



Otago
Regional
Council

Request for Tender (RFT)



By: **Otago Regional Council**

For: **Silver Stream Capacity Improvement – Package 1**

Reference: **2025-10454**

RFT Released:	Monday 17 February 2025
Deadline for Questions:	5pm, Monday 24 February 2025
Deadline for Tenders:	5pm, Monday 10 March 2025

Otago Regional Council
[Otago Regional Council \(orc.govt.nz\)](https://orc.govt.nz)
70 Stafford Street, Dunedin 9016

The opportunity

This RFT is issued by Otago Regional Council, referred to below as “the Buyer” or “we” or “us”.

Project Overview

The Otago Regional Council (ORC) is seeking to improve the flood flow capacity of the Whakaehu / Silver Stream, a critical sub-catchment within the Lower Taieri River system. This watercourse serves as a floodway, and in the 1970s, a drainage scheme was implemented along an 8 km stretch of the Silver Stream to reduce flood risk for Mosgiel. This involved deepening the stream and constructing stopbanks. However, over time, sediment accumulation has diminished the stream’s ability to manage floodwaters, reducing its capacity.

To address this issue, ORC has obtained consent to remove accumulated sediment (alluvium) from outside the wetted bed. This initiative is intended to improve the stream’s flood capacity and while avoiding ecological impacts.

Project Scope

The works will focus on an 8 km stretch of the Silver Stream, from Wingatui Road (NZTM 2000: E1395528 N4917945) to its confluence with the Taieri River (NZTM 2000: E1388149 N4914578). The project will be delivered in multiple phases, with Phase 1 covered under this Request for Tender (RFT).

- **Phase 1 (This RFT):** Removal of 7,828 m³ of accumulated sediment between Gladfield Road and the Taieri River confluence.

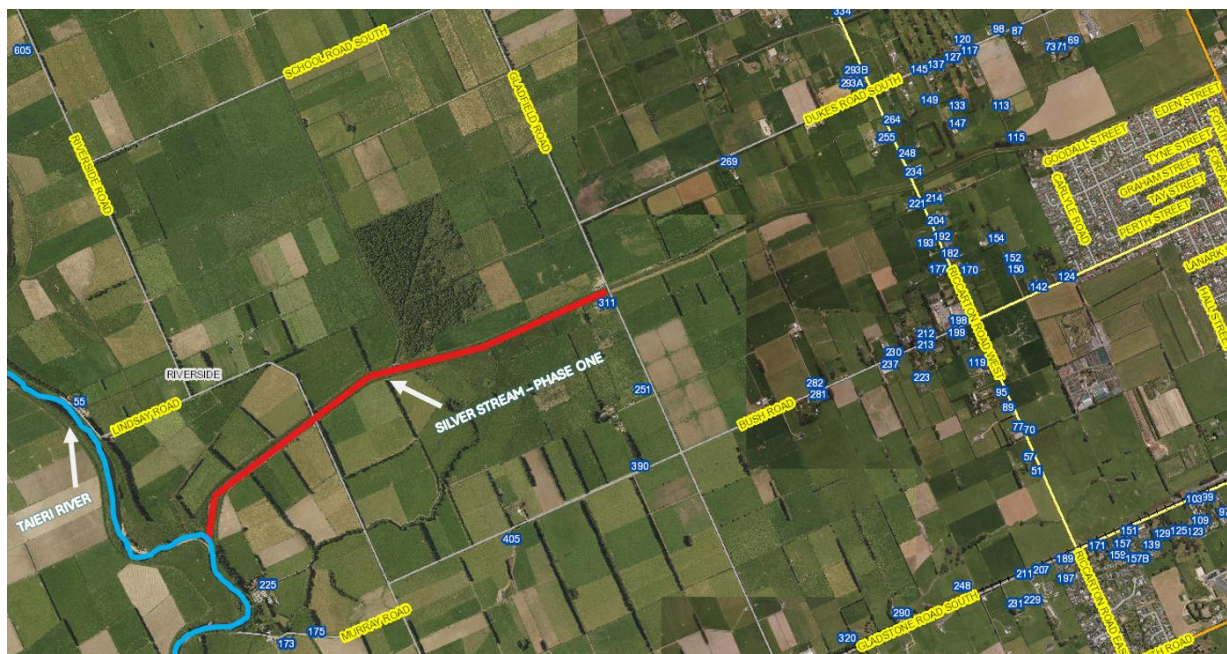


Figure 1: Approximate work area for Phase 1 (this RFT), from Gladfield Road to the Taieri River confluence.

