

CONDITIONS OF TENDERING AND TENDER PROCESS

PART 1: GENERAL

WCT1

Interpretation and Context

WCT1.1

The provisions of Section 1 (Interpretation) of NZS 3910: 2003 apply to these Conditions Of Tendering ("these Conditions").

WCT1.2

Except as provided in WCT1.1, the provisions of "Conditions of Tendering" of NZS 3910: 2003 do not apply.

WCT1.3

These Conditions are to be read in conjunction with the Schedule To Conditions Of Tendering ("the Schedule") and the Amendments To Conditions Of Tendering, if any, included in the Tender Documents.

PART 2: TENDER PROCESS

WCT2

Submission of Tenders

WCT2.1

Tenders will close at the Time of Tender Closing stated in the Schedule. Each Tender must be enclosed in a sealed envelope, identified as a Tender for the particular Contract and addressed as required by the Schedule.

WCT2.2

Tenders are to be placed in the Tender Box located at the Customer Services One Stop Shop, Level 2, Admin Wing of the Waitakere City Council offices at:

Waitakere Central
6 Henderson Valley Road
Henderson
WAITAKERE CITY

Tenders which are too large to be placed in the Tender Box will be accepted if delivered to this address prior to the Time of Tender Closing, and a written receipt recording the date and time of receipt is given by the Council Officer who accepts delivery.

WCT2.3

Tenders are to be prepared in the form and contain the information required by these Conditions and the Tender Documents. Further detail is included in Part 4 of these Conditions.

WCT2.4

Every Tender must be signed by or on behalf of the Tenderer. The signatory warrants that he or she has authority to bind the Tenderer.

WCT2.5

The cost of preparing and submitting a Tender will be borne by the Tenderer.

WCT2.6

Each Tender will constitute an irrevocable offer and remain open for acceptance by the Principal from the Time of Tender Closing until the expiry of the period of Validity of Tender set out in the Schedule notwithstanding any discussions or negotiations between the Tenderer and the Principal at any time during that period.

WCT2.7

Tender Prices are to be stated exclusive of Goods and Services Tax.

WCT2.8

The original copies of all Tenders submitted to the Principal will be the property of the Principal.

WCT3

Tender Deposit

WCT3.1

If required by the Schedule, each Tender shall be accompanied by a deposit in New Zealand currency or some other security acceptable to the Principal for the amount stated in the Schedule as security for performance by the Tenderer of its obligations under these Conditions.

WCT3.2

The Tender Deposit of the successful Tenderer will be refunded with the first progress payment.

WCT3.3

Tender Deposits received from other Tenderers will be refunded or returned within 10 Working Days after acceptance of the successful Tender or, if no Tender has been accepted as soon as practicable after the expiry of the period of Validity of Tender.

WCT3.4

No interest will be payable on Tender Deposits.

WCT4

Alternative Tenders

WCT4.1

As a means of encouraging or permitting innovation, Tenderers are invited to submit Alternative Tenders that propose methods and/or materials which differ from those specified in the Tender Documents. The Principal reserves the right to only consider an Alternative Tender if the Price is certain. The Principal is not obliged to consider any Alternative Tender.

WCT4.2

An Alternative Tender must contain a statement to the effect that it is submitted as an Alternative Tender and outline in what respects it differs from the original method, form or materials specified in the Tender Documents with sufficient particularity to enable evaluation.

WCT4.3

Alternative Tenders will be evaluated generally in accordance with Section 2.8 of Transfund New Zealand's "Competitive Pricing Procedures Manual". Consideration will be given to the benefits that may arise from acceptance of alternative proposals especially in terms of environmental impact, quality, durability, and cost/whole-life value.

WCT5

Tagged and other Non-Conforming Tenders

WCT5.1

Tenders submitted subject to tags, conditions or endorsement may be considered.

WCT5.2

The Principal may:

- (a) Request the Tenderer to withdraw any tag, condition or endorsement without any adjustment to the Tender Price.
- (b) Request the Tenderer to withdraw any tag, condition or endorsement with adjustment of the Tender Price provided that the adjustment is for an amount that would have been reasonably expected if the Tender had been submitted without endorsement.
- (c) Assign a price to any tag, condition or endorsement.

