

## Schedule 2: RFP process

Pharmac - Te Pātaka Whaioranga expects to follow the process set out below in the sequence indicated.

### 1. Submission

- (a) You may submit more than one proposal. Each proposal will be considered as a separate proposal.
- (b) Proposals must be submitted to Pharmac - Te Pātaka Whaioranga via the Government Electronic Tenders Service (GETS) no later than **2.00 p.m.** (New Zealand time) on **Monday 13 May 2024**. Late proposals will only be considered at Te Pātaka Whaioranga – Pharmac’s discretion, considering the need for fairness to other suppliers and integrity of the RFP process.
- (c) You cannot withdraw your proposal, once submitted, while the RFP process is continuing.
- (d) If you have any enquiries about this RFP you should submit them on GETS, responses to all enquires will be published on GETS. If you do need to get in touch via email, please contact us at [procurement@pharmac.govt.nz](mailto:procurement@pharmac.govt.nz)

### 2. Evaluation

- (a) Following the deadline for submitting proposals, an Evaluation Committee comprising of Pharmac - Te Pātaka Whaioranga staff will evaluate each proposal to select its preferred proposal(s). Pharmac - Te Pātaka Whaioranga may engage relevant external advisors at the evaluation stage, who would be required to enter into a confidentiality agreement with Pharmac - Te Pātaka Whaioranga prior to any review of proposals. For the avoidance of doubt, confidential pricing would not be shared with external advisors.
- (b) The Evaluation Committee will evaluate proposals in light of Pharmac - Te Pātaka Whaioranga’s statutory objective which is “to secure for eligible people in need of pharmaceuticals, the best health outcomes that are reasonably achievable from pharmaceutical treatment and from within the amount of funding provided”. In doing so the Evaluation Committee will be guided by:
  - (i) the Pae Ora health sector principles;
  - (ii) Pharmac - Te Pātaka Whaioranga’s Te Tiriti o Waitangi policy; and
  - (iii) the Factors for Consideration (Factors) that form part of Pharmac - Te Pātaka Whaioranga’s current OPPs, Pharmac - Te Pātaka Whaioranga to the extent applicable. More information on the Factors can be found at [www.pharmac.health.nz/factors-for-consideration](http://www.pharmac.health.nz/factors-for-consideration).
- (c) The requirement for Pharmac - Te Pātaka Whaioranga to pursue its statutory objective means that particular emphasis will be given to those aspects of proposals which demonstrate “health outcomes”, and those aspects of proposals which demonstrate the impact on the “funding provided” for pharmaceuticals. Those Factors which relate directly to these aspects will be given the greatest weight by the Evaluation Committee, but all Factors are important.

- (d) The information to be taken into account in applying the Factors by the Evaluation Committee will be at its discretion, however it will include:
  - (i) information provided by you in accordance with Schedule 4 of this RFP, which is additional to the information provided under clause 3 below;
  - (ii) any advice from the [Pharmacology and Therapeutics Advisory Committee](#) (PTAC), or relevant Specialist Advisory Committee, any relevant professional organisation or healthcare professionals. This may include specific clinical advice regarding relative risks and benefits of the pharmaceuticals following the closing of this RFP;
  - (iii) previous supply performance and relevant expertise;
  - (iv) Information regarding the support that would be provided to support implementation of a proposal that would contribute to equitable access and outcomes for Māori, Pacific peoples, tāngata whaikaha - disabled people but also for people living in areas of high socioeconomic deprivation, those living rurally, and people who've been refugees in line with the Pae Ora Act; and
  - (v) any other information that the Evaluation Committee considers to be relevant having regard to probity principles.
- (e) Each proposal will be evaluated on the basis that the price offered, the expenditure entailed, and any other terms included in the proposal, are the best that the supplier is able to offer. If you do not put forward your best terms you risk having your proposal excluded at the evaluation stage.
- (f) For the purpose of fiscal evaluation for this RFP, Pharmac - Te Pātaka Whaioranga will assess any pricing offered as commencing from no earlier than 1 December 2024. Suppliers may offer proposals that include a listing or price change prior to this date; however, any fiscal impact from this earlier listing/price change will not be included in Pharmac - Te Pātaka Whaioranga's primary fiscal evaluation of proposals.
- (g) If two or more proposals were determined by Pharmac - Te Pātaka Whaioranga to be similar, having considered all the Factors for Consideration, Pharmac - Te Pātaka Whaioranga may undertake a secondary fiscal evaluation where we may consider the impact of earlier list date/price changes.
- (h) Pharmac - Te Pātaka Whaioranga is not bound to select the lowest priced proposal or any proposal.