- **Future Phases (2–4):** Completion of works along other sections in subsequent years which will be procured separately to this RFT.

The total project involves the removal of approximately 34,205 cubic metres of sediment, separated into four phases of works.

- **Phase 1:** 7,828 m³ (~23%) (This RFT)
- **Phase 2:** 6,442 m³ (~19%)
- **Phase 3:** 8,021 m³ (~23%)
- **Phase 4:** 11,914 m³ (~35%)

Key Activities

- Site establishment and securing works area.
- Stripping and excavating accumulated material, as per approved resource consent and environmental conditions.
- Stockpiling, redistributing, and compacting material as per design specifications and Geotechnical Engineering sign off.
- Reinstating affected areas, including finishing and re-grassing sections of the floodbank and return bank.
- Disposal of excavated material.

Proposed works

The ORC plans to remove accumulated alluvium from the Silver Stream's banks to improve flood conveyance. The approach includes:

- Widening the channel and reducing the batter slope to increase flood-carrying capacity (refer to Figure 2 for typical cross-sectional details example).
- Conducting works during low-flow conditions to minimise ecological impacts.

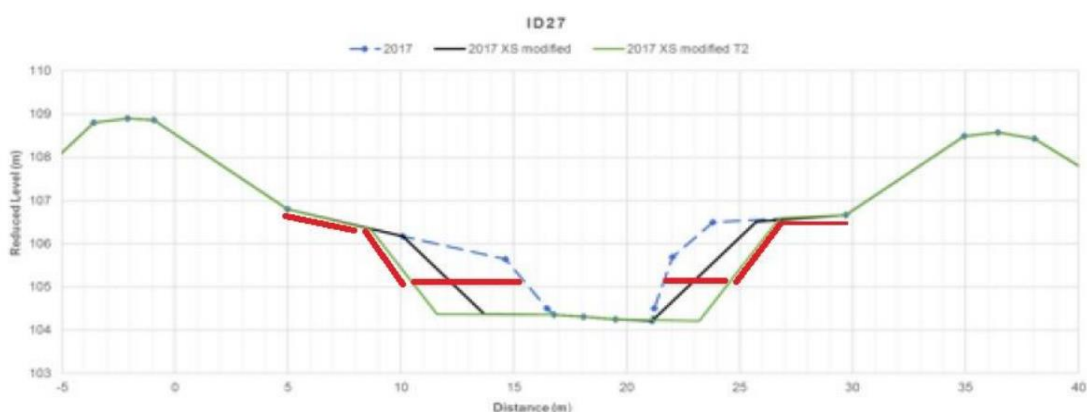


Figure 2: Approximate cross section for proposed works - red line (blue line = current channel, black line and green line options from Payen and Shrestha, 2019).

Figure 2: Approximate cross section of the proposed works.

Environmental Management

An Environmental management plan is required for the works to ensure minimal impact on the surrounding environment. The following sediment and erosion control measures will be implemented as a minimum:

1. **Erosion and Sediment Control Measures:**
 - Installing silt fences between the work zone and the wetted bed.
 - Staging the works to minimise exposed sediment at any given time.
2. **Weather and Flow Monitoring:**
 - Reviewing weather forecasts and monitoring stream flows to avoid working during high-flow conditions.
3. **Restricted Machinery Use:**
 - Prohibiting machinery operation or excavation within the wetted bed.
4. **Material Management:**
 - Prohibiting stockpiling of excavated material within the floodway bed.
 - Promptly stabilising exposed areas as works progress, which may include hydroseeding depending on material conditions according to the contract documents and methodology outlined.

