

**Request for Expressions of
Interest (REOI):
Independent Evaluation of the
New Zealand Nurses
Organisation Safe Staffing
Strategies**

Issue Date: 1 April 2021
Revised Deadline for Responses: 5 pm on 14 May 2021

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A. Introduction to this Request for Expression of Interest (REOI)

New Zealand Nurses Organisation (NZNO) requests expressions of interest from persons / organisations to undertake a full, independent evaluation of current NZNO safe staffing strategies to achieve safe nursing/midwifery workloads and patient safety (the **Evaluation**).

A draft Terms of Reference for the Evaluation has been prepared and is **attached** to this paper. The Terms of Reference, including expected timelines, will be finalised in consultation with the Successful Respondent.

B. About NZNO

Vision

NZNO's vision is *Freed to care, proud to nurse*.

Our Mission

NZNO is committed to the representation of its members and the promotion of nursing and midwifery. NZNO embraces te Tiriti o Waitangi and works to improve the health status of all peoples of Aotearoa New Zealand through participation in health and social policy development.

NZNO is the leading professional nursing association and union for nurses in Aotearoa New Zealand. NZNO represents over 50,000 nurses, midwives, students, kaimahi hauora and health workers on professional and employment related matters. NZNO is affiliated to the International Council of Nurses, Global Nurses United, South Pacific Nurses Forum and the New Zealand Council of Trade Unions.

NZNO promotes and advocates for professional excellence in nursing by providing leadership, research and education to inspire and progress the profession of nursing. NZNO represents members on employment and industrial matters and negotiates collective employment agreements.

Our Philosophy

Me haere tahi tātou mō te hauora me te ora o ngā iwi katoa o Aotearoa.

Let us journey together for the health and wellbeing of the people of Aotearoa (Rev Leo Te Kira 2005).

Kaua e takahia te mana o te Tangata.

Do not trample over the mana of the people (Hone Te Ahu).

Further information can be found on our website: www.nzno.org.nz.

Our structure

NZNO is a multi-levelled, member-based organisation comprising many different specialty groups and membership structures. The different levels of NZNO are described below.

Governance Board

NZNO's Board of Directors has eleven elected members consisting of four leadership positions (Kaiwhakahaere, President, Tumu whakarae and Vice President) and seven elected representatives. The Board has bimonthly meetings in Wellington.

Te Poari o Te Rūnanga o Aotearoa

Te Poari is made up of regional representatives who are accountable to Te Rūnanga members. Te Poari supports the Board by working in partnership to achieve NZNO's strategic aim of giving effect to te Tiriti o Waitangi and giving full recognition to the Te Rūnanga o Aotearoa Memorandum of Understanding.

Membership Committee

The Membership Committee is made up of representatives from each Regional Council, National Student Unit and National Colleges and Sections.

Regional Councils

There are 11 Regional Councils throughout Aotearoa made up of an elected Chairperson and elected representative from workplace groups, Sections, Colleges and the National Student Unit.

Colleges and Sections

There are twenty (20) Colleges and Sections that represent a defined area of professional clinical practice. Each has its own management committee.

National Student Unit

The National Student Unit promotes the interests and participation of nursing students.

C. Our Requirements – the Independent Evaluation

1. Background to the Evaluation

The origin of NZNO's Safe Staffing strategies can be traced to the collective employment agreement negotiations with District Health Boards (DHBs) in 2001. Following the subsequent Multi Employer Collective Agreement (MECA) negotiations of 2004-2005, a Committee of Inquiry into nurse staffing was established. The ensuing Safe Staffing Healthy Workplaces Committee of Inquiry Report in 2006 provided several recommendations which lead to changes to the way nurse staffing was approached in New Zealand, in addition to the establishment of the Safe Staffing Healthy Workplaces Unit (SSHWU).

In the last decade NZNO has initiated the following programmes and campaigns in response to the Committee of Inquiry Report:

- The Care Capacity Demand Management (CCDM) Programme for public sector hospitals in partnership with the DHBs
- The Healthy Workplaces Project for the Primary Health Care and Private Hospitals Sectors
- The Voluntary Safe Staffing Guidelines and more recently the "In Safe Hands" campaign for the Aged Care Sector.

