



Ministry of Education

# Call for Expressions of Interest

Partnership Schools| Kura Hourua  
Round 5 Applications for Schools  
Opening in 2019

EOI released: 13 February 2017

Deadline for Questions: 12pm (noon) Friday 24 February 2017

Deadline for EOIs: 12pm (noon) Friday 3 March 2017

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# This opportunity in a nutshell

The Ministry of Education (the Buyer) is calling for potential sponsors to register their interest in establishing a Partnership School|Kura Hourua (Partnership School or PSKH) to open in 2019.

This is the fifth application round for Partnership Schools. There are ten (10) partnership schools currently in operation. A fourth procurement round is nearing completion, and that is expected to see further partnership schools opening in 2018.

In this fifth application round, the focus will be on sourcing Science, Technology, Engineering and Mathematics (STEM Education) Partnership Schools|Kura Hourua. If suitable STEM-focussed applications are not received, then the focus will continue to be on applications with a focus on priority learners. Given the level of funding available and the fact that this is the first application round with a focus on STEM Partnership Schools, it is considered likely that a mix of STEM and priority learner schools will be selected to proceed to the full application stage.

The Ministry is therefore seeking applications in relation to two different types of Partnership School:

1. STEM schools will use innovative pedagogy, curricula or school structures to engage students in one or more of the following subjects: Science, Technology (including digital technologies), Engineering and Mathematics. STEM Schools will be required to demonstrate how they will deliver more science, technology, engineering and maths competent learners and encourage more students to choose STEM educational and career pathways.
2. Schools focused on raising achievement among priority learners, i.e. those who have been identified as historically not experiencing success in the New Zealand schooling system, including Māori, Pasifika, students with special education needs and students from low socio-economic backgrounds. It is expected that 75% of enrolments will be priority learners. These schools are referred to as “priority learners” through this document.

Subject to this process, it is estimated that there is sufficient funding for about eight new Partnership Schools sourced from application rounds 4 and 5. Applicants interested in being either a STEM or priority learner partnership school are encouraged to register their interest.

Potential sponsors will need to specify which category of school they are seeking to apply to open. The funding, performance standards and requirements around the enrolments differ for each type (refer to the table at 2.7(iii)). Therefore, a separate Response Form is required for each type of school.

## Key Process Information

This is a two-stage application process.

At this first stage, the Expression of Interest (EOI), we will shortlist Applicants based on information in the attached response form.

The second application stage (Request for Application stage) will test all key elements of each application including (but not limited to) more in-depth information on the sponsor, the educational plan (e.g. curriculum, enrolment plans, intended premises, school operations), school leadership and teacher quality, implementation plans and financial viability, including confirming proposed sources of private sector and community support and funding.

Those entering into this process need to be aware that there is a large amount of work involved in preparing a full, well-articulated partnership school application that meets all the criteria, and there is limited time available to do this. Please note that for organisations shortlisted following the EOI

stage, we require the full application to be completed by the end of April. Examples of previous applications can be found at:

<https://minedu.cwp.govt.nz/ministry-of-education/information-releases/partnership-schools-kura-hourua-information-release/second-partnership-schools-application-round-2014/round-2-partnership-schools-applications-phase/>

<http://www.education.govt.nz/ministry-of-education/information-releases/partnership-schools-kura-hourua-information-release/first-partnership-schools-application-round-2013/round-1-partnership-schools-applications-phase/round-one-partnership-schools-applications/>



# SECTION 1: Key information

## 1.1 Context

- a. This is an invitation to suitably qualified Applicants to submit an Expression of Interest to open a Partnership School | Kura Hourua (Partnership School) in 2019 through application round 5.
- b. This EOI is the first step in a multi-step application process. Following evaluation, shortlisted Applicants will be invited to submit a full proposal in response to a Request for Application (RFA). This document deals only with the first step i.e. the EOI process.
- c. Words and phrases that have a special meaning are shown by the use of capitals. Definitions are at the end of Section 4.

## 1.2 Our timeline

- a. Here is our timeline for this EOI.

### Step in EOI process:

### Date:

Deadline for Questions from Applicants: 12pm (noon) 24 February 2017

Deadline for the Ministry to answer Applicants' questions: 28 February 2017

**Deadline for Expressions of Interest: 12pm (noon) Friday 3 March 2017**

Applicants notified of shortlisting: 1 April 2017

RFA released to shortlisted Applicant/s: Early April 2017

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

## 1.3 How to contact us

- a. All enquiries must be directed to our Point of Contact. We will manage all external communications through this Point of Contact.

### b. Our Point of Contact

**Name:** [REDACTED] — s 9(2)(a) OIA

**Title/role:** Procurement Manager, Partnership Schools

**Email address:** PartnershipSchoolsApps@education.govt.nz

## 1.4 Developing and submitting your Expression of Interest

- a. This is an open, competitive tender process. The EOI sets out the step-by-step process and conditions that apply.
- b. Take time to read and understand the EOI. In particular:
  - i. develop a strong understanding of our Requirements, which are detailed in Section 2.
  - ii. in structuring your Response consider how it will be evaluated. Section 3 describes our Evaluation Approach.
- c. For helpful hints on tendering and access to a supplier resource centre go to: [www.procurement.govt.nz](http://www.procurement.govt.nz) / for suppliers.
- d. If anything is unclear or you have a question, ask us to explain. Please do so before the Deadline for Questions. Email our Point of Contact.
- e. In submitting your EOI you must use the Response Form provided. This is a Microsoft Word document that you can download.
- f. You must complete a separate Registration Response Form for each type of school you wish to submit applications for (refer to Section 2 for school types). Note there are two different application forms – one for STEM Partnership School responses and the other for priority learner applications. If you wish to apply under both STEM and priority learner applications, you will need to submit two separate and complete applications – one on each

form.