Summary

This project seeks to improve the flood capacity of the Whakaehu / Silver Stream. The works have been designed in consultation with ecological specialists, engineers, and planners, ensuring a balance between flood management and environmental preservation.

What we don't want

We do not want tenders that cannot complete the physical works by the end of November 2025. We also do not want tenders that have not satisfactorily assessed and mitigated the access and construction risks involved with a project of this nature (with consideration to flood protection, sediment control and ecological aspects).

What's important to us?

Respondents will require proven experience and skills in delivering successful civil construction projects of a similar nature including work undertaken in or near a water course. The ability for the Respondent to assess the environmental risks associated with completing the work is important and Respondents must provide confidence that their programme and methodology takes these risks into account and mitigates them accordingly. Health and safety and environmental records are also important to show the track record of the Respondent in monitoring and putting measures in place to apply lessons learned.

Why should you bid?

This work is intended to improve flood capacity and provide immediate improvements to flood protection for the Taieri community while avoiding ecological impacts.

SECTION 1: Key Information

1.1 Context

- a) This Request for Tenders (RFT) is an invitation to submit a Tender for the Silver Stream Capacity Improvement – Package 1 contract opportunity as per the Feldspar Silver Stream Capacity Improvements – Package 1 document including design drawings and specification (Appendix B).
- b) This RFT is a single-step procurement process.

1.2 Our timeline

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

Deadline for Questions	5pm Monday 24-02-25
Deadline for us to answer questions	5pm Monday 03-03-25
Deadline for Tenders	5pm Monday 10-03-25
Successful Respondent(s) notified (indicative)	Monday 24-03-25
Expected start date of Contract (indicative)	Monday 31-03-25

1.3 How to contact us

- a) Contact us through our Point of Contact via email or the Government Electronic Tenders System (GETS).
- b) Our Point of Contact:

Name: Courtney Stevens

Title/role: Contracts and Procurement Specialist

Email address: engineering.procurement@orc.govt.nz

1.4 Developing and submitting your Tender

- a) This is an open, competitive tender process.
- b) Take time to read and understand the RFT.
- c) Take time to understand our Requirements. These are in SECTION 2 of this document.
- d) Take time to understand how your Tender will be evaluated. See SECTION 3 of this document.
- e) For resources on tendering visit <https://www.procurement.govt.nz/suppliers-2/>
- f) If you have questions, ask our Point of Contact before the Deadline for Questions (see Section 1.2 above).
- g) Use the Response Form (Appendix A) attached to this RFQ to submit your Tender.
- h) Complete and sign the declaration at the end of the Response Form.
- i) Use the Schedule of quantities (Appendix C) attached to this RFQ for your pricing information.
- j) A 'two envelope' system will be used for the evaluation. This means that Respondents must provide all financial information relating to price, expenses and costs in a separate sealed envelope/soft copy folder. The evaluation panel will firstly score each Quote based on the

weighted criteria listed below. Quotes will then be ranked according to their scores. Following completion of the scoring the sealed envelopes containing financial information will be presented to the panel. The panel will then assess which Quotes to shortlist based on best value-for-money over the whole-of-life of the Contract i.e., the scores and the total costs over the whole-of-life of the Contract.

- 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 Proposal

Responses must be submitted electronically to the GETS e-tender box. We will not accept Responses sent by post or delivered to our office.

Make sure you include all attachments and reference material.

1.6 Our RFT Terms

- a) Offer Validity Period: In submitting a Tender, the Respondent agrees that their offer will remain open for acceptance by the Buyer for 6 calendar months from the Deadline for Tenders.
- b) The RFT is subject to the RFT Process, Terms and Conditions (shortened to RFT-Terms) described in Section 6. We have made the following variation/s to the RFT-Terms:

6.17 c) Confidential Information is replaced by;

Suppliers acknowledge that the Buyer's obligations under clause 6.17 a) are subject to the requirements imposed by the Local Government Official Information and Meetings Act 1987, the Privacy Act 2020, and any other obligations imposed by the law or any Court. The Buyer's obligation to keep the Supplier's information confidential will not be breached if the information is disclosed by the Buyer to the appropriate authority because of suspected collusive or anti- competitive tendering behaviour.

