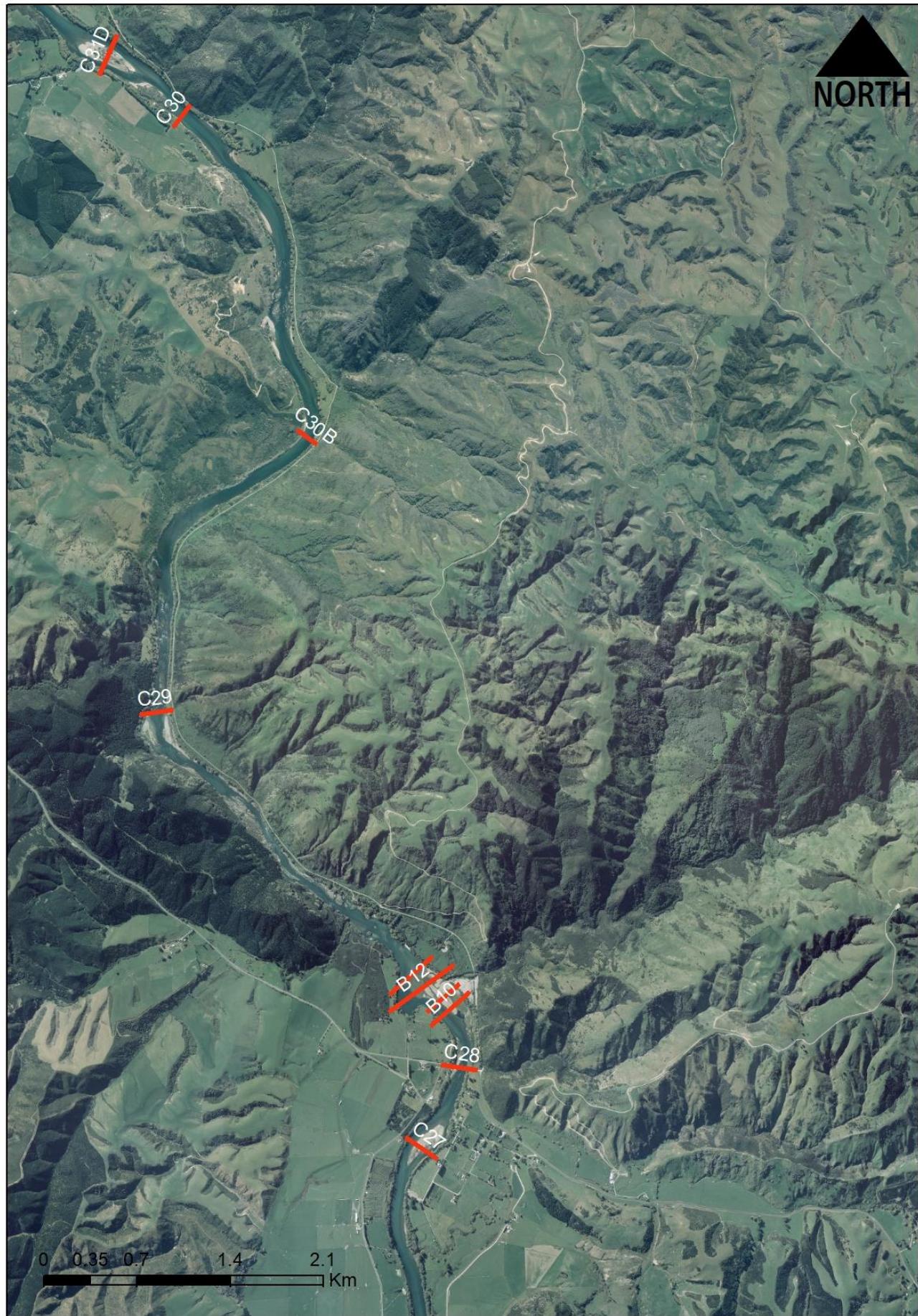
## Appendix 2b – Clutha River cross-section locations for survey