- g. You must also complete and sign the declaration at the end of the Response Form. Barring unintentional errors of form, the Ministry will set aside an application where the Applicant does not complete and sign a declaration in the required form.
- h. Your response should be no more than 20 A4 single sided pages no smaller than arial font 10. You should not make changes to the template.
- i. We require the Response to be submitted in both MSWord and PDF. The PDF version will be provided to evaluators for evaluation.
- j. Check you have provided all information requested, and in the format and order asked for.
- k. Having done the work do not be late – please ensure your response gets to us before the Deadline for Registration

## **1.5 Address for submitting your Response**

- a. Responses must be submitted electronically via Government Electronic Tenders Service (GETS).
- b. Responses sent by email, post or fax, or hard copy delivered to our office, will not be accepted.

## **1.6 Our EOI Process, Terms and Conditions**

- a. This EOI is subject to the government's standard EOI Process, Terms and Conditions (shortened to EOI-Terms) described in Section 4. We have made the following variation/s to the EOI-Terms:

Minor changes to Definitions section needed to aid readability of document, for example, changed term Expression of Interest (EOI) rather than Registration of Interest (RoI); or used the term "Ministry" rather than the "Buyer"; "Request for Application" rather than "Request for Proposal" and "Applicant" rather than "Respondent".

## **1.7 Later changes to the EOI or EOI process**

- a. If, after publishing the request for EOIs, we need to change anything about the EOIs, or the EOI process, or want to provide Applicants with additional information we will let all Applicants know by placing a notice on the Government Electronic Tenders Service (GETS) at [www.gets.govt.nz](http://www.gets.govt.nz).
- b. If you download the EOI from GETS, you will automatically be sent notifications of any changes through GETS by email.

# SECTION 2: Our Requirements

## 2.1 Purpose

This Expression of Interest (EOI) process is the fifth application round for partnership schools, and is for schools opening in 2019.

This fifth round of PSKH seeks to source two types of school:

1. STEM schools will use innovative pedagogy, curricula or school structures to engage students in one or more of the following subjects: Science, Technology (including digital technologies), Engineering and Mathematics. STEM Schools will be required to demonstrate how they will deliver more science, technology, engineering and maths competent learners and encourage more students to choose STEM educational and career pathways.
2. Priority learners: focused on raising the achievement among priority students who have been identified as historically not experiencing success in the New Zealand schooling system. PSKH were charged with a targeted response to education underachievement in disadvantaged areas. It is expected that 75% of enrolments will be from priority learners – Māori, Pasifika, students with specialist education needs and students from low socio-economic backgrounds.

This is the first time the Ministry has sought applications in relation specifically to STEM schools. Applicants are able to apply for either of these types of school. Without limiting its discretion, the Ministry has a preference for STEM schools in this EOI for this application round. Given the level of funding available and the fact that this is the first application round with a focus on STEM Partnership Schools, it is considered likely that a mix of STEM and priority learner schools will be selected to proceed to the full application stage.

## 2.2 Background

In 2012, Cabinet established Partnership Schools I Kura Hourua (PSKH or partnership school) as a new type of school in our education system. The Partnership School model extends the schooling options available for parents and students.

The model enables sponsors (refer to definition at 2.4) to operate a school with greater freedom and flexibility to innovate to enable them to provide high-quality educational outcomes. In exchange for the greater freedoms, there are rigorous performance-related accountabilities for the sponsors who operate the schools.

As at February 2017, three Requests for Application selection rounds have been completed. There are ten PSKH operating in New Zealand with over 1,000 students. A fourth application round is nearing completion and successful Applicants from round four are expected to open their schools in 2018.

## 2.3 What is a Partnership School?

Unlike regular state schools, whose relationship with the Crown is based on regulation, Partnership Schools are accountable to the Crown through a binding, legally enforceable, fixed-term contract to meet specific and measurable performance goals.

In exchange for committing to achieving these goals, the schools have greater flexibility with regard to school organisation, employment arrangements, curriculum, and teaching methods and practices.

This flexibility is intended to allow the schools to use fresh, innovative ways to engage with students and enable them to succeed.

This also allows the schools to be based on partnerships with communities and community organisations, iwi, whānau/families, philanthropists, businesses and not-for-profit organisations. Schools may be secular or faith-based.

Partnership Schools are resourced under a funded model (employment arrangements, resourcing, school organisation, teaching methods and practices, curriculum, and buildings). This gives the provider significant flexibility as to how resources are deployed compared to other state-funded schools. Educational performance is the most critical aspect of the performance regime.

Further information on Partnership Schools can be found on the Ministry of Education's website at: <http://partnershipschools.education.govt.nz/>

The Partnership Schools legislation (the Education Amendment Act 2013) describes the Partnership School policy's intent and how the partnership schools legal framework differs to that of State schools.

## 2.4 Sponsors

Successful Applicants (if any) at the end of the two-stage application process, will be considered for approval by the Minister of Education to become the sponsor of a Partnership School.

