

Conditions of Tendering

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Conditions of Tendering

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This section includes notices to tenderers.

The Conditions of Tendering section does not form part of the Contract.

1 General

1.1 Contact Person

Refer requests for information about the Tender to:

| | |
|-------------------|---------------------------------|
| Name: | Patrick Leal |
| Telephone number: | 0475 107 730 |
| e-mail address: | patrick.leal@cabonne.nsw.gov.au |

2 Tenderer Eligibility

2.1 Acceptable Legal Entities

The Principal contracts only with recognised and acceptable legal entities. The Principal does not contract with firms under any form of external administration. Any tender submitted by an unincorporated business such as a sole trader, partnership, or business name must identify the legal entity that proposes to enter the contract.

The Principal will not award this Contract to a Tenderer that is a trustee if the Tenderer cannot demonstrate that it will be able to meet all of the requirements of the contract, including the financial assessment requirements, for the entire contract period.

2.2 Quality management

The Principal may elect to pass over a Tender from a Tenderer that does not demonstrate the capacity to systematically plan and manage the quality of its work in accordance with the *NSW Government Quality management guidelines (Construction Procurement)* (Edition 4) which are available on the buy.nsw website at <https://buy.nsw.gov.au/categories/construction>

Submit when requested the information identified in Tender Schedules - **Schedule of Quality Management Information.**

2.3 Work health and safety management

Tenderers must demonstrate their capacity to manage work, health and safety (WHS) in accordance with the *NSW Work Health & Safety management guidelines (for Construction Procurement)* (Edition 6) (*WHSM Guidelines*). These *Guidelines* are available on the buy.nsw website at: <https://buy.nsw.gov.au/categories/construction>

Submit with the Tender the information identified in Tender Schedules - **Schedule of Work Health and Safety Management Information.**

2.4 Environmental management

Tenderers must demonstrate their capacity to manage environmental matters in accordance with the *NSW Government Environmental management guidelines (Construction Procurement)* (Edition 4) (*EM Guidelines*) available on the Buy.nsw website at: <https://buy.nsw.gov.au/categories/construction>

Submit with the Tender the information identified in Tender Schedules - **Schedule of Environmental Management Information.**

A Tender will not be accepted from a Tenderer that does not have a Corporate Environmental Management System acceptable to the Principal in accordance with the *EM Guidelines*.

2.5 Financial assessment

By tendering for this Contract, the Tenderer agrees that the Principal may engage private sector consultants to financially assess tenderers. Financial details of tenderers may be obtained by an external Financial Assessor for assessment. Financial Assessors have a contract with the Principal to safeguard the financial details obtained. Financial Assessors must not disclose such details, either in whole or in part to any party other than NSW Government agencies or authorities without the express written permission of the Tenderer.

Information about the financial assessment services scheme (Scheme SCM2491) is available on the buy.nsw website at:

<https://buy.nsw.gov.au/schemes/financial-assessment-services-scheme>

The main criteria considered in the financial assessment of tenderers are:

- Net Tangible Assets (total assets, excluding any assets of company directors, less total liabilities less intangible assets);
- Current Ratio (ratio of current assets to current liabilities); and
- Working Capital (current assets less current liabilities).

The Principal considers a Tenderer meeting the following financial indicators, with no other significant detrimental financial characteristics, to be financially satisfactory in respect of its Tender:

- Net Worth exceeds 5% of the initial Contract Price;
- Current Ratio exceeds 1; and
- Working Capital exceeds 10% of the initial Contract Price.

Deviations from the above indicators will not necessarily prevent the Principal from considering any tender.

The Principal may elect to pass over a Tender from a Tenderer if any of the above financial assessment indicators are below a threshold acceptable to the Principal. The Principal may, at its discretion, also consider other actions where defects in the financial assessment may be able to be rectified.

Submit, when requested by the Financial Assessor or Principal, the Financial Assessment information shown in Tender Schedules - **Schedule of Financial Assessment Information**.

3 Contract details

3.1 Site

The Principal may provide geotechnical or other information concerning the Site. Some Site information, including reports and investigations, may not form part of the Contract.

Refer to General Conditions of Contract clause 36 - **Site Information** for information concerning the Site that does not form part of the Contract.

Refer to Preliminaries clause – **Site** for *Site* related contract requirements.

The Tenderer may apply to the Contact Person to request further investigations. The Principal will only consider such a request in exceptional circumstances.

Reports And Site information

Reports and other Site Information are available as follows:

- Geotechnical Report (ASCT)
- Site Survey (Premise)

Investigations Carried Out

Investigations carried out on this site include:

- Asbestos and Hazardous Materials Investigation (Evirowest/Barnsons)

Other Site Activities

Other site activities which may affect this site are:

- None.

Other Contracts

Other contracts which may affect this site are:

- None.

3.2 General Conditions of Contract

The Request for Tender (RFT) documents include a copy of the GC21 Edition 2 General Conditions of Contract.

3.3 Cost adjustment

The work is not subject to Cost Adjustment for labour and materials.