## Appendix 2c – Clutha River cross-section locations for survey



## Appendix 2d – Clutha River cross-section locations for survey



## Appendix 2e – Clutha River cross-section locations for survey



## Appendix 2f – Clutha River cross-section locations for survey



## Appendix 2g – Clutha River cross-section locations for survey



## Appendix 2h– Clutha River cross-section locations for survey



## Appendix 2i – Clutha River cross-section locations for survey



## Appendix 2j – Clutha River cross-section locations for survey



## Appendix 2k – Clutha River cross-section locations for survey



## Appendix 3 – Sample Raw Data Set

XS_ID	Point No	Distance from zero offset	Reduced _Level	Level_Datum	G_Northing	G_Easting	G_Datum	Circuit	Code	Comment
Cross-section Identification	Individual Data Point Identifier  (must correspond to raw data. Not necessary if manually booking data)	X-sect offset  To be calculated as the distance from the control mark along the cross-section line to the point perpendicular to the surveyed point.  (points to the left of the control mark shall be represented as negative distances)	Otago Datum  (2 decimal places)	Otago Datum	Geodetic Northing  (2 decimal places)	Geodetic Easting  (2 decimal places)	Geodetic Datum	Meridional Circuit	Adopt Standard ORC feature codes (Appendix 4)	Additional notes that may be of interest to Council Engineers/Staff.  i.e. Benchmark ID, items not covered by ORC feature codes.

## Appendix 4 – Standard ORC feature codes

**AB** Bridge Abutment

**B** Benchmark

**BL** Building

**BR** Bed Rock

**D** Drain

**F** Fence

**FP** Footpath

**G** Gravels

**GA** Gabion

**GN** Garden Plot

**H** Hedge

**K** Kerb

**P** Peg

**PR** Bridge Pier/Pile

**RD** Road Centreline

**RE** Road Edge

**S** Shingle

Bridge Soffit

**SO** Level

**T** Tree

**V** Vegetation

**W** Water Level

**WA** Wall

**WR** Weir

**X** Marker Post

**Y** Waratah

## Appendix 5 – Conditions of Contract

### Change to the Service Delivery

1. The Contractor shall not change the service delivery without the prior written consent of the ORC Project Manager.
2. The ORC may alter or amend the project timeline at any stage. In the event of substantial changes being made, re-negotiation of the service delivery will be undertaken and the contract shall be varied accordingly.

### Records

3. The Contractor shall make and retain in good order all records required by law and collect other data requested by ORC. Records made during the term of this contract shall be supplied to the Council upon request.

### Land Holder Permission

4. The Contractor must obtain the land holders express permission to access a property for the purposes of the Services – for example knocking on the door of any dwelling. The ORC will provide the Contractor with a letter of introduction for this purpose. The Contractor must not access a property without permission.
5. If the Contractor receives notification that a land holder objects to the survey being undertaken on their property, the Contractor must:
  - a. Immediately leave the property; or
  - b. not enter that property (or properties).

### Interruption of Survey

6. Should flooding or extreme events occur, during the course of a survey job, of such a magnitude that in the opinion of the Project Manager requires re survey of the survey already completed, then the Contractor shall be entitled to payment over and above the contract sum for the survey already completed utilising the following formula:

Payment = Field entitlement + Office entitlement

#### Field entitlement

Number of cross-sections completed in field × Lump sum quoted for fieldwork  
 Total number of cross-sections in contract

#### Office entitlement

Number of cross-sections completed and supplied to Council × Lump sum quoted for office work  
 Total number of cross-sections in contract

### Standard Terms and Conditions

7. Subject to clause 8, the IPENZ Short Form Model Conditions of Engagement (2016) apply to this contract. A copy of the conditions is attached.
8. The IPENZ Short Form Model Conditions of Engagement which apply to this contract are varied as follows:

**Variations to the Short Form Model Conditions of Engagement:**

(Note: 'Consultant' means consultant or contractor and 'Client' is Otago Regional Council)

**1. Consumer Guarantees Act (delete clauses 2 and 3)**

Delete – "(2) Nothing in this Agreement shall restrict, negate, modify or limit any of the Client's rights under the Consumer Guarantees Act 1993 where the Services acquired are of a kind ordinarily acquired for personal, domestic or household use or consumption and the Client is not acquiring the Services for the purpose of a business".

Delete – "(3) The Client and the Consultant agree that where all, or any of, the Services are acquired for the purposes of a business the provisions of the Consumer Guarantees Act 1993 are excluded in relation to those Services".