### **3. Pharmac may request further information**

- (a) Pharmac - Te Pātaka Whaioranga may request such further information as it considers necessary from or about you for the purposes of clarifying or evaluating your proposal, including (but not limited to):
  - (i) detailed information about your company structure, credit status and any other relevant company information;
  - (ii) any other additional information about your pharmaceutical; and

- (iii) any other information regarding the implementation support requested and described above.
- (b) If Pharmac - Te Pātaka Whaioranga requests further information from or about you, it is not obliged to request the same or any other information from or about any other party, provided that in Pharmac's judgment this would not be unfair to any other party.

Please note the Pharmac - Te Pātaka Whaioranga may seek advice from PTAC, or relevant Specialist Advisory Committee, or any relevant professional organisations or health care professionals about your product including evaluation of any product samples.

#### **4. Negotiation**

- (a) Pharmac - Te Pātaka Whaioranga may negotiate with the submitter(s) of one or more preferred proposals, in the latter case whether or not the acceptance of either supplier's proposal would exclude acceptance of the other proposal.
- (b) Negotiations will proceed on the basis that Pharmac - Te Pātaka Whaioranga's standard terms and conditions for supply of pharmaceuticals are applied. These terms and conditions are available as an attachment to this RFP on GETS.
- (c) Given that Pharmac - Te Pātaka Whaioranga expects your proposal to be the best you can offer, Pharmac does not intend to initiate negotiation with you on price. However, Pharmac - Te Pātaka Whaioranga does not exclude the possibility that the final price agreed will be different from the price put forward in your proposal, as a result of the impact that other negotiated terms may have on price.
- (d) Pharmac - Te Pātaka Whaioranga may negotiate and enter into a provisional agreement with a preferred supplier(s) on whatever special terms, in addition to Pharmac - Te Pātaka Whaioranga's standard terms and conditions, Pharmac - Te Pātaka Whaioranga considers appropriate.
- (e) If Pharmac - Te Pātaka Whaioranga and the supplier(s) are unable to reach a provisional agreement within what Pharmac - Te Pātaka Whaioranga considers to be a reasonable time, Pharmac - Te Pātaka Whaioranga may terminate those negotiations and negotiate with a different supplier(s).

#### **5. Consultation and approval**

- (a) Any provisional agreement will be conditional on consultation with suppliers and other interested parties, to the extent Pharmac - Te Pātaka Whaioranga considers consultation to be necessary or appropriate, and on Board approval (or approval by the Board's delegate acting under delegated authority).
- (b) Pharmac - Te Pātaka Whaioranga will not consider any counter-offers received during consultation.
- (c) The provisional agreement and responses to consultation will be considered by Pharmac's Board (or by the Board's delegate acting under delegated authority) in accordance with Pharmac - Te Pātaka Whaioranga's decision-making framework as outlined in its OPPs with reference to the [Factors for Consideration](#) and in line with Pharmac - Te Pātaka Whaioranga's [Te Tiriti o Waitangi policy](#).

- (d) If the Board or its delegate does not approve the provisional agreement, then Pharmac - Te Pātaka Whaioranga may initiate negotiations for a provisional agreement with any other supplier(s).
- (e) The RFP process will be complete once Pharmac - Te Pātaka Whaioranga has notified suppliers of either:
  - (i) the Board's or its delegate's decision to accept a negotiated agreement; or
  - (ii) the termination of the RFP process.

