



Consultancy Services Order (CSO) with MfE Contract Management Accountability Statement

AoG Consultancy Services Order (CSO)

CSO or Project name	Efficiency and effectiveness of levy and funds administration		
Contract number			
Agency	Ministry for the Environment	Provider	KPMG New Zealand
Agency contact name & title	<i>Tessa Knight</i>	Provider contact name & title	<i>James Poskitt</i>
	<i>Programme Director</i>		<i>Director</i>
Agency email address	<i>Tessa.Knight@mfe.govt.nz</i>	Provider email address	jposkitt@kpmg.co.nz
Agency phone #	<i>027 543 8700</i>	Provider phone #	+64292007295
Provider's Nominated Personnel	<i>Peter Chew, Ronja Lidenhammar, Tom Henderson and Gabby Milne</i>		
Sub Category	<i>[title: accounting, assurance, taxation...]</i>		
GCDO Assurance Sub Panel	<i>[yes/no]</i>		
Protective Security Services Sub Panel	<i>[yes/no]</i>		

A1. Purpose and any background information

Why is this procurement needed?

The background of this work arises from Cabinet decisions made on 29 April 2024 with respect to the investment of the waste disposal levy to achieve Government priorities.

Cabinet invited the Minister for the Environment to independently review the process for making investment decisions using the waste disposal levy and back-office functions in the Ministry for the Environment (the **Ministry**) relating to the waste disposal levy, with a focus on value for money.

The purpose for this procurement is to engage a suitable consultancy to carry out this independent review (refer [CAB-24-MIN-0138](#) recommendation 23) and report back to Cabinet by October 2024.

While the review must necessarily be retrospective, it will also give consideration to future requirements relating to levy administration, with the view to drawing insights or making recommendations that may increase the efficiency and effectiveness of these functions in the near term. Treasury have been engaged throughout the procurement process.

The purpose for this procurement is to engage a suitable supplier to carry out this independent review and report back to Cabinet by October 2024.

BACKGROUND

What is the waste disposal levy?

The waste disposal levy (the **levy**) is charged on waste at municipal and other landfills. The levy has been [progressively increased and expanded since July 2021](#). At present, the two key intents of the levy are to incentivise waste reduction, and to fund investments to further minimise waste.

What is the Ministry's role with respect to the levy?

The Ministry collects the levy via the Online Waste Levy System (**OWLS**) which is managed by a third-party supplier. Under the Waste Minimisation Act 2008 (the **WMA**), the Ministry (the Secretary for the Environment) must distribute and spend all levy money received ([section 30](#) of the WMA) by:

- Paying any refunds to site operators
- Paying shares to territorial authorities – half of the levy collected must be allocated to territorial authorities
- Spending the remaining funds on collecting and administering the levy; funding projects that promote or achieve waste minimisation, and associated administration costs relating to those projects.

Non-departmental funding (the waste investments funds)

The [Waste Minimisation Fund](#) (the **WMF**) has been the primary fund for investing the Government portion of the waste disposal levy along with the [Plastics Innovation Fund](#) (the **PIF**). Revenue for both funds have come from the same Government appropriation. PIF is currently closed, and we do not expect to reopen it. Instead, we intend to condense into a single fund with multiple signals under the WMF.

The Contaminated Sites Remediation Fund (the **CSRF**) will be closed and replaced by the Contaminated Sites and Vulnerable Landfills Fund (the **CSVL**). Prior to 1 July 2024 the CSRF was not funded by the levy. Post 1 July 2024 CSVL will be partially funded by the levy and fully levy-funded from 2025/26 onwards.

In light of the levy expansion and significantly more levy money available for investment, before the WMF reopened in October 2022, significant changes were made to fund management processes including the fund being open year-round with a focus on initiatives that make the greatest impact (reflected in an increase in the minimum grant size). In recent years, funding for the WMF has come from both Climate Emergency Response Funding (**CERF**) and the levy. Only the levy is within the scope of this procurement.

Departmental funding

Waste levy departmental funding is used to fund all levy related administration. This includes:

- Waste Investments:
 - Staff and other administrative costs in relation to funding projects (eg. staff costs, subject matter experts, third-party due diligence, external panel costs and the online Funds Management System (**FMS**)).
 - The end-to-end function involves managing and tracking funding enquiries, accepting and assessing expressions of interest and applications, application moderation and award, contracting, ongoing contract management, and project monitoring, reporting and evaluative activities.
- Waste Operations
 - Staff and other administrative costs for levy collection including the Online Waste Levy System (OWLS) and the third-party supplier (formerly FishServe Innovations New Zealand Limited recently transitioned to Deloitte) who provide operational services.
 - Staff and administration associated with the distribution of the waste levy e.g. to territorial authorities; and monitoring, tracking and audit of the use of the waste levy by territorial authorities (including using an online system)
 - Compliance, monitoring and enforcement activities – the Ministry has a direct compliance, monitoring and enforcement role under the WMA including activities such as new policy implementation, site audits of levied landfills (regulated community consists of 182 levy liable facilities and approximately 400 further non levy facilities that have obligations under the WMA.) and enforcement action on non-complying operators. The waste operations team also provides the internal audit function for waste investments.
- Levy overheads which fund:
 - Waste Investments' and Waste Operations' proportionate share of the Ministry's shared service costs (i.e. overheads). This includes central costs such as accommodation, ICT, Finance, Procurement, P&C etc. Shared service costs are allocated proportionally based on each work streams relative share of budgeted FTE.

The table below provides an overview of the current appropriated departmental funding for the waste levy:

\$,000's	2023/24	2024/25	2025/26	2026/27
Waste Minimisation Administration	\$13,536	\$12,706	\$5,906	\$5,906

Cabinet has directed officials to identify a suitable annual quantum for waste-related investment ahead of Budget 2025. This is likely to result in an annual envelope for waste-related investments from levy revenue from 2025/2026 onwards.

From 1 July 2024, 2024/25 the waste levy will also fund all of the Ministry's waste and hazardous substances work programme. This effectively increases the scope of departmental activities eligible for levy funding to include functions such as policy development and implementation, data and others. These functions are considered out of scope based on the retrospective focus of this procurement on existing 'back-office' activities.

A2. Specific questions / instructions for Provider

The solution sought is to produce a report that provides an independent review of departmental levy spend in relation to two key objectives:

1. Review the processes for making (waste levy) waste investment decisions, with a focus on value for money.
2. Review back-office functions funded by the levy, with a focus on value for money, including:
 - a. collecting, distributing and administering the levy
 - b. levy compliance, monitoring and enforcement; and
 - c. funds administration.

Objective One

Review the processes for making (waste levy) waste investment decisions, with a focus on value for money.

Internal review of the waste investment funds (background):

The Ministry's Risk, Assurance and Resilience (RAR) team has been conducting a review of the waste investment process to identify opportunities to increase efficiencies and decrease administrative burden with a focus to enhance customer centricity while maintaining appropriate, effective, and fit for purpose risk and assurance controls.

The approach to this review was a "management control self-assessment (CSA)" with support from the Assurance Team. To date, the Waste Investments team has mapped out their end-to-end investments process identifying key risks and controls established to manage the risks. The next step is for the Waste Investments Team to identify a project that has been through the entire investments process for the Assurance team to "walk through" and identify opportunities for efficiencies.

However, this work has been paused in light of the requirement for this independent review. The work already done by this team can be handed over during discovery to the appointed consultant to ensure synergies and efficiencies are achieved in delivery of objective one.

In addition to the recent self-assessment, the waste funds were also reviewed in 2018 and in 2019 by independent consultants, with a particular focus on managing financial risk. While that previous review had a broader scope, there may be some useful insights to be drawn from the earlier reviews. These documents will be provided to the consultant.

Requirements for objective one:

Conduct a process review, considering value for money associated with the end-to-end waste investment funds **decision-making** process (for WMF & PIF) which includes three key phases:

- Expression of Interest (EOI) – initial conversations, EOI submission and assessment, moderation and approvals
- Application – application submission, independent panel assessment, assessment, due diligence, moderation and approvals
- Contracting – project planning, deed of funding negotiation, external due diligence, legal review

In addition, how post-project evaluation feeds into decision making is also in scope.

The Ministry requires the report to set out the provider's independent review findings with respect to the efficiency and effectiveness of the process for making waste investment decisions. Value for money conclusions will need to be provided in consideration of the output of objective 2c (administration of the waste investment funds).

Out of scope

- Investment decision-making processes for other Ministry administered funds such as the Contaminated Sites Remediation Fund and the Freshwater Improvement Fund (previously not funded by levy).
- Decision-making processes with respect to WMF projects that are funded with Climate Emergency Response Funding.

Objective Two:

Review back-office functions funded by the levy, with a focus on value for money, including:

- a. collecting, distributing and administering the levy
- b. levy compliance, monitoring and enforcement; and
- c. funds administration.

Requirements for objective two:

- Document the activities undertaken across functions a, b, and c.
- Assess these functions and activities against the Ministry's regulatory responsibilities.
- Assess and report on this delivery against departmental expenditure **since levy rates were increased in 2021** with respect to the value for money.
- Assess whether the current appropriated departmental funding from FY26 onwards will be adequate to deliver on the Ministry's regulatory responsibilities. If not, provide an assessment of the indicative level of departmental funding required to deliver on these functions/activities.¹ This assessment will need to take into account that Cabinet has directed officials to identify a suitable annual quantum for waste-related investment ahead of Budget 2025, which may require provision of indicative level of funding under scenarios the Ministry will provide.
- Provide any recommendations that helps to avoid 'dead weight loss' from the administration of the key levy functions.

Resourcing and inputs for administering the levy related functions include:

- Human resources (internal and external)
- Systems - Funds Management System (FMS), [Territorial authority waste levy expenditure system \(TAWLES\)](#), Online Waste Levy System (OWLS)
- Processes and tools
- Other ancillary costs such as travel.
- Finance activities (funded by overheads) relating to specific levy related activities only:
 - Distribution of the levy to territorial authorities
 - Reporting related to levy revenue and expenditure
 - Review of finance control environment – Levy specific (i.e. internal controls).

Out of scope:

- Back-office functions not funded by the levy in FY24 e.g. Waste operations compliance, monitoring and enforcement activities not related to levied facilities.
- The Ministry's overhead allocation methodology. Allocation methodology is reviewed annually as part of Audit NZ's audit.
- Waste Investments activities funded by the Climate Emergency Response Fund
- Detailed assessment of specific processes, methodologies or systems employed by the two levy administrative function areas.

Value for money:

It is important that a clear definition of value for money and appropriate quantitative and qualitative measures are agreed from the outset of the project. Definitions and proposed measures should be included in the proposal. This may include measures of effectiveness (e.g. outcomes sought in WMA 2008 are clear and being achieved), measures of efficiency (e.g. outputs are delivered with minimal wasted effort or expense) and other factors such as confidence in the decision-making process.

A3. Additional Information e.g. risks to client, additional contact information

Not applicable.

A4. Client specific requirements***Supplier Code of Conduct***

Further to clause 5.1 (Provider Obligations) of Part F to this CSO, the Provider must comply with the Supplier Code of Conduct issued by the Procurement Functional Leader (see www.procurement.govt.nz).

On-Site requirements

Further to clauses 5.1 (Provider Responsibilities), 6.3 (Personnel) and 6.4 (Subcontracting) of Part F to this CSO, if the Provider (including the Provider's Personnel and Subcontractor Personnel) is at the Ministry's premises, the Provider must observe the Ministry's policies and procedures (including those relating to security requirements and health and safety).

Payment

The Provider's Fees will be paid as follows:
A fixed Fee of \$56,272.15 excluding GST.

Invoices

The Provider must send the Ministry an invoice for the Charges at the following times:
On the completion of the Services.

The Provider's tax invoice must contain the Ministry's contract reference number. If the Provider's tax invoice does not contain the Ministry's contract reference number, the Ministry will not process the invoice and will return the invoice to the Provider. The Provider shall reissue the invoice to the Ministry with the contract reference number.

Privacy

Further to clause 5.1 (Provider responsibilities), where the Provider is holding or processing any personal information (as defined in the Privacy Act 2020) the Provider must:

- (a) as soon as practicable, report any breach or potential breach of its obligations under the Privacy Act 2020 in respect of such personal information; and
- (b) give the Ministry reasonable notice in advance of making a mandatory breach notification to the Privacy Commissioner (or, where prior notice is not reasonably possible, promptly after).

¹ Since the suitable annual quantum for waste-related investment (non-departmental) is yet to be confirmed, an appropriate quantum will need to be assumed for the purposes of this requirement.

A5. Timeframes

Start date: 29 July 2024

End date: 27 September 2024

A6. Indicative budget

Up to \$56,272.15 excl. GST (includes AoG Administration fee)

No expenses payable.

A7. Outputs of the Services

Timelines for delivery of key deliverables and their associated performance standards are as below.

Deliverable	Performance Standards	Due date
Draft report provided to MfE for feedback	Draft report provided to MfE for feedback. Draft report presents findings in relation to objectives one and two and covers all the requirements addressed in section A2 above.	27 August 2024
Final report provided to MfE	Final report provided to MfE. A clearly written, well analysed and evidenced final report, anticipated in at least two parts, which present findings in relation to objectives one and two and covers all the requirements outlined in section A2 above.	30 August 2024 (or later by mutual agreement)

A8. Provider liability cap


Default liability cap(s) set out in Part F to be applied.