The term 'sponsor' is used in the wider sense of giving backing to the project and being responsible for delivering outcomes. It is the legal name of the entity that the Minister approves to operate the Partnership School and is the counter-party to the contract with the Government.

The sponsor must be a 'body' such as an incorporated board or trust, company or other legal entity. We welcome applications from organisations from a range of backgrounds including education providers, businesses, iwi, community organisations, faith-based groups, and culture-based educational organisations.

Due to recent changes in legislation TEIs (Tertiary Education Institutions) are now able to be approved as a sponsor of a Partnership School.

Existing private schools seeking to convert to a Partnership School are not eligible to apply in this application round.

## 2.5 Key values of a Partnership Schools

The key values of the Partnership School/Kura Hourua model include:

- a) how effectively a group proposes to use the flexibilities of the Partnership Schools model and how well the Applicant demonstrates that it will provide learning pathways for its students into future education (should the student choose it)
- b) partnerships with community and other organisations
- c) accountability to meet agreed standards including student achievement
- d) focus on educational performance rather than facilities and property
- e) increased flexibility to decide how to operate and use funding, and
- f) high trust between the Minister/Ministry and sponsors in order to achieve the agreed outcomes.

## 2.6 Government's Expectations

Sponsors operating Partnership Schools are expected to be either:

- a) STEM focused: (science, technology, engineering and/or mathematics) education to deliver more science, technology, engineering and/or maths competent learners and encourage more students to choose STEM educational and career pathways; or
- b) Priority learner focused: focused on raising the achievement among priority students from groups who have been identified as historically not experiencing success in the New Zealand schooling system. PSKH were charged with a targeted response to educational underachievement in disadvantaged areas. It is expected that 75% of enrolments will be from priority learner groups – Māori, Pasifika, students with specialist education needs and students from low socio-economic backgrounds.

The above are in addition to the expectations that Partnership Schools will:

- a) engage effectively with parents, family/whānau and communities to support and contribute to achieving high educational outcomes for their children
- b) use the freedoms available through this model to lift the educational performance of students
- c) deliver high-quality educational programmes with a strong focus on performance
- d) meet specified performance standards agreed with the Crown, including student academic achievement, and
- e) have strong governance and the organisational capacity and capability required to ensure the high-quality management and operation of the school.

Applicants will need to demonstrate during the application process (in this EOI and, if shortlisted, in further detail in the Request for Application stage) that they have the capability to meet all of these expectations.

## 2.7 Types of Partnership School sought in Round 5

The Ministry is seeking applications in relation to two different types of Partnership School:

### i) STEM Partnership Schools

STEM schools will use innovative pedagogy, curricula or school structures to engage students in one or more of the following subjects: Science, Technology (including digital technologies), Engineering and Mathematics.

STEM Schools will be required to demonstrate how they will deliver more learners competent in science, technology, engineering and maths and encourage more students to choose STEM educational and career pathways.

### ii) Priority Learner Partnership Schools

Priority learner partnership schools are focussed on raising achievement among priority students from groups who have been identified as historically not experiencing success in the New Zealand schooling system.

Priority learners are defined as Māori, Pasifika, those students with special education needs and/or students from low socio-economic status backgrounds.

It is expected that priority learner partnership schools will maintain a school roll with at least 75% of students drawn from priority learner groups.

iii) Summary of key differences:

	STEM Partnership Schools	Priority Learner Partnership Schools
Focus	Focus on STEM subject with objective of delivering STEM-competent learners ready to enter STEM career pathways	Improving educational outcomes for priority learners
Indicative Performance Standards	Yet to be agreed, but the Government expectation is that these will be set to a higher standard than priority learner schools	For Secondary, aimed at achieving 85% of Level 2 students at NCEA  For Primary, aimed at achieving 85% of students at or above national standards or Ngā Whanaketanga Rumaki Māori (NWRM)
Funding	Operational funding is at a level similar to what state schools would receive (with salaries and property support cashed up) based on the funding received by a decile 5 school  Funding for STEM is likely to be lower than for priority learners	Operational funding is at a level similar to what state schools would receive (with salaries and property support cashed up) based on the funding received by a decile 3 school
Subjects	Must have a focus on one or more of: Science, Technology (including digital technologies), Engineering and Mathematics	Not prescribed.  Although expectation is that students at NCEA level would have access to a broad range of choices
Student Enrolments	No parameters around the students enrolled	Must have at least 75% of enrolments from priority learner groups

## 2.8 Contract term

We anticipate that the initial Contract Term will be for a period of 6 years, plus an agreed establishment period.

There will be a further two rights of renewal of six years each, at the Minister's discretion.

## 2.9 Key contracted outcomes

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

Description	Indicative date for delivery
Partnership School established and open	February 2019
Partnership School delivering on contracted outcomes	Quarterly reporting

Further information on contracted outcomes will be specified in the Request for Application documentation. A key focus is on the achievement of contracted outcomes.

## 2.10 Funding for Partnership Schools

The table below provides indicative payments that will be available to successful round 5 Sponsors operating priority learner partnership schools. More specific information will be provided in the Request for Application. STEM partnership schools have their operational funding calculated based on a decile 5 school and are anticipated to receive approximately between 1 and 2% less operational funding than priority learner partnership schools.

Note: The information in this section 2.10 is provided for information purposes and is subject to change. It cannot be relied upon by Applicants.