**2. Payment (replace clauses 8 and 9 with the following)**

(8) Subject to clause 9,

a. the Client shall pay the Consultant the amounts and at the times specified in this contract; and

b. all amounts payable by the Client shall be by the 20<sup>th</sup> of the month following the date the relevant tax invoice being sent to the Client.

(9) If the Client does not approve the amount payable in its entirety, the Client shall pay any uncontested part of the tax invoice in accordance with clause 8 and will provide the Consultant an explanation in writing why all or part of the tax invoice has not been paid.

**3. Insurance (delete clause 11 and replace with the following)**

(11) The maximum aggregate amount payable, whether in contract, tort or otherwise, in relation to claims, damages, liabilities, losses or expenses, shall be limit to NZD 1,000,000.

**(delete clause 13 and replace with the following)**

(13) The Consultant shall take out and maintain for the duration of the Services a policy of Professional Indemnity insurance and Public Liability Insurance for the amount of liability as follows:

1. *Professional Indemnity Insurance – NZD 2,000,000; and*
  - a. *Public Liability Insurance – NZD 5,000,000.*

The Consultant undertakes to use all reasonable endeavours to maintain a similar policy of insurance for six years after the completion of the Services.

**4. Health and Safety (delete clause 16 and insert new clauses)**

(20) The Consultant and the Client must comply with the Health and Safety at Work Act 2015 and Regulations made under that Act.

(21) The Consultant must comply with the Health and Safety requirements in Appendix 6, including having a Site-Specific Health and Safety Plan (SSSP) which identifies each health and safety hazard which might arise in the carrying out of the services.

(22) The Consultant must comply with the approved SSSP.

(23) Prior to carrying out the Services, and whilst carrying out the Services, the Consultant and Client shall undertake an onsite hazard/risk assessment against the health and safety plan. All changes or additions to the plan must be recorded in writing.

(24) In providing the services, the Consultant shall comply with the Client's health and safety policies.

(25) The Consultant and the Client must consult, cooperate and coordinate with each other and other persons engaged in the work activities and/or the workplace to promote health and safety in performing the services.

**5. Confidentiality (delete second sentence in clause 5)**

Delete – "The Consultant shall not, without the Client's prior consent, use information provided by the Client for purposes unrelated to the Services".

**6. Confidentiality (insert new clauses)**

(26) The Consultant shall not, without the Client's prior written consent, use or disclose information or any other property provided by the Client except for the purpose of providing the Services.

(27) The Consultant shall not assign, subcontract or otherwise transfer the benefits and obligations under this contract to any other Party without the Client's prior written consent

(28) The Consultant shall notify the Client immediately of any actual or potential conflict of interest and will cooperate with the Client to mitigate, modify or negate any conflict.

(29) The Consultant shall not undertake any publicity without the prior approval of the Client.

#### **7. Termination (delete second sentence in clause 17)**

Delete – “The Client and the Consultant may (in the event the other Party is in material default) terminate the Agreement by notice to the other Party”.

#### **8. Termination (insert the following new clauses)**

(20) Either Party may terminate this agreement by written notice to the other if the other Party breaches this agreement and that breach is not remediable or the breach is remediable, and that other Party fails to remedy the breach within seven (7) days of the giving of written notice from the first Party requiring the breach to be remedied.

(21) The Client may terminate this agreement with immediate effect by giving written notice to the Consultant if the Consultant becomes insolvent or has a receiver, administrator or liquidator appointed in relation to all or a material part of its assets.

#### **9. Dispute resolution (delete clause 18 and insert the following new clause)**

(22) The Parties must use reasonable endeavours to resolve any disputes by negotiation. If the Parties cannot resolve their dispute by negotiation within 10 working days, a Party may, by notice to the other, require that the dispute be dealt with by mediation. The mediation will be conducted in accordance with the Mediation Protocol of Arbitrators' and Mediators' Institute of New Zealand Inc ("AMINZ"). The mediator will be agreed between the Parties, but failing agreement within 5 working days of the giving of notice requiring mediation, the mediator will be selected and their fee determined by the chairperson of AMINZ.

