



City of
Mount Gambier

Conditions of Tendering

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Conditions of Tendering

1.1 Definitions

In the RFT, the following terms shall, unless inconsistent with the context, have the meanings indicated:

- 1.1.1 A reference to a **clause** is a reference to a clause of the RFT.
- 1.1.2 **Closing Date** means the time and date detailed in the specification, or such later time and date as may be notified in writing to Tenderers by the Council.
- 1.1.3 **Conditions of Tendering** means these Conditions of Tendering.
- 1.1.4 **Conforming Tender** means a Tender described in clause 1.5.1.
- 1.1.5 **Contract for Services** means the contract for the provision of the Goods/Services, and may be subsequently amended by agreement between the Council and the successful Tenderer.
- 1.1.6 **Council** means the City of Mount Gambier.
- 1.1.7 **Elected Members** means members of Council elected by persons enrolled on the voters roll for the City of Mount Gambier.
- 1.1.8 **Goods** means the goods sought to be purchased by the Council pursuant to the RFT.
- 1.1.9 **Nominated Contact Person** means the person referenced in clause 1.3.1
- 1.1.10 **Non-Conforming Tender** means a Tender that does not meet the requirements set out in the Specification and/or the Tender Documents.
- 1.1.11 **Preferred Tenderer** means the Tenderer referred to in clause 1.9.1.
- 1.1.12 **RFT** means the Request for Tender.
- 1.1.13 **Services** means the services sought to be purchased by the Council pursuant to the RFT.
- 1.1.14 **Specifications** means the detailed description of the requirements of Council.
- 1.1.15 **Tender** means a tender submitted by a Tenderer pursuant to the RFT.
- 1.1.16 **Tender Documents** means the documents specified in clause 1.2.1.

1.1.17 **Tender Process** means the process for calling, receiving, evaluating and awarding of Tender(s).

1.1.18 **Tenderer's Representative** means the person nominated by a Tenderer under clause 1.3.2.

1.2 Request for Tenders

The Council seeks Tenders from Tenderers for the provision of the Goods/Services, which are further described in the Tender Documents.

1.2.1 *Tender Documents*

The Tender Documents may be comprised of:

1.2.1.1 the Conditions of Tendering;

1.2.1.2 the Contract for Services;

1.2.1.3 the Specifications; and

1.2.1.4 the Tender Response Schedules.

1.2.2 *Electronic Lodgement of Tenders*

1.2.2.1 Tenders must be lodged electronically before the Closing Time/Date as detailed in the specification and in accordance with the tender lodgement procedure set out in this clause.

1.2.2.2 Tenders lodged by any other means or to any other email address other than detailed in the specification will not be considered.

1.2.2.3 Tenderers warrant that they have taken all reasonable steps to ensure that their Tenders are free of viruses or any other matter which would cause harm to the Council's website or systems.

1.2.2.4 Tenderers acknowledge that it is their sole responsibility to ensure that sufficient time has been allowed for Tender lodgement, including time that may be required for any problem analysis and resolution prior to the Closing Time/Date.

1.2.2.5 If Tenderers have any problem uploading their Tender, they must contact the Nominated Contact Person prior to the Closing Date. Any failure to do so will result in the Tender being a Non-Conforming Tender.

1.2.2.6 A Tender is deemed to have been lodged by the Tenderer when the Tender has been received by the server as detailed in the specification.

1.2.3 *Late Tenders*

Tenders received after the Closing Date **WILL NOT** be considered or accepted.

1.2.4 *Extension of Time for the Submission of Tenders*

1.2.4.1 The Council may, in its absolute discretion, no less than two business days before the Closing Date, extend the Closing Date by notice in writing to the Tenderers.

1.2.4.2 A Tenderer may request the Council to extend the Closing Date for the submission of a Tender by written application to the Nominated Contact Person.

(a) Any such requests must be received by the Nominated Contact Person at least five business days prior to the Closing Date, and must provide sufficient reasons to support the request.

(b) It is entirely at the Council's discretion as to whether an extension is granted.

1.2.5 *Tender Validity Period*

1.2.5.1 All Tenders will remain open for acceptance by the Council for a period of not less than three months after the Closing Date.