### i) Establishment Funding

The Establishment Funding is made up of 3 components:

	Primary School Years 1- 8	Secondary Schools Years 9 – 13
Set Up component	\$250,000	\$400,000
Principal's Salary	Up to 4 terms at \$32,500/term	Up to 5 terms at \$32,500/term
Property and insurance	The equivalent of 6 months of year 1 property funding	The equivalent of 6 months of year 1 property funding

ii) Quarterly Operational Payments

	Primary School Years 1- 8	Secondary Schools Years 9 – 13
	Annual funding paid quarterly	Annual funding paid quarterly
<b>Property and Insurance</b>	Based on Space Entitlement Space Entitlement is dependent on the size of the school's roll Rates are Approximately  Primary \$154.58/m2 per annum Intermediate \$171.58/m2 per annum	Based on Space Entitlement Space Entitlement is dependent on the size of the school's roll  Secondary (years 9 – 15) \$188.58/m2 per annum
<b>Teaching and Operating Rate</b>	Primary roll 50 and below: \$8,579 per student  Primary roll 51 and above: \$5,247 per student	Roll 100 and below: \$12,585 per student  Roll 101 and above: \$7,046 per student
<b>Professional Development and Resources</b>	\$276 per student	\$276 per student

Other payment for other services may be available and is dependent on eligibility.

iii) Composite Schools

Generally funding is pro-rated (based on roll composition) for composite schools. More information will be made available in the Request for Application.



iv. Indicative Examples

Below are some indicative examples of the Annual Funding available to Partnership Schools.

**Primary School**

		Roll					
Roll	Rate (\$)	50	100	150	200	250	300
Space Entitlement (m2)		376	666	941	1209	1473	1831
Property & Insurance	\$154.58 per m2	\$58,122	\$102,950	\$145,460	\$186,887	\$227,696	\$283,036
Teaching and Operating (roll 1-50)	\$8,579 per student	\$428,950	\$428,950	\$428,950	\$428,950	\$428,950	\$428,950
Teaching and Operating (51+)	\$5,247 per student	-	\$262,350	\$524,700	\$787,050	\$1,049,400	\$1,311,750
Professional Development and Resources	\$276 per student	\$13,800	\$27,600	\$41,400	\$55,200	\$69,000	\$82,800
<b>Total</b>		<b>\$500,872</b>	<b>\$821,850</b>	<b>\$1,140,510</b>	<b>\$1,458,087</b>	<b>\$1,775,046</b>	<b>\$2,106,536</b>

## Secondary School

	Rate (\$)	Roll					
Roll		50	100	150	200	250	300
Space Entitlement (m2)		1259	2036	2753	3543	3930	4301
Property & Insurance	\$188.58 per m2	\$237,422	\$383,949	\$519,161	\$668,139	\$741,119	\$811,083
Teaching and Operating (1-100)	\$12,585 per student	\$629,250	\$1,258,500	\$1,258,500	\$1,258,500	\$1,258,500	\$1,258,500
Teaching and Operating (101+)	\$7,046 per student	-	-	\$352,300	\$704,600	\$1,056,900	\$1,409,200
Professional Development and Resources	\$276 per student	\$13,800	\$27,600	\$41,400	\$55,200	\$69,000	\$82,800
<b>Total</b>		<b>\$880,472</b>	<b>\$1,670,049</b>	<b>\$2,171,361</b>	<b>\$2,686,439</b>	<b>\$3,125,519</b>	<b>\$3,561,583</b>

# SECTION 3: Our Evaluation Approach

The PSKH Authorisation Board (the Board), supported by the Ministry of Education, will assess the EOIs and determine which Applicants should be invited to submit full applications.

## 3.1 Evaluation model

The evaluation model that will be used to shortlist Applicants' expressions of interest is a weighted attribute (weighted criteria) model.

The Partnership Schools Authorisation Board, supported by officials from the Ministry of Education will evaluate the responses and shortlist the responses following the following process:

1. Ministry of Education officials will review applications for compliance and conformance with the requirements of the EOI.
2. Ministry of Education officials will support the Authorisation Board by evaluating and providing a preliminary scoring of the expression of interest responses.
3. The Authorisation Board will review the analysis and preliminary scores provided by the Ministry, alongside their own independent assessments to confirm or amend the preliminary scores provided. A justification will be recorded for any changes to preliminary scores.
4. If required, clarification questions will be asked of the Applicants and information provided to the Authorisation Board and/or Ministry of Education.
5. The Ministry of Education and/or the Authorisation Board may take into account the response to any section of the Registration Response Form in its evaluation of other criteria or for conducting due diligence.
6. The Authorisation Board scores will be finalised and the weighting will be applied.
7. The Authorisation Board, with reference to the final weighted ranked list, the focus on STEM schools and the matters stated at clause 4.7, will determine the short-list of organisations to be invited to submit a full application.
8. The Authorisation Board will recommend a shortlist depending on the quality of the applications following a two step process:
  - a) Step 1: The Authorisation Board will first consider STEM schools applications and shortlist those it considers to be of a suitable standard for short-listing using the factors identified at clause 4.7;
  - b) Step 2: (if there is considered to be an insufficient number of STEM applicants recommended for short-listing) consider applications for priority learner schools for short-listing using the factors identified at clause 4.7.The Authorisation Board may take the quality of priority learner schools into account in determining the level required for short-listing of STEM schools.

9. A senior Ministry of Education official will receive the Authorisation Board's recommendation of the shortlist, and with reference to the process and the recommended outcome, endorse proceeding to the next stage.