The CCDM Programme aims to match the demand safely and consistently for services (care required by patients) with the resources, namely staff, knowledge, equipment and facilities required to meet the demand. Nurse rostering is determined according to patient acuity data, rather than nurse: patient ratios. Real time indicators allow for gaps in capacity and demand to be identified and addressed on the day. CCDM was launched in three DHBs in New Zealand in 2009, with additional DHBs adopting the programme progressively over the coming decade. As at 2020, no single DHB has completely implemented CCDM. The NZNO/DHB MECA 2018-2020 required commitment to full Implementation of CCDM by 2021.

To date, evaluations on CCDM have focused on process evaluations rather than outcomes for patients, or nursing experience. DHBs collect a core dataset comprising 23 parameters in the categories of quality patient care, quality work environment and best use of health resources (figure 1). Accordingly, some DHBs have significant longitudinal datasets available for analysis.

The Healthy Workplaces Project also arose from the recommendations of the Safe Staffing Healthy Workplaces Committee of Inquiry Report in 2006. The project aims to achieve workplaces with the right people, providing the right care in the right place at the right time. This work addresses safe staffing across a range of different contexts including primary health care, prison health services, private hospitals and hospices.

The goal is for workplaces to achieve the seven elements identified as components of safe care including:

- The freedom to deliver care
- The right workplace culture
- A focus on quality and safety
- Leadership in the workplace
- A skilled and knowledgeable workforce
- Having the tools to do the job
- The wider team

In practical terms, the project operates via joint workplace committees which provide a forum for nurses to raise concerns and work towards addressing the components of safe care and healthy workplaces.

Staffing in the Aged Care Residential Sector is guided by *The New Zealand Standard Indicators for Safe Aged Care and Dementia Care for Consumers SHNZ HB 8163:2005*. The standards include a suggested amount of time each resident should be allotted per week for care. The standards are voluntary, outdated and no longer reflect the acuity of patients cared for New Zealand aged care facilities. The “In Safe Hands” Campaign aimed to highlight the need for mandatory safe minimum staffing levels in Aged Residential Care facilities.

In August and September 2020, members were asked to vote on a policy remit calling for an independent evaluation of current NZNO Safe Staffing strategies, including CCDM and publish any result showing significant outcomes for nursing workloads and patient safety at a national level; and present options to campaign for additional Safe Staffing mechanisms, including legislated minimum nurse/patient ratios for consideration and endorsement by NZNO members. The majority of members voted for the remit.

2. The Evaluation

The scope of the evaluation is proposed to be as follows:

- a. Undertake a systemic evaluation of current NZNO Safe Staffing Strategies in their entirety, including CCDM;
- b. Report/publish results showing significant outcomes for nursing workloads and patient safety at the national level;
- c. Report on options to campaign for additional Safe Staffing mechanisms including legislated minimum nurse/patient ratios and make recommendations for considerations and endorsement by NZNO members;
- d. Prepare and report on the outcome of the systematic evaluation of NZNO Safe Staffing Strategies;
- e. Provide an interim report and/or findings on the systematic evaluation of current NZNO Safe Staffing Strategies for dissemination to members by Friday 16 July 2021, as part of the information pack for the Annual General Meeting to be held in September 2021;
- f. Make any additional comments and/or recommendations that are appropriate and relevant to the review;
- g. Provide progress evaluation reports to the Expert Advisory Group.

Please note that this scope, along with the rest of the draft Terms of Reference will be finalised in consultation with the Successful Respondent.

We are interested in a holistic, multi-disciplinary evaluation of the current NZNO Safe Staffing Strategies. This may draw on national and international expertise in nursing/midwifery safe staffing strategies and subject matter experts.