1.2.5.2 Once submitted, a Tenderer cannot withdraw its Tender without the prior written consent of the Council, unless the Tender is withdrawn in writing before the Closing Date.

1.2.6 *Copying Tenders*

Tenderers must not use the RFT or the RFT Documents (including any attached technical and other written information supplied by the Council) for any purpose other than to prepare a Tender. This includes not copying this RFT or the RFT Documents (including any attached technical and other written information supplied by the Council) and providing a copy to any third party not involved in the preparation of a Tender.

1.3 Communication between the Parties

1.3.1 *Enquiries or Requests for Information or Clarification*

- 1.3.1.1 Any enquiries or requests for information or clarification regarding the RFT or the Tender Documents must be made in writing and addressed to the Nominated Contact Person detailed in the specification.
- 1.3.1.2 The Nominated Contact Person may (but is not obligated to) respond to a Tenderer's enquiries or requests for information or clarification.
- 1.3.1.3 If the Council provides any information to a Tenderer by way of clarification, then the Council reserves the right to provide that information to other Tenderers.
- 1.3.1.4 No statement made by the Nominated Contact Person, or any other representative of the Council should be construed as modifying the RFT or any of the Tender Documents, unless confirmed in writing by the Nominated Contact Person.

1.3.2 *Tenderer's Contact Person*

- 1.3.2.1 Tenderers are required to nominate a person to be the authorised contact person for the purpose of the RFT (**Tenderer's Representative**).
- 1.3.2.2 All communication with the Tenderer will be via the Tenderer's Representative.

1.3.3 *Site/Industry Briefing*

- 1.3.3.1 The Council may conduct a site/industry briefing. The briefing (if conducted) is intended to provide Tenderers with background information, and Tenderers are not to treat any statements made at the briefing as variations to the RFT.
- 1.3.3.2 The Council reserves the right to require all Tenderers to attend the site/industry briefing.
- 1.3.3.3 Details of the briefing will be provided to Tenderers at least seven business days prior to the briefing. Tenderers may be notified of the site/industry briefing by email, and Council may post the details of the briefing on the internet.
- 1.3.3.4 Each attending Tenderer must advise the Nominated Contact Person of the details of that Tenderer's attendees

(including name and position) at least two business days before the briefing.

1.3.4 ***Tenderer not to solicit the Council and its employees***

The Tenderer and its representatives must not interfere or attempt to interview or to discuss its Tender with Elected Members or employees and/or agents of the Council, other than the Nominated Contact Person. The Council reserves the right to reject any Tender submitted by a Tenderer which contravenes this clause.

1.4 **Tender Preparation**

1.4.1 ***Tenderers to be informed***

Each Tenderer must, prior to submitting its Tender, become acquainted with the nature and extent of the Goods/Services to be supplied or undertaken, and make all necessary examinations, investigations, inspections and deductions.

1.4.2 ***Evidence of Registration or Licensing***

Each Tenderer must (if applicable) be licensed or registered to perform the Services and provide evidence of such if required.

1.4.3 ***Conflict of Interest***

Tenderers must inform Council of any circumstances or relationships which will constitute a conflict or potential conflict of interest if the Tenderer is successful. If any conflict or potential conflict exists, the Tenderer must advise how it proposes to address this.

1.4.4 ***Use of Sub-contractors***

Where a Tenderer proposes to use resources from organisations other than the Tenderer itself, substantial information relating to the contractual arrangements for such resources must be detailed in the Tender, together with information on the relevant experience of such other organisation.

1.4.5 ***Ombudsman Act***

Tenderers should be aware that the *Ombudsman Act 1972 (SA)* has been amended so that the definition of “administrative act” under that Act includes an act done in the performance of functions under a contract for services with a Council. That Act also includes powers enabling the Ombudsman to investigate matters in the public interest. The Tenderer must ensure compliance with all obligations arising under that Act and any other applicable legislation.