### 3.2 Evaluation criteria

Responses will be evaluated on their merits according to the following evaluation criteria and process.

The following evaluation criteria and weightings will be applied:

Section of Response	Criterion	Weighting
2.2	<p>Capability of the Sponsor</p> <p>2.2.1 Overview of the Sponsor</p> <p>2.2.2 Capability to operate a Partnership School</p> <p>2.2.3 Governance</p> <p>2.2.4 Financial management capability</p>	20%
2.3	<p>Special Character and Key Focus of the School</p> <p><u>STEM Applications</u></p> <p>2.3.1 Special Character: Distinctive Concept</p> <p>2.3.2 School Mission Statement</p> <p>2.3.3 Innovation</p> <p>2.3.4 Student cohort: demographic information</p> <p>2.3.5 Meeting STEM outcomes</p> <p>2.3.6 Evidence of use of flexibilities of the Partnership School model</p> <p><u>Or</u></p> <p><u>for Priority Learner Applications</u></p> <p>2.3.1 Special Character: Distinctive Concept</p> <p>2.3.2 School Mission Statement</p> <p>2.3.3 Innovation</p> <p>2.3.4 Student cohort: demographic information</p> <p>2.3.5 Outcomes for priority learners</p> <p>2.3.6 Evidence of use of flexibilities of the Partnership School model</p>	20%
2.4	<p>Educational Programme</p> <p>2.4.1 Curriculum</p> <p>2.4.2 Qualifications</p>	20%

	2.4.3 Subject Choices (if Secondary) 2.4.4 Curriculum Development 2.4.5 Future Education and Career Pathways for Students	
2.5	School Leadership and Teacher Quality 2.5.1 School Leader 2.5.2 Recruitment of High Quality Teachers	<b>15%</b>
2.6	Achieving enrolments 2.6.1 School model that will appeal to the cohort 2.6.2 Enrolment Plan	<b>10%</b>
2.7	Sourcing of School Premises and other Major Resources 2.7.1 School Premises 2.7.2 Other Major Resources	<b>5%</b>
2.8	Partnerships 2.8.1 Community Engagement 2.8.2 Additional Resources and Funding 2.8.3 Table of educational, business and community supporters	<b>10%</b>
	<b>Total weighting</b>	<b>100%</b>

### 3.3 Scoring

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

Rating	Definition	Score
<b>EXCELLENT</b> 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. The Response identifies factors that will offer potential added value, with supporting evidence.	<b>9-10</b>
<b>GOOD</b> exceeds the criterion in some aspects	Satisfies the criterion with minor additional benefits. Above average demonstration by the Respondent of the relevant ability, understanding, experience, skills, resource and quality measures required to meet the criterion. The Response identifies factors that will offer potential added value, with supporting evidence.	<b>7-8</b>
<b>ACCEPTABLE</b> meets the criterion in full, but at a minimal level	Satisfies the criterion. Demonstration by the Respondent of the relevant ability, understanding, experience, skills, resource, and quality measures required to meet the criterion, with adequate supporting evidence.	<b>5-6</b>
<b>MINOR RESERVATIONS</b> marginally deficient	Satisfies the criterion with minor reservations regarding some aspects of the Respondent's relevant ability, understanding, experience, skills, resource and/or quality measures required to meet the criterion, and/or concerns regarding the supporting evidence supplied.	<b>4</b>
<b>SIGNIFICANT RESERVATIONS</b>	Satisfies the criterion but with significant reservations regarding aspects of the Applicant's relevant ability, understanding, experience, skills, resources and quality measures required to deliver the outcomes. Application may also be deficient with regard to the quality of supporting evidence supplied.	<b>3</b>
<b>SERIOUS RESERVATIONS</b> significant issues that need to be addressed	Satisfies the criterion with major reservations. Considerable reservations of the applicant's relevant ability, understanding, experience, skills, resource and quality measures required to meet the criterion, with inadequate supporting evidence.	<b>1-2</b>
<b>UNACCEPTABLE</b> significant issues not capable of being resolved	Does not meet the criterion. Does not comply and/or insufficient information provided to demonstrate that the Respondent has the ability, understanding, experience, skills, resource and quality measures required to meet the criterion, with inadequate supporting evidence.	<b>0</b>

# SECTION 4: EOI Process, Terms and Conditions

## Preparing and submitting a Response

### 4.1 Preparing a Response

- a. Respondents are to use the Response Form provided and include all information requested by the Buyer in relation to the EOI.
- b. By submitting a Response, the Respondent accepts that it is bound by the EOI Process, Terms and Conditions (EOI-Terms) contained in Section 4 (as varied by Section 1, paragraph 1.6, if applicable).
- c. Each Respondent will:
  - i. examine the EOI and any documents referenced in the EOI and any other information provided by the Buyer
  - ii. if appropriate, obtain independent advice before submitting a Response
  - iii. satisfy itself as to the correctness and sufficiency of its Response.
- d. There is no expectation or obligation for Respondents to submit Responses in response to the EOI solely to remain on any prequalified or registered supplier list. Any Respondent on such a list will not be penalised for failure to submit a Response.