D. Respondent criteria

NZNO is requesting responses from individuals or organisations who are able to demonstrate the following:

- A strong understanding, knowledge and experience of:
 - evaluation and/or research in the health sector and/or nursing;
 - expertise in both qualitative and quantitative data collection and analysis methods;
- A strong understanding and knowledge of:
 - Nursing/midwifery workforce safe staffing strategies in public hospitals, aged care and public sector
 - CCDM including good understanding of the principles of the te Tiriti o Waitangi
- Strong critical analysis skills
- Adequate resourcing and processes to be able to conduct the review in a timely, efficient and effective way within the timeframes specified in the draft Terms of Reference.
- A proven track record of experience providing work of a similar nature to a high-quality.
- A fair and reasonable price for conducting the review and cost-efficiency.

It is desirable/preferable for reviewer(s) to have knowledge of nursing/midwifery workforce including safe staffing strategies and CCDM

E. Contract and payment

- If a contract is awarded as a result of this REOI process, it will be materially on the terms and conditions of the contract **attached**.
- You must let us know in your response if you wish to question and/or negotiate any of the terms or conditions in the proposed contract, or wish to negotiate new terms and/or conditions. The Response Form 1 (non-price information) 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.
- NZNO anticipates that any such contract will likely commence in June 2021 and will end once the requirements of the Review have been completed.
- Payment is proposed to be on successful delivery of milestones.

F. Key information about this REOI process

- This Request for Expressions of Interest (**REOI**) is an invitation to suitably qualified suppliers to submit a response for an Independent Review of the New Zealand Nurses Organisation Independent Evaluation of Safe Staffing Strategies contract opportunity.
- This REOI is a closed, single-step, competitive procurement process.
- In submitting your Response you must use the two Response Forms provided and complete and sign the declaration at the end of the Response Forms.

Timeline

Step	Date
Issue of the REOI	29 March 2021
Deadline for requests for clarification from Potential Respondents	9 April 2021
Deadline for NZNO to answer requests for clarification	16 April 2021
Deadline for responses to the REOI (revised)	5 pm on 14 May 2021
Anticipated contract start date (if a contract is awarded)	June 2021

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

Our Point of Contact

- Our Point of Contact for this REOI is: safestaffing@nzno.org.nz
- All enquiries must be directed to our Point of Contact. We will manage all external communications through this Point of Contact.

Requests for clarification

- Respondents should satisfy themselves as to the interpretation of this REOI. If they are uncertain about any aspect of it, Respondents should seek clarification before the deadline for requests for clarification set out above. All requests for clarification must be made by email to NZNO's Point of Contact.
- NZNO will endeavour to respond to requests in a timely manner, but not later than the deadline for NZNO to answer requests for clarification above.
- If NZNO considers a request to be of sufficient importance to all Potential Respondents, it may provide details of the request and answer to other Potential Respondents. In doing so, NZNO may summarise the request and will not disclose the identity of the Potential Respondent that made the request. The request and answer will be emailed to Potential Respondents. Requests for clarification may be withdrawn at any time.
- In requesting clarification, a Potential Respondent is to indicate, in its request, any information that is commercially sensitive. NZNO will not publish such commercially sensitive information. However, NZNO may modify a request to eliminate such commercially sensitive information, and distribute that modified request and the answer where NZNO considers it of general significance to all Potential Respondents. In this case, however, the Potential Respondent will be given an opportunity to withdraw the request or remove the commercially sensitive information before the modified request and answer are distributed.

Submitting a response

- Responses must be delivered in both hard and soft copies. We require 4 hard copies and 1 soft copy on a memory stick.
- Respondents are responsible for ensuring that all copies are identical.

Two envelope requirement

- Hard copies of Responses must be arranged as follows:
 - The Respondent must place its completed Response Form 1 (non-price information) in one sealed envelope and mark the envelope "Non-price information".
 - The Respondent must place its completed Response Form 2 (price information) in a second sealed envelope and mark the envelope "Price information".
 - Both sealed envelopes must then be placed in a third envelope and addressed in accordance with the directions above.
- The memory stick must contain the Respondent's completed Response Form 1 (non-price information) in one folder on the stick and completed Response Form 2 (price information) in another folder on the stick.