New Zealand Law add new clause;

6.24 b) The Supplier acknowledges that the Buyer is a local authority and that in terms of its regulatory functions as a local authority the Buyer is obliged to, and shall act as, an independent local authority and not as a party to this Contract. Any consent or approval of the Buyer acting as a party to this Contract shall not be construed as a consent or approval of, or bind it in its regulatory capacity.

1.7 Later changes to the RFT or RFT process

- a) 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 GETS.
- b) If you downloaded the RFT from GETS you will automatically receive notifications of any changes through GETS.

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

This Request for Quotation (RFQ) pertains to the physical works outlined in the Design Package (Appendix B), which includes design drawings and specifications for Phase 1 of the works area. The primary objectives are to improve capacity in the area above the wetted bed and below the floodbank to the specified levels and extent outlined in Phase 1, ensuring construction, compaction, and finishing meet the design specifications.

This opportunity involves the following scope of work for Phase 1 of the project:

- Site establishment and safely securing works area.
- Stripping and excavating accumulated 7,828 (~23%) cubic metres of material to adjacent farmland as per approved resource consent and environmental conditions.
- Stockpiling, redistributing, and compacting material as per design specifications and Geotechnical Engineering sign off.
- Reinstating the area, including finishing and re-grassing affected sections of the flood bank and return bank.
- Environmental management and sediment control.
- Distribution of disposal material on adjoining properties, levelling, seeding and making good.

Broader Outcomes

ORC is committed to the implementation of broader outcomes in our projects. ORC has adopted 'He Mahi Rau Rika', a new Significance, Engagement and Māori Participation Policy. Further information on this policy can be found here:

<https://www.orc.govt.nz/news-and-events/news-and-media-releases/2021/october/orc-adopts-he-mahi-rau-rika-a-new-significance-engagement-and-maori-participation-policy>

2.1 Background

Preliminary designs were undertaken by Otago Regional Council Hazards Team, supported by Barnett and MacMurray Consulting Ltd. A final design with construction specifications has since been completed by Otago Regional Council Hazards Team providing the Remediation Design Package including design drawings and specifications (Appendix B) for this work.

2.2 Key outcomes

The following are the key outcomes that are to be delivered:

- Delivery of the contract works as per supplied drawings and specifications, and within any consent and engineering conditions.
- Commitment to achieving the Broader outcomes goals as per ORC's He Mahi Rau Rika Policy.
- Establish and maintain all provisions of a Construction Management Plan (CMP) that includes:
 - Site specific safety plan,
 - Environmental management plan,
 - Erosion and sediment control,
 - Flood preparedness and mitigation plan,
 - Quality Management plan,
 - Reinstatement of any disturbed ground as required,
 - Traffic management plan (if and where required).

- Provide topographical survey prior to works being undertaken and upon completion to quantify volumes of cut/fill for claim and completion purposes.
- Provide as-built post works Construction Drawings (pdf) showing the final cut and fill depths, contours and all other features including but not limited to; trees, gates, fences and structures, to the satisfaction of the Engineer within 20 days of completion of the works. The Construction Drawings should include:
 - LiDAR data through the restored flood bank at approximately 25m intervals along the flood bank and return bank,
 - Cross-sections through the restored flood bank at approximately 50m intervals along the flood bank and return bank,
 - Long section from approx. 50 upstream to 50 downstream of restored flood bank and along return bank.