#### **10. Privacy (insert the following new clause)**

(23) The Consultant must take all reasonable steps to protect any personal information (as defined in the Privacy Act 1993), provided by the Client, from unauthorised disclosure or release. In the event of any unauthorised disclosure or release, the Consultant must immediately advise the Client in writing.

#### **11. Relationship of the Parties (insert the following new clause)**

(24) The Parties acknowledge that the Consultant is an independent contractor of the Client and not an employee, agent or partner of, or joint venturer with the Client. The Consultant is in all respects in business on its own account in relation to the provision of the Services and is responsible for meeting all tax, ACC levies, insurance premiums, and other costs and expenses relating to the Consultant's business.

#### **12. Notices (insert the following new clause)**

(25) All notices to be given under this agreement must be in writing and be addressed to the Party to whom it is to be sent at the physical address or email address from time to time designated by that Party for such purposes. Any notice given under this agreement will be deemed to have been received:

- a. at the time of delivery, if delivered by hand;
- b. three working days after the date of mailing, if posted;
- c. if sent by email, on the date and time at which it enters the recipient's information system, as evidenced (if required by the recipient, where delivery is disputed) in a confirmation of delivery report from the sender's information system which indicates that the email was sent to the email address of the recipient.

#### **13. General provisions (insert the following new clauses)**

(26) The Consultant shall not assign, subcontract or otherwise transfer the benefits and obligations under this agreement to any other Party without the Client's prior written consent.

(27) The Consultant shall notify the Client immediately of any actual or potential conflict of interest and will cooperate with the Client to mitigate, modify or negate any conflict.

(28) The Consultant shall not undertake any publicity without the prior approval of the Client.

(29) This is the entire agreement between the parties relating to its subject matter and supersedes and extinguishes any previous agreement (whether oral or written) between the Parties in relation to such matters.

- (30) This agreement may be executed and delivered in any number of counterparts, including by way of electronic transmission where a Party signs a counterpart and sends it as a PDF to the other Party by email. All such counterparts, when taken together, will constitute the same document.