3.4 Insurance

The Contractor must arrange insurance of the Works (and any temporary works) and public liability insurance and pay all premiums in accordance with General Conditions of Contract clause 27 - **Insurance**.

Asbestos liability insurance

The Contractor must arrange any asbestos related insurance required by law. Any other asbestos related insurance is at the discretion of the Contractor. The Contractor will not be entitled to any additional payments for asbestos related insurance. The Principal does not require the Contractor to hold any particular Asbestos Liability Insurance under General Conditions of Contract clause 27 – **Insurance**.

Other Insurance

Unless otherwise advised by the Principal, the Contractor must arrange and pay all premiums for all other insurance required under General Conditions of Contract clause 27 – **Insurance**.

For professional indemnity insurance, a Certificate of Currency or evidence of the ability to obtain the required insurance, such as a letter from a broker or insurer, may be required as a condition of acceptance of tender.

3.5 Proposed Subcontractors and Consultants

For any individual Subcontract or consultancy agreement valued at more than \$100,000 or 2% of the Contract Price, whichever is the greater, complete Tender Schedules - **Schedule of Proposed Subcontractors and Consultants**, providing the names of the Subcontractors and Consultants and descriptions of the type of work they will be carrying out. Include confirmation that the recent WHS, environmental and workplace relations management performance of the proposed Subcontractors and Consultants has been reviewed by the Tenderer and found to be satisfactory. Submit the Schedule when requested.

This information will be taken into account in assessing the tenders. Identification of Subcontractors and Consultants before the award of the Contract will be taken as an indication of the team approach to be used by the Contractor and a demonstration that the Contractor will not trade off different subcontractors' prices to obtain a lower price (a practice that is unacceptable under the NSW Government Supplier Code of Conduct) .

4 Current policies

4.1 Disclosure of Tender and Contract information

Details of this tender process and any contract awarded as a result of the tender process may be disclosed in accordance with the *Government Information (Public Access) Act 2009* (NSW).

4.2 Exchange of information by the Principal

By submitting a Tender, the Tenderer authorises the Principal to gather, monitor, assess, and communicate to other State and Commonwealth Government agencies or local government authority's information about the Tenderer's financial position and its performance in respect of any contract awarded as a result of the tender process. Such information may be used by those agencies or authorities in considering whether to offer the Tenderer future opportunities for work.

4.3 Unconditional undertakings - approved institutions

For the purpose of giving unconditional undertakings, banks, building societies, credit unions and insurance companies listed by the Australian Prudential Regulation Authority (APRA) as being regulated by the APRA are acceptable. Lists appear at the APRA website at:

<https://www.apra.gov.au/list-of-registered-financial-corporations>

The Principal is prepared to consider proposals from Tenderers for the approval of Unconditional Undertakings by substantial financial institutions, not registered by APRA, which lawfully carry on business in Australia. The Principal may require the submission of evidence demonstrating the substance and status of any proposed financial institution without cost to the Principal.

5 Further information

5.1 Addenda to RFT Documents

If, as a result of a request for clarification from a Tenderer or for any other reason, the Principal issues an instruction amending the Request for Tender (RFT) documents, the instruction will be issued in writing to all tenderers in the form of an Addendum, which becomes part of the RFT documents. Written Addenda issued by the Principal are the only recognised explanations of, or amendments to, the RFT documents.

5.2 Pre-Tender meeting

A pre-tender meeting will be held on the date, at the time and at the place nominated in the advertisement or invitation.

The Contact Person will be available at that time to answer any Tenderer's queries regarding the Tender.

6 Preparation of Tenders

6.1 Alternative Tenders

The Principal may consider alternative tenders, provided the alternative tender meets the scope, functional intent and design concept expressed in the tender document. Where an alternative tender is proposed, submit a detailed description of the alternative stating clearly the manner in which it differs from the detailed requirements of the RFT documents and including separate tender schedules applicable to the alternative.

Alternative tenders will not be considered unless the Tenderer has submitted a conforming tender.

6.2 Qualifications and Departures

Qualifications and departures include any condition, offer or proposal of any nature appearing on any documents submitted with or within the Tender which constitute any variation of, omission from or addition to this RFT.

Where the Tenderer considers a qualification or departure to its Tender is necessary, it may discuss its concern with the nominated contact person and/ or utilise the option, if available, to submit an alternative tender.

Refer to Conditions of Tendering - **Evaluation of Tenders** for information on the evaluation of qualifications and departures.

Submit with the tender the information shown in Tender Schedules - **Schedule of Qualifications and Departures Information**.

6.3 Non-Price Criteria Information

Refer to Conditions of Tendering - **Evaluation of Tenders** for information on the evaluation of non-price criteria.

Submit with the tender the information shown in Tender Schedules - **Schedule of Non-Price Criteria Information**.

6.4 Information for “Payment Claim Worksheet”

Submit when requested the details shown in Tender Schedules - **Schedule of Information for General Conditions of Contract - Schedule 3 (Payment Claim Worksheet)**.