2.3 What we require from a Respondent:

a. Relevant Skills and Experience

We are seeking suppliers that are able to demonstrate that they have experience and a proven track record of undertaking similar high-quality civil works in proximity to water and public areas.

b. Methodology and Programme

We are seeking suppliers that are able to demonstrate that they have the available plant, workforce and materials to achieve the agreed programme:

- Site to be available from the week of 10 April 2025
- The Contractor shall complete all physical works by December 2025, unless an alternative completion date is mutually agreed upon in writing by the Principal. The Principal acknowledges that there will be a shutdown period during which grass will not grow; therefore, the Contractor must provide an indicative shutdown/standdown period, which shall be included in the comprehensive programme.

c. Social Procurement Outcomes

We are seeking suppliers who are committed to the implementation of broader outcomes in our projects. ORC has adopted 'He Mahi Rau Rika', a new Significance, Engagement and Māori Participation Policy. Further information on this policy can be found here:

<https://www.orc.govt.nz/news-and-events/news-and-media-releases/2021/october/orc-adopts-he-mahi-rau-rika-a-new-significance-engagement-and-maori-participation-policy>

d. Solution

This opportunity involves the following scope of work for Phase 1:

- Site establishment and safely securing works area.
- Stripping and excavating accumulated 7,828 (~23%) cubic metres of material to adjacent farmland as per approved resource consent and environmental conditions.
- Stockpiling, redistributing, and compacting material as per design specifications and

- Geotechnical Engineering sign off.
- Reinstating the area, including finishing and re-grassing affected sections of the flood bank and return bank.
- Distribution of disposal material on adjoining properties, levelling, seeding and making good.

2.4 Other information

- a) It is expected that best practice Environmental Sediment Control (ECS) will be used in the Construction Management Plan including the option of using silt fences as specified in best practice guidelines such as (<https://www.aucklandcouncil.govt.nz/UnitaryPlanDocuments/mir-erosion-sedimentcontrol-guide-auckland-region.pdf> , F1.3 p112 Sediment Control Fences).

2.5 Contract term

We expect that the Contract will commence in April 2025. The anticipated Contract term and options to extend are:

Description	Years
Initial term of the Contract	18 months includes defect period
Maximum term of the Contract	12 month defect period upon practical completion

2.6 Other tender documents

These documents have been uploaded on GETS and are available to Respondents – they form part of this RFT. These include:

- Appendix A – Response Form
- Appendix B – P&G Specification
- Appendix C – Schedule of Quantities
- Appendix D – NZS 3910:2013 Contract Agreement (Draft)
- Appendix E – NZS 3910:2013 Schedule 1
- Appendix F – NZS 3910:2013 Schedule 2
- Appendix G – Silver Stream Capacity Improvements Phase 1 Plans
- Appendix H – Beca Assessment of Environmental Effects
- Appendix I – Notification Recommendation Report
- Appendix J - ORC Health and Safety Policy
- Any response or notice to tender issued under Sections 6.3.3, 6.3.4 or 6.3.5

SECTION 3: Our Evaluation Approach

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

3.1 Pre-conditions

#	Pre-conditions
1.	Must hold current Public Liability insurance valued at \$5m.
2.	Must hold current Motor Vehicle insurance valued at \$5m.
3.	Must hold Contractor's Plant Insurance for each individual plant item worth more than \$50,000 that will be used in delivering the services.
4.	Must have an appropriate level of health & safety accreditation to one of the following: SiteWise (75%+), IMPAC PreQual (60%+), ISO45001.

3.2 Evaluation model

The evaluation model is **weighted attributes**. 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 sealed envelope or soft copy file. The evaluation panel will score each Tender according to the weighted criteria in Section 3.4 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.

3.3 Broader Outcomes

We will evaluate Tenders which promote Broader Outcomes. These may be social, environmental, cultural or economic.

See Rule 16 of Government Procurement Rules for more information at:

[Broader outcomes | New Zealand Government Procurement](#)

3.4 Evaluation criteria

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

Criteria	Weighting
Relevant Skills and Experience	20%
Methodology and Programme	30%
Broader Social Procurement Outcomes	10%
Price	40%
Total weightings	100%

3.5 Scoring

The tender evaluation panel will use the following scoring scale.

