



Expression of Interest

To operate a Partnership School|Kura Hourua opening in 2018

PSKH.04

The Rules

EOI released: 12 August 2016

Deadline for Questions: 5:00pm 1 September 2016

Deadline for Submission: 4:00pm 8 September 2016

Ministry of Education
33 Bowen Street
Wellington

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Key information



1.1 Context

- a. This is an invitation to suitably qualified organisations to submit an Expression of Interest (EOI) for the establishment and operation of a Partnership School|Kura Hourua opening in 2018.
 - b. This EOI is the first step in a multi-step application process. Following evaluation shortlisted Applicant/s will be invited to submit a full application. This document deals only with the first step i.e. the EOI process.
 - c. Words and phrases that have a special meaning are shown by the use of capitals e.g. Applicant, which means ‘a *person, organisation, business or other entity that submits an Expression of Interest in response to the EOI. The term Applicant includes its officers, employees, contractors, consultants, agents and representatives.* Definitions are at the end of this document.
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1.2 Our timeline

- a. Here is our timeline for this EOI.

Step in EOI process:

Date:

Deadline for Questions from applicants: 1 September 2016

Deadline for the Board and Ministry to answer applicants’ questions:
5 September 2016

Deadline for Submission: 16:00 8 September 2016

Applicants notified of shortlisting: 27 September 2016

RFA released to shortlisted applicant/s: week starting 30 September 2016

- b. All dates and times are dates and times in New Zealand.
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1.3 How to contact us

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

- b. Our Point of Contact

Name: Drew Preddy Partnership Schools Procurement Manager

Email address: partnership.schools@education.govt.nz



1.4 Developing and submitting your EOI

- a. This is an open, competitive tender process. The EOI sets out the step-by-step process and conditions that apply.
 - b. Take time to read and understand the EOI. In particular:
 - i. develop a strong understanding of our Requirements detailed in the request document
 - ii. in structuring your Submission consider how it will be evaluated.
 - c. For helpful hints on tendering and access to an applicant resource centre go to: www.process.govt.nz/for_applicants.
 - d. If anything is unclear or you have a question, ask us to explain. Please do so before the Deadline for Questions. Email our [Point of Contact](#).
 - e. In submitting your Registration you must use the Response Form provided.
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This is a Microsoft Word document that you can download.

- f. You must also complete and sign the declaration at the end of the Response Form.
 - g. Limit your Submission to the stated word limits.
 - h. Check you have provided all information requested, and in the format and order asked for.
 - i. Having done the work, don't be late – please ensure you get your submission to us before the Deadline for Submission!
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1.5 Address for submitting your EOI

- a. Submissions must be submitted electronically by uploading to GETS: 17790992.
 - b. Submissions sent by post or fax, or hard copy delivered to our office, will not be accepted.
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1.6 Our EOI Process, Terms and Conditions

- a. The EOI is subject to the Government's standard EOI Process, Terms and Conditions (shortened to EOI-Terms) described further in this document.
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1.7 Later changes to the EOI or EOI process

- a. If, after publishing this EOI, we need to change anything about the EOI, or EOI process, or want to provide applicants with additional information, we will let all potential Applicants know by placing a notice on the Government Electronic Tenders Service (GETS) at www.gets.govt.nz.
 - b. If you downloaded the EOI from GETS you will automatically be sent notifications of any changes through GETS by email.
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EOI Process, Terms and Conditions

Note to Applicants

- In managing this process We endeavour to act fairly and reasonably in all of Our dealings with interested Applicants, and to follow due process which is open and transparent.
 - If you have any questions about the EOI-Terms please get in touch with our [Point of Contact](#).
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The EOI process



Preparing and submitting an Expression of Interest

2.1. Preparing an Expression of Interest

- a. Applicants are to use the Response Form provided and include all information requested in relation to the EOI.
- b. By submitting an Expression of Interest the Applicant accepts that it is bound by the EOI Process, Terms and Conditions (EOI-Terms) contained in this Section (as varied by Section 1, paragraph 1.7, if applicable).
- c. Each Applicant will:
 - i. examine the EOI and any documents referenced in the EOI and any other information provided
 - ii. if appropriate, obtain independent advice before submitting an Expression of Interest
 - iii. satisfy itself as to the correctness and sufficiency of its Submission.