6.5 Contract Information

Submit when requested the details shown in Tender Schedules - **Schedule of Contract Information**.

6.6 Program

Submit a program in the form of a bar chart or network diagram, showing how Scheduled Progress will be achieved and including allowance for likely holiday periods; restraints imposed by the Principal’s Documents; any Milestones; and any external dependencies including provision of access and work by others. Refer to Tender Schedules - **Schedule of Program Information** for additional requirements. This program may form part of the Contract under General Conditions of Contract clause 22 - **Time management**.

7 Submission of Tenders

7.1 Documents to be submitted

The following documents must be completed and submitted by the Tenderer:

- Tender Schedule
- Any supporting documents relating to non-price assessment criteria (Refer Tender Schedule)

Do not change the text on the Tender Form or Tender Schedules, other than to insert the required information.

Acknowledge on the Tender Form, by listing the applicable Addendum numbers, that the Tender allows for all Addenda issued.

7.2 Submission procedure

Submit the Tender Form, Tender Schedules marked ‘Submit with Tender Form’ and other required documents or information by the date and time given in the advertisement or invitation.

If more than one tender submission is made, mark each submission clearly as to whether it is a copy, an alternative tender, or whether the submission supersedes another submission.

Submit when requested, by the date, time and method stipulated in the request, Tender Schedules marked ‘Submit when requested’ and any other information requested by the Principal to allow further consideration of the Tender.

Failure to meet these requirements may result in the Tender being passed over.

Any tender that is not received in full at close of tenders may be passed over.

7.3 Tenders submitted electronically

Legal status

Tenders submitted electronically will be treated in accordance with the *Electronic Transactions Act 2000* (NSW), and given no lesser level of confidentiality, probity, and attention than tenders submitted by other means.

Lodgement of a tender electronically is evidence of a Tenderer’s acceptance of the NSW Government Global terms and conditions which are available with the tender opportunity.

Please note that the following clarifications and interpretations of terms in the referenced NSW Government Global terms and conditions apply to this RFT unless the context requires a different interpretation:

- ‘response’ and ‘quotation’ means ‘tender’;
- ‘Respondent’, ‘user’, you, and ‘Supplier’ means ‘Tenderer’;
- ‘Opportunity’ means this ‘Request for Tenders’ or ‘RFT’; and
- ‘amendment notice’ means ‘Addendum’. Note that the RFT can only be changed by the issue of an instruction in the form of an Addendum. Refer to Clause 5.1.

The Principal may decline to consider for acceptance, tenders that cannot be effectively evaluated because they are incomplete or corrupt.

7.4 Late Tenders

In accordance with the NSW Government *Supplier Code of Conduct*, late tenders will not be accepted, except where the integrity and competitiveness of the tendering process will not be compromised. The *Supplier Code of Conduct* is available on the buy.nsw website at <https://buy.nsw.gov.au/policy-library/policies/supplier-code-of-conduct>.

8 Procedures after closing of Tenders

8.1 Evaluation of Tenders

In evaluating tenders, the Principal may take into consideration factors including, but not limited to: whole of life costs; ability to meet requirements of the NSW Government *Supplier Code of Conduct*, *Aboriginal Participation Policy*, and other referenced policies; innovation; delivery time; quality offered; previous performance; experience; capability; work health and safety performance; reasonable steps in dealing with modern slavery, workplace and industrial relations performance; environmental management performance; quality management capability; community relations; value adding including economic, social and environmental initiatives; and conformity.

Weighted Non-Price Evaluation

Tenders will be assessed using a weighted scoring process based on information provided with the Tender. The ratio of price to non-price criteria will be 60:40.

The non-price criteria (in priority order with most important listed first) will be:

- Experience in Similar Projects
- Capability to Undertake this Project
- Proposed Timeframe
- References

The Principal may elect to pass over a Tender from a Tenderer with an assessed score on any of the above non-price criteria that is below a threshold acceptable to the Principal.

8.2 Acceptance of Tender

The Principal may accept tenders that do not conform strictly with all requirements of the RFT documents.

The Principal is not bound to accept the lowest or any tender. Tenders which do not comply with any requirement of, or which contain conditions or qualifications not required or allowed by, the tender document may be passed over.

No Tender, or qualification or departure from a contract condition or specification, is accepted unless the Principal gives an acceptance or formal agreement in writing.

8.3 Protection of privacy

The Tenderer warrants, in respect of any personal information provided in this Tender or any contract arising from this Tender, that the information is accurate, up to date and complete, and that nominated individuals authorise its collection and are aware:

- that the information is being collected for the purpose of evaluating tenders and administering any contracts arising from those tenders and may be made available to other NSW government agencies or local government authorities for those purposes;
- whether the supply of the information by the individual is required by law or is voluntary, and any consequences for the individual if the information (or any part of it) is not provided; and
- of the existence of any right of access to, and correction of, the information.

END OF SECTION – CONDITION OF TENDERING