Part B – for Provider to complete

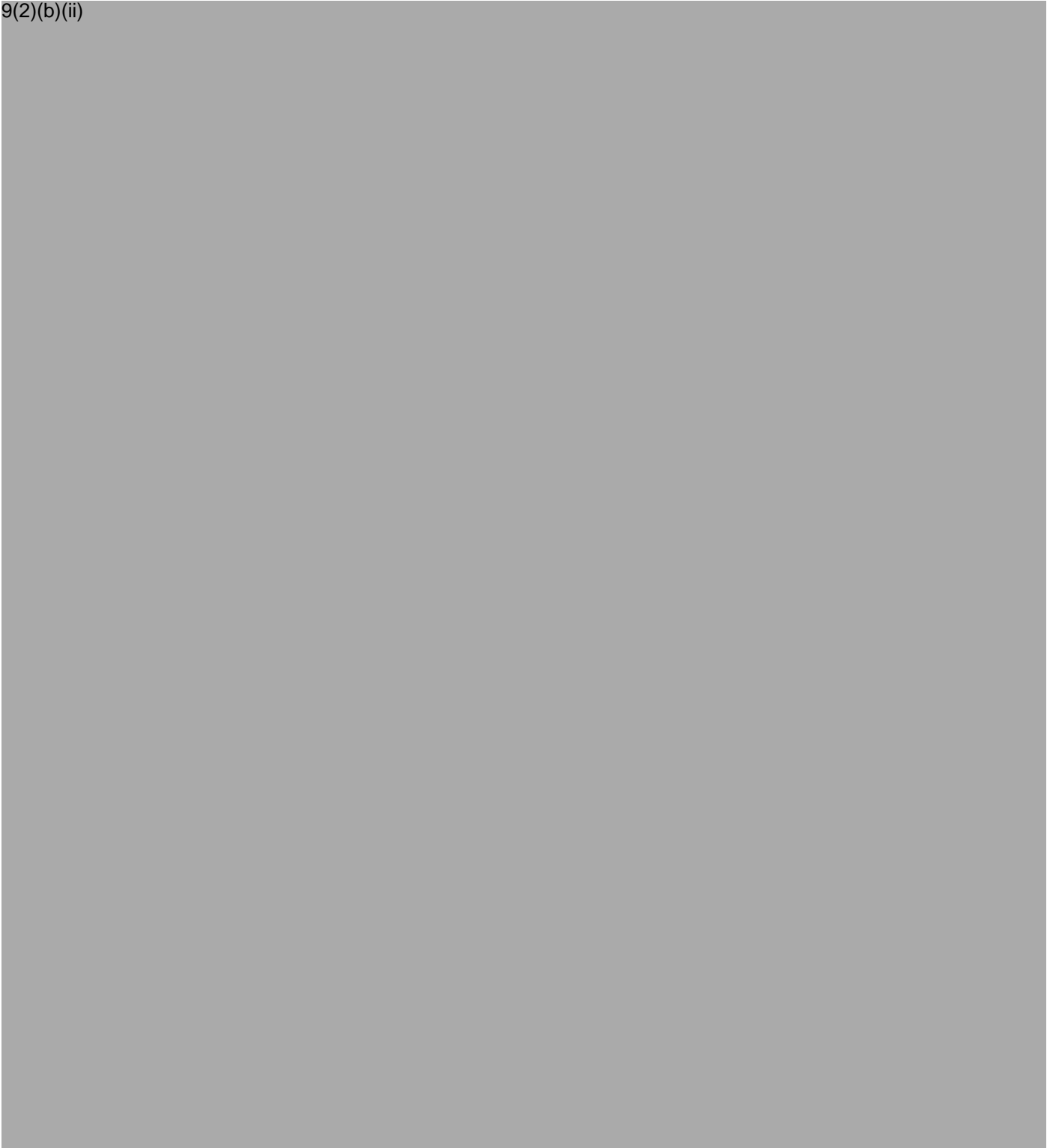
The Provider will complet Part B and email the form back to the client

B1. Specific Services to be provided

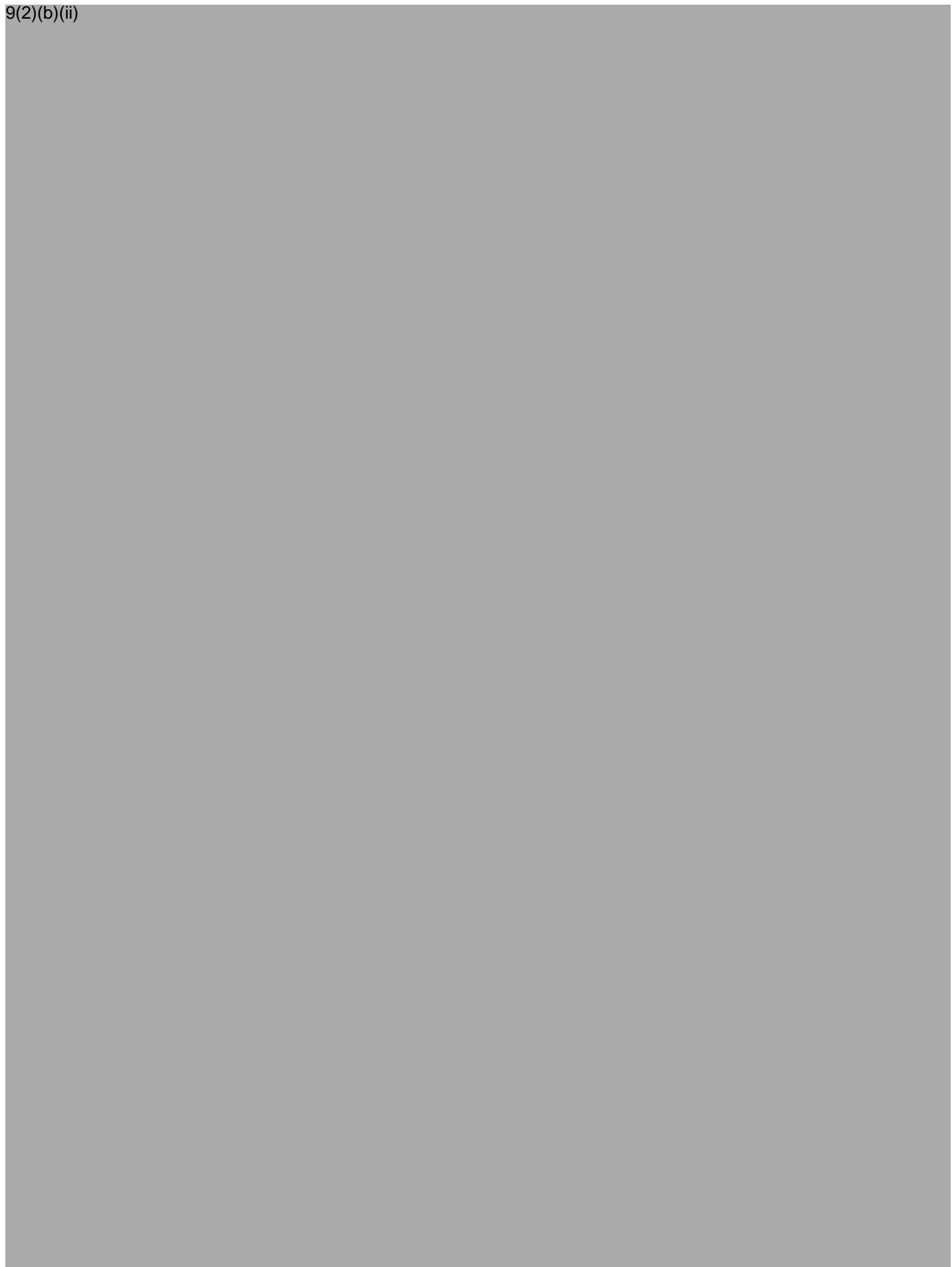
9(2)(b)(ii)




9(2)(b)(ii)



9(2)(b)(ii)



9(2)(b)(ii)



B2. Sub Category and Tier to be Provided

Selection	Sub-category of Services	Tier (1/2/3)
	Accounting	
	Assurance	
	Audit	
	Finance and economics	
	Procurement and logistics	
	Taxation	
	Business change	
	Human resource	
	Marketing and public relations	
X	Operations management and risk	1
	Policy, research and development	

B3. Can you confirm that the Nominated Personnel (if any) is available to provide the Services?

Yes

B4. Can you confirm that the timeframe for delivery of the Services (as set out in Part A) is acceptable?

Yes

B5. Estimate / Quote (excluding GST, if any)

Fees	\$56,272.15 (incl AoG fee)
Administration Fee (Tier 1 and 2 only)	
The above Fees are apportioned as follows:	
Job Level 1	\$
Job Level 2	\$
Job Level 3	\$
Job Level 4	\$
Job Level 5	\$
Fixed Fee	\$
Monthly Retainer	\$
Subcontracting	\$
Expenses	\$
Total Charges	\$
Identify whether the Total Charges is an Estimate / Quote and the method that the Charges have been calculated	Fixed price

Additional information / assumptions:

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Job Level	Indicative Characteristics
Level 5	<ul style="list-style-type: none"> • 15+ years of extensive professional experience in their specialised field in a consultancy role. • An industry leader and key influencer who is respected for their professional proficiency and knowledge. • Recognised as a trusted adviser to ministers and/or senior executive teams. • Acts as the senior responsible person on major client engagements. Able to be accountable for leading complex projects/programs. • Responsible for leading a high performing team of professionals, including the coaching and mentoring of colleagues at Levels 1–4.

Level 4	<ul style="list-style-type: none"> • 10+ years of substantial professional experience in their specialised field in a consultancy role. • Strong theoretical base in subject area, with ability to apply best practice principles to the subject matter context. • Senior team leader with the ability to deputise for the senior responsible person and coach and mentor more junior staff. • Ability to coordinate contributions of other specialists to complete a joint project. • Can engage with clients at strategic/management level if required.
Level 3	<ul style="list-style-type: none"> • 3-10 years of notable professional experience in their specialised field in a consultancy role. • A trusted performer on a wide range of client-facing consultancy projects in both the private and public sectors. • Thorough knowledge of functional area, combining a broad grasp of relevant best practice principles. • Ability to participate in multi-disciplinary teams and to work independently (with limited supervision). • Performs professional level analysis requiring technical skills and independent initiative within a well-defined program of work. • Contacts with clients predominantly at a working level.
Level 2	<ul style="list-style-type: none"> • 1-3 years of demonstrable professional experience in their specialised field in a consultancy role. • Previous experience on a range of client-facing consultancy projects, preferably in both the private and public sectors. • Has a theoretical base in subject area, possibly supplemented through recent study, with the ability to translate theory into practice • Performs a variety of analytical tasks requiring independent initiative and knowledge. • Interacts with clients predominantly at the working level.
Level 1	<ul style="list-style-type: none"> • 0+ years of relevant professional experience in a professional environment. • Evidence of prior contributions to consultancy engagements. • Performs a range of administrative tasks to support the wider team. • Work is performed under the guidance of colleagues at Levels 3-5.

B6. Conflict of Interest declaration and Additional Information

I, James Poskitt have made diligent inquiry whether KPMG has any actual, potential or perceived Conflict of Interest were it to provide the Services described in this Consultancy Services Order and I have disclosed any actual, potential or perceived Conflict of Interest and how it will be managed below:

No conflicts of interest have been identified

B7. Additional information

NA

Part C – Variations to Part A

LEAVE BLANK WHEN ISSUING CONSULTANCY SERVICES ORDER

The client will complete Part C if they wish to change any details in Part A

C1. Revised scope and/or timeframe

Part D – Variations to Part B

LEAVE BLANK WHEN ISSUING CONSULTANCY SERVICES ORDER

The Provider will complete this only if and when it receives a Variation per Part C above from the client

D1. Revised Estimate (excluding GST, if any)

Revised Fees

\$(Add in total Fees)

Administration Fee (Tier 1 and 2 only)

\$(1% of Fees for Services for which the Provider is Tier 1 or Tier 2)

The above Fees are apportioned as follows:

Job Level 1

\$

Job Level 2

\$

Job Level 3

\$

Job Level 4

\$

Job Level 5

\$

Fixed Fee

\$

Monthly Retainer

\$

Subcontracting

\$

Revised Expenses

\$


Total Charges


\$

Identify whether the Total Charges is an Estimate / Quote and the method that the Charges have been calculated

Additional information / assumptions:

Part E – Acceptance**LEAVE BLANK WHEN ISSUING CONSULTANCY SERVICES ORDER***The Provider and client to complete on acceptance of this Consultancy Services Order*

E1. Signatures	
Name of Provider's authorised signatory	James Poskitt
Signature of authorised signatory	
Date of acceptance (signing)	24/07/24

The client accepts and authorises this Consultancy Services Order	[Yes/No]
Name of client's authorised signatory	Shaun Lewis
Signature of authorised signatory	
Date of acceptance (signing)	25/07/2024

Consultancy Services Order (CSO) with MfE Contract Management Accountability Statement

Part F – Terms

THE PROVIDER AND PARTICIPATING AGENCIES ARE NOT PERMITTED TO AMEND THIS PART F.

*This Part F contains an extract of selected terms and conditions from the Services Agreement (the **Agreement**). Clause, schedule and paragraph references have been updated to refer to clauses, schedules and paragraphs in this Part F where applicable. For the full terms and conditions that govern the Services, please refer to the Agreement.*

1.	Appointment	All-of-Government Procurement Manager, Centre of Expertise for Consultancy, in accordance with clause 13.2(c)(ii); and
1.1	Appointment	
(a)	The Participating Agency appoints the Provider to provide Services to the Participating Agency as detailed in this Consultancy Services Order and the Provider accepts that appointment, in accordance with the terms of this Consultancy Services Order.	(vi) as otherwise stated in this Consultancy Services Order.
(b)	Certain obligations of the Provider in this Consultancy Services Order do not apply to sub-categories of Services for which the Provider has been appointed as a Tier 3 Provider as follows:	
(i)	the Participating Agency may nominate specific Personnel to be the primary providers or to supervise the delivery of the Services but clauses 6.2(b) to 6.2(e) do not apply to any nominated Personnel;	
(ii)	the relevant Services are not required to meet or exceed the Service Levels specified in Schedule 3 (Performance Measurement) and clause 2.5(a), Schedule 3 (Performance Measurement) do not apply;	
(iii)	the Provider is not required to pay an Administration Fee and clause 8.3(a)(v) does not apply;	
(iv)	the Provider is not required to conduct the Agency Satisfaction Survey for the relevant Services and clause 5.1(h) does not apply;	
(v)	the Provider and Participating Agency are not obligated to escalate a dispute to the CoE's	
2.	Services	
2.1	Services	
(a)	The Provider will provide Services to the Participating Agency in accordance with the terms of this Consultancy Services Order.	
(b)	The Provider will use all reasonable endeavours to ensure that, on the date the Documentation is provided under this Consultancy Services Order, such Documentation is in a readable and readily useable format.	
2.2	Agents may procure Services	
The Participating Agency may, by notice to the Provider and the CoE, appoint one or more third parties to procure Services under this Consultancy Services Order on the Participating Agency's behalf and/or receive invoices, as if that agent was a Participating Agency, provided that any such procurement is for the sole benefit of the Participating Agency.		
2.3	Timely performance	
The Provider will ensure that the Services to be performed under this Consultancy Services Order are provided on or before the date specified for performance (if any) in this Consultancy Services Order and, if no time is specified, within a reasonable time after the issue of the Consultancy Services Order.		
2.4	Delay	

- (a) If the Provider considers that it is (or is likely to be) prevented or delayed from achieving a date or time for performance (**Milestone**) specified in this Consultancy Services Order (**Delay**), it will:
- (i) immediately provide notice verbally or in writing to the Participating Agency, setting out:
- (A) the cause of the Delay and its expected duration;
- (B) the effect of the Delay on its ability to perform its obligations under this Consultancy Services Order (including any future Milestones);
- (C) what extension, if any, to the relevant Milestone is being sought; and
- (D) what steps, if any, the Participating Agency may take to mitigate the effect of the Delay; and
- (ii) take all reasonable steps necessary (including by the allocation of additional resources) to eliminate or avoid the Delay and, in all cases, mitigate its effects.
- (b) If the Provider and Participating Agency agree that the Delay is acceptable or wish to amend the Milestone:
- (i) the Provider will complete and submit Part C of this Consultancy Services Order to the Participating Agency; and
- (ii) upon receipt of the completed Part C of this Consultancy Services Order, the Participating Agency must promptly advise the Provider in writing if the completed Part C is acceptable.
- (c) If the Provider does not achieve the Milestone (as amended from time to time) and the Participating Agency's acts or omissions, or those of its Personnel or third parties acting on its behalf, have not caused the Provider to fail to achieve the Milestone, the Participating Agency may, without prejudice to any other right or remedy, suspend payment of any Charges relating to this Consultancy Services Order until the Provider remedies the relevant failure.
- the Provider has been appointed as a Tier 1 and Tier 2 Provider to a standard that reaches or exceeds the Service Levels specified in Schedule 3 (Performance Measurement).
- (b) In addition, the Provider must:
- (i) provide the Services diligently, efficiently, effectively and in accordance with Industry Best Practice;
- (ii) ensure that the Services to be performed under this Consultancy Services Order are provided on or before the date specified for performance (if any) in this Consultancy Services Order and, if no time is specified, within a reasonable time after the issue of this Consultancy Services Order;
- (iii) ensure that all Documentation, information and advice (including Documentation, information and advice provided prior to the issue of this Consultancy Services Order) provided to the Participating Agency or published on the Provider Database is Fit for Purpose so that, without limitation, it contains sufficient content and detail to enable the Participating Agency to make use of it for the purpose for which it was requested;
- (iv) act in the best interests of the Participating Agency in the provision of Services to the Participating Agency; and
- (v) provide Services to the reasonable satisfaction of the Participating Agency (as reported to the CoE).