Addresses for responses

- For Responses sent by post:
Review of New Zealand Nurses Organisation Independent Evaluation of Safe Staffing Strategies REOI
Attn: Jinny Willis
NZNO
PO Box 2128
Wellington 6140
- For Responses delivered by hand or courier:
Review of New Zealand Nurses Organisation Independent Evaluation of Safe Staffing Strategies REOI
Attn: Jinny Willis
NZNO

Level 3, 57 Willis Street
Wellington 6011

- Responses sent by fax or email will not be accepted.
- Responses received after the closing time will not be considered.

Offer Validity Period

In submitting a Response, the Respondent agrees that their offer will remain valid and open for acceptance by NZNO for 6 calendar months from the deadline for responses set out above.

Terms and conditions

The REOI is subject to the Terms and Conditions set out in section H.

Later changes to this REOI or REOI process

If, after issuing this REOI, NZNO wishes to change anything about this REOI or the REOI process, or to provide Potential Respondents with additional information, it will let all Potential Respondents know by emailing them.

G. Evaluation Approach

Pre-conditions

- There are two pre-conditions for participating in this REOI process, they are that:
 - the Respondent (or Respondents, in the case of a joint Response) does not have a Conflict of Interest as described below; and
 - there are no matters which may impact on the credibility or reputation of NZNO if the Respondent was awarded a contract as a result of this REOI.
- A “Conflict of Interest” arises if a Respondent’s personal or business interests or obligations do, could, or be perceived to, conflict with its obligations to NZNO under the REOI or in the provision of the services sought under the REOI. It means that the Respondent’s independence, objectivity or impartiality can be called into question.
- A Conflict of Interest may be:
 - 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.
- Responses which fail to meet either pre-condition will be eliminated from further consideration. Accordingly, Potential Respondents who are unable to meet either pre-condition should conclude that they will not benefit from submitting a Response.

Evaluation model

- The evaluation model that will be used is weighted criteria. Price is a weighted criterion.
- A ‘two envelope’ system will be used for the initial evaluation of the Responses.
 - NZNO’s Review Advisory Group (a committee convened to ensure the effective and efficient running of the Review) will first score each Response based on the non-price related weighted criteria listed below. Responses will then be ranked according to their scores.
 - Following completion of the scoring on non-price related weighted criteria, the sealed envelopes containing price information will be presented to the Review Advisory Group. The Review Advisory Group will then score each Response based on the price related weighted criteria below and then combine the two scores to give an overall score for each Response.
- Please see Section H, clause 7 for further information about the evaluation process.

Evaluation criteria

Responses that meet the pre-conditions will be evaluated on their merits according to the following evaluation criteria and weightings.

Criteria	Weighting
Non-price related criteria	
A strong understanding, knowledge and experience of: <ul style="list-style-type: none"> ○ evaluation and/or research in the health sector and/or nursing; ○ expertise in both qualitative and quantitative data collection and analysis methods; A strong understanding and knowledge of: <ul style="list-style-type: none"> ○ Nursing/midwifery workforce safe staffing strategies in public hospitals, aged care and private sector ○ CCDM including good understanding of the principles of the te Tiriti o Waitangi 	25%
<ul style="list-style-type: none"> • Strong critical analysis skills and a proven track record of experience providing work of a similar nature to a high-quality. 	15%
<ul style="list-style-type: none"> • Provider capacity and resourcing to conduct and complete the Review within expected timeframes. 	25%
Price related criteria	
<ul style="list-style-type: none"> • Price and cost-efficiency 	35%

Scoring

The following scoring scale will be used in evaluating Responses. Scores by individual panel members may be modified through a moderation process across the whole evaluation panel.