## **IPENZ SHORT FORM MODEL CONDITIONS OF ENGAGEMENT: April 2016**

1. The Consultant shall perform the Services as described in the attached documents.
2. ~~Nothing in this Agreement shall restrict, negate, modify or limit any of the Client's rights under the Consumer Guarantees Act 1993 where the Services acquired are of a kind ordinarily acquired for personal, domestic or household use or consumption and the Client is not acquiring the Services for the purpose of a business.~~
3. ~~The Client and the Consultant agree that where all, or any of, the Services are acquired for the purposes of a business the provisions of the Consumer Guarantees Act 1993 are excluded in relation to those Services.~~
4. In providing the Services the Consultant shall exercise the degree of skill, care and diligence normally expected of a competent professional.
5. The Client shall provide to the Consultant, free of cost, as soon as practicable following any request for information, all information in his or her power to obtain which may relate to the Services. ~~The Consultant shall not, without the Client's prior consent, use information provided by the Client for purposes unrelated to the Services.~~ In providing the information to the Consultant, the Client shall ensure compliance with the Copyright Act 1994 and shall identify any proprietary rights that any other person may have in any information provided.
6. The Client may order variations to the Services in writing or may request the Consultant to submit proposals for variation to the Services. Where the Consultant considers a direction from the Client or any other circumstance is a Variation the Consultant shall notify the Client as soon as practicable.
7. The Client shall pay the Consultant for the Services the fees and expenses at the times and in the manner set out in the attached documents. Where this Agreement has been entered by an agent (or a person purporting to act as agent) on behalf of the Client, the agent and Client shall be jointly and severally liable for payment of all fees and expenses due to the Consultant under this Agreement.
8. ~~All amounts payable by the Client shall be paid within twenty (20) working days of the relevant invoice being mailed to the Client. Late payment shall constitute a default, and the Client shall pay default interest on overdue amounts from the date payment falls due to the date of payment at the rate of the Consultant's overdraft rate plus 2% and in addition the costs of any actions taken by the Consultant to recover the debt.~~
9. ~~Where Services are carried out on a time charge basis, the Consultant may purchase such incidental goods and/or Services as are reasonably required for the Consultant to perform the Services. The cost of obtaining such incidental goods and/or Services shall be payable by the Client. The Consultant shall maintain records which clearly identify time and expenses incurred.~~
10. Where the Consultant breaches this Agreement, the Consultant is liable to the Client for reasonably foreseeable claims, damages, liabilities, losses or expenses caused directly by the breach. The Consultant shall not be liable to the Client under this Agreement for the Client's indirect, consequential or special loss, or loss of profit, however arising, whether under contract, in tort or otherwise.
11. ~~The maximum aggregate amount payable, whether in contract, tort or otherwise, in relation to claims, damages, liabilities, losses or expenses, shall be five times the fee (exclusive of GST and disbursements) with a maximum limit of \$NZ500,000.~~
12. Without limiting any defences, a Party may have under the Limitation Act 2010, neither Party shall be considered liable for any loss or damage resulting from any occurrence unless a claim is formally made on a Party within 6 years from completion of the Services.
13. ~~The Consultant shall take out and maintain for the duration of the Services a policy of Professional Indemnity insurance for the amount of liability under clause 11. The Consultant undertakes to use all reasonable endeavours to maintain a similar policy of insurance for six years after the completion of the Services.~~
14. If either Party is found liable to the other (whether in contract, tort or otherwise), and the claiming Party and/or a Third Party has contributed to the loss or damage, the liable Party shall only be liable to the proportional extent of its own contribution.
15. Intellectual property prepared or created by the Consultant in carrying out the Services ("New Intellectual Property") shall be jointly owned by the Client and the Consultant. The Client and Consultant hereby grant to the other an unrestricted royalty-free license in perpetuity to copy or use New intellectual Property. Intellectual property owned by a Party prior to the commencement of this Agreement and intellectual property created by a Party independently of this Agreement remains the property of that Party. The ownership of data and factual information collected by the Consultant and paid for by the Client shall, after payment by the Client, lie with the Client. The Consultant does not warrant the suitability of New Intellectual Property for any purpose other than the Services or any other use stated in the Agreement.
16. ~~The Consultant and the Client will be aware of, and comply with, any relevant obligations imposed on them under the Health and Safety at Work Act 2015 (the "Act"). The Consultant has not and will not assume any duty imposed on the Client from time to time pursuant to the Act arising out of this engagement.~~
17. The Client may suspend all or part of the Services by notice to the Consultant who shall immediately make arrangements to stop the Services and minimise further expenditure. ~~The Client and the Consultant may (in the event the other Party is in~~

- ~~material default) terminate the Agreement by notice to the other Party.~~ Suspension or termination shall not prejudice or affect the accrued rights or claims and liabilities of the Parties.
18. ~~The Parties shall attempt in good faith to settle any dispute by mediation.~~
19. This Agreement is governed by the New Zealand law, the New Zealand courts have jurisdiction in respect of this Agreement, and all amounts are payable in New Zealand dollars.

## Appendix 6 – Health and Safety Requirements



### Otago Regional Council Contract H&S Requirements Policy

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September 2018

## Purpose:

The Otago Regional Council is committed to providing an environment that is safe and healthy for everyone. This includes consulting, co-operating & co-ordinating with PCBUs whose H&S duties overlap ORC's.

This policy sets out ORC's requirement that any PCBU undertaking work for ORC provides evidence of effective, practical H&S planning for the work to be done, and of H&S legal compliance.

## Definitions:

ACOP	Approved Code of Practice
Approved Contractor	PCBU that has gained ORC H&S Approved Contractor status.
Contractor	PCBU that contracts to do work for ORC, including consultants.
H&S	Health & safety
HASW Act	Health & Safety at Work Act 2015
ORC	Otago Regional Council
PCBU	Person conducting a business or undertaking, as in s17, HASW Act
SFARP	So far as is reasonably practicable, as defined in s22, HASW Act.
SSSP	Site Specific Safety Plan
TMP	Traffic Management Plan
Workers	As defined in s19, HASW Act.

## Policy Summary:

As part of its duties under the HASW Act, ORC requires all Contractors to:

1. Achieve ORC Approved Contractor status before working for the ORC (as set out in the ORC H&S Approved Contractors Policy); and
2. Demonstrably comply with all:
  - a. H&S law (including WorkSafe Safe Work Instruments), and
  - b. ORC H&S requirements (set out below), and
  - c. Relevant ACOPs & WorkSafe instruments or to demonstrate H&S practices at least as safe.