WCT5.3

The Principal would prefer Tenderers to price any tags, conditions or endorsements in their Tender and submit those Prices as alternatives to a fully conforming base Tender.

WCT5.4

All tags, conditions or endorsements must be outlined in a separate document included with the Tender.

PART 3: GENERAL CONDITIONS OF TENDER

WCT6

Rights reserved by the Principal

WCT6.1

The Principal reserves the right to:

- Reject all or any Tenders.
- Refuse to accept the lowest Tender.
- Re-advertise for Tenders.
- Waive any irregularities or informalities in the Tendering process.
- Amend the closing date, the acceptance date or any other date in the Tender Documents (except the date at which the period of Validity of Tender expires).
- Amend the Tender Documents and any associated documents by the issue of a written amendment notice.
- Seek clarification of any Tender.
- Suspend or cancel, (in whole or in part), the Tender process
- Consider or reject any late or non-conforming Tender, at the Principal's sole discretion. Consideration of late Tenders will be in accordance with the Principal's policy in relation to late Tenders.
- Enter into discussions and/or negotiations with any one or more Tenderers at any time and upon any terms and conditions.

WCT6.2

The failure or omission by the Principal at any time to enforce or require strict or timely compliance with any provision of the Tender Documents shall not affect or impair that provision in any way or the Principal's right to avail itself of the remedies it may have in respect of a breach of any such provision.

WCT6.3

The Principal will not be bound to give any reasons for decisions made as a result of this Tender or as an outcome of Tender evaluation.

WCT6.4

The Tenderer acknowledges that the evaluation methodology may be used only as a guide, to assist the Principal in decision making and that the Tenderer with the highest evaluation score will not necessarily be awarded the Tender.

WCT7

Shortlisting and Negotiation

WCT7.1

If the Principal in its discretion decides to shortlist or negotiate with any Tenderer then it may:

- Notify the Tenderer of its preferred status and the expected timeframe for negotiations.
- Advise other Tenderers that:
 - Their Tenders have been unsuccessful, or
 - That their Tenders are shortlisted but not preferred.

WCT7.2

Any failure to reach agreement between the Principal and the preferred Tenderer may result in a re-evaluation of other shortlisted Tenderers. Negotiation would then commence with the Tenderer selected from this re-evaluation.

WCT7.3

This process will be repeated until a Tender is accepted, until the Principal elects to abort the Tender process, or until expiry of the period of Validity of Tender, whichever first occurs.

WCT8

Issue of documents

WCT8.1

Tender Documents issued to Tenderers (except schedules of quantities for use in the preparation of Tenders) remain the property of the Principal.

WCT8.2

A non-refundable Tender Document fee of the amount set out in the Schedule will be charged upon issue of the Tender Documents.

WCT8.3

Notices to Tenderers may be issued by the Principal of its own volition, or as a result of a request for information or clarification. (See clause WCT10.1.)

WCT9

Tenderers to inform themselves

WCT9.1

The Tender Documents generally show, and where necessary specifically show, the extent of the Contract Works included in this Contract. It is not intended, nor is it practicable, that every detail or individual item of work required to complete the Contract is included. Tenderers are expected to be thoroughly experienced in Contracts of this nature, and to draw on this experience when preparing their Tenders.

WCT9.2

The Tendered Price must, except where otherwise provided, allow for all the Contractor's obligations under the Contract as set out in the Tender Documents and all of the Contractor's costs, margin and profit.

WCT9.3

Tenderers should satisfy themselves as to: the nature of the Site so far as is evident from such inspection and from an examination of such data as may be made available by the Principal or upon reasonable enquiry, the nature of the Contract Works, the equipment necessary for the completion of the Contract Works and the means to access the Site. Tenderers should also obtain all necessary information as to risks, contingencies and other circumstances which may influence their Tender.

WCT9.4

If specified in the Schedule a site inspection must be attended before submission of Tenders. This site inspection must be attended, and confirmed by both parties, in the presence of the Engineer or Engineer's Representative or other person nominated by the Principal.

WCT9.5

Each Tenderer will be deemed to have examined the Site, the Tender Documents and any other information supplied in writing and to have satisfied itself, as far as is practicable for an experienced Contractor, before Tendering, as to the correctness and sufficiency of the Tender for the Contract Works and of the Rates / Prices stated in the Tender. No claim for additional payment will be recognised where based on the conditions or requirements that would reasonably have become known to the Contractor by a thorough Site inspection.