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. Response identifies factors that will offer potential added value, with supporting evidence.	9-10
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. Response identifies factors that will offer potential added value, with supporting evidence.	7-8
ACCEPTABLE meets the criterion in full, but 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.	5-6
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, due to little or no supporting evidence.	3-4
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, due to little or no supporting evidence.	1-2

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, due to little or no supporting evidence.	0
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Price

If a Respondent offers a price that is substantially lower than other Responses (an abnormally low bid), NZNO may seek to verify with the Respondent that the Respondent is capable of fully delivering all of the requirements and meeting all of the conditions of the proposed contract for the price quoted.

H. Terms and Conditions

1. Definitions and interpretation: In this REOI:

- a. **Conflict of Interest** is described in Section G.
- b. **Evaluation Approach** means the process set out in section G of this REOI.
- c. **Potential Respondent** means a person, organisation, business or other entity who has been invited to participate in this REOI by NZNO.
- d. **Requirements** means the goods and/or services described in section C of this REOI which NZNO intends to purchase.
- e. **Respondent** means a person, organisation, business or other entity that submits a Response in response to the REOI. The term Respondent includes its officers, employees, contractors, consultants, agents and representatives. The term Respondent differs from a supplier, which is any other business in the market place that does not submit a Response.
- f. **Response** means the response a Respondent submits in reply to the REOI. It comprises the Response Forms, the Respondent's bid, financial and pricing information and all other information submitted by a Respondent.
- g. **Successful Respondent** means, following the evaluation of Responses and successful negotiations, the Respondent/s who is awarded a contract/s to deliver all or part of the Requirements.
- h. Where this REOI refers to NZNO emailing a Respondent, NZNO will use the same email address as it used to invite the Respondent to participate in this REOI process.
- i. The plural includes the singular and vice versa.

2. Preparing a response

- a. Respondents are to use the Response Forms provided and include all information requested by NZNO in relation to the REOI.
- b. By submitting an REOI the Respondent accepts that it is bound by the provisions of the REOI document including the terms and conditions contained in this section H (**Terms and Conditions**).
- c. If there is a conflict between:
 - i. a provision in this section H and a provision in any other part of this REOI document; or
 - ii. a provision in this section H and a provision in a Response Form provided with this REOI document,
the provision in this section H will prevail.
- d. Each Respondent will:
 - iii. examine the REOI and any documents attached to the REOI and any other information provided by NZNO, consider all risks, contingencies and other circumstances relating to the delivery of the Requirements and include adequate provision in its response to manage such risks and contingencies;
 - iv. document in its Response all assumptions and qualifications made about the delivery of the Requirements, including any assumption that NZNO or a third party will deliver any aspect of the Requirements or incur any cost related to the delivery of the Requirements;
 - v. if appropriate, obtain independent advice before submitting a response; and

vi. satisfy itself as to the correctness and sufficiency of its Response, including the proposed pricing and the sustainability of the pricing.

3. Submitting a response

- e. Each Respondent is responsible for ensuring that its Response is received by NZNO at the correct address on or before the deadline for responses. NZNO will acknowledge receipt of each.
- f. NZNO intends to rely on the Respondent's Response and all information provided by the Respondent (e.g. correspondence and negotiations). In submitting a Response and communicating with NZNO, each Respondent should check that all information it provides to NZNO is:
 - i. true, accurate and complete, and not misleading in any material respect; and
 - ii. does not contain intellectual property that will breach a third party's rights.

4. Independent advisors: NZNO may invite independent advisors to evaluate any Response or any aspect of any Response.

5. Third party information

- a. Each Respondent authorises NZNO 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 Respondent's Response.
- b. Each Respondent is to ensure that all referees listed in support of its Response agree to provide a reference.
- c. To facilitate discussions between NZNO and third parties each Respondent waives any confidentiality obligations that would otherwise apply to information held by a third party, with the exception of commercially sensitive pricing information.

6. NZNO clarification

- a. NZNO (including the Review Advisory Group and the Board) may, at any time, request from any Respondent clarification of its Response as well as additional information about any aspect of its Response. NZNO is not required to request the same clarification or information from each Respondent.
- b. The Respondent must provide the clarification or additional information in the format requested. Respondents will endeavour to respond to requests in a timely manner. NZNO may take such clarification or additional information into account in evaluating the Response.
- c. Where a Respondent fails to respond adequately or within a reasonable time to a request for clarification or additional information, NZNO may cease evaluating the Respondent's Response and may eliminate the Response from the REOI process.