3. Estimates and Quotes

3.1 Estimates and Quotes

- (a) The Provider must provide an Estimate or Quote for all Services to be provided under this Consultancy Services Order, unless the total Fees in respect of the Services under this Consultancy Services Order are likely to be less than \$10,000 (exclusive of GST) or such other amount as determined by the CoE and notified to the Provider.
- (b) Despite clause 3.1(a), if, during the course of providing the Services, the Provider becomes aware that the total Fees (excluding GST) are likely to exceed the amount referred to in clause 3.1(a), the Provider must provide an Estimate in accordance with clauses 3.1(c) to (e).

2.5

Service standards

- (a) The Provider must provide the Services in relation to the sub-categories for which

- (c) All Estimates and Quotes will be provided at no cost to the Participating Agency.
 - (d) All Estimates and Quotes must specify the estimated timeframe to perform the Services requested in this Consultancy Services Order and the Rates of Personnel providing the Services and include any Expenses likely to be incurred in providing the Services.
 - (e) All Quotes and Estimates must be provided to the Participating Agency in writing and must be included in this Consultancy Services Order.
 - (f) To avoid doubt and without limiting clause 4.5(c) of the Services Agreement, if any Quote or Estimate is not acceptable to the Participating Agency, the Participating Agency and Provider may seek to negotiate a more favourable Quote or Estimate, including a decrease in the Rates on which the Quote or Estimate was based.
- Services Order if those Charges exceed any Quote provided in relation to this Consultancy Services Order, unless the Participating Agency has given its prior written consent in accordance with clause 3.3(b).
- (b) If the Participating Agency agrees to allow the Provider to increase the Charges:
 - (i) the Provider will complete and submit Part D of this Consultancy Services Order to the Participating Agency; and
 - (ii) upon receipt of the completed Part D of this Consultancy Services Order, the Participating Agency must promptly advise the Provider (in writing) if the completed Part D is acceptable.

4. Conflicts of interest

4.1 Conflicts of interest

3.2 If Charges exceed the Estimate

- (a) If during the course of providing the Services under this Consultancy Services Order, the Provider becomes aware that the total Charges (excluding GST) are likely to exceed the Estimate, the Provider must give written notice to the Participating Agency using Part D of this Consultancy Services Order as soon as the Provider becomes so aware, but no later than the time the costs accrued or incurred reach 80% of the Estimate.
- (b) The notice under clause 3.2(a) must specify a revised Estimate for the Services and include the reason the total Charges will exceed the original Estimate.
- (c) The Participating Agency has sole discretion whether to approve a revised Estimate and must act reasonably when deciding whether to approve a revised Estimate.
- (d) When a revised Estimate is approved, the Participating Agency must provide written notice of the same to the Provider.
- (e) If a Provider has provided an Estimate to the Participating Agency for Services, the Participating Agency is not liable to pay the Provider any amount exceeding the Estimate unless the Participating Agency has approved a revised Estimate.

- (a) The Provider must, upon receipt of this Consultancy Services Order, make diligent inquiry whether it has any actual, potential or perceived Conflicts of Interest if it were to provide the Services specified in this Consultancy Services Order and, if no such Conflict of Interest exists, the Provider must provide confirmation to that effect to the Participating Agency.
- (b) If the Provider has an actual, potential or perceived Conflict of Interest, the Provider must immediately notify the Participating Agency and must not begin performing the Services without the prior written approval of the Participating Agency.
- (c) The Provider must take all reasonable steps to ensure that:
 - (i) a situation does not arise that might result in an actual, potential or perceived Conflict of Interest; and
 - (ii) any Personnel or Subcontractors of the Provider do not engage in any activity or obtain interests that might result in the Provider or such Personnel or Subcontractors having an actual, potential or perceived Conflict of Interest,

that cannot be managed to the satisfaction of the Participating Agency.

3.3 If Charges exceed the Quote

- (a) The Provider acknowledges that neither the CoE nor the Participating Agency are obliged to pay any Charges to the Provider in relation to Services performed under this Consultancy

- (d) If, after commencing Services under this Consultancy Services Order, the Provider becomes aware of any matter, circumstance, interest or activity that may give rise to any actual, potential or

perceived Conflict of Interest, the Provider must immediately notify the Participating Agency of all relevant details and must immediately cease work on the Services until such time as the Participating Agency provides written notice confirming the Provider may continue to perform the Services or terminates the engagement of the Provider in respect to the Services to be performed under this Consultancy Services Order in accordance with clause 4.1(e).

- (e) If the Participating Agency considers that the Provider has an actual Conflict of Interest of sufficient gravity that the Provider can no longer perform Services for it, the Participating Agency may, by written notice to the Provider, terminate this Consultancy Services Order with immediate effect on the date of termination specified in that notice.
- (f) Any approval or notice given by the Participating Agency pursuant to clause 4.1(b) or 4.1(d) may require the Provider to take steps reasonably required by the Participating Agency to manage the Conflict of Interest, and the Provider must provide written notice confirming its acceptance of those steps before it may commence or continue to provide the Services under this Consultancy Services Order.

- (e) ensure that it and its Personnel providing the Services do not access the Participating Agency's information or systems except to the extent necessary to provide the Services and for no other purpose;
- (f) as soon as is practicable, notify the Participating Agency of any problems or issues that arise in relation to the performance of its obligations under this Consultancy Services Order, including any problems or issues that will, or are likely to, affect the provision or quality of the Services or the ability of the Provider to perform its obligations under this Consultancy Services Order;
- (g) without limiting any other provision of this Consultancy Services Order, use all reasonable endeavours to avoid damaging or adversely affecting any Participating Agency's reputation;
- (h) in relation to the sub-categories for which the Provider has been appointed as a Tier 1 and Tier 2 Provider, conduct the Agency Satisfaction Survey by asking the Participating Agency the questions recorded in Annexure A of Schedule 5 (Governance) to the Services Agreement within 5 Business Days of the Services in this Consultancy Services Order being completed.

5. Responsibilities

5.1 Provider responsibilities

In addition to its other obligations under this Consultancy Services Order, the Provider will:

- (a) respond promptly, accurately and adequately to any requests for information made by the Participating Agency in relation to the Services, including requests for advice;
- (b) in performing Services for the Participating Agency under this Consultancy Services Order comply with all privacy and other policies and guidelines issued by the Participating Agency and notified or made available to the Provider;
- (c) obtain, maintain and comply with any governmental, regulatory or other approvals, permissions, consents, licences, and requirements necessary to provide the Services and perform its obligations under this Consultancy Services Order;
- (d) comply with all Laws at all times during the Term in so far as they relate to the provision of the Services, including the Privacy Act 2020 and all applicable consumer laws;

5.2

Participating Agencies' responsibilities

The Participating Agency has the following responsibilities in relation to the Services:

- (a) to manage its operational relationship with the Provider, including in relation to the fulfilment of this Consultancy Services Order;
- (b) to notify the Provider of all relevant policies, guidelines and procedures of the Participating Agency that the Provider must comply with when performing the Services under this Consultancy Services Order;
- (c) to provide adequate instructions and information to the Provider to allow it to perform the Services under this Consultancy Services Order;
- (d) to make timely decisions where approvals or consents are reasonably sought by the Provider in performing the Services under this Consultancy Services Order;
- (e) to pay the Charges; and
- (f) to use its best efforts to resolve any dispute directly with the Provider before involving the CoE in accordance with clause 13.

6. Resourcing

6.1	General requirements The Provider will provide and maintain sufficient resources (including human resources, equipment, telecommunications connectivity, premises and other facilities) to enable it to perform its obligations on time and otherwise in accordance with this Consultancy Services Order.	Participating Agency from time to time; and (iv) will carry out their respective duties with due care, skill and diligence.
6.2	Provider's Nominated Personnel (a) The Participating Agency may, in this Consultancy Services Order, nominate specific Personnel (Nominated Personnel) to be the primary providers or to supervise the delivery of the Services. (b) If any Nominated Personnel nominated in this Consultancy Services Order are not available to provide or supervise the Services requested, the Provider must immediately notify the Participating Agency and provide details of other Personnel (if any) with the necessary skills and experience to provide or supervise the Services requested pursuant to this Consultancy Services Order. (c) Notice given under clause 6.2(b) must specify the period for which the Nominated Personnel will continue to be unavailable. (d) Upon receipt of notice under clause 6.2(b), the Participating Agency must notify the Provider whether the replacement Personnel are acceptable. (e) The Participating Agency is under no obligation to accept any replacement Personnel and, if it does not approve the replacement Personnel, the Provider may not commence or continue providing the Services.	(b) The Participating Agency will notify the Provider of any security clearances and probity checks required by, or necessary to provide the Services to, the Participating Agency.
6.3	Personnel (a) The Provider will ensure that all of its Personnel who are engaged in the performance of the Provider's obligations under this Consultancy Services Order: (i) have the requisite skills, expertise, qualifications and experience; (ii) have, before performing any such obligations, obtained all security clearances and passed all probity checks required by, or necessary to provide the Services to, the Participating Agency; (iii) comply with all health, safety, security and other policies, codes of conduct, procedures and reasonable directions as may be reasonably required by the	6.4 Subcontracting (a) The Provider will not subcontract the performance of all or part of the Services or any of its other obligations under this Consultancy Services Order, except with the prior written consent of the Participating Agency. (b) The Provider is solely responsible for the selection of each Subcontractor and must ensure that each Subcontractor is creditworthy, qualified and has the relevant experience to perform the work it is required to carry out for the Provider. (c) To the extent permitted by Law, the Provider is and remains fully responsible for any act or omission of any Subcontractor. (d) The Provider must ensure that each Subcontract contains obligations on the Subcontractor that are consistent with the relevant terms of this Consultancy Services Order, including in relation to clauses 5.1 (Provider responsibilities), 6.3(a) (Personnel), 10 (Confidentiality), 11 (Intellectual Property) and 14 (Termination) and Schedule 3 (Performance Measurement), together with clause 15 (Audit) of the Services Agreement. (e) If, in the Participating Agency's reasonable opinion, a Subcontractor is: (i) materially not performing in accordance with the terms of this Consultancy Services Order, the Participating Agency may, by notice to the Provider, require the Provider to procure that the Subcontractor performs the relevant obligations within 10 Business Days, failing which the Participating Agency may, by notice to the Provider, require the Provider to remove that Subcontractor; or (ii) a material threat to the health, safety or security of the Personnel or property of the Participating Agency, or has breached security or confidentiality requirements of this Consultancy Services Order, the Participating Agency may, by

notice to the Provider, require the Provider to remove that Subcontractor,

and the Provider will ensure the immediate removal of that Subcontractor.

7. Changes

7.1 Change procedure

The Participating Agency may agree any variations to this Consultancy Services Order with the Provider using Part C of the Consultancy Services Order.

8. Price and payment

8.1 Calculation of Charges

The Charges will be calculated in accordance with the terms of Schedule 2 (Pricing).

8.2 Participating Agency to pay for Services

- (a) The Participating Agency will pay the Provider the Charges applicable to any Services procured by the Participating Agency on the terms of this clause 8.
- (b) The Charges and Administration Fee comprise the total amount payable by the Participating Agency for the Services.

8.3 Invoicing and payment

Except as otherwise provided in Schedule 2 (Pricing) or as agreed with the Participating Agency in this Consultancy Services Order, the Provider will invoice the Participating Agency (or, if the Participating Agency has instructed the Provider in writing, the third party agent) for the Charges and the Participating Agency will pay those Charges, in accordance with the following terms:

- (a) the Provider will render one itemised invoice to the Participating Agency at the end of each month during the Term for all Services performed during that month specifying (as applicable):
 - (i) the nature and amount of the Fees or other applicable fees and fee structures;
 - (ii) the Personnel and their applicable Rate;
 - (iii) the hours billed (by Personnel and in the aggregate);
 - (iv) the nature and amount of any Expenses (including any third party charges to be passed on to the Participating Agency);
 - (v) if applicable, the amount representing the Administration Fee;
 - (vi) how much of the Estimate or Quote has been used;

- (vii) a brief description of the Services provided during that month; and

- (viii) any other matters the Participating Agency may reasonably request;

- (b) each correctly rendered invoice will be payable on or before the 20th day of the month following the month in which the invoice was received;

- (c) the Participating Agency will have no obligation to pay any Charges which are invoiced more than 90 days after the date that such amount was required to be invoiced pursuant to this clause 8.3; and

- (d) the Provider may only invoice the Participating Agency for any Expenses at the cost actually incurred by the Provider.

8.4

Invoice disputes

If the Participating Agency or the Provider disputes an invoice:

- (a) it may withhold the disputed sum and, if applicable, associated Administration Fee until the dispute is resolved;
- (b) the dispute will be resolved in accordance with clause 13; and
- (c) it will pay the undisputed portion in accordance with clause 8.3.

The Provider will not be excused from performing its obligations under this Consultancy Services Order while an invoice is disputed by the Participating Agency.

8.5

Taxes

- (a) Except for any GST payable by the Participating Agency, any present or future tax, levy, impost, duty, charge, assessment or fee of any nature (including applicable interest and penalties) payable in connection with this Consultancy Services Order under any Law is to be paid by the Provider and not passed on to the Participating Agency unless otherwise expressly agreed in writing by the Participating Agency.
- (b) The Participating Agency may deduct from any payment to be made to the Provider any withholding taxes or other deductions that it is required by Law to make.

8.6

Administration Fee

In relation to the sub-categories for which the Provider has been appointed as a Tier 1 or Tier 2 Provider, the Provider will ensure that each invoice issued to the Participating Agency for the Charges includes, in addition to the Charges, a

separate amount equal to 1% of the Fees (excluding GST) (the **Administration Fee**).

8.7

Suspension of payment

- (a) Without prejudice to any other right or remedy that may be available to the Participating Agency, the Participating Agency may suspend payment of all or any part of the Charges if the CoE has notified the Provider that the Provider is in Material Breach, until that Material Breach is remedied.
- (b) If the Material Breach is not capable of remedy the Participating Agency and the Provider agree to treat the Charges as being in dispute and clause 14 will apply.

9.

Warranties

9.1

General warranties

Each party represents, warrants and undertakes that:

- (a) it has full power, capacity and authority to execute, deliver and perform its obligations under this Consultancy Services Order;
- (b) it has, and will continue to have, all the necessary consents, permissions, licences and rights to enter into and perform its obligations under this Consultancy Services Order; and
- (c) this Consultancy Services Order constitutes its legal, valid and binding obligations and is enforceable in accordance with its terms.

9.2

Provider's warranties

The Provider represents, warrants and undertakes that:

- (a) it will perform its obligations under this Consultancy Services Order with due care, skill, promptness and diligence at all times;
- (b) it has, and will have throughout the Term, sufficient Personnel to supply the Services and to perform its other obligations under this Consultancy Services Order;
- (c) it, and each of its Personnel engaged in the performance of the Services, has, and will have throughout the Term, the necessary expertise and all necessary governmental, regulatory or other approvals, permissions, consents, licences, qualifications, accreditations and requirements to provide the Services and perform its other obligations under this Consultancy Services Order;
- (d) it will comply with the requirements of all Laws as they relate to the provision of Services by the Provider;

- (e) the possession or use of any item of Intellectual Property supplied or licensed by it, or the use of any item of Intellectual Property by it to perform its obligations under this Consultancy Services Order, will not infringe the rights of any third party;
- (f) all Documentation (and any other information or advice supplied by it to the Participating Agency) and any information and data reported to the CoE will be accurate, complete and (as applicable) Fit for Purpose;
- (g) there are no existing agreements, undertakings or arrangements which prevent it from entering into this Consultancy Services Order, or which would impede the performance of its obligations under this Consultancy Services Order, or that it would breach by entering into this Consultancy Services Order;
- (h) it is not (and nor is any of its Personnel) a party to any litigation, proceedings or disputes which could adversely affect its ability to perform its obligations under this Consultancy Services Order; and
- (i) it has not offered any inducement in connection with the entering into or negotiation of this Consultancy Services Order, and will not offer any inducement in connection with the supply of Services to the Participating Agency.