2.2. Applicants' Deadline for Questions

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



2.3. Submitting an Expression of Interest

- a. Each Applicant is responsible for ensuring that its Submission is received at the correct address (uploaded to the GETS website) on or before the Deadline for Submissions (as set out in paragraph 1.2). We will acknowledge receipt of each Submission.
- b. We intend to rely on the Applicant's Submission and all information provided by the Applicant (e.g. in correspondence). In submitting an Expression of Interest each Applicant should check that all information it provides is:
 - i. true, accurate and complete and not misleading in any material respect
 - ii. does not contain intellectual property that will breach a third party's rights.

Assessing Submissions



2.4. Evaluation panel

- a. The Authorisation Board (the Board) supported by the Ministry of Education form the evaluation panel. In addition, the Board may invite independent advisors to evaluate any EOI, or any aspect of any Submission.

2.5. Third party information

- a. Each Applicant authorises the collection of additional information, except commercially sensitive pricing information, from any relevant third party (such as a referee or a previous or existing client) and to use that information as part of its evaluation of the Applicant's Submission.
- b. Each Applicant is to ensure that all referees listed in support of its Submission agree to provide a reference.
- c. To facilitate discussions by Us and any third parties each Applicant waives any confidentiality obligations that would otherwise apply to information held by a third party, with the exception of commercially sensitive pricing information.

2.6. Board and Ministry's clarification

- a. We may, at any time, request from any Applicant clarification of its Submission as well as additional information about any aspect of its Submission. We are not required to request the same clarification or information from each Applicant.
- b. The Applicant must provide the clarification or additional information in the format requested. Applicants are expected to respond to requests in a timely manner. We may take such clarification or additional information into account in evaluating the Registration.
- c. Where an Applicant fails to respond adequately or within a reasonable time to a request for clarification or additional information, We may cease evaluating the Submission and may eliminate the Submission from the process.



2.7. Evaluation and shortlisting

- a. The Board will base its initial evaluation on the Submissions submitted in response to the invitation. This evaluation will be in accordance with the Evaluation Approach set out in the EOI. The Board may adjust its evaluation of an Expression of Interest following consideration of any clarification or additional information as described in paragraphs 1.6.
- b. In deciding which Applicant/s to shortlist, the Board may take into account any of the following additional information:
 - i. the results from due diligence
 - ii. any matter that materially impacts on the Board's trust and confidence in the Applicant
 - iii. any relevant information that the Board may have in its possession.
- c. Our Point of Contact will advise Applicants if they have been shortlisted or not. Being shortlisted does not constitute acceptance of the Applicant's Submission, or



imply or create any obligation on the Crown to enter into negotiations with, or award a Contract for delivery of the Requirements to any shortlisted Applicant(s), at this stage in the EOI process.

2.8. Applicant's debrief

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- a. At any time after shortlisting Applicants, the Board will offer Applicants who have not been shortlisted a debrief. Each Applicant will have 30 Business Days from the date of offer to request a debrief. When an Applicant requests a debrief, We will provide the debrief within 30 Business Days of the date of the request. The debrief may be provided by letter, email, phone or at a meeting. The debrief will:
 - i. provide the reasons why the Submission was or was not successful
 - ii. explain how the Submission performed against the pre-conditions (if applicable) and the evaluation criteria
 - iii. indicate the Submission's relative strengths and weaknesses
 - iv. explain, in general terms, the relative advantage/s of the shortlisted Submission/s
 - v. seek to address any concerns or questions from the Applicant
 - vi. seek feedback from the Applicant on the EOI process.