WCT9.6

The Tenderer acknowledges that:

- While every effort has been made to ensure that any information relating to the Tender supplied by the Principal or its agents, employees or consultants is correct, such information is supplied on an indicative basis only. No claim for compensation or damages on the grounds that any information so supplied is incorrect, incomplete, inaccurate or misleading, will be entertained.
- Prior to putting forward its Tender a full opportunity for inspection and investigation was afforded by the Principal. The Contractor shall therefore be deemed to have allowed in the Tendered Price for all matters concerning the Site and its surroundings including, but not limited to, the physical conditions, existing structures and utilities, access, services, and requirements of all relevant authorities.
- The Tenderer has relied solely upon its own judgement, after such inspection and investigation, and not upon any representation, warranties or statements made by the Principal or any agent, employee or consultant of the Principal.

WCT10

Ambiguities in Tender Documents or Tenders

WCT10.1

Where the Tender Documents are ambiguous or unclear, the issue of an explanatory notice may be requested. If an explanatory notice is issued, it will be sent to all Tenderers as a Notice to Tenderers.

WCT10.2

In the absence of any Notice to Tenderers, Tenders may be submitted subject to any reasonable interpretation of any ambiguity or uncertainty in the Tender Documents, endorsed upon or attached to the Tender.

WCT10.3

Tenders are to be based on the Tender Documents and interpreted as relating to the Tender Documents unless clearly endorsed otherwise.

WCT11

Information accuracy

WCT11.1

The Tenderer warrants that:

- All information provided by the Tenderer will be complete and accurate in all material respects.
- That the provision of information to the Principal, and the use of it by the Principal for the evaluation of Tenders and for the negotiation of any resulting contractual agreement, will not breach any third party intellectual property rights.

WCT11.2

The Principal is under no obligation to check any Tender for errors.

WCT11.3

Without limiting WCT11.2, if the Principal becomes aware of errors in extension of unit rates or in summation of items the Principal may draw the error to the attention of the Tenderer and may:

- Seek confirmation of the Tendered Price, or
- Request withdrawal of the Tender, should the Tendered Price not be confirmed, or
- Adjust the Tendered Price to that calculated from the correct extension of unit rates or summation of items.

WCT11.4

Tenderers may be asked to revise or clarify their Tender or to provide additional information during the Tender process. These requests may require prompt action and must be responded to in writing within the time specified in the request.

WCT12

Referee reports

WCT12.1

The Tenderer, pursuant to subclause 2 of section 6 of the Privacy Act 1993, authorises the Principal to:

- Verify with any third party any information included in the Tender or disclosed to the Principal in connection with the Tender.
- Carry out a credit check on the Tenderer.

WCT13

Canvassing of Council officers and / or elected members

WCT13.1

Tenderers must not attempt to influence the outcome of the Tendering process by canvassing, lobbying or otherwise seeking support of any Waitakere City Council Councillor, Community Board member or Council officer. Failure to comply with this clause will be viewed as a breach of the Tenderer's obligations under these Conditions and may result in rejection of the Tender and forfeiture of the Tender Deposit.

WCT14

Referential Tenders

WCT14.1

Referential Tenders (that is, Tenders under which the Tendered Price is to be determined by reference to the Tender Price of another Tender) will not be considered.

WCT15

Merger

WCT15.1

The agreements, obligations and warranties of the parties contained in the Tender Documents insofar as the same have not been fulfilled at the time of Acceptance of the Tender or the execution of the agreement, will not merge (cease to exist) by such acceptance or execution.

PART 4: FORM AND CONTENT OF TENDER SUBMISSIONS

WCT16

Envelope submission – general requirements

WCT16.1

The form and contents of the Tender should comply with the following requirements, with the pre-formatted sheets completed where supplied and placed in the correct envelope.

WCT16.2

The type of Tender submission required (i.e. whether single or two-envelope) is set out in the Schedule.