1.4.6 *Freedom of Information*

Tenderers should be aware that the *Freedom of Information Act 1991 (SA) (FOI Act)* gives members of the public rights to access documents of the Council. The FOI Act promotes openness in governance and accountability of government agencies and confers the public with a legally enforceable right to be given access to documents, including contracts entered into by the Council, except for those contracts or provisions which should be kept confidential for public interest purposes, the preservation of personal privacy or are commercial in confidence.

1.4.7 *Collusion*

The Tenderer must not collude with any other Tenderers or potential Tenderers.

1.4.8 *Tenderer's confidential information*

1.4.8.1 Subject to clauses 1.4.8.2 and 2, the Council will treat as confidential all Tenders submitted by Tenderers in connection with the RFT during the Tender process, the evaluation of Tenders and any negotiations with preferred Tenderers.

1.4.8.2 The Council will not be taken to have breached any obligation to keep information provided by Tenderers confidential to the extent that the information:

- (a) is disclosed by the Council to its advisers, officers, employees or subcontractors solely in order to conduct the RFT process or to prepare and manage any resultant agreement;
- (b) is disclosed to the Council's internal management personnel, solely to enable effective management or auditing of the RFT process;
- (c) is published in the agenda for an open meeting to consider and determine the outcome of the Tender process;
- (d) is disclosed by the Council to the responsible Minister;
- (e) is authorised or required by law to be disclosed;
- (f) is in the public domain otherwise than due to a breach of the relevant obligations of confidentiality; or

- (g) is disclosed after the Council has either contracted with a Tenderer or terminated the RFT process.

1.5 Tender Documents

1.5.1 *Conforming Tenders*

A Conforming Tender is a Tender which meets all of the requirements set out in the RFT and the Tender Documents.

1.5.2 *Non-Conforming Tenders*

The Council is not required to, but may at its sole discretion, consider an incomplete, informal or a Non-Conforming Tender. Failure to respond to or meet any of the requirements set out in the RFT and the Tender Documents will result in the Tender being deemed a Non-Conforming Tender.

1.5.3 *Content of Tenders*

1.5.3.1 Tenderers can supply any other additional information or documents. The Council may have reference to such additional information or documents in evaluating the Tender.

1.5.3.2 All prices quoted by Tenderers in their Tender are:

- (a) to be in Australian dollars;
- (b) to be exclusive GST;
- (c) (if subject to rise and fall) to provide full details of how the rise and fall applies and the method of determining the price; and
- (d) In the prescribed format as detailed in the specification.

1.5.3.3 If a Tenderer proposes to provide the Goods/Services on a basis different to that envisaged by the Tender Documents (whether for reasons of innovation, efficiency or otherwise) that proposal should be fully documented and justified with the Tender. The Council does not warrant that any discussion with the Council's Nominated Contact Person prior to the Closing Date in relation to such a proposal will be taken into account in evaluating the Tenders.

1.6 Acknowledgement by Tenderers

Tenderers acknowledge that the Council:

- 1.6.1 makes no representations and offers no undertakings in issuing the RFT or the Tender Documents;
- 1.6.2 is not bound to accept the lowest Tender or required to accept any Tender;
- 1.6.3 may accept all or part of any Tender;
- 1.6.4 may require one or more Tenderers (but is not obliged to require all) to supply further information and/or attend a conference or interview;
- 1.6.5 may require one or more Tenderers (but is not obliged to require all) to make presentation(s);
- 1.6.6 may undertake “due diligence” checks on any Tenderer, including verifying references and/or referees, and undertaking company searches and credit checks;
- 1.6.7 will not be responsible for any costs or expenses incurred by the Tenderer arising in any way from the preparation and submission of its Tender;
- 1.6.8 accepts no responsibility for a Tenderer misunderstanding or failing to respond correctly to the RFT;
- 1.6.9 will not be liable for or pay any expenses or losses incurred by any party whether in the preparation of a Tender or prior to the signing of any Contract for Services or otherwise; and
- 1.6.10 will not be bound by any verbal advice given or information furnished by any member, officer or agent of the Council in respect of the Tender Documents or the RFT, but will only be bound only by written advice provided by the Nominated Contact Person.