2.9. Issues and complaints

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

Standard EOI Terms & Conditions

2.10. Our Point of Contact

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- a. All enquiries regarding the EOI must be directed by email to Our Point of Contact. Applicants must not directly or indirectly approach any representative of the Board and/or Ministry, or any other person, to solicit information concerning any aspect of the EOI.
 - b. Only the Point of Contact, and any person of the Board authorised by the Point of Contact, are authorised to communicate with Applicants regarding any aspect of the EOI. We will not be bound by any statement made by any other person.
 - c. We may change the Point of Contact at any time. We will notify Applicants of any such change. This notification may be posted on GETS or sent by email.
 - d. Where an Applicant has an existing contract with the Ministry then business as usual communications, for the purpose of managing delivery of that contract, will continue using the usual contacts. Applicants must not use business as usual contacts to lobby, solicit information or discuss aspects of the EOI.

2.11. Conflict of Interest

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

2.12. Ethics

- a. Applicants must not attempt to influence or provide any form of personal inducement, reward or benefit to any representative of the Board or the Ministry in

relation to the EOI.

- b. An Applicant who attempts to do anything prohibited by paragraphs 1.10.a and d. and 1.12.a. may be disqualified from participating further in the EOI.
- c. We reserve the right to require additional declarations, or other evidence from an Applicant, or any other person, throughout the EOI process to ensure probity of the EOI process.

2.13. Anti-collusion and bid rigging

- a. Applicants must not engage in collusive, deceptive or improper conduct in the preparation of their Submission or any other submissions or in any discussions with the Board and/or the Ministry. Such behaviour will result in the Applicant being disqualified from participating further in the EOI process. The Applicant warrants that its Submission has not been prepared in collusion with a Competitor.
- b. We reserve the right, at its discretion, to report suspected collusive or anti-competitive conduct by Applicants to the appropriate authority and to give that authority all relevant information including an Applicant's Submission.

2.14. Confidential Information

- a. We and the Applicant agree that we will each take reasonable steps to protect Confidential Information and, subject to paragraph 1.14.c. and without limiting any confidentiality undertaking agreed between them, will not disclose Confidential Information to a third party without the other's prior written consent.
- b. We and the Applicant may each disclose Confidential Information to any person who is directly involved in the EOI process on its behalf, such as officers, employees, consultants, contractors, professional advisors, evaluation panel members, partners, principals or directors, but only for the purpose of participating in the EOI.
- c. Applicants acknowledge that Our obligations under paragraph 1.14.a. are subject to requirements imposed by the Official Information Act 1982 (OIA), the Privacy Act 1993, parliamentary or constitutional convention and any other obligations imposed by the law. We will not be in breach of our obligations if Confidential Information is disclosed to the appropriate authority because of suspected collusive or anti-competitive tendering behaviour. Where We receive an OIA request that relates to an Applicant's Confidential Information We will consult with the Applicant and may ask the Applicant to explain why the information is considered by the Applicant to be confidential or commercially sensitive.

2.15. Confidentiality of EOI information

- a. For the duration of the EOI, to the date of the announcement of the Successful Applicant(s), or the end of the EOI process, the Applicant agrees to keep the EOI strictly confidential and not make any public statement to any third party in relation to any aspect of the EOI, the EOI process or the award of any Contract without Our prior written consent.
- b. An Applicant may disclose information relating to the EOI to any person described in paragraph 1.14.b. but only for the purpose of participating in the EOI. The Applicant must take reasonable steps to ensure that such recipients do not disclose Confidential Information to any other person or use Confidential Information for any purpose other than responding to the EOI.

2.16. Costs of participating in the EOI process

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

2.17. Ownership of documents

- a. The EOI and its contents remain the property of the Crown. All Intellectual Property rights in the EOI remain the property of the Crown or its licensors. We may request the immediate return or destruction of any or all EOI documents and any copies.



Applicants must comply with any such request in a timely manner.

- b. All documents forming the Submission will, when delivered, become the property of the Crown. Submissions will not be returned to Applicants at the end of the EOI process.
- c. Ownership of Intellectual Property rights in the Submission remain the property of the Applicant or its licensors. However, the Applicant grants a non-exclusive, non-transferable, perpetual licence to retain, use, copy and disclose information contained in the Submission for any purpose related to the EOI process.