7. Evaluation Process

- a. The Review Advisory Group will undertake an initial evaluation process as set out in Section G on the basis of Responses submitted in response to the REOI. The Review Advisory Group may then adjust its evaluation of any Response following consideration of:
 - i. any clarification or additional information;
 - ii. the Respondent's understanding of the Requirements and capability to fully deliver the Requirements;
 - iii. the results from any checks undertaken;
 - iv. the ease of contracting with the Respondent based on that Respondent's feedback on the proposed contract (where this does not form part of the weighted criteria);
 - v. any matter that materially impacts on the Review Advisory Group's trust and confidence in the Respondent; and
 - vi. any other relevant information that the Review Advisory Group may have in its possession.
- b. The Review Advisory Group will then advise the NZNO Board of the scores and rankings it has ascribed to the Responses and make a non-binding recommendation to the Board as to which Respondent to negotiate with.
- c. The Board will make the final decision about which Respondent to negotiate with.

- d. NZNO may invite a Respondent to enter into negotiations with a view to contract. Where the outcome is unsatisfactory, NZNO may discontinue negotiations with that Respondent and may then initiate negotiations with another Respondent.
 - e. Each Respondent agrees that any legally binding contract entered into between the Successful Respondent and NZNO will materially be in the form **attached**.
- 8. Notification process:** Respondents that are unsuccessful will be notified via email within a reasonable period of time. The Successful Respondent will be notified by the NZNO Board.
- 9. NZNO's Point of Contact**
- a. All requests for clarification regarding the REOI must be directed by email to NZNO's Point of Contact. Respondents must not directly or indirectly approach any representative or member of NZNO, or any other person, to solicit information concerning any aspect of the REOI.
 - b. Only the Point of Contact, and any authorised person of NZNO, are authorised to communicate with Respondents regarding any aspect of the REOI. NZNO will not be bound by any statement made by any other person.
 - c. NZNO may change the Point of Contact at any time. NZNO will notify Respondents of any such change by email.
 - d. Where a Respondent has an existing contract with NZNO then business as usual communications, for the purpose of managing delivery of that contract, will continue using the usual contacts. Respondents must not use business as usual contacts to lobby NZNO, solicit information or discuss aspects of the REOI.
- 10. Conflict of Interest:**
- a. Each Respondent must complete the Conflict of Interest declaration in the Response Forms and must immediately inform NZNO if:
 - i. a Conflict of Interest arises during the REOI process; or
 - ii. the Respondent becomes aware of any matter which may impact on the credibility or reputation of NZNO if the Respondent was awarded a contract as a result of this REOI.
 - b. A material Conflict of Interest or a matter referred to in ii. above may result in the Respondent being disqualified from participating further in the REOI.
- 11. Ethics**
- a. Respondents must not attempt to influence or provide any form of personal inducement, reward or benefit to any representative or member of NZNO in relation to the REOI.
 - b. A Respondent who attempts to do anything prohibited by clause 9a or d, 11a or 12a, may be disqualified from participating further in the REOI process.
 - c. NZNO reserves the right to require additional declarations, or other evidence from a Respondent, or any other person, throughout the REOI process to ensure probity of the REOI process.
- 12. Anti-collusion and bid rigging**
- a. Respondents must not engage in collusive, deceptive or improper conduct in the preparation of their Responses or other submissions or in any discussions or negotiations with NZNO. Such behaviour will result in the Respondent being disqualified from participating further in the REOI process. In submitting a Response, the Respondent warrants that its Response has not been prepared in collusion with a competitor.
 - b. NZNO reserves the right, at its discretion, to report suspected collusive or anti-competitive conduct by Respondents to the appropriate authority and to give that authority all relevant information including a Respondent's Response.
- 13. Confidential Information**
- a. NZNO and the Respondent will each take reasonable steps to protect any information belonging to the other party that is marked confidential or could reasonably be presumed to be confidential (**Confidential Information**) and, subject to clause 13b. and without limiting any confidentiality undertaking agreed between them, will not disclose the other party's Confidential Information to a third party without the other party's prior written consent.