## Specific statutory requirements: HASW Act, sections 34 & 36:

Prior to work starting and in sufficient time for review and amendment (if necessary), all Contractors must provide evidence to the ORC Project Manager or the ORC H&S Business Partner, that, SFARP, they have:

1. Identified risks in the work they are to do, and
2. Assessed those risks, and
3. Eliminated those risks, or if elimination is not possible:
4. Minimised those risks.

## ORC H&S requirements:

ORC requires evidence of risk management commensurate with the risk, type, scope, and duration of work to be done.

For clarity: this Policy does not over-rule or replace any requirement in NZS3910:2013 "Conditions of contract for building & civil engineering construction".

In most cases, a SSSP or similar will be appropriate. If NZS 3910:2013 'Conditions of contract for building and civil engineering construction' applies, ORC will liaise with the Engineer to the Project regarding the SSSP.

SSSPs must be site specific (not generic) and may contain the following (as applicable):

- i. Site manager and foreman's names & contact details.
- ii. Site Map showing location of: Site Office, worker facilities (toilets, "smoko" area, washing facilities), parking area, machinery/equipment store, visitor check and sign-in, first aid kits, fire extinguishers, evacuation exit points, and emergency assembly area.
- iii. A risk register specific to the contract work or services (in addition to the Contractors' general risk register). The register must include how risks are eliminated or minimised. ORC is particularly interested to understand identified high-risk activities, specific to the work to be done;
- iv. First aid arrangements, including first aiders' names, certificate expiry date; and mobile.
- v. Other site-safety personnel names, mobile numbers, and responsibilities;
- vi. Site lighting.
- vii. Site signage.
- viii. A TMP, including how pedestrian safety will be ensured.

Procedures for:

- ix. Managing and inducting on-site registration of site personnel & visitors, and visitor signage;
- x. Regular monitoring of site safety management
- xi. Training the proper use of on-site work plant, equipment, and substances;
- xii. Identifying & assessing on-site risks.
- xiii. Managing emergencies that may arise, including emergency access details to relay to emergency services (street address/rural Rapid Number, GPS, helicopter landing area);
- xiv. Engagement with the Contractor's workers during the contract works;
- xv. Ensuring all electrical equipment on site has a current test tag;
- xvi. Recording all health & safety related activity (e.g. Site H&S Folder);

ORC may require other evidence, dependent on the contract specification.

#### **H&S Monitoring:**

ORC may carry out site inspections during the contract, any such visits to be arranged with the Contractor. ORC will adhere to site H&S requirements.

If non-compliance is identified, it will be raised with the site manager or supervisor and, through discussion, action agreed.

ORC will notify the Contractor of any non-compliance issues identified, and any required corrective actions. The contractor must provide a written report on corrective action. The report must include what was done, by whom, and on what date.

If a serious safety breach, or potential for same, is identified, and it is not immediately remedied by the Contractor, the matter may be escalated within the Contractor's organisation. ORC may instruct that the site be closed-down until it is made safe.

A post-contract H&S review meeting may take place with the contractor and sub-contractors (if applicable) and ORC personnel.

#### **Asbestos**

If asbestos is discovered or suspected on site, the area is to be immediately contained and the Contractor to advise the ORC Project Manager/Engineer and ORC H&S Business Partner, as soon as practicable. The Contractor's proposed Asbestos Removal Management Plan (ARCP) must be provided to the ORC Project Manager/Engineer, for discussion and finalisation.

ORC requires a copy of any Independent Asbestos Clearance Certificate for asbestos removal for which a Certificate is legally required.

#### **Mycoplasma bovis (m.bovis):**

Contractors must provide their Protocol for eliminating the spread of m.bovis, which must be at least as thorough as ORC's.

#### **Revocation of H&S Approval:**

Contractors' non-adherence to their H&S documents, undertakings and agreements may result in ORC H&S approval being revoked. Costs associated with this will be the responsibility of the Contractor.

#### **Insurance:**

Contractors must provide evidence of insurance relevant to the work to be done. This may be Public Liability and/or Professional Indemnity and will be advised to Contractors for each job/project.