### 4.2 Respondents' Deadline for Questions

- e. Each Respondent should satisfy itself as to the interpretation of the EOI. If there is any perceived ambiguity or uncertainty in the EOI document/s Respondents should seek clarification before the Deadline for Questions.
- a. All requests for clarification must be made by email to the Buyer's Point of Contact. The Buyer will respond to requests in a timely manner, but not later than the deadline for the Buyer to answer Respondent questions in Section 1, paragraph 1.2.a, if applicable.
- b. If the Buyer considers a request to be of sufficient importance to all Respondents it may provide details of the question and answer to other Respondents. In doing so the Buyer may summarise the Respondent's question and will not disclose the Respondent's identity. The question and answer may be posted on GETS and/or emailed to participating Respondents. A Respondent may withdraw a request at any time.
- c. In submitting a request for clarification a Respondent is to indicate, in its request, any information that is commercially sensitive. The Buyer will not publish such commercially sensitive information. However, the Buyer may modify a request to eliminate such commercially sensitive information, and publish this and the answer where the Buyer considers it of general significance to all Respondents. In this case, however, the Respondent will be given an opportunity to withdraw the request or remove the commercially sensitive information.

### 4.3 Submitting a Response

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

- c. Where the Buyer requires the Response to be delivered in hard and soft copies, the Respondent is responsible for ensuring that both the hard and soft copies are identical.

## Assessing Responses

### 4.4 Evaluation panel

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

### 4.5 Third party information

- a. Each Respondent authorises the Buyer 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 the Buyer 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.

### 4.6 Buyer's clarification

- a. The Buyer may, at any time, request from any Respondent clarification of its Response as well as additional information about any aspect of its Response. The Buyer 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. The Buyer 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, the Buyer may cease evaluating the Response and may eliminate the Response from the process.

### 4.7 Evaluation and shortlisting

- a. The Buyer will base its initial evaluation on the Responses submitted in response to the invitation. This evaluation will be in accordance with the Evaluation Approach set out in the EOI. The Buyer may adjust its evaluation of a Response following consideration of any clarification or additional information as described in paragraphs 4.6 and 4.7.
- b. In deciding which Respondent/s to shortlist the Buyer may take into account any of the following additional information:
  - A. the results from due diligence
  - B. any matter that materially impacts on the Buyer's trust and confidence in the Respondent
  - C. any relevant information that the Buyer may have in its possession.
- c. The Buyer will advise Respondents if they have been shortlisted or not. Being shortlisted does not constitute acceptance by the Buyer of the Respondent's Response, or imply or create any obligation on the Buyer to enter into negotiations with, or award a Contract for delivery of the Requirements to any shortlisted Respondent/s. At this stage in the EOI process the Buyer will not make public the names of the shortlisted Respondents.

### 4.8 Respondent's debrief

- a. At any time after shortlisting Respondents, the Buyer will offer Respondents who have not been shortlisted a debrief. Each Respondent will have 30 Business Days from the date of offer to request a debrief. When a Respondent requests a debrief, the Buyer will provide the debrief within 30 Business Days of the date of the request, or the date the Contract is signed, whichever is later.
- b. The debrief may be provided by letter, email, phone or at a meeting. The debrief will:
  - a. provide the reasons why the Response was or was not successful



- b. explain how the Response performed against the pre-conditions (if applicable) and the evaluation criteria
- c. indicate the Response's relative strengths and weaknesses
- d. explain, in general terms, the relative advantage/s of the shortlisted Response/s
- e. seek to address any concerns or questions from the Respondent
- f. seek feedback from the Respondent on the EOI process.

#### **4.9 Issues and complaints**

- a. A Respondent may, in good faith, raise with the Buyer any issue or complaint about the EOI, or the EOI process at any time.
- b. The Buyer will consider and respond promptly and impartially to the Respondent's issue or complaint.
- c. The Buyer and Respondent each agree to act in good faith and use its best endeavours to resolve any issue or complaint that may arise in relation to the EOI.
- d. The fact that a Respondent has raised an issue or complaint is not to be used by the Buyer to unfairly prejudice the Respondent's ongoing participation in the EOI process or future contract opportunities.

## **Standard EOI conditions**

#### **4.10 Buyer's Point of Contact**

- a. All enquiries regarding the EOI must be directed by email to the Buyer's Point of Contact. Respondents must not directly or indirectly approach any representative of the Buyer, or any other person, to solicit information concerning any aspect of the EOI.
- b. Only the Point of Contact, and any authorised person of the Buyer, are authorised to communicate with Respondents regarding any aspect of the EOI. The Buyer will not be bound by any statement made by any other person.
- c. The Buyer may change the Point of Contact at any time. The Buyer will notify Respondents of any such change. This notification may be posted on GETS or sent by email.
- d. Where a Respondent has an existing contract with the Buyer 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 the Buyer, solicit information or discuss aspects of the EOI.

#### **4.11 Conflict of Interest**

- a. Each Respondent must complete the Conflict of Interest declaration in the Response Form, and must immediately inform the Buyer should a Conflict of Interest arise during the EOI process. A material Conflict of Interest may result in the Respondent being disqualified from participating further in the EOI process.

#### **4.12 Ethics**

- a. Respondents must not attempt to influence or provide any form of personal inducement, reward or benefit to any representative of the Buyer in relation to the EOI.
- b. A Respondent who attempts to do anything prohibited by paragraphs 4.10.a and d. and 4.12.a. may be disqualified from participating further in the EOI.
- c. The Buyer reserves the right to require additional declarations, or other evidence from a Respondent, or any other person, throughout the EOI process to ensure probity of the EOI process.