2.18. No binding legal relations

- a. Neither the EOI, nor the EOI process, creates a process contract or any legal relationship between the Board or the Ministry and any Applicant, except in respect of:
 - i. the Applicant's declaration in its Submission
 - ii. the Applicant's statements, representations and/or warranties in its Submission and in its correspondence with Us
 - iii. the Evaluation Approach to be used to assess Submissions as set out in Section 3 of the Request document, and in the EOI-Terms (as varied by the Key Information section paragraph 1.7, if applicable)
 - iv. the standard EOI conditions set out in paragraphs 1.10 to 1.23
 - v. any other matters expressly described as binding obligations in Key Information, paragraph 1.6.
- b. Each exception in paragraph 1.18.a. is subject only to Our reserved rights in paragraph 1.20.
- c. Except for the legal obligations set out in paragraph 1.18.a. no legal relationship is formed between the Board or the Ministry and any Applicant unless and until a Contract is entered into between those parties.

2.19. Elimination

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

2.20. Our additional rights

- a. Despite any other provision in the EOI, We may, on giving due notice to Applicants:
 - i. amend, suspend, cancel and/or re-issue the EOI, or any part of the EOI
 - ii. make any material change to the EOI (including any change to the timeline,



Requirements or Evaluation Approach) on the condition that Applicants are given a reasonable time within which to respond to the change.

- b. Despite any other provision in the EOI We may:
 - i. accept a late Submission if it is Our fault that it is received late
 - ii. in exceptional circumstances, accept a late Submission where We consider that there is no material prejudice to other Applicants. We will not accept a late Submission if We consider that there is risk of collusion on the part of an Applicant, or the Applicant may have knowledge of the content of any other EOI.
 - iii. in exceptional circumstances, answer questions submitted after the clarification period ends
 - iv. accept or reject any EOI, or part of an EOI
 - v. accept or reject any non-compliant, non-conforming or alternative EOI
 - vi. decide not to invite any Applicant to complete a full Application
 - vii. liaise or negotiate with any Applicant without disclosing this to, or doing the same with, any other Applicant
 - viii. provide or withhold from any Applicant information in relation to any question arising in relation to the EOI. Information will usually only be withheld if it is deemed unnecessary, is commercially sensitive to an Applicant, is inappropriate to supply at the time of the request or cannot be released for legal reasons
 - ix. waive irregularities or requirements in the EOI process where it considers it appropriate and reasonable to do so.
- c. We may request that an Applicant agrees to the Board:
 - i. selecting any individual element/s of the Requirements that is offered in an Expression of Interest and capable of being delivered separately, unless the Registration specifically states that the Registration, or elements of the Registration, are to be taken collectively
 - ii. selecting two or more Applicants to deliver the Requirements as a joint venture or consortium.

2.21. New Zealand law

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

2.22. Disclaimer

- a. We will not be liable in contract, tort, equity, or in any other way whatsoever for any direct or indirect damage, loss or cost incurred by any Applicant or any other person in respect of the EOI process.
- b. Nothing contained or implied in the EOI, or EOI process, or any other communication by the Board and/or the Ministry to any Applicant shall be construed as legal, financial or other advice. We have endeavoured to ensure the integrity of such information. However, it has not been independently verified and may not be updated.
- c. To the extent that liability cannot be excluded, the maximum aggregate liability of the Crown is \$1.

2.23. Precedence

- a. Any conflict or inconsistency in the documents forming the EOI shall be resolved by giving precedence in the following descending order:
 - i. Key Information, paragraph 1.6
 - ii. EOI Terms



- iii. all other Sections of the EOI documents
 - iv. any additional information or document provided by the Board and Ministry to Applicants through the Our Point of Contact or GETS.
- b. If there is any conflict or inconsistency between information or documents having the same level of precedence, the later information or document will prevail.