#### **Related materials:**

ORC H&S Policies, procedures, and guidelines, including the ORC H&S Approved Contractors Policy  
New Zealand H&S legislation, including Regulations.

New Zealand Standards.

WorkSafe guidelines and other materials.

Relevant ACOPs, WorkSafe Safe Work Method Statements, and NZ Standards.

AS/NZ 4801:2001 Occupational Health and Safety management systems- Specifications with guidance for use.

NZS 3910:2013 'Conditions of contract for building and civil engineering construction'.

#### **Further information:**

Further information may be obtained from:

Nicole Ross

H&S Business Partner

[Nicole.Ross@orc.govt.nz](mailto:Nicole.Ross@orc.govt.nz)

## Appendix 7 - Mycoplasma Bovis Cleaning and Decontamination Protocol

The most common means of spreading the disease is by the cows having nose to nose contact, or transferred infected cow dung.

We need to practice good on-farm hygiene so we don't unintentionally contribute to spreading the disease.

The kits in each ORC vehicle provide you with means to conduct decontamination and cleaning of yourself and the vehicles.

What do we need to do?

**Personal hygiene** - Practice good hygiene practice by ensuring your clothing and footwear is clean and free of cow dung before you enter the property. Boots especially should be sprayed and scrubbed with Citric Acid mix.

**Vehicles** - Where possible avoid taking your vehicle on farm where cows have access to. Farm driveways, milk tanker lane can be considered a safe zone provided cows do not have access to these areas, or cows are not crossing the milk tanker lanes. If you are unsure and it is not vital that you need to have the vehicle on the property leave it on the road.

In circumstances when it is necessary to take the vehicle on farm, do your best to avoid where the cows are, or have been grazing. If you are on a number of farms in one day do a risk assessment and leave what you may consider to be the highest risk properties until last. (e.g. – sheep farm being no risk and a dairy farm being high risk).

Ensure the vehicles are as free as they can be of cow dung before entering a farm. Remove all cow dung, spray the citric acid particularly to the wheels, tyres and wheel arches.

### Citric Acid Mixing Rates

Citric Acid is the best product for decontamination and is extremely effective in killing the MB bacteria. The Citric Acid in the kit is: Powder Form mixing rate is 30 grams (6 teaspoons) per litre of water OR Liquid form: mixing rate 100mls to 10L of water. DO NOT prepare the mix in the water container – it should contain only water. 5L hand pump available if required.

### Safety

Please use the rubber gloves (disposable) and safety splash goggles when mixing the solution.

**Eye contact:** wash eye immediately (eye wash pack in kit). Ensure complete irrigation of the eye by keeping eyelids apart and away from the eye and moving the eyelids by occasionally lifting the upper and low lids. If pain persists seek medical attention.

**Skin Contact:** flush skin with running water and soap (if available) and remove contaminated clothing including footwear.

### Disposal Method

Mixed product: flush to drain with copious quantities of water and in accordance with local regulations.

Powder: disposal in accordance with waste disposal or local or national regulations.

Ensure that the kit container lid is secure and not loose in the vehicle – it must be tied down.

# Otago Regional Council Request for Proposal – Survey of the Clutha River

## Proposal Form – Form A

### ABOUT THE SUBMITTER

1 I/We the undersigned submit the following information for the Proposal Survey of the Clutha River in accordance with this RFP, Council's Specification and Conditions of Contract.

2 Name of Submitter: \_\_\_\_\_

3 Address for correspondence:

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4 Physical address if different from above

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5 Submitter principal contact for the purpose of this Proposal:

Name: \_\_\_\_\_

5.1 Telephone number: Landline: \_\_\_\_\_

Mobile \_\_\_\_\_

Fax: \_\_\_\_\_

Email: \_\_\_\_\_

6 Submitter's principal contact for management of the contract

Name: \_\_\_\_\_

6.1 Address for correspondence:

---

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6.2 Telephone number: Landline: \_\_\_\_\_

Mobile \_\_\_\_\_

Fax: \_\_\_\_\_

Email: \_\_\_\_\_

## RESPONSE TO THE REQUIREMENTS

- 7 Please list who will carry out the Service. Attach separate document and label: Form A – Question 7.
- 8 Please provide details of qualifications, skills and experience relevant to the Service; supporting written evidence is essential. Attach separate document and label: Form A – Question 8.
- 9 Please describe relevant experience of those personnel in carrying out similar work. Attach separate document and label: Form A – Question 9.
- 10 Please detail your methodology and approach to be used. Attach separate document and label: Form A – Question 10.
- 11 Please provide details for three referees; name, phone number, and email address.