9.3

Continuous application

The warranties, representations and undertakings set out in clause 9.2 will be deemed to be given by the Provider continuously throughout the Term.

9.4

Notification

Each party will promptly notify the other if at any time during the Term it breaches any of the warranties, representations and undertakings in this clause 9.

9.5

Other warranties excluded

All warranties (statutory, express or implied) which are not expressly referred to in this Consultancy Services Order are excluded to the fullest extent permitted by Law.

10.

Confidentiality

10.1

Protection of Confidential Information

- (a) Subject to clauses 10.1(c) and 10.2, the Provider and the Participating Agency will treat as confidential and not disclose to any third party nor use for its own benefit any Confidential Information that is the Confidential Information of the other.
- (b) The Provider will:

(i)	ensure that all Confidential Information of the Participating Agency (and any backup archives containing such Confidential Information) in the possession or control of the Provider from time to time is kept secure and managed and protected and only disclosed or otherwise dealt with in accordance with this Consultancy Services Order;	10.2	(vi)	to the extent that such disclosure is authorised by this Consultancy Services Order; or
(ii)	not use any Agency Information for its own purposes or for any purposes different from those contemplated by this Consultancy Services Order; and		(vii)	if such disclosure is approved for release with the consent of the party from whom the Confidential Information is first received.
(iii)	advise the CoE in writing if any Confidential Information of the Participating Agency will be transferred or stored outside New Zealand before such information is transferred and will confirm that the requirements of this clause 10.1 will be met while such Confidential Information is stored outside New Zealand.			
(c)	Clause 10.1(a) does not prevent the disclosure of Confidential Information:			
(i)	if that information was known, or becomes known, to the public through no act or default of the recipient;		(a)	The Provider may, subject to clause 10.2(d), disclose the Confidential Information of the Participating Agency to its Subcontractors, Personnel, Related Entities and Professional Advisers who need to know the same for the sole purpose of enabling the Provider to perform its obligations and exercise its rights under this Consultancy Services Order.
(ii)	that the recipient is required by Law or parliamentary practice (including parliamentary questions) to disclose, or to a Select Committee or to a Minister of the Crown, so long as the recipient provides notice of the required disclosure promptly upon receipt of notice of the required disclosure (if it is permitted to do so by Law);		(b)	The Participating Agency may, subject to clause 10.2(d), disclose the Confidential Information of the Provider to its third party suppliers, Personnel and Professional Advisers and any other Participating Agencies (including the CoE) who need to know the same in connection with the Services.
(iii)	that was lawfully known to the recipient prior to the date it was received;		(c)	The Provider will not disclose the Participating Agency's Confidential Information to any of its Subcontractors, Related Entities or Professional Advisers, and the Participating Agency will not disclose the Provider's Confidential Information to any of its third party suppliers or Professional Advisers, unless the recipient has given a written confidentiality undertaking to the disclosing party in terms substantially similar to those set out in this clause 10.
(iv)	that becomes available to the recipient from a source other than a party to this Consultancy Services Order, provided that the recipient has no reason to believe such source is itself bound by an obligation of confidence to the person that disclosed that information or is otherwise prohibited under Law from disclosing such information;		(d)	Any undertaking given pursuant to clause 10.2(c) will be provided to the other party to this Consultancy Services Order on request.
(v)	to any Professional Adviser for the purposes of rendering professional services to a party in relation to this Consultancy Services Order;			
		11.	Intellectual Property	
		11.1	Intellectual Property owned by Provider	
			(a)	The Participating Agency acknowledges that all:
			(i)	Intellectual Property held by the Provider before the Commencement Date;
			(ii)	Intellectual Property developed independently from this Consultancy Services Order by the Provider, and that is not developed, commissioned or created under or in connection with this Consultancy Services Order; and
			(iii)	adaptations and modifications to

described in clauses 11.1(a)(i) and (ii),

remains the Provider's sole and exclusive property (**Provider IP**).

- (b) To the extent that the Participating Agency needs to use any of the Provider IP to receive the full benefit of the Services, the Provider grants to the Participating Agency a royalty-free, non-exclusive licence (including, if agreed in this Consultancy Services Order, the right to sublicense) to use, copy, modify and distribute during the Term any Provider IP provided to the Participating Agency by or on behalf of the Provider.

11.2 Intellectual Property owned by Participating Agency

- (a) The Provider acknowledges that the Participating Agency or its licensor has, and continues to have, sole and exclusive ownership of all Intellectual Property rights in all of the Agency Information together with all adaptations and modifications of such Agency Information (**Pre-contract Participating Agency IP**).
- (b) All Intellectual Property created or developed by the Provider or its employees or Subcontractors in performing the Services and developing the Documentation will be owned by the Participating Agency from the date the Intellectual Property is created or developed (**Post-contract Participating Agency IP** and, together with the Pre-contract Participating Agency IP, the **Participating Agency IP**).
- (c) If the Provider (or any of its Subcontractors) has under any Law any right in or claim to any of the Participating Agency IP or holds any of the Participating Agency IP, the Provider (by itself and for its Subcontractors):
 - (i) assigns to the Participating Agency all of its rights, title and interest in and to the Participating Agency IP from the date it was created or developed; and
 - (ii) waives all right of lien or similar rights as may now or later be claimed in the Participating Agency IP; and
 - (iii) waives all of its moral rights under Part 4 of the Copyright Act 1994 in the Participating Agency IP,

and the Provider will sign all documents and do all acts and things that are necessary to give effect to this clause 11.2(c).

- (d) To the extent that the Provider needs to use any of the Participating Agency's IP for the purpose of performing its obligations under this Agreement, the Participating Agency grants to the Provider, subject to any written direction given by the Participating Agency, of a royalty-free, non-exclusive, non-transferable licence to use and store the Participating Agency's IP for the sole purpose of performing its obligations under this Consultancy Services Order during the Term.

11.3 Intellectual Property owned by third parties

- (a) To the extent that the Provider needs to use any Intellectual Property held or owned by a third party (**Third Party IP**) in performing the Services under this Consultancy Services Order, the Provider will use its best endeavours to obtain the fullest rights of use and licence of that Third Party IP (on terms and at a cost to be agreed with the Participating Agency) as are necessary for the performance of those Services for the benefit of the Participating Agency.
- (b) The Participating Agency acknowledges that the Provider may have limited ability to obtain rights and/or a licence to use any Third Party IP and, where the Provider, using its best endeavours, cannot obtain appropriate rights and/or a licence for the Participating Agency to use that Third Party IP, the warranty in clause 9.2(e) applies.

12. Liability

12.1 Indemnity

- (a) The Provider will, to the extent permitted by Law, indemnify the Participating Agency against all Losses suffered or incurred by the Participating Agency as a result of any:
 - (i) unlawful, malicious or negligent act or omission by the Provider;
 - (ii) personal injury, sickness, death or loss of, or damage to, tangible property due to an act or omission of the Provider; or
 - (iii) any other breach by the Provider of its obligations under this Consultancy Services Order.
- (b) The Provider will, subject to clause 12.1(c), indemnify the Participating Agency against all Losses suffered or incurred by the Participating Agency as a result of any claim that the possession or use of any Intellectual Property supplied or licensed by the Provider, or the use of any Intellectual Property used to provide the Services, infringes any third party's rights.

(c)	The Provider will have no liability under clause 12.1(b) to the extent that any IP Claim arises from any:	Participating Agency (which will not be unreasonably withheld); and
(i)	modification by the Participating Agency of any item of Intellectual Property supplied or licensed by the Provider without the approval of the Provider;	(iv) the Provider will notify the CoE of the IP Claim, and the outcome within 5 Business Days of the claim being concluded.
(ii)	use by the Participating Agency of Intellectual Property supplied or licensed by the Provider for any purpose disallowed by this Consultancy Services Order or the applicable Intellectual Property licence (but only if the licence has been provided to the Participating Agency prior to such use); or	(b) If any IP Claim disrupts the Participating Agency's use or enjoyment of a Service, the Provider will (unless otherwise requested by the CoE), at its own expense and at its option, immediately:
(iii)	use of Intellectual Property used to provide the Services if and to the extent that Intellectual Property was supplied by the Participating Agency.	(i) obtain for the Participating Agency the legal right to continued use of the infringing materials; or
		(ii) replace, modify or resupply the infringing materials so that there is no further infringement, without adversely affecting the performance or functionality of those materials.
12.2	IP Claims	12.3
(a)	In the event of a claim under clause 12.1(b) (an IP Claim):	Maximum liability of Participating Agency
(i)	the Participating Agency will give the Provider notice of the IP Claim as soon as practicable and, to the extent permissible by Law, permit the Provider (at the Provider's cost) to handle all negotiations for settlement and to control and direct any litigation that may follow (Control of the IP Claim);	In addition to its obligation to pay the Charges, the maximum aggregate liability of the Participating Agency to the Provider under or in connection with this Consultancy Services Order will be, in respect of all Losses, limited to the total Charges paid and payable under this Consultancy Services Order.
(ii)	if the Provider has Control of the IP Claim:	12.4
(A)	the Participating Agency will provide all reasonable assistance to the Provider (at the Provider's cost) in the handling of any negotiations and litigation; and	Maximum liability of the Provider
(B)	the Provider will keep the Participating Agency informed of the defence or negotiations of the IP Claim and diligently conduct any litigation or negotiations, using competent counsel and in a manner that does not adversely affect the name or reputation of the Participating Agency;	The maximum liability of the Provider to the Participating Agency for all Losses under or in connection with this Consultancy Services Order in respect of all claims will not exceed:
(iii)	the Provider will not enter into any settlement or compromise in relation to the IP Claim without the prior written consent of the	(a) in relation to the sub-categories for which the Provider has been appointed as a Tier 1 Provider, the greater of:
		(i) 10 times the total Charges paid and payable under this Consultancy Services Order;
		(ii) \$5,000,000; and
		(iii) any greater amount or multiple set out in this Consultancy Services Order;
		(b) in relation to the sub-categories for which the Provider has been appointed as a Tier 2 Provider, the greater of:
		(i) 10 times the total Charges paid and payable under this Consultancy Services Order;
		(ii) \$2,000,000; and
		(iii) any greater amount or multiple set out in this Consultancy Services Order; and

	<p>(c) in relation to the sub-categories for which the Provider has been appointed as a Tier 3 Provider, the greater of:</p> <ul style="list-style-type: none"> (i) 10 times the total Charges paid and payable under this Consultancy Services Order; (ii) \$1,000,000; and (iii) any greater amount or multiple set out in this Consultancy Services Order. 	<p>(i) notify the other party as soon as practicable after the Force Majeure Event occurs and provide full information concerning the Force Majeure Event, including the extent of its inability to perform, an estimate of the time likely to be required to overcome the Force Majeure Event and the steps the non-performing party will take to comply with clauses 12.8(b)(ii) and 12.8(b)(iii);</p> <p>(ii) use all reasonable endeavours to mitigate and remedy the effect of the Force Majeure Event and minimise the impact of the event on the other party; and</p> <p>(iii) use all reasonable endeavours to perform its obligations under this Consultancy Services Order as far as is practicable,</p>
12.5	<p>No double dipping</p> <p>A party to this Consultancy Services Order (or the CoE acting on behalf of the Participating Agency in accordance with the Services Agreement) cannot recover for the same Loss under both this Consultancy Services Order and the Services Agreement.</p>	
12.6	<p>Exclusions on liability</p> <p>The limitations on liability set out in clauses 12.3 and 12.4 will not limit the liability of:</p> <ul style="list-style-type: none"> (a) the Provider under clauses 12.1(a) and 12.1(b) (other than in respect of negligent acts or omissions under clause 12.1(a)(i) and breach by the Provider of its obligations under this Consultancy Services Order under clause 12.1(a)(iii), which are subject to the limitations of liability in clauses 12.3 and 12.4); (b) the Provider for any fraudulent act or omission; or (c) either party for any breach of confidentiality. 	<p>and the Participating Agency will not be required to pay Charges to the extent that the Provider fails to perform its obligations to the Participating Agency due to a Force Majeure Event.</p> <p>(c) If the non-performing party affected by the Force Majeure Event is the Provider, the Participating Agency may, to the extent that any Service requested by the Participating Agency under this Consultancy Services Order has not been delivered and delivery has, or will be, delayed by the Force Majeure Event, terminate this Consultancy Services Order, by notice to the Provider within five Business Days following receipt by the Participating Agency of notice of the Force Majeure Event, at no cost to the Participating Agency, subject to the Participating Agency paying for Services delivered up to the date of the Force Majeure Event.</p>
12.7	<p>Categories of loss</p> <ul style="list-style-type: none"> (a) Irrespective of how liability arises, neither the Provider nor the Participating Agency will, under any circumstances, be liable for any indirect loss or damage (including consequential loss) arising under or in connection with this Consultancy Services Order. (b) The Participating Agency will not, under any circumstances, be liable for any loss of profits or loss of revenue suffered by the Provider in connection with this Consultancy Services Order. 	
12.8	<p>Force majeure</p> <ul style="list-style-type: none"> (a) The Provider and the Participating Agency will not be liable to the other for any failure to perform its obligations under this Consultancy Services Order during the time and to the extent that such performance is prevented, wholly or substantially, by reason of any Force Majeure Event. (b) The party subject to the Force Majeure Event (the non-performing party) must: 	<p>(i) professional indemnity insurance;</p> <p>(ii) public liability insurance in respect of the Services provided under this Consultancy Services Order; and</p> <p>(iii) other insurance to cover standard Classific risks (including in respect of</p>
	<p>12.9 Insurance</p> <ul style="list-style-type: none"> (a) During the Term and for a period of two years following the termination of this Consultancy Services Order, the Provider will, at its own expense, ensure that it maintains adequate insurance in respect of its potential liability for loss or damage under this Consultancy Services Order in accordance with Industry Best Practice, but as a minimum the Provider must hold: 	

Documentation which is the property of the Participating Agency and in the Provider's possession or control).

- (b) The Provider will, at the Participating Agency's request, promptly provide satisfactory evidence that it has complied with its obligations in this clause 12.9.

13. Dispute resolution

13.1 Dispute

In the event of any dispute, difference or question arising out of, or in connection with, this Consultancy Services Order or its formation (a **dispute**):

- (a) the Participating Agency and the Provider will each use its best efforts to resolve the dispute through good faith negotiations and informal dispute resolution techniques, and will continue to perform its obligations under this Consultancy Services Order as far as possible as if the dispute had not arisen, pending final settlement of the dispute; and
- (b) neither the Participating Agency nor the Provider will commence any formal proceedings relating to the dispute unless it has complied with clause 13.2.

13.2 Escalation

- (a) The Participating Agency and the Provider will each advise its respective Representative (or equivalent person) of a dispute on the day that the dispute arises.
- (b) The Representatives will use their best efforts to resolve the dispute in accordance with clause 13.1(a).
- (c) If the dispute is not resolved:
- (i) within 10 Business Days, the dispute will be escalated to senior representatives of the Provider and the Participating Agency with delegated authority to resolve the dispute; and
- (ii) in relation to the sub-categories for which the Provider has been appointed as a Tier 1 and Tier 2 Provider, within a further 10 Business Days, the dispute will be escalated to the CoE's Manager, All-of-Government Contracts and the Provider's Chief Executive.