Rating	Definition	Score
EXCELLENT significantly exceeds the criterion	Exceeds the criterion. Exceptional demonstration by the Respondent of the relevant ability, understanding, experience, skills, resource and quality measures required to meet the criterion. Quote identifies factors that will offer potential added value, with supporting evidence.	90-100
GOOD exceeds the criterion in some aspects	Satisfies the criterion with minor additional benefits. Above average demonstration by the Respondent of the relevant ability, understanding, experience, skills, resource and quality measures required to meet the criterion. Quote identifies factors that will offer potential added value, with supporting evidence.	70-90
ACCEPTABLE meets the criterion at a minimal level	Satisfies the criterion. Demonstration by the Respondent of the relevant ability, understanding, experience, skills, resource, and quality measures required to meet the criterion, with supporting evidence.	50-70
MINOR RESERVATIONS marginally deficient	Satisfies the criterion with minor reservations. Some minor reservations of the Respondent's relevant ability, understanding, experience, skills, resource and quality measures required to meet the criterion, with little or no supporting evidence.	30-50
SERIOUS RESERVATIONS significant issues that need to be addressed	Satisfies the criterion with major reservations. Considerable reservations of the respondent's relevant ability, understanding, experience, skills, resource and quality measures required to meet the criterion, with little or no supporting evidence.	10-30
UNACCEPTABLE significant issues not capable of being resolved	Does not meet the criterion. Does not comply and/or insufficient information provided to demonstrate that the Respondent has the ability, understanding, experience, skills, resource and quality measures required to meet the criterion, with little or no supporting evidence.	0-10

3.6 Price

We wish to obtain the best value-for-money over the whole-of-life of the Contract. This means achieving the right combination of fit for purpose, quality, on time delivery, quantity and 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).

3.7 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. arrange site-visits.

SECTION 4: Pricing information

4.1 Pricing information to be provided by Respondents

- a. Respondents must use the Pricing Schedule provided.
- 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\$. Unless otherwise agreed, we will arrange contractual payments 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. In this case, only invoices issued by the lead in the consortium will be accepted.

4.2 Basis of Payment

4.2.1 Scope

The Schedule of Prices shall be read in conjunction with the Tender Documents. Payment shall be made at the appropriate rates set out in the priced schedule for final quantities determined by the Engineer and in accordance with NZS4224:1983 Code of Practice for Measurement of Civil Engineering Quantities.

Attention is drawn to General Conditions of Contract Clauses 2.2.2 and 2.3.2 which require the Contractor to allow for all costs in carrying out the work as specified in the documents, unless expressly excluded.

The Contractor shall not rely on the quantities given in the schedule for the purpose of ordering materials.

Lump Sum amounts shall include all costs associated with completion of the item, including labour, materials, plant and equipment, transportation, overhead and profit.

All volumes are measured as solid volumes unless stated otherwise in the specific Basis of Payment Clauses below.

4.2.2 Abbreviations

The following abbreviations are used in the Schedule of Prices

lineal metre	m
cubic metre	cu m or m ³
square metre	sq m or m ²
kilometre	km
number	no
each	ea
lump sum	LS
hour	hr
percent	%
tonne	t
provisional sum	PS
provisional item	PI

4.2.3 Contingency Amount (Item 5)

This is a Contingency Sum item as per NZS3910 12.12 and payment will be made in accordance with this clause. Where variations are required that could not have been reasonably foreseen for inclusion in the Contract, the Contractor will be paid under the contingency item. This will include items that may be requested by the Engineer as the work proceeds that were not included in the original tender documents or drawings. All work under this item shall only proceed with a written variation order issued by the Engineer. A price for each variation shall be submitted to the Engineer for approval before the work proceeds.

4.2.4 Schedule B – Variation Pricing

Where onsite overheads, off site overheads and profit and time related expenses are sought, payment shall be assessed in accordance with the General Conditions of Contract clause 9.3.

4.2.5 Schedule C – Dayworks Rates

These rates shall be used when additional work is required as Dayworks carried out in accordance with the General Conditions of Contract clause 9.4. Payment for these items shall only be made with written instruction and approval from the Engineer prior to the work being carried out. The rates provided shall be exclusive of GST.