	Name	Phone Number	Email Address
Referee 1			
Referee 2			
Referee 3			

10. Checklist

- Details of how the Submitter will address all points listed in the Specifications.
- Detail of any core assumptions made in the tender.
- Qualifications and experience of the person responsible for providing the Service.
- Confirmation that the Service can be provided in the timeframe stipulated.
- Details of any similar work undertaken
- Health and Safety Plan
- Referees
- Supplementary pages included

Additional Information:

- a) Where space provided is insufficient attach additional pages providing full responses.
- b) Attach supporting information where required.
- c) Include in Envelope A any additional non-price information supporting the Proposal.
- d) The nature and purpose of the further or additional information must clearly be stated

## OUR DECLARATION

Submitter's declaration		
Topic	Declaration	Respondent's declaration
<b>RFP Process, Terms and Conditions:</b>	I/we have read and fully understand the RFP, including the RFP Process, Terms and Conditions. I/we confirm that Submitter/s agree to be bound by them.	[agree / disagree]
<b>Requirements:</b>	I/we have read and fully understand the nature and extent of the Services as described in Section 2 - Specification. I/we confirm that the Submitter /s has the necessary capacity and capability to fully provide the Services and will be available to deliver throughout the relevant Contract period.	[agree / disagree]
<b>Ethics:</b>	In submitting this Proposal the Submitter /s warrants that it:	[agree / disagree]
	<ul style="list-style-type: none"> <li>a. has not entered into any improper, illegal, collusive or anti-competitive arrangements with any Competitor</li> <li>b. has not directly or indirectly approached any representative of the ORC (other than the Point of Contact) to lobby or solicit information in relation to the RFP</li> <li>c. has not attempted to influence, or provide any form of personal inducement, reward or benefit to any representative of the Buyer.</li> </ul>	
<b>Conflict of Interest declaration:</b>	The Submitter warrants that it has no actual, potential or perceived Conflict of Interest in submitting this Proposal, or entering into a Contract to deliver the Services. Where a Conflict of Interest arises during the procurement process the Submitter will report it immediately to the ORC's Point of Contact.	[agree / disagree]

**Details of Conflict of Interest:** [if you think you may have a Conflict of Interest briefly describe the conflict and how you propose to manage it or write 'not applicable'].

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**DECLARATION**

I/we declare that in submitting the Proposal and this declaration:

- a. the information provided is true, accurate and complete and not misleading in any material respect
- b. the Proposal does not contain Intellectual Property that will breach a third party's rights
- c. I/we have secured all appropriate authorisations to submit this Proposal.

I/we understand that the falsification of information, supplying misleading information or the suppression of material information in this declaration and the Proposal 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.

By signing this declaration, the signatory below represents, warrants and agrees that he/she has been authorised by the Submitter/s to make this declaration on its/their behalf.

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**Signature:**

**Full name:**

**Title / position:**

**Name of  
organisation:**

**Date:**

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# Otago Regional Council Request for Proposal – Survey of the Clutha River

## Proposal Form – Form B - PRICE

Note: where space provided is insufficient attach additional pages providing full responses.

**1** I/We the undersigned submit the following information for the Proposal: Survey of the Clutha River in accordance with this RFP, Council's Specification and Conditions of Contract.

**2** Name of Submitter: \_\_\_\_\_

**3** Address for correspondence:

\_\_\_\_\_

\_\_\_\_\_

**4** Schedule of Prices

Activity 1			No of Hours	Hourly Rate \$/h	Total Cost
1.0					
	Name of Person	Activity Description			
	Name of Person	Activity Description			
	Disbursements	List each disbursement activity			

Lump sum rate for communicating with land holders	
Lump sum rate for Mycoplasma bovis cleaning	
Total excluding GST	
GST	
<b>Total including GST</b>	

Signed: \_\_\_\_\_

Date: \_\_\_\_\_