- b. NZNO and the Respondent may each disclose the other party's Confidential Information to any person who is directly involved in the REOI 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 REOI.
- c. Subject to clause 13b, from the date that this REOI is released to the date of the end of the REOI process (as notified to the Respondent by NZNO), the Respondent agrees to keep the REOI strictly confidential and not make any public statement to any third party in relation to any aspect of the REOI, the REOI process or the award of any contract without NZNO's prior written consent.

14. Costs of participating in the REOI process: Each Respondent will meet its own costs associated with the preparation and presentation of its Response and any negotiations.

15. Ownership of documents

- a. The REOI and its contents remain the property of NZNO. All intellectual property rights in the REOI remain the property of the NZNO. NZNO may request the immediate return or destruction of any or all REOI documents and any copies. Respondents must comply with any such request in a timely manner.
- b. All documents forming the Response will, when delivered to NZNO, become the property of NZNO. Responses will not be returned to Respondents at the end of the REOI process.
- c. Ownership of intellectual property rights in the Response remain the property of the Respondent or its licensors. However, the Respondent grants to NZNO a non-exclusive, non-transferable, perpetual licence to retain, use, copy and disclose information contained in the Response for any purpose related to the REOI process.

16. No binding legal relations

- a. Neither the REOI, nor the REOI process, creates a process contract or any legal relationship between NZNO and any Respondent.
- b. No legal relationship is formed between NZNO and any Respondent unless and until a contract is entered into between those parties.

17. Elimination: NZNO may exclude a Respondent from participating in the REOI if NZNO has evidence of any of the following, and it is considered by NZNO to be material to the REOI:

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

18. NZNO's additional rights

- a. Despite any other provision in the REOI, NZNO may, on giving due notice to Respondents:
 - i. amend, suspend, cancel and/or re-issue the REOI, or any part of the REOI; and/or
 - ii. make any material change to the REOI (including any change to the timeline, Requirements or Evaluation Approach) on the condition that Respondents are given a reasonable time within which to respond to the change.
- b. Despite any other provision in the REOI, NZNO may:
 - i. Accept a late Response if it is NZNO's fault that it is received late.

- ii. In exceptional circumstances, accept a late Response where it considers that there is no material prejudice to other Respondents. NZNO will not accept a late Response if it considers that there is risk of collusion on the part of a Respondent or the Respondent may have knowledge of the content of any other Response.
- iii. In exceptional circumstances, answer a request for clarification submitted after the deadline for requests for clarification.
- iv. Accept or reject any response, or part of a Response.
- v. Accept or reject any non-compliant, non-conforming or alternative Response.
- vi. Decide not to accept the lowest priced conforming Response.
- vii. Decide not to enter into a contract with any Respondent.
- viii. Liaise or negotiate with any Respondent without disclosing this to, or doing the same with, any other Respondent.
- ix. Provide or withhold from any Respondent information in relation to any request for clarification arising in relation to the REOI. Information will usually only be withheld if it is deemed unnecessary, is commercially sensitive to a Respondent, is inappropriate to supply at the time of the request or cannot be released for legal reasons.
- x. Amend the proposed contract at any time, including during negotiations with a Respondent.
- xi. Waive irregularities or requirements in or during the REOI process where it considers it appropriate and reasonable to do so.

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

20. Disclaimer

- a. NZNO will not be liable in contract, tort, equity, or in any other way whatsoever for any direct or indirect damage, loss or cost incurred by any Respondent or any other person in respect of the REOI process.
- b. Nothing contained or implied in the REOI, or REOI process, or any other communication by NZNO to any Respondent shall be construed as legal, financial or other advice. NZNO has endeavoured to ensure the integrity of such information. However, it has not been independently verified and may not be updated.