1.7 Council's Rights

The Council reserves the right to:

- 1.7.1 amend, vary, supplement or terminate the RFT at any time;
- 1.7.2 accept or reject any Tender, including the lowest price tender;
- 1.7.3 negotiate with any service provider on all or any part of the Goods/Services to be supplied pursuant to this RFT;
- 1.7.4 vary the timing and process referred to in the specification;
- 1.7.5 postpone or abandon the RFT;
- 1.7.6 add or remove any Tenderer;

- 1.7.7 accept or reject any Tenders whether or not they are Conforming Tenders;
- 1.7.8 accept all or part of any Tender;
- 1.7.9 negotiate or not negotiate with one or more Tenderers; and/or
- 1.7.10 discontinue negotiations with any Tenderer.

1.8 **Tender Evaluation**

- 1.8.1 In assessing Tenders, the Council will have regard to, but not necessarily be limited to, the following criteria (not listed in any order of priority):
 - 1.8.1.1 insurance;
 - 1.8.1.2 compliance with work health and safety requirements;
 - 1.8.1.3 customer service experience and capacity;
 - 1.8.1.4 the tendered prices, including the proposed pricing structure;
 - 1.8.1.5 the level of risk associated with negotiation of an acceptable Contract for Services;
 - 1.8.1.6 degree of compliance with the requirements set out in the RFT and the Tender Documents; and
 - 1.8.1.7 such other matters that Council considers relevant, including:
 - (a) details of current and previous relevant experience in the provision of the Goods/Services;
 - (b) the provision of any aspect of the Goods/Services by sub-contractors (if applicable);
 - (c) financial resources;
 - (d) staff resources; and
 - (e) current and future contracts/workload.

1.8.2 ***Use of Tender Documents***

The Council may use, retain and copy any information contained in the Tenders for the evaluation of Tenders and for the finalisation of the provisions of the Contract.

1.8.3 *Debriefing of Tenderers*

If requested, Tenderers may be debriefed against the Council's evaluation criteria. Tenderers will not be provided with information concerning other Tenderers, apart from publicly available information. No comparison with other Tenders will be made.

1.9 **Acceptance of Tender**

1.9.1 The Council reserves the right to negotiate different terms and conditions for the Contract for Services with any one or more Tenderers (each referred to as a Preferred Tenderer).

1.9.2 The Council and the Preferred Tenderer may (if required) enter into negotiations for the award and execution of a Contract.

1.9.3 If, despite their best endeavours and acting in good faith, the Council and the Preferred Tenderer are unable to negotiate and agree on the terms of the Contract for Services, the Council reserves the right to negotiate with any other parties, including other Tenderers, for the provision of the Goods/Services.

1.9.4 The successful Tenderer will be notified in writing by the Council of the Council's acceptance of its Tender. The successful Tenderer must not make any oral or written public statements in relation to the awarding of a Contract until written notice is received by the Tenderer.

1.9.5 The notification of the acceptance of Tender by the Council creates an obligation on the Council and the successful Tenderer to enter into the Contract for Services (subject to any variations agreed pursuant to this clause 1.9).

1.9.6 The successful Tenderer acknowledges and agrees that all intellectual property created by the successful Tenderer arising out of the provision of the Goods/Services belongs to the Council, and the successful Tenderer will do all reasonable things necessary to assist the Council in the protection and transfer of ownership of the intellectual property resulting from the provision of the Services.

1.10 **Unsuccessful Tenders**

Unsuccessful Tenderers must, if required by the Council, return the Tender Documents to the Council, once they have been advised that their Tender is unsuccessful.

1.11 **No Legal Requirement**

The issue of this RFT or any response to it does not commit, obligate or otherwise create a legal obligation on the Council to purchase the Goods/Services from the Tenderers.

2. Governing Law

- 2.1 The RFT is governed by the law in South Australia.
- 2.2 The parties irrevocably submit to the exclusive jurisdiction of the courts in South Australia.

3. ICAC

Tenderers acknowledge that if they enter into a contract with the Council they will be considered to be public officers for the purposes of the *Independent Commissioner Against Corruption Act, 2012 (SA) (ICAC Act)* and will be obliged to comply with the ICAC Act and the Directions and Guidelines issued pursuant to the ICAC Act.