Definitions

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

Advance Notice A notice published by the buyer on GETS in advance of publishing the EOI. An Advance Notice alerts the market to a contract opportunity. Where used, an Advance Notice forms part of the EOI.

Applicant A person, organisation, business or other entity that submits an Expression of Interest in response to the EOI. The term Applicant includes its officers, employees, contractors, consultants, agents and representatives.

Business Day Any week day in New Zealand, excluding Saturdays, Sundays, New Zealand (national) public holidays and all days from Boxing Day up to and including the day after New Year's Day.

Board, Ministry, We, Our or Us The Authorisation Board supported by the Ministry of Education is the party that has issued the call for an EOI with the intent of purchasing the services described in the Request. The term "Board", "Ministry", "We" or "Our" includes its officers, employees, contractors, consultants, agents and representatives.

Competitors Any other business that is in competition with an Applicant either in relation to the services sought under the EOI or in general.

Confidential Information Information that:

- is by its nature confidential
- is marked by either the Board and/or the Ministry or an Applicant as 'confidential', 'commercially sensitive', 'sensitive', 'in confidence', 'top secret', 'secret', 'classified' and/or 'restricted'
- is provided by the Board and/or the Ministry, an Applicant, or a third party in confidence
- the Board and/or Ministry or an Applicant knows, or ought to know, is confidential.

Confidential information does not cover information that is in the public domain through no fault of either the Board, the Ministry or an Applicant.

Conflict of Interest A Conflict of Interest arises if an Applicant's personal or business interests or obligations do, could, or be perceived to, conflict with its obligations to the Board and/or the Ministry under the EOI or in the provision of the services. It means that the Applicant's independence, objectivity or impartiality can be called into question. A Conflict of Interest may be:

- actual: where the conflict currently exists
- potential: where the conflict is about to happen or could happen, or
- perceived: where other people may reasonably think that a person is compromised.

Contract The written contract/s entered into by the Minister of Education acting for and on behalf of Her Majesty the Queen and Successful Applicant(s) for the delivery of the Requirements.

Deadline for Submissions The deadline that Submissions are to be delivered or submitted to the Board and Ministry as stated in Section 1, paragraph 1.2.

Deadline for Questions The deadline for Applicants to submit questions to the Board as stated in paragraph 1.2, if applicable.

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| EOI | Means Our call for Expressions of Interest. |
| Expression of Interest | Our call for Expressions of Interest comprises the Advance Notice (where used), this EOI document (including the EOI-Terms) and any other schedule, appendix or document attached to EOI, and any subsequent information provided by the Board and/or the Ministry to Applicants through Our Point of Contact or GETS. |
| EOI-Terms | Means the Process, Terms and Conditions that apply to this Registration of Interest Conditions as described in this document. |
| EOI Process, Terms and Conditions (shortened to EOI-Terms) | The government's standard terms and conditions that apply to EOIs as described in this document. These may be varied subsequent to the release of the EOI by the Board and Ministry on giving notice to Applicants. |
| Evaluation Approach | The approach used by the Board and the Ministry to evaluate Registrations as described in the EOI-Terms (as varied by Section 1, paragraph 1, if applicable.). |
| GETS | Government Electronic Tenders Service www.gets.govt.nz |
| GST | The goods and services tax payable in accordance with the New Zealand Goods and Services Tax Act 1985. |
| Intellectual Property | All intellectual property rights and interests, including copyright, trademarks, designs, patents and other proprietary rights, recognised or protected by law. |
| Point of Contact | We and each Applicant are required to appoint a Point of Contact. This is the channel to be used for all communications during the EOI process. Our Point of Contact is identified in Section 1, paragraph 1.3. The Applicant's Point of Contact is identified in its Registration. |
| Requirements | The goods services which We intend to purchase as described in the Request document. |
| Response Form | The form and declaration prescribed and used by an Applicant to respond to the EOI, duly completed and submitted by an Applicants as part of its Submission. |
| Submission | The response an Applicant submits in reply to the Our EOI. It comprises the Response Form, the Applicant's registration and all other information submitted by an Applicant. |