#### **4.13 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 with the Buyer. Such behaviour will result in the Respondent from being disqualified from participating further in the EOI process. The Respondent warrants that its Response has not been prepared in collusion with a Competitor.
- b. The Buyer 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.

#### **4.14 Confidential Information**

- a. The Buyer and Respondent will each take reasonable steps to protect Confidential Information and, subject to paragraph 4.14.c. and without limiting any confidentiality undertaking agreed between them, will not disclose Confidential Information to a third party without the other's prior written consent.
- b. The Buyer and Respondent may each disclose Confidential Information to any person who is directly involved in the EOI 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 EOI.
- c. Respondents acknowledge that the Buyer's obligations under paragraph 4.14.a. are subject to requirements imposed by the Official Information Act 1982 (OIA), the Privacy Act 1993, parliamentary or constitutional convention and any other obligations imposed by the law. The Buyer will not be in breach of its obligations if Confidential Information is disclosed by the Buyer to the appropriate authority because of suspected collusive or anti-competitive tendering behaviour. 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.

#### **4.15 Confidentiality of EOI information**

- a. For the duration of the EOI, to the date of the announcement of the Successful Respondent, or the end of the procurement process, the Respondent agrees to keep the EOI strictly confidential and not to make any public statement to any third party in relation to any aspect of the EOI, the EOI process or the award of any Contract without the Buyer's prior written consent.
- b. A Respondent may disclose information relating to the EOI to any person described in paragraph 4.14.b. but only for the purpose of participating in the EOI. The Respondent must take reasonable steps to ensure that such recipients do not disclose Confidential Information to any other person or use Confidential Information for any purpose other than responding to the EOI.

#### **4.16 Costs of participating in the EOI process**

- a. Each Respondent will meet its own costs associated with the preparation and presentation of its Response and any negotiations.

#### **4.17 Ownership of documents**

- a. The EOI and its contents remain the property of the Buyer. All Intellectual Property rights in the EOI remain the property of the Buyer or its licensors. The Buyer may request the immediate return or destruction of any or all EOI 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 the Buyer, become the property of the Buyer. Responses will not be returned to Respondents at the end of the EOI process.
- c. Ownership of Intellectual Property rights in the Response remain the property of the Respondent or its licensors. However, the Respondent grants to the Buyer a non-exclusive, non-transferable, perpetual licence to retain, use, copy and disclose information contained in the Response for any purpose related to the EOI process.

#### **4.18 No binding legal relations**

- a) Neither the EOI, nor the EOI process, creates a process contract or any legal relationship between the Buyer and any Respondent, except in respect of:
  - i. the Respondent's declaration in its Response
  - ii. the Respondent's statements, representations and/or warranties in its Response and in its correspondence with the Buyer
  - iii. the Evaluation Approach to be used by the Buyer to assess Responses as set out in Section 3, and in the EOI-Terms (as varied by Section 1, paragraph 1.6, if applicable)

- iv. the standard EOI conditions set out in paragraphs 4.10 to 4.23
- v. any other matters expressly described as binding obligations in Section 1, paragraph 1.6.
- b) Each exception in paragraph 4.18.a. is subject only to the Buyer's reserved rights in paragraph 4.20.
- c) Except for the legal obligations set out in paragraph 4.18.a. no legal relationship is formed between the Buyer and any Respondent unless and until a Contract is entered into between those parties.

#### **4.19 Elimination**

- a. The Buyer may exclude a Respondent from participating in the EOI process if the Buyer has evidence of any of the following, and is considered by the Buyer to be material to the EOI:
  - i. the Respondent has failed to provide all information requested, or in the correct format, or materially breached a term or condition of the EOI process
  - ii. the Response contains a material error, omission or inaccuracy
  - iii. the Respondent is in bankruptcy, receivership or liquidation
  - iv. the Respondent has made a false declaration
  - v. there is a serious performance issue in a historic or current contract delivered by the Respondent
  - vi. the Respondent has been convicted of a serious crime or offence
  - vii. there is professional misconduct or an act or omission on the part of the Respondent which adversely reflects on the integrity of the Respondent
  - viii. the Respondent has failed to pay taxes, duties or other levies
  - ix. the Respondent represents a threat to national security or the confidentiality of sensitive government information
  - x. the Respondent is a person or organisation designated as a terrorist by New Zealand Police.

#### **4.20 Buyer's additional rights**

- a. Despite any other provision in the EOI the Buyer may, on giving due notice to Respondents:
  - i. amend, suspend, cancel and/or re-issue the EOI, or any part of the EOI
  - ii. make any material change to the EOI (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 EOI the Buyer may:
  - i. accept a late Response if it is the Buyer'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. The Buyer 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 questions submitted after the Clarification Period ends
  - 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 enter into a Contract with any Respondent
  - vii. liaise or negotiate with any Respondent without disclosing this to, or doing the same with, any other Respondent
  - viii. provide or withhold from any Respondent information in relation to any question arising in relation to the EOI. 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
  - ix. amend the Proposed Contract at any time, including during negotiations with a shortlisted Respondent
  - x. waive irregularities or requirements in the EOI process where it considers it appropriate and

reasonable to do so.

- c. The Buyer may request that a Respondent agrees to the Buyer:
  - i. selecting any individual element/s of the Requirements that is offered in a Response and capable of being delivered separately, unless the Response specifically states that the Response, or elements of the Response, are to be taken collectively
  - ii. selecting two or more Respondents to deliver the Requirements as a joint venture or consortium.