WCT17

Single Envelope Tender submission

WCT17.1

Where Single Envelope Tender submission is specified Tenders must include:

- Tenderer's detailed Statement of Attributes (refer Part 5)
- Completed Form of Tender Form E1
- List of Proposed Sub-Contractors/Plant Form E2
- Contractor's Health and Safety Pre-Qualification Questionnaire (refer WCT20) Form E3
- Completed Schedule of Prices Form E4
- Supplementary information (refer WCT21)
- Tender Deposit Cheque (refer WCT3)

Where Notices to Tenderers have been issued, Tenderers are required to confirm that full allowance for all Notices to Tenderers has been made by inserting the number of each Notice to Tenderers issued in the space provided on the Form of Tender.

WCT18

Two-Envelope Tender submission

WCT18.1

Where Two-Envelope Tender submission is specified Tenders must be submitted in two envelopes, with the "Price Envelope" (Envelope 2) being sealed and enclosed within the "Non-Price Envelope" (Envelope 1).

Envelope 1 must be marked "Envelope 1 – Non-Price Attributes" and include:

- Tenderer's detailed Statement of Attributes (refer Part 5)
- List of Proposed Sub-Contractors/Plant Form E2
- Contractor's Health and Safety Pre-Qualification Questionnaire (refer WCT20) Form E3
- Supplementary information (Non-Price related) (refer WCT21)
- Tender Deposit Cheque (refer WCT3)
- Confirmation that Notices to Tenderers, if issued, are covered as required in Envelope 2
- Envelope 2 (Sealed)

Envelope 2 must be marked "Envelope 2 – Price" and must only contain:

- Completed Form of Tender Form E1
- Completed Schedule of Prices Form E4
- Supplementary information (Price related) (refer WCT21)

Where Notices to Tenderers have been issued, Tenderers are required to confirm that full allowance for all Notices to Tenderers has been made by inserting the number of each Notice to Tenderers issued in the space provided on the Form of Tender

WCT19

Tender Options

WCT19.1

Where Tenderers are required to submit Prices for multiple Tender Options, these are to be presented on separate Forms of Tender (Form E1). The Principal reserves the right to determine which, if any option will be selected.

WCT20

Contractor's Health and Safety Pre-Qualification Questionnaire

WCT20.1

Each Tenderer must complete the Contractor's Health & Safety Pre-Qualification Questionnaire (Form E3). Failure to do so or the submittal of incomplete or false information may invalidate the Tender. The information provided will be used in the evaluation of Tenders, and will form part of the Contract Agreement.

WCT21

Supplementary information

WCT21.1

Tenders will include any supplementary information required by the Tender Documents as listed in the Schedule and the Amendments To Conditions Of Tendering, where applicable, or as otherwise provided for by these Conditions.

PART 5: STATEMENT OF ATTRIBUTES

WCT22

Statement of Attributes

WCT22.1

Each Tenderer must submit information relating to the Non-Price attributes described below or as varied within the Amendments To Conditions Of Tendering.

a) Relevant Experience

Details of relevant experience showing the Tenderer's suitability for the work described in the specification. Where Sub-Contractors are to be engaged, their relevant experience is also to be supplied.

b) Track Record

Evidence of the Tenderer's ability to complete projects to target performance levels, on schedule and within budget, and demonstrate past conformity with safety requirements (refer WCT20). The names, position and telephone numbers of past clients who may be contacted as referees are to be included. Similar information is to be provided for any proposed Sub-Contractor.

c) Technical Skills

Details of key personnel to be engaged on the Contract Works, including their relevant skill, experience and availability.

d) Resources

Details of plant, equipment, machinery and other facilities intended to be used on the Contract Works, and whether such plant, equipment, machinery or other facilities are owned or will be hired.

e) Management Skills

Details of management methods, skills and systems applied to carry out the Contract Works. These skills are to include management training given to staff, and methods of communication between staff and the Engineer. Systems for maintaining records relating to the Contract Works, systems for reporting internally and as required for this Contract and systems used in the preparation and submission of payment claims should also be described. The company's safety record (ACC claim record and OSH record) and the procedures used to ensure safety at the Contract Works must be submitted in terms of the Health and Safety in Employment Act 1992 by fully completing the Contractor's Health and Safety Pre-Qualification Questionnaire (refer WCT20).

f) Methodology

Describe the methodology proposed to achieve the specified end result within the required time, including but not limited to, the following:

- Public safety
- Public relations
- Methods to minimise environmental damage
- Reinstatement methods
- Communication
- Programming
- Quality assurance procedures (refer WCT22.1.1)
- Implementation / supervision

WCT22.1.1

Each Tenderer, in its statement of Methodology (WCT22.1 part f) must demonstrate that it can institute quality management systems, incorporating well defined quality assurance procedures, relevant to the Contract Works such as to ensure that all the work carried out meets the standards required. The quality management systems must, as a minimum, be compliant with or equivalent to the standard specified in the Schedule and this should be demonstrated by the Tenderer in its submission.