13.3 Mediation

- (a) If a dispute is not resolved under clause 13.2, either party may, by written notice to the other, refer the dispute to

mediation, or they may agree in writing to refer the dispute to mediation.

- (b) The mediation will be conducted by a single mediator in accordance with the terms of the Resolution Institute Standard Mediation Agreement and at a fee to be agreed by the parties.
- (c) If the parties fail to agree on the identity of the mediator and/or the mediator's fee within five Business Days of referral of the dispute to mediation, the mediator will be chosen, and the mediator's fee determined, by the chairperson for the time being of Resolution Institute (or his or her nominee).

13.4 Urgent relief

Nothing in this clause 13 will preclude either party from taking immediate steps to seek urgent relief before a New Zealand court.

14. Termination

14.1 Termination of Consultancy Services Order

The Participating Agency may terminate this Consultancy Services Order:

- (a) for convenience by giving the Provider at least one month's prior written notice;
- (b) by notice to the Provider with immediate effect on the date of termination specified in that notice, if the Provider commits a Material Breach which is:
- (i) not capable of being remedied (and, for the avoidance of doubt, paragraphs (a) and (b) of the definition of "Material Breach" are deemed incapable of being remedied); or
- (ii) capable of being remedied but which is not remedied to the satisfaction of the Participating Agency within 10 Business Days following the date of receipt by the Provider of the Participating Agency's notice of the Material Breach;
- (c) in accordance with clause 4.1(e) (Conflict of Interest); or
- (d) in accordance with clause 12.8(c) (Force Majeure Event).

14.2 Consequences of termination or expiry

- (a) In the event of termination or expiry of this Consultancy Services Order, the Participating Agency will not be obliged to make any payment to the Provider except for any Charges payable for Services supplied pursuant to this Consultancy Services Order before the effective date of expiry or termination.

(b) Termination or expiry will not, unless otherwise provided in this Consultancy Services Order, affect:	accept those terms and conditions or the terms of that Communication.
(i) any rights and remedies available to either party which have accrued up to and including the date of termination or expiry; and (ii) the provisions of this Consultancy Services Order which expressly, or by their nature, survive termination or expiry, including clauses 16 (Entire agreement), 10 (Confidentiality), 11 (Intellectual Property), 12 (Liability), 13 (Dispute Resolution), 15.2 (Consequences of termination or expiry) and 17 (General) and Schedule 1 (Definitions); (iii) the continued application of clauses of the Services Agreement which expressly, or by their nature, are intended to continue to apply to this Consultancy Services Order after termination or expiry of this Consultancy Services Order, including clauses 1.4 (Precedence) and 15 (Audit).	(c) For the avoidance of doubt, and without limiting clauses 16.1(a) and 16.1(b): (i) any Communication which is expressed or intended to operate as an indemnity, warranty, representation, undertaking, condition or other term of such a nature is hereby disappplied and excluded from this Consultancy Services Order; and (ii) any part of this Consultancy Services Order which describes the nature, scope, price or manner of delivery of Services will, subject to clause 16.1(c)(i), form part of this Consultancy Services Order, but only to the extent that it does not conflict with any other part of this Consultancy Services Order.
15. Entire agreement	16. General
15.1 Entire agreement	16.1 Interpretation
(a) This Consultancy Services Order is intended to be read in conjunction with the Services Agreement. The provisions of the Services Agreement (not already included in this Consultancy Services Order) which confer rights, obligations or benefits on the parties or the CoE in respect of this Consultancy Services Order are intended to apply to this Consultancy Services Order.	The rules of interpretation set out in clause 19.1 of the Services Agreement apply to this Consultancy Services Order.
(b) Subject to clause 16.1(a), no other terms or conditions, including any conditions of sale, invoices or any other communication not included in this Consultancy Services Order (Communication), will be incorporated into this Consultancy Services Order, even if at some later date the other party (including, in the case of the Participating Agency) signs or otherwise purports to	16.2 Relationship of the parties
	Nothing expressed or implied in this Consultancy Services Order will be deemed to constitute either party as the partner, agent, or joint venturer of the other party.
	16.3 Costs
	A party who has an obligation to do anything under this Consultancy Services Order will perform that obligation at its own cost, unless a term of this Consultancy Services Order expressly provides otherwise.
	16.4 Assignment
	Neither party may assign, novate, transfer or otherwise dispose of the whole or any part of its rights and obligations under this Consultancy Services Order without first obtaining the other party's consent (which will not be unreasonably withheld or delayed).
	16.5 Public disclosures
	Subject to clause 10, all public disclosures by the Provider relating to this Consultancy Services Order, including the fact of its existence (but not including any announcement intended solely for internal distribution or any disclosure required by legal, accounting or regulatory requirements), will be co-ordinated with, and must first be approved in writing by, the Participating Agency prior to release.
	16.6 Notices
	(a) Unless otherwise specified in this Consultancy Services Order, each notice or other communication under this Consultancy Services Order will be made in writing and delivered by post, personal

delivery or email to the addressee at the addressee's postal address, physical address or email address (as applicable) and marked for the attention of the person or office holder (if any) from time to time designated for that purpose by the addressee.

- (b) The Provider's postal address, physical address and email address is set out in the Provider Database and may be amended by the Provider at any time.
- (c) The Participating Agency's postal address, physical address and email address is as notified by the Participating Agency to the Provider and may be amended by the Participating Agency at any time.
- (d) A notice or other communication will be deemed to be received:
 - (i) in the case of a letter sent to the addressee's postal address, on the third Business Day after posting;
 - (ii) in the case of personal delivery, on receipt; and
 - (iii) in the case of an email, at the time the email leaves the communications system of the sender, provided that the sender:
 - (A) does not receive any error message relating to the sending of the email at the time of sending; and
 - (B) has obtained confirmation that the email has been delivered to the recipient (which confirmation may be in the form of an automated delivery receipt from the communications system of the recipient),

on the Business Day on which it is dispatched or, if dispatched after 5 p.m. (in the place of receipt), on the next Business Day after the date of dispatch.

16.7 Severability

If any term or provision of this Consultancy Services Order is held to be illegal, invalid or unenforceable it will be severed from this Consultancy Services Order without affecting the legality, validity or enforceability of the remaining provisions.

16.8 Waiver

- (a) Neither party will be deemed to have waived any right under this Consultancy Services Order unless the waiver is in writing and signed by the parties.

- (b) Any failure or delay by a party to exercise any right or power under this Consultancy Services Order will not operate as a waiver of that right or power.
- (c) Any waiver by a party of any breach, or failure to exercise any right, under this Consultancy Services Order will not constitute a waiver of any subsequent breach or continuing right.

16.9 Remedies cumulative

Except as is expressly stated otherwise in this Consultancy Services Order:

- (a) the rights, powers and remedies provided in this Consultancy Services Order are cumulative and are not exclusive of any rights, powers or remedies provided by Law or under this Consultancy Services Order; and
- (b) the exercise of any rights, powers and remedies provided in this Consultancy Services Order will not prejudice the exercise of any other right, power or remedy under this Consultancy Services Order or existing at Law.

16.10 Counterparts

This Consultancy Services Order may be signed in two counterparts, each of which will be deemed an original, but both of which together are to constitute a single instrument.

16.11 Governing law and jurisdiction

- (a) This Consultancy Services Order is governed by, and will be construed in accordance with, the laws of New Zealand.
- (b) Subject to clause 13, each party irrevocably submits to the exclusive jurisdiction of the New Zealand courts for the purpose of hearing and determining any dispute under, or in connection with, this Agreement.

SCHEDULE 1: DEFINITIONS

In this Consultancy Services Order, unless the context otherwise requires:

Administration Fee means the amount referred to in clause 8.6;

Agency Information means all:

- (a) information and records belonging to the Participating Agency that are supplied to or collected by the Provider for the purpose of enabling the Provider to perform its obligations under this Consultancy Services Order;
- (b) compilations of data created by a Participating Agency or the Provider for the purposes of this Consultancy Services Order; and

- (c) legal names, logos, trademarks, brands or images of the Participating Agency, including all related Intellectual Property of the Participating Agency and the New Zealand Coat of Arms or any other coat of arms or emblem used by the Participating Agency,

but excluding the Provider's working papers;

Annexure means any document physically attached to a Schedule and identified as such and any other document incorporated by reference in any part of this Consultancy Services Order (other than an Annexure);

Appointment Letter means the letter issued to the Provider by the CoE, as amended or reissued from time to time, confirming (among other things) the Provider's appointment as an All-of-Government provider of consultancy services and detailing the terms and conditions of the appointment (including the Services and the applicable Tier(s));

Business Day means any day of the year other than a Saturday, a Sunday or a public holiday (as defined in section 44 of the Holidays Act 2003) observed at the location of the Participating Agency;

Charges means the amount payable by Participating Agencies for Services and includes Fees and Expenses, as described in Schedule 2 (Pricing) and agreed in this Consultancy Services Order;

CoE means the Ministry of Business, Innovation and Employment, the Centre of Expertise for Consultancy Services;

Commencement Date is the date on which this Consultancy Services Order is signed by both parties or, if two dates, the later date;

Confidential Information means:

- (a) all information and trade secrets already communicated or subsequently communicated under or in connection with this Consultancy Services Order, including information obtained during the negotiation of this Consultancy Services Order or in the performance of this Consultancy Services Order and information on the Provider Database;
- (b) any information about the business or property of either party including any information:
 - (i) relating to the financial position of that party;
 - (ii) concerning that party's suppliers and customers; or
 - (iii) relating to that party's internal management, structure, Personnel or strategies;
- (c) the terms of this Consultancy Services Order; and
- (d) Agency Information;

Conflict of Interest means any matter, circumstance, interest or activity of the Provider, its Personnel or Subcontractors, arising by whatever means that directly or indirectly conflicts with:

- (a) the duties of the Provider and any of its Personnel or Subcontractors to the Participating Agency; or
- (b) the interests of the Participating Agency in relation to this Consultancy Services Order or otherwise in respect to the provision of consultancy services to the Participating Agency either before or after the Commencement Date;

or otherwise impairs or might appear to impair the ability of the Provider (or any of its Personnel or Subcontractors) to provide the Services to the Participating Agency under this Consultancy Services Order diligently, independently,

impartially and in the best interests of the Participating Agency;

Consultancy Services Order means this service order relating to the supply of Services issued by the Participating Agency;

Contract Quarter means a period of three consecutive months commencing on 1 January, 1 April, 1 July or 1 October;

Control means, in relation to the Provider or any ultimate or intermediate holding company or Holding Entity of the Provider, the power to:

- (a) manage, directly or indirectly, the operation of the business; or
- (b) control, directly or indirectly, the composition of the board of directors or board of management or equivalent governing body,

of the Provider or such ultimate or intermediate holding company or Holding Entity, whether through the ownership of voting securities, by contract or otherwise, and for these purposes "holding company" will have the same meaning as in section 5 of the Companies Act 1993;

Documentation means all advice, communications, documentation (including information on the Provider Database) and reports (whether in paper, electronic, audio or audio-visual format) relating to, or provided as part of, the Services together with additions, modifications to, and replacements of, that documentation, but excludes the Provider's working papers;

Estimate means an estimate of the total Charges for the Services required by the Participating Agency;

Expense means any actual and reasonable out-of-pocket costs incurred by the Provider in the delivery of the Services and agreed to in this Consultancy Services Order, and includes any freight and related costs, travelling and incidental expenses and other costs, disbursements, fees, charges and expenses directly or indirectly incurred by the Provider;

Fees means the amount payable by the Participating Agency to the Provider for its time spent delivering the Services calculated on the basis of the Rates, excluding Expenses;

Fit for Purpose means, in relation to any Service or Documentation to be provided by the Provider to the Participating Agency, that such Services or Documentation are, in descending order of priority, fit for the purpose(s):

- (a) expressly made known in writing by the Participating Agency to the Provider (including in this Consultancy Services Order); or
- (b) for which the Provider, given its knowledge of the Participating Agency and understanding why the Services or Documentation are required, has reason to expect such Services or Documentation to be used;

Force Majeure Event means an event or circumstance beyond the reasonable control of either party which makes it impossible or illegal to perform, or prevents compliance with, or the performance of, a party's obligations under this Consultancy Services Order, including:

- (a) fire, floods, tsunamis, storms, tempest, earthquake or other act of God;
- (b) any act of a public enemy, war, riot, or act of civil or military authority;
- (c) nuclear, chemical or biological contamination; and
- (d) subject to paragraph (g) of this definition, any act of a third party engaged in subversive or terrorist activity or sabotage,

but does not include an event to the extent that:

- (e) the effect of that event could have been substantially prevented, avoided or overcome or mitigated by:
 - (i) implementation of any contracted business continuity or disaster recovery service, or any contingency plans agreed between the parties or which a party has represented it has in place; or
 - (ii) exercising a reasonable standard of care; or
 - (iii) using information provided by the other party or which is available in the public domain; or
- (f) it is an event for which the party affected is or was directly responsible; or
- (g) that event is constituted or caused by any act or omission of Personnel or a Subcontractor unless and to the extent that the Personnel or Subcontractor was itself affected by an event, which if it occurred in relation to either party would have been a Force Majeure Event; or
- (h) that event is constituted or caused by an Insolvency Event or the insolvency of a Subcontractor or lack of funds for any reason;

GST means goods and services tax under the Goods and Services Tax Act 1985;

Holding Entity means a trust, unit trust, partnership, limited partnership, unincorporated joint venture or other body corporate or unincorporated body of persons that Controls the Provider, and includes any natural person that Controls the Provider;

Industry Best Practice means the high professional standard that would reasonably be expected from a prudent and experienced provider of consultancy services in New Zealand having regard to market practice at the relevant time;

Insolvency Event means, in relation to the Provider:

- (a) the presentation of an application for its liquidation that is not discharged within 30 days of its filing or which is not demonstrated to the Participating Agency prior to the expiry of that 30 day period as being an application that is frivolous or vexatious;
- (b) any step taken in or toward the making of any compromise, proposal or deed of arrangement with all or some of its creditors;
- (c) the appointment of a liquidator, receiver, statutory manager, administrator or similar official, to it;
- (d) the suspension or threatened suspension by it of the payment of its debts;
- (e) cessation by it of a whole or any relevant part of its business in New Zealand;
- (f) the enforcement of any security against the whole or a substantial part of its assets; or
- (g) any other insolvency event or proceedings analogous to any of the foregoing occurring in any relevant jurisdiction;

Intellectual Property means copyright, all rights in relation to inventions (including patents), registered and unregistered trademarks, registered and unregistered designs, trade or other proprietary rights or rights derivative of those rights (including licence rights) anywhere in the world as well as any other rights in intellectual property which are recognised or protected under Law;

Law means:

- (a) any statute, regulation, bylaw, ordinance or subordinate legislation in force from time to time to which a party is subject;
- (b) the common law and the law of equity as applicable to the parties from time to time;
- (c) any binding court order, judgment or decree;
- (d) any applicable industry code of practice or conduct, convention, policy, rule or standard to which a party is bound; or
- (e) any applicable direction, policy, permission, consent, licence, rule or order that is binding on a party and that is made or given by any governmental or regulatory body having jurisdiction over a party or any of that party's assets, resources or business,

in any jurisdiction that is applicable to this Consultancy Services Order;

Losses means liabilities, expenses, losses, damages and costs (including legal costs on a full indemnity basis);

Material Breach means any material breach by the Provider of the terms of this Consultancy Services Order or the occurrence of any event having a material effect on the ability of the Provider to perform its obligations under this Consultancy Services Order (other than a Force Majeure Event), including:

- (a) the occurrence of an Insolvency Event in relation to the Provider or the likely occurrence of an Insolvency Event;
- (b) the occurrence of a change in Control of the Provider or any ultimate or intermediate holding company or Holding Entity of the Provider that the CoE has not previously approved (acting reasonably);
- (c) any representation or warranty made by the Provider in terms of this Consultancy Services Order being found to be untrue or incorrect; and
- (d) any failure on the part of the Provider to comply with, observe or perform any of the terms of this Consultancy Services Order in circumstances where that contract breach or that contract breach together with other contract breaches is considered by the Participating Agency on reasonable grounds to cause the Provider to be unable or unwilling, or be likely to be unable or unwilling, to perform its obligations under this Consultancy Services Order;

Maximum Rates means the maximum Rates payable to the Provider for providing the Services, as recorded in the Provider Database, excluding Expenses;

Panel means the All-of-Government panel of providers who provide consultancy services to Participating Agencies, including any sub-panel, as detailed on www.procurement.govt.nz;

Participating Agency means the Participating Agency that is a party to this Consultancy Services Order;

Participating Agencies means each of the CoE and every other Eligible Agency that is a party to the memorandum of understanding between the CoE and all other Participating Agencies relating to the management of their relationship with each other and with the Provider in relation to the Services, as amended from time to time;

Personnel includes partners, principals, directors, employees, agents, officers and individual independent contractors;

Professional Adviser means any accounting, legal, procurement or technical professional;

Provider Database means the IT platform described in Schedule 7 (Provider Database) to the Services Agreement;

Quote means a fixed price, capped price or other pre-agreed basis for establishing the Charges for Services required by the Participating Agency where the Provider is prevented from increasing the Charges without the prior written consent of the Participating Agency;

Rates means the rates (whether hourly, daily or weekly or other time-related basis) payable to the Provider for providing the Services, determined in accordance with Schedule 2 (Pricing), excluding Expenses;

Related Entity means a related company under the Companies Act 1993 (New Zealand) or a related body corporate under the Corporations Act 200, provided that any reference in the Companies Act 1993 to a "company" is deemed to include any partnership, body corporate, association or other entity, whether corporate or unincorporated, irrespective of the place of incorporation or registration of that partnership, body corporate, association or other entity;

Representative has the meaning given in paragraph 3.1 of Schedule 5 (Governance) to the Services Agreement);

Service Level means a required standard for the Provider's performance of its obligations under this Consultancy Services Order, as described in Schedule 3 (Performance Measurement);

Service Level Default means a failure by the Provider to meet one or more Service Levels;

Services means the consultancy services provided from time to time under the terms of this Consultancy Services Order;

Services Agreement means the All-of-Government services agreement relating to the supply of Tier 1 and 2 consultancy services between the CoE and the Provider;

Subcontractor means any person to whom the Provider has subcontracted any part of its obligations under this Consultancy Services Order or who is a supplier to the Provider in respect of this Consultancy Services Order and includes the employees and subcontractors of that person and **Subcontract** will be construed accordingly;

Term means the period commencing on the date that this Consultancy Services Order is signed by both parties and ending on the earlier of:

- (a) the date on which the Services are completed in accordance with this Consultancy Services Order; and
- (b) the date on which this Consultancy Services Order is terminated in accordance with its terms; and

Tiers means any of **Tiers 1** and **Tiers 2** for which members of the Panel are appointed and, in respect of the Provider, means the Tier(s) the Provider is appointed to as detailed in the Appointment Letter.

SCHEDULE 2: PRICING

1. Introduction

This Schedule sets out general principles underlying the Charges.

2. Principles

2.1 Participating Agency will only pay for Services ordered

- (a) The Provider will invoice the Participating Agency for the Charges in accordance

with clause 8.3 of this Consultancy Services Order.

- (b) The Participating Agency will only pay for Services that it orders in accordance with this Consultancy Services Order.

2.2

No minimum volume

The Participating Agency is not required to meet a minimum aggregate expenditure or volume level for any Services.

2.3

No interest

No interest will be payable on any amount due to the Provider under this Consultancy Services Order.

2.4

Rates

- (a) The Fees are calculated on the Rates, being either the Rates that are recorded on the Provider Database or, subject to paragraph 3, a different Rate as negotiated between the Provider and Participating Agency and recorded in this Consultancy Services Order.
- (a) The Maximum Rates are the maximum amounts payable by the Participating Agency for the Services.

3.

Charges

The Charges payable by the Participating Agency for Services must not include any Fees invoiced at Rates higher than the Maximum Rates recorded in the Provider Database.

SCHEDULE 3: PERFORMANCE MEASUREMENT

2.

Introduction

This Schedule describes, in relation to the sub-categories for which the Provider has been appointed as a Tier 1 and Tier 2 Provider:

- (a) the Service Levels; and
- (b) how performance against Service Levels will be measured and reported.

3.

Service Levels

3.1

Format

Each Service Level is described in Annexure A using the following format:

Parameter	Description
Description	Description of what the Service Level will measure
Purpose	Why it is important to Participating Agencies that the Service Level is met
Calculation	Method for calculating the Service Level
Service Level	The performance standard that the Provider is required to meet or exceed

3.2 Service Levels must be met

- (c) At all times during the Term, the Provider will, in relation to the sub-categories for which the Provider has been appointed as a Tier 1 and Tier 2 Provider, perform its obligations to meet or exceed the Service Levels.
- (d) The Provider acknowledges that any failure to meet the Service Levels may have a significant impact on the Participating Agency.

3.3 Changes to Service Levels

- (a) From time to time during the Term, the CoE and the Provider may negotiate in good faith to add, delete or modify then-existing Service Levels to reflect changes in the Participating Agencies' requirements or objectives.
- (e) Any changes to Service Levels will be effected in accordance with clause 10 of the Services Agreement.

4. Performance measurement

3.2 Failure to meet Service Levels

If the Provider fails to achieve one or more of the Service Levels in any Contract Quarter in respect of this Consultancy Services Order, it will:

- (a) take such steps and do all things necessary, as soon as possible, to correct the failure; and
- (a) notify the Participating Agency of the reasons for the failure and the steps that the Provider is taking to ensure that the failure is not repeated; and
- (b) consider whether the Charges for the Services that are subject to the Service Level Default should be reduced to reflect the lower value of the Services provided.

Annexure A: Service Levels

Parameter	1. Services Fit for Purpose
Description	Were the Services subject to this Consultancy Services Order Fit for Purpose?
Purpose	To ensure Services provided are Fit for Purpose.
Calculation	The Participating Agency will advise whether the Services are Fit for Purpose as part of the Agency Satisfaction Survey.
Service Level	100% of Services delivered to the Participating Agency must be Fit for Purpose.

Parameter	2. Timely Performance of Services
Description	Did the Provider perform the Services subject to this Consultancy Services Order within the timeframe recorded in this Consultancy Service Order (or as amended by agreement from time to time)?
Purpose	To ensure on-time provision of Services requested under a Consultancy Services Order.
Calculation	The Provider is required to report on this metric as part of the reporting requirements in Schedule 6 (Reporting) to the Services Agreement.
Service Level	The Provider must deliver all Services subject to this Consultancy Services Order within the agreed timeframe for delivery recorded in this Consultancy Services Order including any variation to the timeframe recorded in Part D of this Consultancy Services Order.

Parameter	3. Services Performed to budget
Description	Were the Charges for the Services subject to this Consultancy Services Order within the Estimate or Quote recorded in this Consultancy Services Order?
Purpose	To ensure Services requested under a Consultancy Services Order are performed on or under the Provider's Estimate or Quote.
Calculation	The Provider is required to report on this metric as part of the reporting requirements in Schedule 6 (Reporting) to the Services Agreement.
Service Level	The Provider must deliver all Services subject to this Consultancy Services Order within the agreed Estimate or Quote recorded in this Consultancy Services Order including any variation to the Estimate recorded in Part D of this Consultancy Services Order.



PROCUREMENT PLAN - STANDARD

Name of Procurement:	Efficiency and effectiveness of levy and funds administration
Prepared by:	Tessa Knight, Programme Manager
Business Peer review conducted by:	Michelle Kazor, Programme Director of Waste Investment; Jonathan Ryan, Programme Director of CCMRE
Date:	12 th June 2024
Budget for this work (NZ\$ excl. GST):	\$60,000 – noting the range to be provided in the RFQ (\$40,000-\$60,000)

ENDORSEMENTS AND APPROVALS

Endorsed by Procurement Business Partner:

Niamh Quirke, Procurement Advisor

Date: 12/06/2024

Signature:

Approved by Contract Owner (Budget Holder/Financial Delegation Holder):

Jonathan Ryan, Programme Director

Date: Click or tap to enter a date.

Signature:

A conflict-of-interest form will be completed by the supplier as soon as possible prior to contracting. If a conflict is declared, the management plan will require to be approved by the Financial Delegation Holder.

If any conflict relates to the Financial Delegation Holder directly, the procurement plan must be elevated to an one-up delegation to approve and sign.

Comments relating to the plan and sign off:

Total Procurement Value Ex GST (Departmental)	*Position holding <u>Financial Delegation</u>
Up to and including \$40,000	Manager
Up to and including \$100,000	General Manager
Up to and including \$250,000	Deputy Secretary
Up to and including \$1,000,000	Chief Operating Officer (COO)
Over \$1,000,000	Secretary for the Environment



PROCUREMENT PLAN - STANDARD



Does this Procurement relate to contractors and/or consultants performing contractor functions?

No

PLANNING

Background

Why is this procurement needed?

This procurement arises from Cabinet decisions made on 29 April 2024 with respect to the investment of the waste disposal levy to achieve Government priorities.

Cabinet invited the Minister to independently review the process for making investment decisions using the waste disposal levy and back-office functions in the Ministry for the Environment relating to the waste disposal levy, with a focus on value for money.

The purpose for this procurement is to engage a suitable consultancy to carry out this independent review (refer [CAB-24-MIN-0138](#) recommendation 23) and report back to Cabinet by October 2024. While the review must necessarily be retrospective¹, it will also give consideration to future requirements relating to levy administration, with the view to drawing insights or making recommendations that may increase the efficiency and effectiveness of these functions in the near term. Treasury have been engaged throughout the procurement process.

What is the waste disposal levy?

The waste disposal levy (levy) is charged on waste at municipal and other landfills. The levy has been [progressively increased and expanded since July 2021](#). At present, the two key intents of the levy are to incentivise waste reduction, and to fund investments to further minimise waste.

What is the Ministry's role with respect to the levy?

The Ministry for the Environment (the Ministry) collects the levy via the Online Waste Levy System (OWLS) which is managed by a third-party supplier. Under the Waste Minimisation Act 2008 (WMA), the Ministry (the Secretary for the Environment) must distribute and spend all levy money received ([section 30](#) of the WMA) by:

- Paying any refunds to site operators.
- Paying shares to territorial authorities - half of the levy collected must be allocated to territorial authorities.
- Spending the remaining funds on collecting and administering the levy; funding projects that promote or achieve waste minimisation, and associated administration costs relating to those projects.

Non-departmental funding (the waste investment funds)

¹ Scope of this procurement is to cover Ministry functions and responsibilities funded by the levy prior to 1 July 2024.



PROCUREMENT PLAN - STANDARD

The [Waste Minimisation Fund](#) (WMF) has been the primary fund for investing the Government portion of the waste disposal levy along with the [Plastics Innovation Fund](#) (PIF). Revenue for both funds have come from the same Government appropriation. PIF is currently closed, and we do not expect to reopen it. Instead, we intend to condense into a single fund with multiple signals under the WMF.

The Contaminated Sites Remediation Fund (CSRF) will be closed and replaced by the Contaminated Sites and Vulnerable Landfills Fund (CSVL). Prior to 1 July 2024 the CSRF was not funded by the levy. Post 1 July 2024 CSVL will be partially funded by the levy and fully levy-funded from 2025/26 onwards.

In light of the levy expansion and significantly more levy money available for investment, before the WMF reopened in October 2022, significant changes were made to fund management processes including the fund being open year-round with a focus on initiatives that make the greatest impact (reflected in an increase in the minimum grant size). In recent years, funding for the WMF has come from both Climate Emergency Response Funding (CERF) and the levy. Only the levy is within the scope of this procurement.

Departmental funding

Waste levy departmental funding is used to fund all levy related administration. This includes:

- Waste Investments:
 - Staff and other administrative costs in relation to funding projects (eg. staff costs, subject matter experts, third-party due diligence, external panel costs and the online Funds Management System (FMS)).
 - The end-to-end function involves managing and tracking funding enquiries, accepting and assessing expressions of interest and applications, application moderation and award, contracting, ongoing contract management, and project monitoring, reporting and evaluative activities.
- Waste Operations:
 - Staff and other administrative costs for levy collection including the Online Waste Levy System (OWLS) and the third-party supplier (formerly FishServe Innovations New Zealand Limited recently transitioned to Deloitte) who provide operational services.
 - Staff and administration associated with the distribution of the waste levy eg to territorial authorities; and monitoring, tracking and audit of the use of the waste levy by territorial authorities (including using an online system)
 - Compliance, monitoring and enforcement activities - the Ministry has a direct compliance, monitoring and enforcement role under the WMA including activities such as new policy implementation, site audits of levied landfills (regulated community consists of 182 levy liable facilities and approximately 400 further non levy facilities that have obligations under the WMA.) and enforcement action on non-complying operators. The waste operations team also provides the internal audit function for waste investments.
- Levy overheads which fund:
 - Waste Investments' and Waste Operations' proportionate share of the Ministry's shared service costs (i.e. overheads). This includes central costs such as



PROCUREMENT PLAN - STANDARD

accommodation, ICT, Finance, Procurement, P&C etc. Shared service costs are allocated proportionally based on each work streams relative share of budgeted FTE.

The table below provides an overview of the current appropriated departmental funding for the waste levy:

\$,000's	2023/24	2024/25	2025/26	2026/27
Waste Minimisation Administration	\$13,536	\$12,706	\$5,906	\$5,906

Cabinet has directed officials to identify a suitable annual quantum for waste-related investment ahead of Budget 2025. This is likely to result in an annual envelope for waste-related investments from levy revenue from 2025/2026 onwards.

From 1 July, 2024/25 the waste levy will also fund all of the Ministry's waste and hazardous substances work programme. This effectively increases the scope of departmental activities eligible for levy funding to include functions such as policy development and implementation, data and others. These functions are considered out of scope based on the retrospective focus of this procurement on existing 'back-office' activities.

Description of requirement

The solution sought is to produce a report that provides an independent review of departmental levy spend in relation to two key objectives:

1. Review the processes for making (waste levy) waste investment decisions, with a focus on value for money.
2. Review back-office functions funded by the levy, with a focus on value for money, including:
 - a. collecting, distributing and administering the levy
 - b. levy compliance, monitoring and enforcement;
 - c. and funds administration.

Objective One

Review the processes for making (waste levy) waste investment decisions, with a focus on value for money.

Requirements for objective one:

Conduct a process review, considering value for money associated with the end-to-end waste investment funds **decision-making** process (WMF & PIF) which includes [three key phases](#):

- Expression of Interest (EOI) – initial conversations, EOI submission and assessment, moderation and approvals
- Application – application submission, independent panel assessment², assessment, due diligence, moderation and approvals
- Contracting – project planning, deed of funding negotiation, external due diligence, legal review

In addition, how post-project evaluation feeds into decision making is also in scope.

² High value projects (funding request over \$1 million) or high-risk projects only.



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The Ministry requires the report to set out the provider's independent review findings with respect to the efficiency and effectiveness of the process for making waste investment decisions. Value for money conclusions will need to be provided in consideration of the output of objective 2c (administration of the waste investment funds).