## 6. Miscellaneous

- (a) Pharmac - Te Pātaka Whaioranga reserves the right, having regard to probity principles:
  - (i) to make such adjustments to the above RFP process as it considers appropriate, at any time during the process, provided that it notifies suppliers affected by those changes;
  - (ii) not to accept any proposal;
  - (iii) to seek clarification of any proposal;
  - (iv) to meet with any supplier in relation to its proposal;
  - (v) to enter into an agreement or arrangement that differs in material respects from that envisaged in this RFP letter;
  - (vi) to suspend this RFP process. For example, if during the RFP process (and before a provisional agreement is entered into) it becomes apparent to Pharmac - Te Pātaka Whaioranga that further consultation is appropriate or required we may suspend the RFP process in order to consult. In this situation we may ask you to adapt and resubmit your proposal in light of consultation, or alternatively we may request that new proposals be submitted;
  - (vii) to terminate this RFP process at any time, by notifying suppliers who submitted proposals, and, following termination, to negotiate with any supplier(s) on whatever terms Pharmac thinks fit;
  - (viii) to readvertise for proposals.
- (b) Pharmac - Te Pātaka Whaioranga may consult or seek clinical advice from PTAC or a relevant Specialist Advisory Committee at any stage of the RFP process. Pharmac - Te Pātaka Whaioranga will notify you if the clinical advice results in any changes to the terms of the RFP.
- (c) You must not initiate or engage in any communication with other suppliers in relation to the RFP, whether before or after submitting your proposal(s), until such time as a provisional agreement is accepted by Pharmac - Te Pātaka Whaioranga's Board or the Board's delegate.
- (d) You must not initiate or engage in any communication with Te Pātaka Whaioranga - Pharmac, Manatū Hauora – Ministry of Health (including its operating unit

Medsafe), the Minister of Health (or any Associate Ministers), Health New Zealand – Te Whatu Ora, Whaikaha – Ministry of Disabled People, or any of their officers or directors, or advisors to Pharmac - Te Pātaka Whaioranga with a view to influencing the outcome of this RFP process. Failure to comply with this clause will entitle Pharmac - Te Pātaka Whaioranga, in its sole discretion, to disqualify you from this RFP process.

- (e) You must pay your own costs for preparing and submitting your proposal.
- (f) Proposals are submitted in reliance on your own knowledge, skill, and independent advice, and not in reliance on any representations made by Pharmac - Te Pātaka Whaioranga.
- (g) Your submission of a proposal will be taken as acceptance of the terms contained in this RFP letter. Pharmac - Te Pātaka Whaioranga may exclude your proposal if you do not comply with any of the terms contained in this RFP letter.
- (h) This is an RFP and not a tender. Your proposal is not an offer capable of being converted into a contract for the supply of oestradiol gel by Pharmac - Te Pātaka Whaioranga's apparent acceptance and instead a separate agreement needs to be negotiated.
- (i) Pharmac - Te Pātaka Whaioranga is not liable in any way whatsoever for any direct or indirect loss (including loss of profit), damage or cost of any kind incurred by you or any other person in relation to this RFP.
- (j) Pharmac - Te Pātaka Whaioranga will consider your proposal and information exchanged between us in any negotiations relating to your proposal, excluding information already in the public domain, to be confidential to us and our employees, legal advisors and other consultants, external advisors, Manatū Hauora – Ministry of Health, Health New Zealand - Te Whatu Ora and Whaikaha – Ministry of Disabled People (**Confidential Information**). However, you acknowledge that it may be necessary or appropriate for Pharmac to release Confidential Information in accordance with:
  - (i) section 12 of the Official Information Act 1982; and
  - (ii) any other legal and administrative obligations,and you consent to such disclosure.

Where Pharmac reaches a preliminary view that Confidential Information must be disclosed for the purposes stated in paragraph (j)(i) above, Pharmac will consult with you, and will act in good faith, before deciding whether to disclose the Confidential Information. To the extent permitted by law, Pharmac will inform you if Confidential Information is disclosed for the purposes stated in paragraph (j)(ii) above, including any disclosure to a court, inquiry or ombudsman.

## 7. Anticipated timetable

- (a) Following receipt of proposals, Pharmac - Te Pātaka Whaioranga anticipates:
  - (i) the Evaluation Committee evaluating proposals in May and June 2024;
  - (ii) negotiating with submitter(s) of one or more preferred proposals in July 2024;

- (iii) consulting on a provisional agreement July 2024;
- (iv) Pharmac's Board, or the Board's delegate, considering this provisional agreement in or after September 2024,

provided that the above time frames are only approximate and may be extended, without notice being required from Pharmac - Te Pātaka Whaioranga, if any stages of the RFP process take longer than anticipated.

- (b) Under this indicative timetable, the earliest that changes to the Pharmaceutical Schedule could be implemented is December 2024.
- (c) Please note the date of implementation may be delayed at Pharmac - Te Pātaka Whaioranga's discretion to allow for an orderly transition to any principal supply arrangement.

## **8. Governing Law**

This RFP is governed by Aotearoa New Zealand law, and the New Zealand courts have exclusive jurisdiction in all matters relating to this RFP.