WCT22.2

While the information described for each of the attributes in WCT22.1 and WCT22.1.1 should be addressed by the Tenderer in its Tender, or as otherwise required by the Amendments To Conditions Of Tendering, the Tenderer is also encouraged to provide additional, but concise information that is relevant and specific to the Contract Works in order to best demonstrate the Tenderer's qualities.

PART 6: TENDER EVALUATION

WCT23

Tender Evaluation

WCT23.1

Tenders will be evaluated generally in accordance with the requirements contained in Transfund New Zealand's "Competitive Pricing Procedures Manual".

The Tender evaluation will be undertaken using one of the methods described in Clauses WCT23.1.1 and WCT23.1.2.

WCT23.1.1

Lowest Price Conforming Tender Method

Evaluation will be as detailed in Sections 2.4 to 2.6 (inclusive) of Transfund New Zealand's "Competitive Pricing Procedures Manual".

WCT23.1.2

Weighted Attributes Method

Evaluation will be as described in Sections 2.4, 2.5 and 2.7 of Transfund New Zealand's "Competitive Pricing Procedures Manual", but where a single envelope Tender submission is required Tender Prices will be recorded at the time of opening and Price and Non-Price attributes evaluated concurrently. Weightings will be applied to the Attributes as defined in the Schedule.

PART 7: ACCEPTANCE AND COMMUNICATION OF OUTCOMES

WCT24

Communication of Outcomes

WCT24.1

Tenderers will be notified of the outcomes to the Tender in writing.

WCT24.2

All notices will be forwarded to the address provided by the Tenderers in their Tender.

WCT25

Acceptance of Successful Tender

WCT25.1

A Contract at the amount of the successful Tender will only be created upon written communication of acceptance to the successful Tenderer by letter or facsimile transmission signed by an officer of the Principal who has been duly authorised to accept the Tender.

INDEX

Page or Clause

A

Acceptance of Successful Tender	WCT25
Accuracy, Information	<i>see Submission of Tenders, information accuracy</i>
Alternative Tenders	WCT4
Evaluation	WCT4.3
Submission.....	WCT4.2, WCT4.1
tags conditions and endorsements as alternatives.....	WCT4.2
Ambiguity	
request for explanatory notice	WCT10.1
submission of Tenders	WCT10.2
Amendments To Conditions Of Tendering	WCT22.2, WCT22.1, WCT21.1, WCT1.3
Attributes, Statement of.....	WCT22
Management Skills	WCT22.1
Methodology.....	WCT22.1
Quality Assurance	WCT22.1.1
Relevant Experience	WCT22.1
Resources	WCT22.1
Submission, Single Envelope	WCT17.1
Submission, Two-Envelope.....	WCT18.1
Technical Skills	WCT22.1
Track Record.....	WCT22.1

C

Canvassing, of Council officers and/or Elected Members	WCT13
Communication of Outcomes	WCT24
Competitive Pricing Procedures Manual, Transfund NZ	3, 12
Conditions of Tender, General	Part 3

E

Envelope submission	
general requirements	WCT16
Single Envelope	WCT17
Two-Envelope	WCT18
Errors, Extension or Summation	WCT11.3
Evaluation	
Alternative Tenders	WCT4.3
method, Lowest Price Conforming Tender Method	WCT23.1.1
method, Weighted Attribute Method	WCT23.1.2
methodology, use of	WCT6.4

F

Form of Tender	
Notices to Tenderers	WCT18.1, WCT17.1
Single Envelope submission	WCT17.1
Tender Options	WCT19.1
Two-Envelope submission	WCT18.1

G

GST.....	WCT2.7
----------	--------

H

Health and Safety in Employment Act 1992	WCT22.1
Health and Safety Pre-Qualification	WCT20
attribute information.....	WCT22.1
failure to complete	WCT20.1
incomplete or false information	WCT20.1
Single Envelope submission	WCT17.1