#### 4.21 New Zealand law

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

#### 4.22 Disclaimer

- a. The Buyer 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 EOI process.
- b. Nothing contained or implied in the EOI, or EOI process, or any other communication by the Buyer to any Respondent shall be construed as legal, financial or other advice. The Buyer has endeavoured to ensure the integrity of such information. However, it has not been independently verified and may not be updated.
- c. To the extent that liability cannot be excluded, the maximum aggregate liability of the Buyer is \$1.

#### 4.23 Precedence

- a. Any conflict or inconsistency in the documents forming the EOI shall be resolved by giving precedence in the following descending order:
  - i. Section 1, paragraph 1.6
  - ii. Section 4 (EOI-Terms)
  - iii. all other Sections of this EOI 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 later information or document will prevail.

## Definitions

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

<b>Advance Notice</b>	A notice published by the buyer on GETS in advance of publishing the EOI. An Advance Notice alerts the market to a contract opportunity. Where used, an Advance Notice forms part of the EOI.
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<b>Applicant(s)</b>	Applicant means Respondent. Refer to definition of Respondent.
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<b>Business Day</b>	Any week day in New Zealand, excluding Saturdays, Sundays, New Zealand (national) public holidays and all days from Boxing Day up to and including the day after New Year's Day.
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<b>Buyer</b>	The Buyer is the government agency that has issued the call for Responses of interest through an EOI with the intent of purchasing the goods or services described in the Requirements. The term Buyer includes its officers, employees, contractors, consultants, agents and representatives.
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<b>Competitors</b>	Any other business that is in competition with a Respondent either in relation to the
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	goods or services sought under the EOI or in general.
<b>Confidential Information</b>	<p>Information that:</p> <ol style="list-style-type: none"> <li>1. is by its nature confidential</li> <li>2. is marked by either the Buyer or a Respondent as 'confidential', 'commercially sensitive', 'sensitive', 'in confidence', 'top secret', 'secret', classified' and/or 'restricted'</li> <li>3. is provided by the Buyer, a Respondent, or a third party in confidence</li> <li>4. the Buyer or a Respondent knows, or ought to know, is confidential.</li> </ol> <p>Confidential information does not cover information that is in the public domain through no fault of either the Buyer or a Respondent.</p>
<b>Conflict of Interest</b>	<p>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 the Buyer under the EOI or in the provision of the goods or services. It means that the Respondent's independence, objectivity or impartiality can be called into question. A Conflict of Interest may be:</p> <ul style="list-style-type: none"> <li>▪ actual: where the conflict currently exists</li> <li>▪ potential: where the conflict is about to happen or could happen, or</li> <li>▪ perceived: where other people may reasonably think that a person is compromised.</li> </ul>
<b>Contract</b>	The written contract/s entered into by the Buyer and Successful Respondent/s for the delivery of the Requirements.
<b>Deadline for Response</b>	The deadline that Responses are to be delivered or submitted to the Buyer as stated in Section 1, paragraph 1.2.
<b>Deadline for Questions</b>	The deadline for Respondents to submit questions to the Buyer as stated in Section 1, paragraph 1.2, if applicable.
<b>Evaluation Approach</b>	The approach used by the Buyer to evaluate Responses as described in Section 3, the EOI-Terms (as varied by Section 1, paragraph 1, if applicable.).
<b>EOI</b>	The Buyer's call for Expression of Interest.
<b>Expression of Interest</b>	The Buyer's call for Expression of Interest comprises the Advance Notice (where used), this EOI document (including the EOI-Terms) and any other schedule, appendix or document attached to EOI, and any subsequent information provided by the Buyer to Respondents through the Buyer's Point of Contact or GETS.
<b>EOI-Terms</b>	Means the Process, Terms and Conditions that apply to this Expression of Interest Conditions as described in Section 4.
<b>EOI Process, Terms and Conditions (shortened to EOI-Terms)</b>	The government's standard terms and conditions that apply to EOIs as described in Section 4. These may be varied at the time of the release of the EOI by the Buyer in Section 1, paragraph 1.6. These may be varied subsequent to the release of the EOI by the Buyer on giving notice to Respondents.
<b>GETS</b>	Government Electronic Tenders Service <a href="http://www.gets.govt.nz">www.gets.govt.nz</a>
<b>GST</b>	The goods and services tax payable in accordance with the New Zealand Goods and Services Tax Act 1985.
<b>Intellectual Property</b>	All intellectual property rights and interests, including copyright, trademarks, designs, patents and other proprietary rights, recognised or protected by law.
<b>Ministry of Education</b>	Is the Buyer of the Services. Refer to definition of buyer

<b>Point of Contact</b>	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 EOI process. The Buyer's Point of Contact is identified in Section 1, paragraph 1.3. The Respondent's Point of Contact is identified in its Response.
<b>Response</b>	The response a Respondent submits in reply to the Buyer's EOI. It comprises the Response Form, the Respondent's Response and all other information submitted by a Respondent.
<b>Requirements</b>	The goods and/or services described in Section 2 which the Buyer intends to purchase.
<b>Respondent</b>	A person, organisation, business or other entity that submits a Response in response to the EOI. 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 Registration.
<b>Response Form</b>	The form and declaration prescribed by the Buyer and used by a Respondent to respond to the EOI, duly completed and submitted by a Respondents as part of its Registration.