Out of scope

- Investment decision-making processes for other Ministry administered funds such as the Contaminated Sites Remediation Fund and the Freshwater Improvement Fund (previously not funded by levy).
- Decision-making processes with respect to WMF projects that are funded with Climate Emergency Response Funding.

Internal review of the waste investment funds (background):

The Ministry's Risk, Assurance and Resilience (RAR) team has been conducting a review of the waste investment process to identify opportunities to increase efficiencies and decrease administrative burden with a focus to enhance customer centricity while maintaining appropriate, effective, and fit for purpose risk and assurance controls.

The approach to this review was a "management control self-assessment (CSA)" with support from the Assurance Team. To date, the Waste Investments team has mapped out their end-to-end investments process identifying key risks and controls established to manage the risks. The next step is for the Waste Investments Team to identify a project that has been through the entire investments process for the Assurance team to "walk through" and identify opportunities for efficiencies.

However, this work has been paused in light of the requirement for this independent review. The work already done by this team can be handed over during discovery to the appointed consultant to ensure synergies and efficiencies are achieved in delivery of objective one.

In addition to the recent self-assessment, the waste funds were also reviewed in 2018 and in 2019 by an independent consultant, with a particular focus on managing financial risk. While that previous review had a broader scope, there may be some useful insights to be drawn from the earlier reviews. These documents will be provided to the consultant.

Objective Two:

Review back-office functions funded by the levy, with a focus on value for money, including:

- a) collecting, distributing and administering the levy
- b) levy compliance, monitoring and enforcement;
- c) and funds administration.

Requirements for objective two:

- Document the activities undertaken across functions a, b, and c.
- Assess these functions and activities against the Ministry's regulatory responsibilities.
- Assess and report on this delivery against departmental expenditure since levy rates were increased in 2021 with respect to the value for money.



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- Assess whether the current appropriated departmental funding from FY26 onwards will be adequate to deliver on the Ministry's regulatory responsibilities. If not, provide an assessment of the indicative level of departmental funding required to deliver on these functions/activities³. This assessment will need to take into account that Cabinet has directed officials to identify a suitable annual quantum for waste-related investment ahead of Budget 2025, which may require provision of indicative level of funding under scenarios the Ministry will provide.
- Provide any recommendations that helps to avoid 'dead weight loss' from the administration of the key levy functions.

Resourcing and inputs for administering the levy related functions include:

- Human resources (internal and external)
- Systems - Funds Management System (FMS), [Territorial authority waste levy expenditure system](#) (TAWLES), [Online Waste Levy System](#) (OWLS)
- Processes and tools
- Other ancillary costs such as travel.
- Finance activities (funded by overheads) relating to specific levy related activities only:
 - Distribution of the levy to territorial authorities
 - Reporting related to levy revenue and expenditure
 - Review of finance control environment – Levy specific (i.e. internal controls).

Out of scope for review:

- Back-office functions not funded by the levy in FY24 e.g. Waste operations compliance, monitoring and enforcement activities not related to levied facilities.
- The Ministry's overhead allocation methodology. Allocation methodology is reviewed annually as part of Audit NZ's audit.
- Waste Investments activities funded by the Climate Emergency Response Fund
- Detailed assessment of specific processes, methodologies or systems employed by the two levy administrative function areas.

Value for money:

It is important that a clear definition of value for money and appropriate quantitative and qualitative measures are agreed from the outset of the project. Definitions and proposed measures should be included in the proposal. This may include measures of effectiveness (e.g. outcomes sought in WMA 2008 are clear and being achieved), measures of efficiency (e.g. outputs are delivered with minimal wasted effort or expense) and other factors such as confidence in the decision-making process.

The ideal supplier for this solution must demonstrate the following attributes:

1. Excellent assurance and finance expertise.
2. Experience in delivering the required services ie. to produce a report that provides an independent review of departmental levy spend.
3. Capacity and capability to deliver within the required timeframes.

³ Since the suitable annual quantum for waste-related investment (non-departmental) is yet to be confirmed, an appropriate quantum will need to be assumed for the purposes of this requirement.



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Key Outcomes/Deliverables for the supplier are:

Milestone/Deliverable/Outcome	Indicative Date
A draft report provided for feedback	09/08/2024
A clearly written, well analysed and evidenced final report, anticipated in at least two parts, which present findings in relation to objectives one and two.	30/08/2024

Added Value

Broader Outcomes:

No broader outcomes are expected to be achieved, however, the deliverables from this procurement may help support and provide insight useful and relevant to the other independent review (refer CAB-24-MIN-0138 para 22), which is being procured separately. Cabinet invited the Minister, in consultation with the Minister for Regulation, to report back to Cabinet by October 2024 on the performance of government spending funded by the levy, with a focus on value for money, whether private investment is being crowded out, on improved environmental outcomes, and on the market failures surrounding waste disposal that have resulted in the need for a levy. There are some areas of cross over between these two recommendations especially with the shared focus on value for money. However, these will be handled as two separate procurements.

Market analysis

Supply and Market options considered for this procurement include:
Consultancy Services - All of Government Panel

The following suppliers have been selected to bid for this procurement:

Supplier Name	Contact Person	Email address	Proposed Contract
EY	9(2)(a)	9(2)(a)	CSO
KPMG	9(2)(a)	AOGPolicyResearchDevelop@kpmg.co.nz	CSO
PriceWaterhouseCoopers	9(2)(a)	nz_proposals@pwc.com	CSO

Justification for selection of suppliers:

Based on the nature of the engagement and its significance, we are only considering Tier 1 AoG Consultancy Panel members, across the assurance and finance / economics areas.

Due to the very tight timeframe for requirements, and in consideration of known conflicts of interest or independence issues, we recommend the suppliers listed in the table above be contacted directly to bid for this work. These are all Tier 1 suppliers and are known providers of assurance, economics and policy consulting work with a good reputation, track record and the required level of expertise suitable to deliver the services

Forecasting/planning

Will there be an ongoing need for this service beyond this procurement?



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<p>Past procurement activity</p>	<p>No</p> <p>Has any procurement activity been undertaken in relation to this need already?</p> <p>Yes</p> <p>2018 – PwC (Contract #22039) were engaged to provide an independent review of the operation and administration of the Waste Minimisation Fund*, including identification of key controls, control gaps or design issues, process inefficiencies, and potential areas for improvement. 02 MfE WMF - Final Report (PWC 2018) 13825855.pdf (sharepoint.com)</p> <p>2022 – Deloitte (Contract #25641) were engaged to provide a high-level review. The objective of the review was to provide advice and recommendations for any governance changes needed to the Ministry's non departmental expenditure (NDE) activities including funds management, governance and assurance arrangements, which would strengthen the Ministry's performance and accountability. Deloitte Governance Review of NDEs and Other Significant Activities 20 October 2022.pptx</p> <p>There are likely to be other relevant procurements, which may be useful documents to form part of the initial 'discovery' phase for the consultant.</p>
<p>Science Investment Procurement strategy</p>	<p>There is no science requirement for this procurement.</p> <p>The chosen procurement strategy is a Low Risk Competitive Process. This will involve a Low Risk RFQ.</p> <p>The contract opportunity will be advertised through MfE closed email invitation.</p> <p>The reason for this recommendation is that there are a range of suppliers who have the potential to successfully carry out this contract. A competitive process between this select group of suppliers is the best way to ensure we are receiving Public Value (ie Secondary Procurement). As the opportunity is under 100k, a Closed Tender approach is preferred over an Open Tender to ensure an efficient use of both the Ministry's and Suppliers' time and resources. Further, the Government Procurement rules state a Panel arrangement should be used unless there is good reason not to. Given the clear scope, deliverables and low risk nature of the procurement, this approach also supports the LR-RFQ simple scoring methodology.</p> <p>This approach to market aligns with the Government Procurement Rules 4th edition and the New Zealand Government's Procurement Principles.</p>
<p>Probity</p>	<p>Probity in this procurement will be managed by:</p> <ul style="list-style-type: none"> • ensuring compliance with the Ministry's policies • ensuring that financial authority for the procurement is approved before proceeding to tender • acting fairly, impartially and with integrity, acting lawfully, and being accountable and transparent • ensuring anyone directly involved in the process signs a confidentiality agreement and declares any actual, potential or perceived conflict of interest • identifying and effectively managing all potential, perceived or actual conflicts of interest



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- treating all suppliers equally and fairly
- protecting the supplier's **Classification** sensitive and confidential information.
- providing each supplier with a comprehensive debrief at the end of the tender process.

Stakeholders

Stakeholder/Group Name	Level of and Reason for Interest
Te Mimiro	Governance group advising Te Purengi on business planning at strategic and detailed levels.
Waste investments team (internal)	Will need to provide discovery for both objective one and two. Review relates to the processes for investment decisions and back-office functions that this team performs.
Waste operations team (internal)	Will need to provide discovery for objective two. Review relates to the back-office functions that this team performs.
Finance team (internal)	Will need to provide discovery for objective two in relation to specific levy related activities conducted by this team.
Treasury (external)	Will be interested in the outcomes and have provided feedback on the procurement scope.

IT requirements

There is no IT requirement to this procurement.

Health & Safety

There is no Health and Safety risk associated with this procurement.

Sensitive Information or Services

The supplier requires may have access to commercially sensitive data. Yes

The contract is expected to give the supplier access to sensitive premises or critical services. No

If yes, can these risks be mitigated? Detail proposed mitigations:
We may need to share commercially sensitive information. We may be able to share this with redactions, but if that is not possible, we will need to ensure information is maintained as confidential. The tender process will require potential suppliers to detail their respective methods / approaches to managing sensitive / confidential information and appropriate confidentiality provisions will be included in the contract with the selected supplier.

Could the successful supplier potentially use the contract to act in a way that is contrary to New Zealand's security interests? No

The Ministry's Chief Security Officer and Risk, Assurance and Resilience team have been informed.

Brand & Experience

The procurement will not result in a publication and/or require design work.

Sustainable Materials & Packaging

There are no physical products being produced as part of this procurement.

Privacy considerations

There are no privacy considerations within this procurement.



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Legal Services or Law Firm Engagement	The procurement will not result in services from a lawyer or legal firm.										
Talent Considerations	The procurement will not provide resource to fill an internal role.										
Budget and Financial	<p>This section confirms budget allocation, information access and financial years for the contract. Note – This procurement was not budgeted for in the current or next financial year. It has arisen from a Cabinet request. We expect the contract to commence from 1 July 2024, with expenditure arising in the first quarter of FY25.</p> <table><tr><td>Is there an existing placeholder for this procurement in FMIS? Title: Efficiency and effectiveness of levy and funds administration (Report Back) I have consulted with Richard Clark.</td><td>Yes</td></tr><tr><td>If the duration of your contract goes across multiple financial years, you must discuss with your Finance Business Partner prior to finalising the procurement plan.</td><td>Yes</td></tr></table>			Is there an existing placeholder for this procurement in FMIS? Title: Efficiency and effectiveness of levy and funds administration (Report Back) I have consulted with Richard Clark.	Yes	If the duration of your contract goes across multiple financial years, you must discuss with your Finance Business Partner prior to finalising the procurement plan.	Yes				
Is there an existing placeholder for this procurement in FMIS? Title: Efficiency and effectiveness of levy and funds administration (Report Back) I have consulted with Richard Clark.	Yes										
If the duration of your contract goes across multiple financial years, you must discuss with your Finance Business Partner prior to finalising the procurement plan.	Yes										
Total Value	<table><tr><th>Item</th><th>Cost (indicative)</th></tr><tr><td>Services/Outcomes</td><td>\$40,000-59,000</td></tr><tr><td>Expenses</td><td>\$1000 (if travel is required)</td></tr><tr><td>Total maximum budget of procurement</td><td>\$60,000 plus GST</td></tr></table>			Item	Cost (indicative)	Services/Outcomes	\$40,000-59,000	Expenses	\$1000 (if travel is required)	Total maximum budget of procurement	\$60,000 plus GST
Item	Cost (indicative)										
Services/Outcomes	\$40,000-59,000										
Expenses	\$1000 (if travel is required)										
Total maximum budget of procurement	\$60,000 plus GST										
Cost Codes	<table><tr><th>Programme Code</th><th>Project Code</th><th>Natural Account Code</th><th>Departmental/ Crown</th></tr><tr><td>712</td><td>71200</td><td>4110</td><td>Departmental</td></tr></table>			Programme Code	Project Code	Natural Account Code	Departmental/ Crown	712	71200	4110	Departmental
Programme Code	Project Code	Natural Account Code	Departmental/ Crown								
712	71200	4110	Departmental								
Agreement duration	Contract Start Date: 12/07/2024 Contract End Date: 30/08/2024										
CONFLICT OF INTEREST											
Internal Process	<p>Have any individuals directly involved in the procurement process declared any real, potential or perceived Conflict of Interest upon commencement of their involvement?</p> <p>Please note, some panel members have identified low risk conflicts of interest. We are in the process of developing the relevant conflict of interest management plans which will require the Financial Delegation Holders</p>	Yes									



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approval. Please see the attached list of all COI forms here: [Conflict of Interest Forms Stage 1](#)

If your procurement is a competitive process, anyone involved in the procurement must complete an Internal Conflict of Interest Declaration Form and have this reviewed by Procurement. All involved individuals are required to immediately report any Conflict of Interest that arises at any time during the procurement process (including once participating Suppliers have been identified).

For direct source processes, anyone who declares a conflict of interest must complete an Internal Conflict of Interest Declaration Form and have this reviewed by Procurement.

For each Conflict of Interest identified, a Conflict Management Plan must be signed by Procurement and the person making the declaration.

Is your procurement strategy a **direct source or secondary direct selection**?

If yes, see below. If no, move onto Risk Assessment.

No

For all direct source procurements, we require the proposed Supplier, their nominated personnel and any sub-contractors to complete an External Conflict-of-Interest form prior to engaging in a contract.

Confirm you will send the following COI form to the Supplier and their nominated personnel to complete prior to contracting.

[External Conflict of Interest form & Management Plan.docx](#)

Yes

If the Supplier declares a conflict, the conflict-of-interest management plan must be completed and passed to the financial delegation holder for consideration and approval, alongside the procurement plan being signed.

- Has this task been completed?

To be done

RISK ASSESSMENT

Key procurement risks related to this plan have been identified and rated using the scale below. Mitigation actions are also detailed in the table.

THREATS CONSEQUENCE



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		Minor	Moderate	Major	Severe
LIKELIHOOD	Almost Certain	Medium	High	Extreme	Extreme
	Likely	Low	High	High	Extreme
	Possible	Low	Medium	High	High
	Unlikely	Very Low	Low	Medium	High
	Rare	Very Low	Low	Medium	Medium

Risk	Mitigation action	Rating Category
Suppliers may not respond with quality proposals	Reasonable number of suppliers being asked to supply a proposal. Consultants have 'less work' at the moment, so we think they are likely to respond favourably. Each respondent's proposal will be scored and evaluated. If the panel do not feel confident in the proposal submitted by the highest ranked supplier, with justification, we can review other options to source a suitable supplier.	Very Low
Conflict of interest and confidentiality management	MFE will consider COI before we request for proposals to eliminate suppliers where we believe there is a significant conflict. All parties involved in procurement documentation development, evaluations and contracting must complete a COI. The supplier will also be asked to complete a COI as part of the agreement. Any conflicts will be reviewed and assigned an appropriate management plan to mitigate the impact.	Low
The consultant is unable to access enough information due to Classification sensitivity	Restrict the work as far as possible to areas that can be informed by publicly available data. Sign confidentiality agreements with recipients, TAs or other stakeholders or	Medium



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public agencies who may be willing to share information if they see benefits to them from the outputs of the work.