Two-Envelope submission	WCT18.1
I	
Information supplied by the Principal	WCT9.6
Intellectual property rights, third party	WCT11.1
Interpretation and Context.....	WCT1
L	
Late Tenders	WCT6.1
Lobbying, of Council officers and/or Elected Members	WCT13
M	
Merger.....	WCT15
Multiple Options	<i>see Tender Options</i>
N	
Negotiation	WCT7
right reserved to negotiate.....	WCT6.1
Non-Conforming Tenders.....	WCT6.1, WCT5
Non-Price Envelope	WCT18.1
Notices to Tenderers	WCT10.1, WCT8.3
envelope submission, single	WCT17.1
envelope submission, two-envelope – envelope 1	WCT18.1
envelope submission, two-envelope – envelope 2	WCT18.1
NZS 3910: 2003	
Conditions of Tendering	WCT1.2
Section 1	WCT1.1
P	
Part 1 General.....	1
Part 2 Tender Process	2
Part 3 General Conditions of Tender.....	4
Part 4 Form and Content of Tender Submissions	8
Part 5 Statement of Attributes	10
Part 6 Tender Evaluation.....	12
Part 7 Acceptance and Communication of Outcomes.....	12
Price Envelope	WCT18.1
Privacy Act 1993	<i>See Referee reports</i>
R	
Referee reports	WCT12
Referential Tenders.....	WCT14
Return of Tenders	<i>See Submission of Tenders: ownership of Tenders</i>
Rights reserved by Principal.....	WCT6
S	
Schedule	
attribute weightings	WCT23.1.2
definition of.....	WCT1.3
Period of Validity of Tender	WCT2.6
quality management systems.....	WCT22.1.1
site inspection	WCT9.4
submission type	WCT16.2
supplementary information	WCT21.1
Tender Deposit.....	WCT3.1
Tender Document fee.....	WCT8.2
time of Tender closing.....	WCT2.1
Schedule of Prices	8, 9
Schedule To Conditions Of Tendering	<i>See Schedule</i>

Shortlisting	WCT7
Site	
information on and nature of	WCT9.6, WCT9.3
inspection	WCT9.5, WCT9.4
Statement of Attributes	<i>See Attributes, Statement of</i>
Sub-Contractors	8, 10
Submission of Tenders	WCT2
Alternative Tenders	<i>See Alternative Tenders</i>
Cost of preparing & submitting	WCT2.5
endorsement	WCT10.3
endorsement, ambiguity or uncertainty	WCT10.2
form of submission	<i>See Envelope Submission</i>
Health and Safety Pre-Qualification	<i>see Health and Safety Pre-Qualification</i>
information accuracy	WCT11
information accuracy, errors in extension or summation	WCT11.3
information accuracy, Principal has no obligation to check	WCT11.2
large Tenders	WCT2.2
Non-Conforming Tenders	WCT5
ownership of Tenders	WCT2.8
signing	WCT2.4
Statement of Attributes	<i>See Attributes, Statement of</i>
supplementary information	<i>see Supplementary information</i>
Tagged Tenders	WCT5
Tendered Price	WCT9.2
Supplementary information	WCT21
Single Envelope submission	WCT17.1
Two-Envelope submission, non-Price	WCT18.1
Two-Envelope submission, Price	WCT18.1
T	
Tagged Tenders	WCT5
Tender Box	WCT2.2
Tender Deposit	WCT3
amount of	WCT3.1
cheque, Single Envelope submission	WCT17.1
cheque, Two-Envelope submission	WCT18.1
Interest not payable	WCT3.4
refund	WCT3.3, WCT3.2
Tender Documents	
Document fee	WCT8.2
issue	WCT8
Tender Evaluation	<i>see Evaluation</i>
Tender Options	WCT19
Tender Submission	<i>see Submission of Tenders</i>
Tender Validity Period	<i>See Validity of Tender</i>
Tenderer's own judgement	WCT9.6
Tenderers to inform themselves	WCT9
Time of Tender Closing	WCT2.6, WCT2.2, WCT2.1
V	
Validity of Tender	WCT2.6
W	
Withdrawal	
errors	WCT11.3
tag, condition or endorsement	WCT5.2