4.2.6 Labour Rates

Rates for labour shall include for all overheads, overtime and other allowances payable, profit and the use of small hand tools and appliances, and ordinary non-mechanical plant and equipment (e.g., ladders, trestles, skips and consumables etc.) and any other emoluments and allowances payable to the workmen.

The rates for labour may be grouped to encompass the staff by skill and grading classifications or single by staff name and shall include for Subcontractors.

4.2.7 Plant Hire Rates

Rates for plant shall be for the time plant is employed in normal working use. The rate shall include all costs associated with the operations including the operator, overtime, and profits associated with the operations.

SECTION 5: Our Proposed Contract

5.1 Proposed Contract

The Proposed Contract that we intend to use for this procurement is attached to this RFT (via GETS).

The following is the Proposed Contract that we intend to use for the purchase and delivery of the Requirements.

The proposed contract will be in the form of NZS 3910:2013 – Conditions of Contract for Building and Civil Engineering Construction. The proposed Specific and Special Conditions of Contract (Schedules 1 and 2) are attached to this request on GETS.

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 new terms or conditions.

The RFT Response Form contains a section for you to state your position. If you do not state your position, you will be deemed to have accepted the terms and conditions in the Proposed Contract in full.

SECTION 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, e.g., 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:
- d. The Buyer will respond on or before the Deadline for Answers.
 - i. 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.
 - ii. Unless stated otherwise in the RFT, the Buyer will post both the questions and answers on GETS.
 - iii. 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 Tenders.
- 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 either:
 - i. in a sealed envelope, separate from the rest of the Tender and clearly marked 'Financial and Pricing Information', or
 - ii. 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,
 - iv. is identical, if they supply both hard and soft copy Tenders.
- 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.

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 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 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.
- c. 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.
- d. 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 offer to debrief the Respondent. This debrief may be by letter, email, phone or a meeting.
- b. The Respondent has 10 Business Days from the date of the Buyer's offer to accept a debrief.
- c. The Buyer will provide the debrief within 30 Business Days from either the date of the Respondent's acceptance of a debrief, or the date the Contract is signed, whichever is later.
- d. The debrief will:
 - 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

During the 30 Business Days after the Contract has been signed, the Buyer:

- a. will let all unsuccessful Respondents know the name of the Successful Respondents, if any
- b. may make public the name and address of the Successful Respondents (if any) and any unsuccessful Respondents,
- c. will publish a Contract Award Notice on GETS, where applicable. Contract Award Notices are available to view by the public on GETS. The Respondent may request that the Buyer withhold its address from the Contract Award Notice for privacy reasons. The Buyer may withhold the Respondent's address from the Contract Award Notice in a manner consistent with the Privacy Act 2020.

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.

Standard RFT conditions

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, 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 GETS.
- 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 the Supplier Code of Conduct issued by the Procurement Functional Leader, and any other 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 Official Information Act 1982 (OIA), the Privacy Act 2020, parliamentary and constitutional convention, and any other obligations imposed by law. Where the Buyer receives an OIA request that relates to a Respondent's Confidential Information, the Buyer will consult with the Respondent and may ask the Respondent to explain why the information is considered by the Respondent to be confidential or commercially sensitive.
- e. The Respondent may disclose the Buyer's Confidential Information to the extent strictly necessary to comply with law or the rule 16s 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.

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 may decide not to accept the lowest price conforming Tender, unless stated otherwise in the Evaluation Approach.

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 or GETS.
- 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	<p>A notice published by the Buyer on GETS 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.</p>
Business Day	<p>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.</p>
Buyer	<p>The government agency that has issued the RFT with the intent of purchasing the goods or services described in the Requirements.</p>
Competitors	<p>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.</p>
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> <ol 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> <ol 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> <ol 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	<p>Any written Contract entered into by the Buyer and a Successful Respondent for the delivery of the Requirements.</p>

Contract Award Notice	A notice on GETS which a Buyer is required to publish under Rule 48 of the Government Procurement Rules, when it has awarded a contract that is subject to those Procurement Rules.
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.
GETS	Government Electronic Tenders Service available at www.gets.govt.nz .
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 GETS.
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.

For more definitions, click [HERE](#).