Timeline is too tight to get the work done with the required level of quality by early September

Ensure time requirements are well understood by suppliers at time of RFP and that the timeline proposed in the RFP looks achievable. MFE staff to create a comprehensive set of 'discovery' documents to the supplier that will enable a rapid start to the work. MFE staff to ensure they have capacity to respond to queries quickly.

Medium

SOURCE

Timeline

The indicative Timeline for this activity is outlined below:

Action	Indicative date	Responsible
Plan		
Conflict of Interest declarations signed	10 June	Business
Procurement plan approved	10 June	Delegation
RFx documents developed/endorsed	10 June	Programme Director
RFP (tender)		
Tender released	12PM 14 June	Business
Last date for supplier questions	12PM 20 June	Business
Last date to answer questions	12PM 24 June	Business
Tender closing date	12PM 1 July	Business
Evaluation		
Panel confidentiality & conflict of interest declarations signed	14 June	Business
Evaluation Panel read the quotes	1 July	Business
Evaluation Panel Moderation	2 July	Business
Clarifications (if required)	3 July	Business
Lite Approval to Appoint Memo signed	5 July	Delegation
Post-evaluation		
Contract Drafting	14 June - 5 July	Business
Advise bidders of outcome	5 July	Business
Contract negotiation	If required	Business
Debrief unsuccessful suppliers	If required	Business
Contract Signed	By 12 July	Business
Anticipated Contract start date	12 July	Business
All documents submitted for Processing	12 July	Business

Evaluation methodology

The evaluation model that will be used is simple score.
Price will be a weighted criterion.



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Evaluation team (Minimum of 3)

A cross-functional team will be involved in the evaluation of responses and recommending the preferred supplier.

Evaluation Chair	Tessa Knight (Programme Manager, Waste Investments and Waste Operations)
Team Member	Job Title
Richard Clark	Finance Business Partner
Conrad Lendrum	Manager, Waste Investments Infrastructure
Darrin Mitchell	Manager, Waste Operations

Evaluation Criteria

Preconditions

Each supplier must meet all the following pre-conditions before its response will be considered for evaluation on its merits.

#	Pre-condition
1.	Supplier must read and understand the New Zealand Government Supplier Code of Conduct , and ensure their nominated subcontractors are aware of the Code.

Having met all of the preconditions qualifying responses will be evaluated on their merits using the following evaluation criteria and weightings.

Evaluation Criteria

Criteria	Weighting
Proposed solution/Technical Merit	20%
<p>Please outline how you propose to deliver to our requirements to produce a report that provides an independent review of departmental levy spend. We will be looking for a well thought out methodology to deliver the key objectives:</p> <ol style="list-style-type: none"> Review the processes for making (waste levy) waste investment decisions, with a focus on value for money. Review back-office functions funded by the levy, with a focus on value for money, including: <ol style="list-style-type: none"> collecting, distributing and administering the levy levy compliance, monitoring and enforcement; and funds administration. <p>Please include detail regarding your methods / approaches to managing sensitive / confidential information.</p> <p>Please include suggested definition(s) of value for money and proposed measures.</p>	
Capability of the Respondent to deliver	20%



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List the key personnel who will deliver the services, and their qualifications and experience.

Capacity of the Respondent to deliver

20%

Please provide a high-level project plan to show how you will meet our timeframes.

The respondent must demonstrate that they can dedicate an appropriate level of expertise and resource to be able to deliver the project outcomes on time and within budget.

Please include information on risk mitigation including a business continuity plan ie. what contingency do you have in place for any unexpected personnel absence or delays?

Track record

20%

Describe what experience your organisation has in delivering the required services. Please include at least three relevant examples of recent projects that demonstrate your track record of successful delivery of similar projects.

Price

20%

Provide your overall price. We will be assessing whether the proposed price represents public value for money and covers the full range of required services.

Total weightings

100%



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Scoring Table

Description	Definition	Rating
Excellent	Exceeds the criterion Respondent demonstrates exceptional ability, understanding, experience and skills. The Proposal identifies factors that will offer potential added value, with supporting evidence.	5
Good	Fulfils the criterion Respondent demonstrates above average ability, understanding, experience and skills. The Proposal identifies minor additional benefits, with supporting evidence.	4
Acceptable	Meets the criterion Respondent demonstrates the ability to meet the criteria, with supporting evidence.	3
Minor reservations	Partially meets the criterion Satisfies only a minimum of the criteria but not all. Reservations about the Respondent to adequately meet the criteria. Little supporting evidence.	2
Serious reservations	Limited demonstration to meet the criterion Extremely limited or no supporting evidence to meet the criteria. Minimum effort made to meet the criteria.	1
Unacceptable	Does not meet the criterion Does not comply or meet the criteria at all. Insufficient information to demonstrate the criteria.	0

Due Diligence

The following verification matrix will be used as part of the evaluation and due diligence process. The table shows how elements of the criteria will be verified by the panel.

Evaluation and due diligence options	Criteria		
	Fit for purpose	Ability to deliver	Value for money
Written offer/tender documents	✓	✓	✓
Buyer clarifications of offer	✓	✓	✓
Reference checks	✓	✓	✓
Interview	✓	✓	
Presentation	✓	✓	
Accepts proposed contact conditions		✓	

Additional Process



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	<p>If the Respondent is a contracted Supplier, the Ministry may</p> <ul style="list-style-type: none">• consider their own experience of service delivery, including in relation to meeting contractual obligations, ease of communication and relationship management.• Consider any other matter that is highlighted through the evaluation process. <p>The above processes and due diligence may be used to adjust the weighted outcome up or down, and due diligence criteria may be used to disqualify a Respondent.</p> <p>Exclusion of a Supplier for due diligence requires the written approval of the Financial Delegation Holder.</p>
Negotiation Considerations	<p>Considering negotiations is a strategy to aid in public value and/or additional values/benefits in a procurement outcome.</p> <p>Negotiations will be planned post-evaluation if required, to address any shortfalls or areas needing agreement in the preferred supplier's response prior to contracting.</p>
MANAGE	
Form of Agreement	<p>The proposed form of Agreement (subject to risk and Legal review if applicable) is Consultancy Services Order (CSO).</p> <p><u>Identify if you need a legal review</u> has indicated this Agreement will not require Legal Review.</p>
Contract Management	<p>The Budget Holder for this procurement will be: Jonathan Ryan The Contract Manager for this procurement will be: Tessa Knight The Contract will be managed by:</p> <ul style="list-style-type: none">• close management and monitoring of deliverables• deliverable-linked payments• regular meetings• supplier reporting (progress reports, issue register)



To:	Shaun Lewis, General Manager
From:	Tessa Knight, Programme Manager
CC:	Darrin Mitchell – Manager Waste Operations Conrad Lendrum – Manager Waste Investment Infrastructure Richard Clark – Finance Business Partner Niamh Quirke – Procurement Business Partner
Date:	19/07/2024
Re:	Approval to Appoint supplier: Efficiency and effectiveness of levy and funds administration

Purpose

To gain your approval to appoint the preferred supplier to provide a report that provides an independent review of departmental levy spend in relation to two key objectives:

1. Review the processes for making (waste levy) waste investment decisions, with a focus on value for money.
2. Review back-office functions funded by the levy, with a focus on value for money, including:
 - a. collecting, distributing and administering the levy
 - b. levy compliance, monitoring and enforcement
 - c. and funds administration.

Background: Procurement Process and Outcome

1. On 12 June 2024 the Procurement Plan for 'Efficiency and effectiveness of levy and funds administration' was approved by Jonathan Ryan as Financial Delegation Holder, leading to a Low-Risk Competitive Process (LR-RFQ) being run. Due to internal changes, Shaun Lewis has taken over as Financial Delegation Holder.
2. A Low-Risk Request for Quotation (LR_RFQ) was run and closed on 16 July 2024. 3 suppliers (being KPMG, EY and PWC) were approached via email to submit a response.
3. One response was received from KPMG.

As outlined in the [procurement plan](#), this was evaluated by an evaluation panel consisting of:

Name	Title
Richard Clark	Finance Business Partner (voting panel member)
Conrad Lendrum	Manager, Waste Investments Infrastructure (voting panel member)
Darrin Mitchell	Manager, Waste Operations (voting panel member)

Tessa Knight	Programme Manager (facilitator and voting panel member)
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Evaluators completed Conflict of Interest Disclosure Forms. A conflict was identified for Richard Clark and a management plan was put in place, approved by Niamh Quirke and Jon Ryan as Financial Delegation holder. For more information, please see the COI form for all Panel Members: [Conflict of Interest Forms](#).

4. The following questions were included in the LR-RFQ for suppliers to respond to, please note all questions were equally weighted:
- Outline how you propose to deliver to our requirements to produce a report that provides an independent review of departmental activities funded by the waste levy. Within this include:
 - detail regarding your methods / approaches to managing sensitive / confidential information
 - suggested definition(s) of value for money and proposed measures.
 - List the key personnel who will deliver the services, and their qualifications and experience.
 - Provide a high-level project plan to show how you'd meet our timeframes. Within this include:
 - Information on risk mitigation including a business continuity plan ie. what contingency do you have in place for any unexpected personnel absence or delays?
 - Describe what experience your organisation has in delivering the required services. Include at least three relevant examples of recent projects that demonstrate your track record of successful delivery of similar projects.
 - Provide your overall price using the price schedule below:

Deliverable	Name & Role (& Level if applicable)	Item/Unit	Unit price excluding GST	Qty	Sub-total excluding GST
1. Draft report - provided for feedback.	[Joe Bloggs]	[eg. hourly fee]	[\$ X]	[# units]	[\$ X]
	[Jane Bloggs]	[eg. hourly fee]	[\$ X]	[# units]	[\$ X]
	[John Bloggs]	[eg. hourly fee]	[\$ X]	[# units]	[\$ X]
Subtotal					[\$ X]
2. Final report - a clearly written, well analysed and evidenced final report, anticipated in at least two parts, which present findings in relation to objectives one and two.	[Joe Bloggs]	[eg. hourly fee]	[\$ X]	[# units]	[\$ X]
	[Jane Bloggs]	[eg. hourly fee]	[\$ X]	[# units]	[\$ X]
	[John Bloggs]	[eg. hourly fee]	[\$ X]	[# units]	[\$ X]
Subtotal					[\$ X]

All of Government (AoG) Administration Fee (If applicable)	[\$ X]
Total FEES NZD excl GST	[\$ X]

5. The **response** was reviewed and evaluated by the evaluation panel, using a simple score evaluation methodology. An evaluation meeting was held on 19 July 2024. A summary of the response is as follows:

Supplier	Strengths	Weaknesses
KPMG	<ul style="list-style-type: none"> The evaluation team was confident that KPMG was capable of delivering the service required within the timeframe specified Proposal is within the proposed budget for this procurement The team appears to have relevant experience and exposure and are capable of delivering the services Seniority of the team given the tight timeframes for this work The evaluation team acknowledged that are a tier 1 supplier that has extensive experience working with Government – the evaluation team also noted that MfE has procured services from KPMG on multiple occasions in relation to the 'Update to the Measuring Emissions Guide' Built in regular check-ins with MfE at key points of the process 	<ul style="list-style-type: none"> The proposal was quite high level (however we note the LR-RFQ timeframe was tight) but we felt more detail could have been provided Additional waste sector knowledge would have been preferable More work could have been put in upfront regarding the value for money measures – however we will workshop these with the supplier during the first week of the project

6. Based on the above, KPMG has been identified as the preferred supplier.
7. **Supplier Conflicts of Interest:** No conflicts of interest were identified by KPMG at the time of tender submission. A formal External Conflict of Interest Declaration form will be sent to the supplier for completion. If any key personnel declare a conflict the relevant Financial Delegation Holder will be notified, and a management plan put into place prior to contract execution.



Conclusions: Contract details

8. The anticipated value of the contract is \$56,272 (excl. GST). This is subject to successful negotiations, and the final committed cost will be the one included on the contract.

9. The proposed form of contract is a Consultancy Services Order and will start on 29 July 2024, running for a term of approximately 8 weeks with an end date of 27 September 2024. We expect that the deliverables will be completed by the end of August 2024, however we are proposing to provide a buffer within the contract end date to provide some flexibility.

Recommendations / Actions

We recommend you approve the appointment of KPMG to provide an independent review of departmental levy to the Ministry.

ENDORSED BY:	
Procurement Business Partner: Niamh Quirke, Procurement Advisor DATE: 22/07/2024	Signature: 
APPROVED BY:	
Financial Delegation Holder: Shaun Lewis, General Manager DATE: 22/07/2024	Signature: 
Comments:	

From: [MFEITService](#)
To: [FMIS Processing](#)
Cc: [Penny Bigham](#)
Subject: Form submission from: Contract Efficiency and effectiveness of levy and funds administration Penny Bigham
Date: Friday, 26 July 2024 9:00:36 am
Importance: Low

The following form has been submitted by Penny Bigham:
Contract Owner: Shaun Lewis
Contract Title: Efficiency and effectiveness of levy and funds administration
Supplier Name: KPMG

Link to Contract: https://ministryforenvironment.sharepoint.com/:b:/r/sites/ECM-Pol-ResEff/Shared%20Documents/02%20-%20Waste%20Minimisation%20Act%20Review_13272992/17%20-%20Amendment%202024/Implementation/Procurement/Rec%2023/SIGNED%20-%20Consultancy%20Services%20Order%20Form%20-%20Efficiency%20and%20Effectiveness%20Review%20-%202024.07.2024.pdf?csf=1&web=1&e=iwxQH2

Link to Procurement Plan: https://ministryforenvironment.sharepoint.com/:w:/r/sites/ECM-Pol-ResEff/Shared%20Documents/02%20-%20Waste%20Minimisation%20Act%20Review_13272992/17%20-%20Amendment%202024/Implementation/Procurement/Rec%2023/Procurement%20Plan%20-%20Efficiency%20and%20effectiveness%20of%20levy%20and%20funds%20administration.docx?d=w94aed78c67664243bc10065344ed7e74&csf=1&web=1&e=Vb8w7n

Link to Approval: https://ministryforenvironment.sharepoint.com/:w:/r/sites/ECM-Pol-ResEff/Shared%20Documents/02%20-%20Waste%20Minimisation%20Act%20Review_13272992/17%20-%20Amendment%202024/Implementation/Procurement/Rec%2023/Approval%20to%20Appoint%20Memo%20-%20Efficiency%20and%20effectiveness%20of%20levy%20and%20funds%20administration%20.docx?d=wc4e5da92fcc64bd590ec989f6118ac57&csf=1&web=1&e=VNMvLk

Link to additional information:

Link to External Conflict-of-Interest declaration: https://ministryforenvironment.sharepoint.com/:b:/r/sites/ECM-Pol-ResEff/Shared%20Documents/02%20-%20Waste%20Minimisation%20Act%20Review_13272992/17%20-%20Amendment%202024/Implementation/Procurement/Rec%2023/External%20Conflict%20of%20Interest%20form%20Management%20Plan%20-%20KPMG%20signed%2024%20July%202024.pdf?csf=1&web=1&e=76Z778

Link to Internal Conflict of Interest declaration:

Additional information for Procurement:

Invoices Waiting?: No

Contractor OnBoarding or Extension?: No

Link to Item: https://ministryforenvironment.sharepoint.com/sites/MFE-BusinessProcesses/_layouts/15/listform.aspx?PageType=4&ListId=cd5fc042%2D3af0%2D4031%2D89f1%2D5e0cdce303a3&ID=3034&ContentTypeID=0x010043CD2A7F568DF64CB3D0A0557154A9AF

PageType=4&ListId=cd5fc042%2D3af0%2D4031%2D89f1%2D5e0cdce303a3&ID=3034&ContentTypeID=0x010043CD2A7F568DF64CB3D0A0557154A9AF